



THE MILLE LACS BAND OF
OJIBWE INDIANS
Legislative Branch of Tribal Government

JOINT RESOLUTION 18-01-94-18

A JOINT RESOLUTION RECOGNIZING THE RIGHT OF A BAND OFFICIAL TO OBTAIN SEPARATE AND INDEPENDENT LEGAL COUNSEL AT BAND EXPENSE TO DEFEND AGAINST CLAIMS REASONABLY IDENTIFIED AS ARISING FROM OR CONNECTED TO ACTS COMMITTED OR OMISSIONS MADE IN AN OFFICIAL'S INDIVIDUAL CAPACITY WITHIN A COUNTERCLAIM AND CROSS-CLAIM FILED IN PENDING LITIGATION INVOLVING MILLE LACS COUNTY, AND THE RIGHT TO INDEMNITY AND TO HOLD BAND OFFICIALS HARMLESS AGAINST SAID CLAIMS MADE WITHIN THEIR OFFICIAL CAPACITY

- WHEREAS, the Mille Lacs Band Assembly ("Band Assembly") is the duly-elected governing body of the Mille Lacs Band of Ojibwe ("Band"), a federally-recognized Indian Tribe and a member of the Minnesota Chippewa Tribe ("MCT"); and
- WHEREAS, Article VI, sec. 1(b) of the MCT's Revised Constitution authorizes each constituent Band government to administer funds within the control of the Band and utilize Band funds for expenses of Band officials; and
- WHEREAS, Article VI, sec. 1 of the Bylaws of the MCT's Revised Constitution authorizes each constituent Band government to statutorily establish the duties of its officers; and
- WHEREAS, 3 MLBSA § 2(d), the Band Assembly is empowered to adopt resolutions to promote the general welfare of the people of the Band; and
- WHEREAS, 4 MLBSA § 2, the Chief Executive of the Band is empowered to exercise the Executive Branch powers of the Band; and
- WHEREAS, 2 MLBSA sec. 5(a) delegates to the Band Assembly the authority to direct in what manner the Band may be subject to suit; and
- WHEREAS, 3 MLBSA sec. 8(a)(5) imposes a duty upon a Band Assembly District Representative to represent the community interests of his or her district electorate; and

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WHEREAS, 3 MLBSA sec. 8(a)(9) authorizes a Band Assembly District Representative to perform legislative and other assigned duties; and

WHEREAS, 3 MLBSA sec. 21 insulates Band Assembly members from suits based upon acts taken or remarks made in official Band Assembly session; and

WHEREAS, 4 MLBSA sec. 18(a) and (c) authorizes the Solicitor General to represent the Band's interests in all legal proceedings in exterior courts of competent jurisdiction, which includes defending actions instituted against the Band; and

WHEREAS, the Band has retained the Ziontz Chestnut Law Firm, acting under the auspices of the Solicitor General, to represent the Band because of its expertise with respect to Indian treaty rights, reservation boundaries, and related matters; and

WHEREAS, on November 16, 2017, in Resolution No. 17-04-36-18, the Band Assembly, with the concurrence of the Chief Executive, authorized the Solicitor General and the Ziontz Chestnut Law Firm to commence litigation on behalf of the Band, Band Police Chief Sara Rice and Band Police Sergeant Derrick Naumann against Mille Lacs County, Mille Lacs County Attorney Joseph Walsh and Mille Lacs County Sheriff Brent Lindgren in federal court, in both their individual and official capacities; and

WHEREAS, the Solicitor General and the Ziontz Chestnut Law Firm filed the lawsuit, entitled *Mille Lacs Band et al. v. Mille Lacs County et al.*, Case No. 17-cv-05155-SRN-LIB, in federal district court of the District of Minnesota on November 17, 2017; and

WHEREAS, on December 21, 2018, Mille Lacs County filed a counterclaim and cross-claim against the Band and against Band Police Chief Rice, Band Police Sergeant Naumann, Band Chief Executive Melanie Benjamin, Band Secretary-Treasurer Carolyn Beaulieu, Band District 1 Representative Sandra Blake, Band District 2 Representative David Aubid, and Band District 3 Representative Harry Davis (collectively, "Band Officials"), in both their individual and official capacities; and

WHEREAS, the Band's Solicitor General and the Ziontz Chestnut Law Firm have advised the Band that a suit against an official in his or her official capacity is a suit against the entity such that, in this case, the claims against the Band Officials in their official capacities are claims against the Band; and

- WHEREAS, Mille Lacs County's counterclaim and cross-claim make no factual allegations with respect to any actions (or inactions) of the Band Officials and seeks no relief against any Band Official in his or her individual capacity; and
- WHEREAS, the County's counterclaim and cross-claim does not seek an award of money damages against the Band or any Band Official in his or her official or individual capacity; and
- WHEREAS, all of the relief the County seeks in its counterclaim and cross-claim is a direct response to the Band's complaint, addresses issues raised in the Band's complaint, and addresses the official, sovereign, and governmental interests of the Band; and
- WHEREAS, the Band's Solicitor General and the Ziontz Chestnut Law Firm have advised the Band and the Band Officials that under present circumstances they are not aware of any conflict of interest between the interests of the Band and the Band Officials in their official or individual capacities with respect to the County's counterclaim and cross-claim; and
- WHEREAS, regardless, a Band Official is not necessarily obligated to accept legal representation by and through the Band's Interior Legal Counsel to defend against claims purportedly associated with alleged acts or omissions of a Band Official functioning in an individual capacity; and
- WHEREAS, on January 11, 2018, in Resolution No. 18-01-79-18, the Band Assembly, with the concurrence of the Chief Executive, acknowledged "the right of any Band Official to seek separate representation in his or her individual capacity, including such separate representation as may be available under the Band's insurance policies"; and
- WHEREAS, in Resolution No. 18-01-79-18, the Band also pledged that it would "pay all costs and fees necessary to defend . . . the Band Officials in their individual capacities, should they choose to be represented by the Solicitor General and the Ziontz Chestnut Law Firm, against the counterclaim and cross-claim, including payment of any award of costs or disbursements to the County made against the Band Officials in their individual capacities".

NOW, THEREFORE, BE IT RESOLVED that the Band Assembly reaffirms the right of any Band Official to seek and secure separate representation, including such separate representation as may be available under the Band's insurance, to defend the counterclaim and cross-claim, as referenced herein, asserted against a Band Official for purported acts committed or omissions made in his or her individual capacity; and

BE IT FURTHER RESOLVED that the Band Assembly will pay all reasonable attorney's costs and fees necessarily incurred by a Band Official who opts to obtain separate representation in their individual capacity to defend against the counterclaim and cross-claim, as described above; and

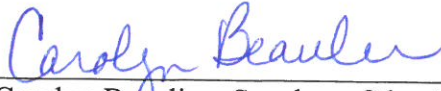
BE IT FURTHER RESOLVED that such separate representation will cease if and when the counterclaim and cross-claim are dismissed against a Band Official choosing to avail him or herself of the above-stated option, subject to revival upon appeal of the same; and

BE IT FURTHER RESOLVED that such separate representation will also cease if and when a Band Official choosing to avail him or herself of the above-stated option no longer occupies elected office, unless a federal court sustains the counterclaim and cross-claim against such individual despite an intervening change of elected status; and

BE IT FURTHER AND FINALLY RESOLVED that an intervening change of elected status will not impact the Band's obligation to pay all reasonable attorney's costs and fees necessarily incurred during the above-stated period of separate representation.

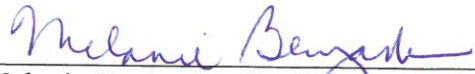
WE DO HEREBY CERTIFY, that the foregoing resolution was duly concurred with and adopted at a regular session of the Band Assembly in Legislative Council assembled, a quorum of legislators being present held on the 6th day of February, 2018 at Nayahshing, Minnesota by a vote of 3 FOR, 0 AGAINST, 0 SILENT.

IN WITNESS WHEREOF, we, the Band Assembly hereunto cause to have set the signature of the Speaker of the Assembly to be affixed to this resolution and forwarded to the Chief Executive for Concurrence.



Carolyn Beaulieu, Speaker of the Assembly

IN CONCURRENCE, with the action of the Speaker of the Assembly, I set my hand to this resolution.



Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND