

**IN THE COURT OF CENTRAL JURISDICTION
COURT ORDER 45**

IN THE MATTER OF THE RULES OF THE DISTRICT COURT

The Court of Appeals hereby adopts the Court Rules of the District Court of the Non-Removable Mille Lacs Band of Ojibwe. All prior Court Rules or Orders issued by the Court of Appeals governing the procedures of the District Court are hereby superseded to the extent that those rules apply to the District Court. Prior rules which apply to both the Court of Appeals and the District Court are still in full force and effect as to the Court of Appeals until such time as a comprehensive set of rules are adopted for the Court of Appeals.

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SECTION I. PLEADINGS

Rule 1. Initial Pleadings

All initial complaints and petitions must include a statement which demonstrates the subject matter jurisdiction of the court. All pleadings shall be filed with the Court Clerk of the District Court, 43408 Oodena Drive, Onamia, MN 56359.

Rule 2. Requirement of Filing Fees

All petitions or complaints filed must be the original. The petitioner must pay the required filing fee for the type of action filed. Litigants should contact the court clerk for the fee amount. Payments can be made in the form of cash, check, or money order payable to the court. A party who cannot afford to pay the fee may file an Application for Waiver of Fee - Paupers Affidavit to be submitted to the Court Administrator for approval. Band elders who are fifty-five (55) or older shall not be required to pay the filing fee. The Office of Solicitor General shall not be required to pay a fee for cases filed on the authority of that office. Fees are not required for probate, name change, domestic violence, harassment, and any other class of case designated by the Court.

Rule 3. Use of Fax Copies

Other than petitions and complaints, parties may file affidavits, pleadings, motions and other documents by use of fax transmission to the Court Clerk. However, the original document shall be filed with the Court Clerk within 48 hours of the filing by fax unless the Court Clerk or Judge deems the fax satisfactory for filing. The fax transmission must reflect the sending party's name, address, telephone number and fax number. (The fax number of the District Court is (320) 532-3153; the phone number is (320) 532-7400).

Rule 4. Court Files Not to be Removed

Original papers on file in the Court Clerk's office shall not be removed from the Court Clerk's office without a written order signed by a Judge, except the Court Clerk or the Court Clerk's deputies may bring them to the courtrooms to be used by the Court officials or the parties and their attorneys, for the purposes of trial or hearing, and they shall then be returned to the Court Clerk's office. Except for cases involving minors or other cases protected from disclosure by Mille Lacs Band statutes, parties may obtain copies of case filings from the Court Clerk after paying the appropriate fee.

Rule 5. Exhibits

No exhibit offered or admitted in evidence shall be removed from the courtroom or from the custody of the Court Clerk or Court Reporter, as the case may be, without permission of the Judge and a written receipt shall be taken from the person receiving it.

Rule 6. Top Margin

All pleadings and proposed orders filed with the Court shall have a two-inch top margin on the first page to allow room for the file stamp.

Rules 7-9 reserved for future use.

SECTION II. COURTROOM DECORUM

Rule 10. Courtrooms, Use of

The use of tobacco, beverages, food or candy, pagers and/or cell phones in the courtroom is prohibited except that water may be allowed at the counsel tables for hearings or at the discretion of the Court for lengthy hearings. All persons are forbidden to scratch, alter, spit on or deface in any manner any of the furniture, equipment, floors, walls, or ceilings of the courtrooms.

Rule 11. Photographs, Broadcasting, and Televising of Judicial Proceedings

Except as expressly permitted by the Chief Justice, the use of cameras, television and other broadcasting equipment is prohibited inside the courtroom.

The purpose of this directive is to ensure that Courtroom proceedings are conducted with dignity and in a manner calculated to avoid the disruption.

It should be emphasized that the representatives of the news media are expected to conduct themselves at all times in a professional manner consistent with the spirit and intent of this rule.

In order to ensure such conduct, in the event conduct of the news media is brought to the attention of the Court which is violative of the foregoing rules, the offending person shall be immediately notified to cease and desist such activity. If the offending party refuses to comply with such order, then the Court may immediately command official personnel to take affirmative action causing cessation of such activity, including the seizure of the equipment of such person. Any offender may be found liable for contempt of court.

This directive does not prohibit any Judge from giving photographic or broadcasting interviews with any television or radio station or to be photographed in any manner in chambers, and any Judge may permit broadcasting, televising, recording or photographing of investigative, ceremonial proceedings or any moot court trial for educational or scientific purposes.

Rule 12. Courtroom Conduct

The following is requested of counsel for proper courtroom conduct:

- (a) Arguments shall be addressed to the Court and not to opposing counsel.
- (b) Stand when talking to the Court or when addressed by the Court.

- (c) When examining a witness, stand or sit where the Court, witness, jury and reporter can hear you.
- (d) Do not sit on counsel table.
- (e) Cell phones and pagers are to be turned off while in the courtroom.
- (f) Do not read newspapers in the courtroom.
- (g) Do not take files, pleadings, or papers away from the Court Clerk's desk or exhibits from the Court Reporter unless you obtain permission to do so.
- (h) Do not droop in ones chair.
- (i) When your business in Court is finished, depart from the courtroom quietly if you wish to retire. Do not hold conferences in the courtroom with your client when Court is in session.
- (j) Advise your clients as to the impropriety of discussing pending matters in the courtroom.

Your conduct in the courtroom as a member of the Bar demonstrates your respect for the administration of justice.

Rules 13-19 reserved for future use.

SECTION III. COURT PROCEDURE- CRIMINAL CASES

Rule 20. Initial Appearance- Bond Setting; Telephone

An initial appearance hearing should consist of the Court Clerk, the District Court Judge, the defendant, and the prosecutor. The defendant may attend by conference call if he/she is incarcerated. The Court and counsel must be able to hear the defendant. The Court shall set a reasonable bond.

Rule 21. District Court Arraignments; Continuances

Trial arraignments shall be held only on the day, and at the time designated by the Judge. Counsel shall be prepared at the time of the trial arraignment to assist the Court in setting the trial date to avoid conflicts with prior commitments of counsel.

Rule 22. Notification of Entry of Appearance of Private Counsel in Criminal Cases

In criminal cases in which private counsel accepts employment to represent a client who is represented by the Public Defender's Office, written notice of such entry of appearance shall be given immediately to the Court and to the Public Defender's Office.

Rule 23. Withdrawal of Counsel in Criminal Cases

In any case regularly set for trial, any application for permission to withdraw as counsel for a defendant or to seek continuance of the trial date must be presented to the Trial Judge at least ten (10) days before the date on which the case is set for trial.

Rule 24. Expunge Order

The following procedure shall be followed by the Court Clerk upon receipt of an Expunge Order in criminal cases wherein a defendant has received a deferred sentence and the prior plea of guilty (or nolo contendere) is being ordered expunged from the records:

- (a) The order of probation and the Expunge Order on plea of guilty (or nolo contendere) shall be removed from the case file and, together with a copy of the docket sheet, kept in a separate confidential file.
- (b) All reference to the defendant's plea of guilty (or nolo contendere) shall then be deleted from the docket sheet leaving only the references to the dismissal of the case.
- (c) No information concerning the confidential files shall be revealed except upon a written order of a Judge or Justice.

Rule 25. Public Defender- Duties

Each month, the Public Defender shall examine the causes for confinement of any and all persons detained in the Penal Institution, and report, briefly, the facts of such examination to the Judge and the Solicitor General, in writing, on or before the 15th day of each month. An original of said report shall be filed in the Office of the Court Clerk for reference by any properly authorized person as an official record.

Rules 26-28 reserved for future use.

SECTION IV. COURT PROCEDURE- GENERALLY

Rule 29. Legal Requirements to Conduct a Trial by Jury

- (a) Jury Trial. The right to a jury trial in civil or criminal cases is governed by Mille Lacs Band Statutes. To determine whether or not a jury trial is authorized in a particular matter, the party desiring a jury trial must review the statutes and request a jury if one is authorized for the matter. Jury trial requirements can be found in 1 MLBSA §10 and 24 MLBSA §§2014, 4004, and 4201, or their successors, if any. A trial by jury shall not be available in domestic relations, probate or cases in equity matters.
- (b) Jury Composition. Juries shall be composed of six (6) members with two (2) alternates, if alternates are deemed advisable by the Court.
- (c) Jury Selection.

- (1) Every six (6) months, the Court Administrator shall prepare the jury source list by randomly selecting names from any available Mille Lacs Band Voter membership records, Mille Lacs Band Human Resources and Corporate Human Resources.
 - (2) The Court Administrator shall prepare and maintain a jury source list of at least fifty (50) qualified jurors.
 - (3) Each voting district on the Mille Lacs Band of Ojibwe Reservation shall be represented on the jury source list.
 - (4) The Court Administrator shall mail to every prospective juror a juror information form. The information form shall provide facts regarding:
 - (A) The criteria for eligibility;
 - (B) Mental or physical disabilities that would prevent the person from rendering satisfactory jury service;
 - (C) The efficient management of the jury system.
 - (5) Two (2) weeks prior to the day scheduled for a jury trial, the Court Administrator shall, at random, select twenty (20) names from the jury source list. The twenty (20) persons so selected shall be known as the jury panel.
 - (6) Each member of the jury panel shall be served with a summons indicating the date, place, and time that she/he is to appear for jury service. The notice shall be served not less than seventy-two (72) hours prior to the designated time for initial appearance. After such initial appearance, the times and places for attendance by those persons included on the jury panel shall be prescribed by the Court.
- (d) Qualifications for Jury.
- (1) The Court Administrator shall determine whether the prospective juror is qualified for jury service.
 - (2) To be qualified to serve as a juror, the prospective juror must be:
 - (A) An enrolled member of the Mille Lacs Band of Ojibwe or an employee of the Mille Lacs Band of Ojibwe or its businesses.
 - (B) At least eighteen (18) years old.
 - (C) A resident within thirty (30) miles from the Treaty of 1855 boundary of the Mille Lacs Band of Ojibwe Reservation. Such a resident shall be assigned to the nearest reservation district.

- (D) Of sound mind and discretion.
 - (E) A person who has had their civil rights restored if they have been convicted of a felony.
 - (F) A person who has not served as a tribal, state, or federal juror in the past two (2) years.
 - (G) A person who has not been dishonorably discharged from the Armed Services.
 - (H) A person who is not a court employee, tribal police officer, or elected official.
 - (I) A prospective qualified juror who is seventy (70) years of age or older, who requests to be excused from jury service shall be automatically excused from service without having to submit evidence of an inability to serve.
 - (J) Not otherwise disqualified according to the standards established by the Tribal Court under its general rule-making authority.
- (3) Upon a satisfactory showing to the Court Administrator, the following persons, upon their request, may be excluded from the jury source list.
- (A) Persons who reside more than thirty (30) miles from the nearest exterior boundary of the Mille Lacs Band of Ojibwe Reservation as determined by the Treaty of 1855.
 - (B) Persons of advanced age, infirmity, or illness.
 - (C) Persons burdened by such other circumstances that jury service would cause extraordinary hardship for them. Such hardship must be substantially greater than would be experienced ordinarily by persons serving as jurors.
- (4) Challenges for Cause.
- (A) Any named party may challenge a prospective juror for cause.
 - (B) Challenges for cause shall be tried by the Court. The Court shall administer an oath or examination of all prospective jurors that they will answer truthfully all questions concerning their qualifications and eligibility for jury service.
 - (C) The judge shall excuse any juror whom she/he feels would not be completely fair and impartial. As a juror is excused, the Court Administrator shall pick the name of another juror to be seated and each named party shall have an opportunity to examine the juror for fairness and impartiality.

- (e) Peremptory Challenges. Each named party shall be entitled to two (2) peremptory challenges of prospective jurors for which no reason need be given for the challenging party. The parties shall alternately remove jurors, or waive their turn to do so, until they have exhausted their peremptory challenges.
- (f) Alternate Jurors. The Court Administrator shall then read aloud the first six (6) names on the list and those persons shall be jurors for the trial. The Court Administrator shall also read aloud the seventh and eighth names on the list, and those persons shall be alternate jurors for the trial. The alternate jurors shall act in all respects as jurors, except that they shall not vote during jury deliberations unless one of the other jurors has been excused by the judge during the course of the trial. The alternate jurors shall be dismissed prior to the jury's retiring to deliberate if they have not been called to replace an original juror who has become for any reason unable to serve.
- (g) Jury Compensation. Each member of the jury panel called to service and each juror who serves upon a jury shall be entitled to compensation at a rate to be fixed by the Court and mileage at the rate in effect for employees of the Mille Lacs Band.
- (h) Contempt. A person summoned to serve as a juror who has not been excused pursuant to any provisions of these Rules, or by order of the Court, who fails to appear where and when summoned, or who having so appeared absents himself/herself therefrom without the permission of the Court, or who renders himself/herself unfit to commence or continue the duties of a juror, shall be found in contempt of Court. In addition to the penalties for contempt of Court prescribed by the Mille Lacs Band statutes, he/she may be charged by the Court with any costs incurred by the Court or by any other persons which resulted from such failure to be present or from such misconduct.
- (i) Challenging Compliance with Selection Procedure.
 - (1) A party may move for appropriate relief if the rules have not been complied with. Such motion should be made within seven (7) days after the moving party discovers or should have discovered the grounds for the motion, and in any event before the jury is sworn to try the case.
 - (2) If the Court determines that there has been a substantial failure to comply with these rules in the selection of the jury, the court shall stay the proceedings until a jury is selected in conformity with these rules.
 - (3) The procedures prescribed by this Rule are the exclusive means by which a party may challenge a jury on the grounds that the jury was not selected in conformity to these rules.

Rule 30. Requests for Jury Trial

In cases where a jury trial is authorized, the request for a jury trial must be made in writing to the Court Clerk. Plaintiffs/petitioners in a civil case must request jury trial in the petition/complaint or within thirty (30) days of a responsive pleading being filed by the opposing party.

Defendants/respondents must request jury trial in their first responsive pleading filed. In a criminal case for which a jury trial is a right, the defendant must affirmatively waive his/her right to jury trial.

The request for a trial by jury in civil matters must be accompanied by a case or surety bond in the amount of \$100.00 to cover the costs of the jury trial. Failure to post jury fees could result in the denial of the request for jury trial.

Rule 31. Voir Dire Examination

The Judge shall initiate the voir dire examination of jurors by identifying the parties and their respective counsel. The Judge may outline the nature of the case and the issues of fact and law to be tried. The Judge may then put to the jurors any questions regarding their qualifications to serve as jurors in the cause on trial. The parties or their attorneys shall be allowed a reasonable opportunity to supplement such examination. Counsel shall scrupulously guard against injecting any argument in their voir dire examination and shall, refrain from asking a juror how he/she would decide hypothetical questions involving law or facts. Counsel shall avoid repetition, shall not call jurors by their first names or indulge in other familiarities with individual jurors, and shall be fair to opposing counsel.

Rule 32. Uniformity in Rulings

When a question of law, fact or procedure has been presented to a Judge, the same question, so far as it relates to the same case, shall not thereafter knowingly be presented to another Judge without apprising the subsequent Judge of the former Judge's ruling or, if no ruling has been made, that such question has already been presented to the first Judge. When this rule has been violated, an order that is issued by the second Judge may be vacated at any time before the entry of a final judgment.

Rule 33. Vacation of Final Judgments

- (a) In any proceeding to vacate, modify or reopen a final judgment that is commenced more than thirty (30) days after its rendition, defects in form of the pleading seeking to vacate, modify, or reopen a final judgment are waived if the opposing party appears in the proceeding but does not immediately object thereto. Such defects are waived by any party in default who had actual notice of the proceeding. Defective service and lack of notice are waived if the opposing party appears in the proceeding but does not object to the deficiencies immediately.
- (b) In any proceeding to vacate, modify or reopen a judgment, whether by a motion, petition or application, jurisdictional grounds are not waived by being joined with nonjurisdictional grounds in the motion, petition or application or by raising nonjurisdictional defenses in an accompanying pleading.

Rule 34. Matters Taken Under Advisement

In any matter taken under advisement, a decision shall be rendered within sixty (60) days of the date on which the matter was taken under advisement or, if briefs are to be submitted, within sixty (60) days of the date of the filing of the final brief.

When a trial court takes a matter under advisement, the Judge shall specify the date by which a decision shall be rendered. If briefs are to be submitted, the dates for filing such shall also be specified.

The Judge may extend the deadline for a decision for up to sixty (60) additional days and shall provide written notice to the parties of said extension.

Upon entering and filing the decision with the Court Clerk, it shall be the duty of the Court Administrator to see that copies of the order or judgment setting out such decision are delivered or mailed by the Court Clerk to counsel in the case and to any party appearing pro se. The time to appeal from a decision rendered in absentia runs from the day its copy is mailed or personally delivered to the parties.

Rule 35. Jury Sessions- Motion and Demurrer Sessions- When and How Held- Jury Terms

Jury sessions of the district court may be held at any time upon order of the Judge. A session for the hearing and disposition of motions and demurrers shall be held at least thirty (30) days prior to a jury session, and any motion or demurrer that has been on file for at least five (5) days shall be placed on the docket.

The Presiding Judge shall be in charge of the Jury Panel and shall excuse and discharge those jurors not engaged when their services are no longer required.

Jurors shall be summoned to appear for jury terms of one week duration.

Rules 36-39 reserved for future use.

SECTION V. DOCKETS

Rule 40. Time of Hearing- Set Certain

Court dockets will be set by the Court Clerk and notice will be sent to interested parties.

Rule 41. Citation Docket

There shall be a Judge assigned to be responsible for the docket concerning all citations issued pursuant to the following procedures and rules:

- (a) The Peace Officer shall set all citations and promises to appear at the District Court of the Mille Lacs Band of Ojibwe, Onamia, MN.
- (b) At arraignment, the defendant will have the following alternatives:

- (1) Enter a plea of guilty or a plea of nolo contendere, subject to the approval of the Court, and be sentenced immediately;
 - (2) Waive right to trial and have the case set for sentencing on a date certain; or
 - (3) Plead not guilty and have the case set for trial on a date certain.
- (c) No continuances will be granted except by the Court and for good cause shown.
- (d) Where a bench warrant has been issued for defendant because of non-appearance, that defendant must thereafter post bond before release, and no attorney's affidavit will be accepted in such events, except for good cause shown at the discretion of the Court. Bench warrants issued for failure to pay costs, fees, fines, etc. may be satisfied by payment of the obligation to the Court Clerk. In that event, the bench warrant may be recalled without incarceration of the defendant or the defendant may be released from custody without the necessity of being brought personally before the court.
- (e) Pleas of guilty to traffic tickets may be entered before the Court Clerk in person or by mail, with the amount of the fine set by agreement of the defendant and the Solicitor General, in all cases except the following:
- (1) Driving while under the influence of intoxicating liquor or drugs;
 - (2) Being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs;
 - (3) Driving with a blood-breath alcohol concentrate of 0.08 or more;
 - (4) Leaving the scene of an accident;
 - (5) Driving while license is suspended or revoked;
 - (6) Reckless driving; or
 - (7) Any other charge filed because of a motor vehicle accident in which personal injury or death occurred.
 - (8) Crimes which if committed under the laws of Minnesota would be a felony.

Rules 42-49 reserved for future use.

SECTION VI. OWN RECOGNIZANCE

Rule 50. Procedures Concerning Release of Defendants Upon Their Own Recognizance

The privilege of being released upon one's own recognizance is granted under the following terms and conditions:

- (a) That said privilege shall apply only to defendants arrested for crimes which if committed under the laws of Minnesota or the United States, would not be a felony.
- (b) That the defendant involved has never been convicted of a felony or convicted of an offense involving dishonesty.
- (c) That the defendant resides within the territorial boundaries of the Mille Lacs Band of Ojibwe.
- (d) That the defendant signs an affidavit that personally holds himself/herself responsible to the court for the appearance of said defendant at all proceedings until final disposition has been made of the case to the satisfaction of the Court. Failure to appear would result in the Court forfeiting the own recognizance (O.R.) bond in the amount previously set by the Court as a condition of the O.R. bond.
- (e) That the Court Clerk shall have the duty of administering the procedures of the O.R. system.
- (f) That no defendant shall be allowed O.R. privileges who has previously executed an O.R. affidavit of responsibility for court appearance, and then failed to appear at any proceedings as required and a Bench Warrant was issued for the said defendant.

Rules 51-69 reserved for future use.

SECTION VII. CONTEMPT

Rule 70. Direct Contempt

- (a) Power of the Court. The court has the power to punish any contempt in order to protect the rights of the parties and the interests of the public by assuring that the administration of justice shall not be thwarted. The trial Judge has the power to cite and if necessary punish summarily anyone who, in open court, willfully obstructs the court of judicial proceedings after an opportunity to be heard has been afforded.
- (b) Admonition and Warning. No sanction other than censure should be imposed by the trial Judge unless
 - (1) it is clear from the identity of the offender and the character of the acts that the conduct was disruptive and willfully contemptuous, or
 - (2) the conduct warranting the sanction was preceded by a clear warning that the conduct is impermissible and that specified sanction may be imposed for its repetition. Penalties for direct contempt are at the discretion of the judge, subject to review by the Court of

Appeals. Penalties include, but are not limited to, admonition, fines, incarceration, suspension or disbarment from the bar.

(c) Notice of Intent to Use Contempt Power; Postponement of Adjudication.

(1) The trial Judge should as soon as practicable after the Judge is satisfied that courtroom misconduct requires contempt proceedings, inform the alleged offender of the intention to institute such proceedings.

(2) The trial Judge should consider the advisability of deferring adjudication of contempt or courtroom misconduct of a defendant, an attorney or a witness until after the trial, and should defer such a proceeding unless prompt punishment is imperative.

(d) Notice of Charges and Opportunity to Be Heard. Before imposing any punishment for contempt, the Judge should give the offender notice of the charges and at least a summary opportunity to adduce evidence or argument relevant to guilt or punishment.

(e) Referral to Magistrate. The Judge before whom Courtroom misconduct occurs may impose appropriate sanctions, including punishment for contempt, but should refer the matter to a Magistrate, if his conduct was so integrated with the contempt that the Judge contributed to it or was otherwise involved, or objectivity can reasonably be questioned.

Rules 71-79 reserved for future use.

SECTION VIII. COURT REPORTERS

Rule 80. Persons Qualified for Appointment as Court Reporter

Only persons qualified to act as court reporters in the courts of the State of Minnesota or the Federal courts located in Minnesota may act as official court reporters for the Mille Lacs Band courts. This rule only applies to court reporters who are retained to record and transcribe a hearing pursuant to Rule 81.

Rule 81. Duties of Reporter- Methods- Transcripts

(a) The Court Reporter shall make a full reporting by means of stenographic hand, steno-mask or machine notes, or a combination thereof, of all proceedings, including the statements of counsel and the court and the evidence, in trials and other judicial proceedings to which the Court Reporter is assigned by the appointing Judge unless excused by the Judge who is trying the case with the consent of the parties to the action. A refusal of the court to permit or to require any statement to be taken down by the Court Reporter or transcribed after being taken down, upon the same being shown by affidavit or other direct and competent evidence, to the Court of Appeals, shall constitute a denial of due process of law. The Court Reporter may use an electronic instrument as a supplementary device. A trial or proceeding may proceed without the necessity of a Court Reporter being present, unless there is

objection by a party or counsel. Provided that if an official transcript is ordered then it shall be prepared by the official Court Reporter.

- (b) Upon request of either party in a civil or criminal case the Court Reporter shall transcribe the proceedings in a trial or other judicial proceeding, or so much thereof as may be requested by the party, certify to the correctness of the transcript, and deliver the same as the Court may prescribe. The fee for an original transcript shall be the same rate per page as used by the district courts of the State of Minnesota, or \$5.00 per page, whichever is lesser. Two copies of the original transcript shall be furnished without additional charge. A charge of \$75.00 dollars per hour shall be paid to the Court Reporter if the hearing is not transcribed provided that this amount shall be deducted if transcription is requested at a later date. Mileage is set at the Mille Lacs Band rate. Each page shall be at least twenty-five lines to the page and typed in ten-point pica type. Said page as mentioned herein shall be no more than double spaced and the margin on the left side of the page shall be no more than one and one-half (1-1/2) inches and the margin on the right side of the page shall be no more than one-half (1/2) from the edge of the paper. The fees for making the transcript shall be paid in the first instance by the party requesting the transcript and shall be taxed as costs in the suit.

When the Judge's own motion orders a transcript of the Court Reporter's notes, the Judge may direct the payment of charges therefore and the taxation of the charges as costs in such manner as may seem just. In a criminal action, if the defendant shall present to the Judge an affidavit that defendant intends in good faith to take an appeal in the case and that a transcript of the Court Reporter's notes is necessary to enable defendant to prosecute the appeal, and that the defendant does not have the means to pay for the transcript, the court, upon finding that there is reasonable basis for the averment, shall order the transcript made at the expense of the district court fund.

- (c) The Court Reporter shall file records of the evidence and the proceedings taken in any case with the Court Clerk.

Rule 82. Transcripts- Access to Copies- Costs

A transcript of the Court Reporter's notes, upon request and for the use of an indigent defendant or a Prosecutor, may not be charged to the court fund unless, before its preparation, the cost to be incurred was authorized by written judicial order.

When a Judge authorizes or orders a transcript of the Court Reporter's notes of any proceeding to be prepared at the expense of the court fund, or where a prosecuting attorney orders such a transcript at public or court fund expense and the accused is an indigent and the Judge authorizes a free copy of the transcript for the indigent, a Court Reporter shall prepare an original and two copies of the transcript so ordered and file it with the Court Clerk of the trial court. The court reporter shall immediately notify the prosecuting attorney and the defendant of the date the transcript was filed. The prosecuting attorney and the defendant shall have access to the copies of the transcript on such terms as the trial court may impose. The Judge may prescribe rules for access to or disposition of the copies of the transcript.

Rule 83. Admissibility of transcripts as evidence

Any transcript of notes, duly certified as correct by the reporter who took the evidence, and filed with the clerk of the court in which the cause was tried, shall be admissible as evidence in all cases, of like force and effect, as testimony taken in the cause by deposition, and subject to the same objection, a transcript of said notes may be incorporated into any appellate record. If any reporter ceases to be the official reporter of the court, and thereafter makes a transcript of the notes while acting as official reporter, the court reporter shall swear to the transcript as true and correct and when so verified, the transcript shall have the same force and effect as if certified while an official reporter.

Rule 84. Copies of Recordings of Hearings

All hearings in the Mille Lacs Band District Court shall be recorded. Any party to the hearing shall have the right to request a copy of the recording unless the Judge determines there is good cause not to provide the copy. A fee of \$10.00 shall be charged to the requesting party except that the Mille Lacs Band and its departments, entities, and officers requesting a copy for official reasons shall not be required to pay said fee.

Rules 85-89 reserved for future use.

SECTION IX. COURT FUND

Rule 90. Deposit of Fees, Fines and Forfeitures in the Court Fund- Uses- Agent of fund- Bond

- (a) All moneys paid into the Court of Central Jurisdiction, or received by the Court Clerk, in any case pending or adjudicated, shall be forthwith deposited with the Office of Management and Budget, in the name of the Court of Central Jurisdiction.
- (b) All fines imposed by the Court shall be paid by the defendant before he/she leaves the Mille Lacs Band Government Center unless the Court Orders otherwise or the Court authorizes the defendant to make other arrangements with the Court Clerk.
- (c) Fines imposed by a Judgment by Default shall be paid within one week of service of the Order on the Defendant unless other arrangements are made with the Clerk of Court.
- (d) If the defendant does not pay his/her fines as required by this Rule, the Court, upon application by the Solicitor General, shall recover the fine by garnishing the Defendant's wages and/or per capita payment once the judgment is sixty (60) days past due. The Court shall attach an additional \$50.00 on the fine to cover the administrative costs of this procedure.

Rules 91-99 reserved for future use.

SECTION X. CIVIL PROCEDURE

Rule 100. Petition- Contents

Such petition, or charge, shall contain the following:

- (a) The full name, address, telephone number and fax number, if any, of the person filing the petition.
- (b) If the petition is filed on behalf of another person or organization, the full name, address, telephone number and fax number, if any, of the party or organization represented.
- (c) The full name, address, telephone number and fax number, if any, of the person against whom the charge is made (herein referred to as respondent).
- (d) A clear and concise statement of the facts, constituting the alleged claim, including the date, place and names of those parties involved in the alleged claim.
- (e) A clear and concise statement of the legal authority and jurisdiction under which the cause of action is being predicated.

The Court, on its own motion or that of a party, may dismiss any petition which is insufficient on its face.

Rule 101. Attorneys Required to be a Member of the Mille Lacs Band Bar

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his/her name. Said attorney must be admitted to the bar of the Mille Lacs Band.

Rule 102. Service of Pleadings- Dismissal- Frivolous Pleadings

- (a) After summons is issued, the original shall be returned and filed in the case with the Court Clerk. In those cases where the court has issued contempt or restraining orders, or granted injunctive relief or in other extraordinary proceedings requiring personal notice to the party affected, the original order shall be filed with the Court Clerk after its issuance, and certified copies thereof shall be used for service on the parties.

If the Court (Judge or Court Clerk) has examined the court file and docket sheet of a case and determines that more than 180 days have elapsed without service being made on a named defendant, the Court may notify the plaintiff or plaintiff's attorney with notice to all parties or counsel of record to file a pleading to show cause why the action should not be dismissed as to that defendant. If good cause is not shown or response is not made, the Court may dismiss the case without prejudice.

- (b) If a pleading is found to be frivolous, the Court may, on its own motion or on the oral or written motion of the opposing party, tax costs in the case or a portion of the costs up to and

including the frivolous pleading, against the party filing it. The Court may make subsequent Orders to insure compliance with the Court's findings.

(c) Service under this rule may be accomplished by first-class mail.

Rule 103. Briefs

Each brief shall be clearly styled to show whether it is in support of a motion, in opposition to a motion, or a reply brief, the particular application or proceeding to which it relates, and the party or parties on whose behalf it is presented.

All motions and applications and responses to them, including briefs if required, shall not exceed twenty (20) pages in length without prior permission of the Court. Reply briefs are permitted only by leave of Court by application stating the reason for filing a reply brief. No reply brief may exceed five (5) pages in length. No further briefs shall be filed unless authorized by statute, court rule, or with prior permission of the Court.

Rule 104. Response to Interrogatories and Requests for Admissions and Request for Production of Documents

Each answer or objection to an interrogatory, request for admission, or request for production of documents shall be immediately preceded by the interrogatory or request to which response is being made.

Rules 105-109 reserved for future use.

SECTION XI. PRE-TRIAL PROCESS

Rule 110. Scheduling Order

A scheduling order may be issued at the discretion of the Judge. The Judge may enter a scheduling order for a time and date certain for the performance of the following duties and any other duties deemed appropriate:

- (a) Response or amended response of defendant;
- (b) Reply, if any, of plaintiff;
- (c) Mutual exchange of names of proposed witnesses and expected testimony; mutual exchange of proposed exhibits and description of such exhibits;
- (d) Filing of motions to join additional parties or to dismiss;
- (e) Status conference report due;
- (f) Status and simplification conference;

- (g) Cut-off for amendments to pleadings;
- (h) Settlement conference;
- (i) Mutual exchange of authorities to be relied upon at trial and mutual exchange of trial briefs, if any; final exchange of list of witnesses and exhibits; cut-off for filing additional motions or responses to amended pleadings, if any;
- (j) Discovery cut-off; cut-off for filing responses to motions, if any;
- (k) Pretrial conference report due;
- (l) Pretrial conference; disposition of pending motions; and,
- (m) Trial.

Rule 111. Pre-Trial Order

Plaintiff's counsel shall initiate the preparation of the pretrial order by submitting a proposed pretrial order to opposing counsel no later than fifteen (15) days before the pretrial conference hearing. If Plaintiff's counsel fails to do so, then at least ten (10) days before the pretrial conference hearing, Defendant's counsel shall submit a proposed pretrial order to Plaintiff's counsel. If plaintiff is pro se, the first named represented party shall initiate its preparation. Opposing counsel and pro se parties must cooperate with the preparing party in the completion of the pretrial order and shall return the completed pretrial order to opposing counsel no later than five (5) days before the pretrial hearing. In all cases that the Mille Lacs Band is party, the Mille Lacs Band's counsel shall have the duty of tendering the proposed pretrial order.

Rule 112. Purpose of the Agreed Pre-Trial Order- Expectations and Directions for Parties

- (a) Purpose of the agreed pretrial order. The purpose of the agreed pretrial order is to condense all material information into one working document that will control the trial of the case.
- (b) Prior rulings. The agreed pretrial order must reflect the current status of the case and accurately reflect all prior rulings by the court.
- (c) Unprofessional conduct. Failure of the plaintiff's attorney to timely initiate and/or failure of any attorney in the case to cooperate in timely preparation of the agreed pretrial order shall be deemed to be unprofessional conduct by the court.
- (d) Good faith disputes. While all reasonable efforts should be made by counsel and litigants to timely agree on a pretrial order, if, following good faith effort, disputes still remain regarding factual and/or legal issues, such should be noted in the single pretrial order submitted, for ultimate resolution by the court.

- (e) No adoption of pleadings by reference. Counsel may not adopt pleadings and incorporate them into the pretrial order by reference.
- (f) Reservation of rights not allowed. No reservation of an asserted right to add additional witnesses or exhibits or to take additional discovery will be allowed in the agreed pretrial order.
- (g) Late exhibits. Late exhibits are those not listed in the agreed pretrial order. If late exhibits are discovered, the party desiring to offer them shall immediately mark them for identification and furnish copies to opposing counsel with a statement explaining their late production. If objected to, the sponsoring party must file a written motion requesting permission to supplement the exhibit list.
- (h) Late witnesses. Additional witnesses, listed after the witness exchange date, will be permitted to testify only if ordered to prevent manifest injustice and only then, if proper notice is given, under the facts and circumstances of the case, to the other party, and a written motion is immediately filed requesting permission to supplement the witness list.
- (i) Pro se litigants. Pro se litigants and opposing counsel should confer before a pretrial conference and be prepared to discuss at the conference significant disputes relative to issues of fact and law, exhibits, witnesses, evidence, in limine matters and all matters bearing on an expeditious settlement or trial of the case.
- (j) Pretrial conference. At the pretrial conference, the Court may take any appropriate action to ensure a fair trial to all parties.
- (k) Demonstrative aids, exhibits, and summaries. All demonstrative aids, exhibits and summaries intended to be used for any purpose at trial shall be displayed to opposing counsel at least fourteen (14) days in advance of trial, unless a shorter time is allowed pursuant to the scheduling order.

Rule 113. Application to Withdraw and Order for Withdrawal

Upon application, counsel may request an Order for Withdrawal as Counsel. The application must state the reason for requesting the withdrawal and the status of the case.

Every Order for Withdrawal must contain:

- (a) the case's current status, including when hearings, if any, have been scheduled;
- (b) a certificate of mailing to the client showing last known mailing address and to all other attorneys of record in the case; and,
- (c) whether new or substitute counsel has been obtained by the client and entered an appearance.

An Application to Withdraw will only be considered if submitted to the Judge at least twenty (20) days prior to a scheduled hearing or trial.

Rules 114-119 reserved for future use.

SECTION XII. MOTIONS

Rule 120. Place of Filing- Contents- Service on Other Parties- Time for Filing Motions and Responses Thereto

- (a) Except for oral motions made in court, all motions shall be filed in writing in the office of the District Court either in person, by mail or fax (in accordance with Rule 3). All motions for summary judgment shall also be filed in writing in the office of the District Court either in person, by mail or fax (in accordance with Rule 3). Unless otherwise provided in these rules or by order of the District Court, motions and responses thereto shall be filed promptly and within such time as not to delay the proceedings. Promptness and diligence is favored in all filings in the District Court.
- (b) In a motion a party must specifically state the grounds therefore and the relief or order sought.
- (c) Every motion shall be accompanied by a concise brief or a list of authorities upon which movant relies. Unless the court directs otherwise, neither a brief nor a list of authorities shall be required with respect to any of the following motions:
 - (1) Motions for extensions of time, if the request is made before expiration of the time period originally prescribed, or as extended by previous orders,
 - (2) Motions to continue a hearing, pretrial conference or trial,
 - (3) Motions to amend pleadings or file supplemental pleadings,
 - (4) Motions to appoint a guardian ad litem,
 - (5) Motions for physical or mental examinations,
 - (6) Motions to add or substitute parties,
 - (7) Motions to enter or vacate default judgments,
 - (8) Motions to confirm sales,
 - (9) Motions to stay proceedings to enforce judgments,
 - (10) Motions to shorten a prescribed time period, and

- (11) Motions for scheduling conferences and other settings.
- (12) If the motion does not comply with the requirements of (b) and (c) above, the motion may be denied without a hearing.
- (13) The party filing the motion is responsible for timely service upon opposing parties or amicus parties.

Rule 121. Rulings on Motions

All rulings and orders shall be issued in writing and a copy served on each of the parties. The Judge designated to conduct the hearing shall rule on all motions after the opening of the hearing. Any orders in connection therewith, if announced at the hearing, shall be stated orally on the record. In all other cases, the Judge shall issue such rulings and orders in writing and shall cause a copy of the same to be served on each of the parties. However, the Judge may rule on the matter in the decision if such an action is best for judicial efficiency. Any motion or application not ruled on separately or in the final decision shall be considered denied. Rulings will comply with the time requirements of Rule 33.

Rule 122. Motions, Rulings and Orders to be part of the record

All motions, rulings and orders shall become a part of the record.

Rule 123. Motion to Dismiss

The respondent may file a motion to dismiss in accordance with Rule 12 of the Federal Rules of Civil Procedure.

Rule 124. Motion for Summary Judgment

Any party may move for summary judgment by alleging that there is no genuine issue as to any material fact and by alleging that the moving party is entitled to judgment as a matter of law.

Rule 125. Filing of answer or other participation in proceedings not deemed a waiver of rights

The right to make motions or to make objections to rulings upon motions shall not be deemed waived by the filing of an answer or by other participation in the proceedings before the District Court.

Rule 126. Intervention

Any person desiring to intervene in any proceeding shall file a motion in writing or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. An unstapled original of written motions shall be filed. Immediately upon filing such motion, the moving party shall serve a copy on the other parties. The Judge may by order permit

the party to intervene in person, by counsel, or by other representative to such extent and upon such terms as deemed proper.

The Solicitor General shall be allowed to intervene in any matter in which the interpretation or constitutionality of a Mille Lacs Band statute or governmental action is in question or when the Court is called on to answer a constitutional question arising from the Constitution of the Minnesota Chippewa Tribe.

SECTION XIII. WITNESSES' FEES AND MILEAGE

Rule 127.

Witnesses requested to appear before the District Court shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Witnesses whose depositions are taken, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witnesses' fees and mileage shall be taxed against the party at whose instance the witness appears and the fees of persons taking the deposition shall be taxed against the party at whose instance the deposition is taken.

SECTION XIV. ATTORNEYS

Rule 128.

- (a) Admission to appear before the Court of Central Jurisdiction is controlled by the Rules for the Court of Appeals, Rule 56.
- (b) Cultural Causes of Action are controlled by 5 MLBSA §103 and 24 MLBSA §601 et seq. Appearances of attorneys before the panel of elders in a Cultural Cause of Action will be at the discretion of the Cultural Court. Parties are not entitled to representation when appearing before the Cultural Court.
- (c) All attorneys practicing before the Court of Central Jurisdiction shall comply with the current MINNESOTA RULES OF PROFESSIONAL CONDUCT, or its successor rules, if any. Violations of said rules shall be acted upon by the Court and any disciplinary action taken will be transmitted to the appropriate state licensing agency.

History: Rule 128 of Court Order 47 superseded Rule 128 of Court Order 45 on November 17, 2009 due to clerical error in the original rule.

SECTION XV. LAY ADVOCATES

Rule 129.

- (a) All non-attorneys representing parties before the Court of Central Jurisdiction shall be guided by the MINNESOTA RULES OF PROFESSIONAL CONDUCT and comply with the spirit expressed therein. All lay advocates must comply with all Court Rules and procedures herein, including case precedents from the Court of Central Jurisdiction.

- (b) A person may appear in the Court of Appeals on behalf of a party without being certified by the Court of Appeals if the person is representing an extended family member as defined by 8 MLBSA §3(h). A person who desires to regularly appear before the Court of Appeals as a lay advocate to represent parties who are not extended family members must be certified by the Court of Appeals. Such a person must complete an application and be approved by the Court prior to appearing in a case.
- (c) Lay advocates shall not charge or accept a fee from a client for services rendered in a matter before the Court of Appeals except that a lay advocate may accept a traditional gift of nominal value that is freely given by the client.
- (d) Lay advocates shall represent only named individuals and not entities such as businesses, associations, clubs, or corporations, whether incorporated or not.

History: Rule 129 of Court Order 47 superseded Rule 129 of Court Order 45 on November 17, 2009 due to clerical error in the original rule.

SECTION XVI. MISCELLANEOUS COSTS

Rule 130. Service, Travel, and Copying Costs

- (a) For service in a criminal matter, there shall be no fee for service, travel, or copying.
- (b) For service of a subpoena by the Mille Lacs Band in a criminal matter, there shall be no fee for service, travel, or copying. A request for a subpoena must be accompanied with an affidavit stating the reason(s) for the subpoena and a request that the Court's process server serve the subpoena.
- (c) For service of a summons or subpoena in any general civil matter, there shall be a \$25.00 fee for service in addition to a charge for copying costs. A request for a subpoena must be accompanied with an affidavit stating the reason(s) for the subpoena and a request that the Court's process server serve the subpoena.
- (d) For service of an Order for Protection or Harassment Petition, there shall be no fee for service, travel, or copying.
- (e) For service of a summons, notice of ninety (90) day trial, or subpoena in a civil matter involving a Family Matter or the Indian Child Welfare Act where the Mille Lacs Band is the plaintiff, there shall be no fee for service, travel, or copying. A request for a subpoena must be accompanied with an affidavit stating the reason(s) for the subpoena and a request that the Court's process server serve the subpoena.
- (f) Except for the exceptions stated in paragraphs (a)-(e), there shall be a fee of \$2.50 for certifying a document. There shall also be a charge of \$.50 cents per page for copying a document. The Mille Lacs Band, its arms, entities, agencies, and officers will not be charged said fee for copies of documents requested for official business.

- (g) Whenever possible, the Court will provide copies via email. A fee of \$5.00, or \$.50 cents per page, whichever is lesser, will be charged.

SECTION XVII. MISCELLANEOUS PROCEDURES

Rule 131. Electrical Cases

- (a) Ten (10) calendar days notice of a hearing that could result in cancellation of electrical service shall be provided to any Defendant. When the notice is served by First Class U.S. mail, three (3) days shall be added to the length of notice.
- (b) Service of process may be by First Class mail. Proof of such service shall be in the form of an affidavit signed by the person causing such service of process to be mailed and the affidavit must list the address of the defendant and the date the notice was placed in the U.S. mail for service.
- (c) Hearings in electrical cases shall take place during the second full week of each month, unless the District Court, for good cause, orders otherwise.
- (d) The representative of the Mille Lacs Electric Cooperative shall have the authority to negotiate settlement agreements with an authorized representative of the Mille Lacs Band prior to the hearing or at the hearing. Mille Lacs Electric Cooperative shall have the authority to negotiate settlement agreements with a defendant prior to the hearing or at the hearing.

Rule 132. Divorce

- (a) One of the parties to any divorce proceeding brought before the Court of Central Jurisdiction must have been a resident or domiciliary of the territorial jurisdiction of the Mille Lacs Band for the 180 days immediately preceding the commencement of the divorce proceeding.
- (b) The Court of Central Jurisdiction shall have jurisdiction over divorce proceedings only if one of the parties to the action is an enrolled member of the Mille Lacs Band or another federally-recognized Indian tribe.

Rule 133. Foreign Judgments

- (a) A certified copy of any judgment issued by a jurisdiction entitled to comity in this Court may be registered with the Court Clerk of the Court of Central Jurisdiction by the judgment creditor. At the time of registering, the judgment creditor shall make known to the Court Clerk the name and last known address of judgment debtor and judgment creditor, and the attorney, if any, of each. The fee for registering a foreign judgment shall be \$25.00.
- (b) Promptly upon registering the foreign judgment, the Court Clerk shall mail notice of the registration of the foreign judgment to judgment debtor at the address given and shall make

a notice of the mailing in the docket. The notice shall include the name and postal address of judgment creditor and judgment creditor's attorney, if any. The notice shall also include the time period in which judgment creditor may object, such time period being ten (10) calendar days from the date of the notice. When the notice is served by First Class U.S. mail, three (3) days shall be added to the length of notice.

- (c) If, after the time to respond has expired, the judgment debtor files no Motion to Set Aside Registration with the Court, the Court shall issue a writ of execution or other process of enforcement. If judgment debtor does object within the time allowed, a hearing will be set before the Court as soon as is practicable.

Rule 134. Sentencing

- (a) **Maximum Sentence.** The maximum sentence which may be imposed upon a defendant shall be in accordance with the Mille Lacs Band Statutes and shall not exceed the limits applied by 25 USCA §1302 (7).
- (b) **Factors to be Considered in Imposing a Sentence.** The Court should carefully consider what is best for the defendant and the Mille Lacs Band, taking into consideration the seriousness of the offense, the defendant's past record and all of the circumstances surrounding the defendant and the offense charged.

In the event the sentence is not imposed immediately, but is delayed until some future date, the Court may request a pre-sentence investigation from a social worker, probation officer or other suitable person for the guidance of the court in arriving at a just sentence.

- (c) **Pronouncement of Sentence.** After considering all factors relating to the defendant and the pre-sentence investigation report, if one is made, the Court should pass sentence.
- (d) **Alternatives in Sentencing.** There may be some alternatives to a fine or jail term, such as probation, which the Court might wish to consider:
 - (1) Suspended sentence for a specific period dependent upon the good behavior of the defendant.
 - (2) Deferred or delayed sentence for a specific period of time which may be lifted and a not guilty verdict entered and the charge dismissed depending on the good behavior of the defendant.
 - (3) Stay of execution of sentence by giving the defendant time to raise funds to pay a fine or postponing the time when he must go to jail. A stay of sentence is given also if there is an appeal filed and a bond posted.
 - (4) Work release which allows the defendant to stay on his/her job but spend nights, weekends or other times in jail until the sentence is completed. The defendant may also be allowed to do work for the Mille Lacs Band to work the sentence off at the rate prescribed by statute.

- (5) Restitution: In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of any individual to make restitution or to compensate the party injured, through the surrender of property, the payment of money damages or the performance of any other act for the benefit of the injured party.
- (6) Fines: Whether to impose a fine in a particular case, its amount up to the authorized maximum, and the method of payment shall remain within the discretion of the Court of Central Jurisdiction. The Court shall be explicitly authorized to permit installment payments of any imposed fine on conditions tailored to the means of the particular offender.
- (7) Probation:
 - (A) Where sentence has been imposed upon any defendant, the Court of Central Jurisdiction may in its discretion suspend the sentence imposed and allow the offender his/her freedom on probation, upon his/her signing a pledge of good conduct during the period of the sentence.
 - (B) Any defendant who shall violate his/her probation pledge shall be required to serve the original sentence plus an additional half of such sentence as penalty for the violation of his/her pledge.
- (e) Determination of Injured Party. Prior to formal sentencing, the Court shall determine and state for the record whether the injured party is the individual or the Mille Lacs Band. Regardless of the injured party, no sentence shall be imposed by the Court which is of a cruel and unusual nature for the offense committed as defined in federal law.
- (f) Judicial Considerations for Sentencing. Each Judge, in fulfilling his/her lawful duty, shall consider the customs and traditions of the Mille Lacs Band towards preserving peace and harmony throughout the Mille Lacs Band prior to the imposition of sentence.

Rule 135. Use of Federal Rules

- (a) Civil. In recognition of the fact that this Court has not developed a complete set of rules of civil procedure, it is hereby determined that the rules of civil procedure for the United States District Court in and for the District of Minnesota shall apply to all civil cases heard in the Court of Central Jurisdiction, until such time as the Court of Central Jurisdiction adopts rules of civil procedure. Upon the adoption of different rules of civil procedure pursuant to Court Order, the rules of civil procedure for the United States District Court in and for the District of Minnesota shall be superseded. Where there is a conflict between the rules of the United States District Court in and for the District of Minnesota and the rules contained herein, Mille Lacs Band rules shall govern.

Any rule of civil procedure for the United States District Court in and for the District of Minnesota that is contrary to the customs and traditions of the Mille Lacs Band, and it is

clearly established by the evidence that the said rule is in conflict, the Judge shall give precedence to custom and tradition.

Individual Judges shall have the responsibility for ruling on matters within the rules of civil procedure that conflict. Any person with standing in the matter may appeal any adverse decision founded upon an interpretation of the rules of civil procedure to the Court of Appeals.

- (b) Criminal. In recognition of the fact that this Court has not developed a complete set of rules of criminal procedure, it is hereby determined that the rules of criminal procedure for the United States District Court in and for the District of Minnesota shall apply to all criminal cases heard in the Court of Central Jurisdiction, until such time as the Court of Central Jurisdiction adopts rules of criminal procedure. Upon the adoption of different rules of criminal procedure pursuant to Court Order, the rules of criminal procedure for the United States District Court in and for the District of Minnesota shall be superseded. Where there is a conflict between the rules of the United States District Court in and for the District of Minnesota and the rules contained herein, Mille Lacs Band rules shall govern.

Any rule of criminal procedure for the United States District Court in and for the District of Minnesota that is contrary to the customs and traditions of the Mille Lacs Band, and it is clearly established by the evidence that the said rule is in conflict, the Judge shall give precedence to custom and tradition.

Individual Judges shall have the responsibility for ruling on matters within the rules of criminal procedure that conflict. Any Legal Officer may appeal any adverse verdict founded upon an interpretation of the rules of criminal procedure to the Court of Appeals.

Rule 136. Preliminary Injunctions/Temporary Restraining Orders

- (a) Preliminary Injunction.

- (1) Notice. No preliminary injunction shall be issued without notice to the adverse party.

- (2) Consolidation of Hearing With Trial on Merits. Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated upon the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

- (b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if:

- (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and
- (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; shall be filed forthwith in the Court Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed ten (10) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if the party does not do so, the court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) Security.

- (1) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Mille Lacs Band or of an officer or agency thereof.
 - (2) Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court and irrevocably appoints the Court Clerk as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the Court Clerk, who shall forthwith mail copies to the sureties if their addresses are known.
- (d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action,

their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 137. Judge Unavailable to Sign Orders

When the District Judge is not available to physically sign routine orders, the Court Clerk shall contact the District Judge and obtain permission to affix the District Judge's name (in the form s/ First MI Last) or stamp to the order. The Court Clerk shall sign his/her name below the signature line and write the date, time, and manner of contact used to obtain permission to execute the order. If the District Judge cannot be contacted, the Court Clerk is authorized to use this same procedure with any authorized magistrate. This procedure shall only be used for routine administrative orders, such as scheduling orders or continuances.

Rule 138. Concealed Carry Permits

- (a) Authority to Issue. Title 24, Section 2007 of the Mille Lacs Band Statutes Annotated authorizes the Court to apply Minnesota law in civil proceedings when Mille Lacs Band statutes are silent on an issue and if the state law does not conflict with the unwritten laws of the Mille Lacs Band. Under 24 MLBSA § 1251, it is an offense for a person to “go about in public places armed with a dangerous weapon concealed upon his/her person, unless he/she shall have a permit signed by a Judge of the Court of Central Jurisdiction.” Section 1251 impliedly authorizes the Court to sign a concealed weapons permit but Mille Lacs Band statutes are silent as to the process. Therefore, the Court shall apply the non-criminal portions of Minnesota statute 624.714 for guidance on issuing a permit for a concealed weapon.
- (b) Permit Required to be in Possession. A person, other than a peace officer, as defined in section 626.84, subdivision 1 of the Minnesota statutes, who carries, holds, or possesses a pistol in a motor vehicle, snowmobile, or boat, or on or about the person's clothes or the person, or otherwise in possession or control in a public place must have a permit to carry such a weapon. The holder of a permit to carry must have the permit card and a driver's license, state identification card, or other government-issued photo identification in immediate possession at all times when carrying a pistol and must display the permit card and identification document upon lawful demand by a peace officer. Firearms may be lawfully possessed in a motor vehicle when unloaded and cased. See the appropriate Minnesota statute for specific requirements.
- (c) State Permit Required. Subdivisions 2 and 2a of Minnesota statute 624.714 detail the background check requirements and the firearms safety course requirements for a state permit. Because the Mille Lacs Band does not have the resources to implement these requirements, an applicant for a Mille Lacs Band concealed carry permit must already possess a valid Minnesota permit to carry or possess a permit from another state which is recognized by the Minnesota Bureau of Criminal Apprehension as being valid in Minnesota. Any concealed carry permit issued by this Court shall expire on the same date as the state issued permit.

(d) Filing Procedure. Minnesota statute 624.714 requires that the applicant file a standard form with the sheriff of the county in which the applicant resides. Because of the procedure adopted by this Court, such a process would be unnecessary. Instead, an applicant for a Mille Lacs Band permit shall:

- (1) file an application for concealed carry permit with the Court;
- (2) attach a copy of a current and valid state issued permit to the application;
- (3) provide proof that the firearm to be carried is registered with the Office of Solicitor General; and,
- (4) serve a copy of the application on the Chief of Police of the Mille Lacs Band Tribal Police.

The Chief of Police shall have five working days to object to the permit. The Chief of Police shall not be required to make any report to the Court unless he/she objects to the permit. If the Chief of Police objects to the issuance of a permit, the Court will consider that objection in its decision regarding the issuance of a permit.

(e) The Permit. Permits to carry must be on an official, standardized permit card adopted by the Court, containing only the name, residence, and driver's license number or state identification card number of the permit holder, if any. The permit card shall clearly display a notice that a permit, if granted, is void and must be immediately returned to the Court if the permit holder becomes prohibited by law from possessing a firearm.

A permit to carry a concealed weapon issued under this section expires on the same date as the state permit presented with the application. It may be renewed in the same manner and under the same criteria which the original permit was obtained. A renewal may be applied for up to ninety (90) days prior to the expiration date on the permit by submitting to the Court the renewed state permit or a newly issued permit from a state which issues permits recognized as valid in Minnesota by the Bureau of Criminal Apprehension.

The renewal permit is effective beginning on the date it is issued by the Court. Within thirty (30) days after changing permanent address, or within thirty (30) days of having lost or destroyed the permit card, the permit holder must notify the Court of the change, loss, or destruction. Failure to provide notification as required voids the permit and the permit holder must complete the entire application process to obtain a new permit.

After notice is given under the above paragraph, a permit holder may obtain a replacement permit card by paying \$10.00 to the Court Clerk. The request for a replacement permit card must be made by a filed application and, except in the case of an address change, must include a notarized statement that the permit card has been lost or destroyed.

The permit to carry is void at the time that the holder becomes prohibited by law from possessing a firearm, in which event the holder must return the permit card to the Court

within five (5) business days after the holder knows or should know that the holder is a prohibited person. If the Court has knowledge that a permit is void under this paragraph, the Court will give notice to the permit holder in writing. Failure of the holder to return the permit within the five (5) days is a contempt of court unless the Court finds that the circumstances or the physical or mental condition of the permit holder prevented the holder from complying with the return requirement.

When a permit holder is convicted of an offense that prohibits the permit holder from possessing a firearm, the Court must take possession of the permit, if it is available, or require its return.

- (f) Chief of Police May Request Revocation. The Chief of Police may file a petition with the Court for an order revoking a permit to carry. The petition shall state with particularity the reasons why the permit holder is no longer eligible to possess firearms or why the permit holder's continued possession of a firearm or permit is not in the best interest of public safety. An order shall be issued only if the Chief of Police proves his petition by clear and convincing evidence.
- (g) Duty to Report Revocation. A permit revocation must be promptly reported to the issuing court by the permit holder.
- (h) Prohibited Places.
 - (1) A person carrying a firearm on or about his/her person or clothes under a permit or otherwise who remains at a private establishment knowing that the operator of the establishment or its agent has made a reasonable request that firearms not be brought into the establishment may be ordered to leave the premises. A person who fails to leave when so requested shall have his/her Mille Lacs Band issued permit revoked.
 - (2) The following terms in this paragraph have the meanings given.
 - (A) "Reasonable request" means a request made under the following circumstances:
 - (i) the requester has prominently posted a conspicuous sign at every entrance of the establishment containing the following language: "THE MILLE LACS BAND OF OJIBWE BANS GUNS IN THESE PREMISES."; or
 - (ii) the requester or the requester's agent personally informs the person that guns are prohibited in the premises and demands compliance.
 - (B) "Prominently" means readily visible and within four feet laterally of the entrance with the bottom of the sign at a height of four to six feet above the floor.
 - (C) "Conspicuous" means lettering in black arial typeface at least 1-1/2 inches in height against a bright contrasting background that is at least 187 square inches in area.

(D) “Private establishment” means a building, structure, or portion thereof that is owned, leased, controlled, or operated by a nongovernmental entity for a nongovernmental purpose. However, commercial establishments owned or operated by the Mille Lacs Band shall be considered to be a private establishment for the purposes of this policy.

(3) This subdivision does not apply to private residences. The lawful possessor of a private residence may prohibit firearms, and provide notice thereof, in any lawful manner.

(4) A landlord may not restrict the lawful carry or possession of firearms by tenants or their guests.

(5) This subdivision does not apply to:

(A) an active licensed peace officer; or

(B) a security guard acting in the course and scope of employment.

(i) **Scope of Permit.** A permit issued by the Court authorizes the holder to carry a concealed weapon on lands under the jurisdiction of the Mille Lacs Band. It does not authorize the carrying of a concealed weapon into any area where firearms are prohibited by Federal law. It also does not authorize the carrying of a concealed weapon in the governmental buildings of the Mille Lacs Band or commercial buildings of the Mille Lacs Band that are prominently posted as prohibiting firearms.

(j) **Band Employees.** The Court, in its discretion and after consultation with the Mille Lacs Band of Ojibwe Chief of Police, may authorize an employee of the Band to carry a concealed weapon in any building owned by the Mille Lacs Band if the employee can show a special need. A special need includes, but is not limited to, personnel who have received credible threats to their safety related to their official job duties; personnel who, as part of their job duties, routinely interact with known violent persons; or personnel who work with clients whose safety is at risk such as domestic violence victims or witnesses to crimes. If such a permit is issued, a certified copy shall be supplied to Tribal Police, the Corporate Commission, and casino security. A permit issued under this section does not authorize the carrying of a weapon into any facility where such an act is prohibited by Band statute or Federal law. Due to the nature of a permit under this section, the Court will be very hesitant to issue such a permit.

Rules 139-144 reserved for future use.

SECTION XVIII. RULES AMENDMENT AND RESCISSION OF RULES

Rule 145. Amendment or rescission of rules

Any rule may be amended or rescinded by the Court of Appeals at any time; provided, however, any amendment or rescission of rules by the Court of Appeals must meet the requirements of 5 MLBSA §105.

Effective date: November 18, 2009