

# Mille Lacs Band Statutes Annotated

Amendments received through: May 14, 2004

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## TITLE 24 - JUDICIAL PROCEEDINGS

<b>Chapter</b>	<b>Section</b>
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### CHAPTER 1

#### CIVIL CAUSES OF ACTION

<b>Subchapter</b>	<b>Section</b>
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#### Historical and Statutory Notes

The Preamble of Band Statute 1144-MLC-5 provides:

"WHEREAS, it is necessary to develop a written code for adjudication of wrongs of a civil nature that occur on lands subject to the jurisdiction of the Non-Removeable Mille Lacs Band of Chippewa Indians, and

"WHEREAS, a democratic form of government such as is enacted and operational for the benefit of the Non-Removeable Mille Lacs Band of Chippewa Indians requires that laws be implemented to establish equal standards for the conduct of all persons subject to the civil jurisdiction of the Band in the interest of justice, and

"WHEREAS, equal justice is the primary ingredient of any democracy, and

"WHEREAS, it is the desire of the Band Assembly to retain the customs and traditions of the Non-Removeable Mille Lacs Band of Chippewa Indians which, since time immemorial had been unwritten codes to be passed orally from generation to generation,

"NOW THEREFORE, Be it enacted by the Band Assembly."

#### **Cross References**

Civil actions not merged into criminal offenses, see 24 MLBSA §1003.

## **SUBCHAPTER 1**

### **GENERAL PROVISIONS**

#### **Section**

1. Purpose
2. Exclusive original jurisdiction.
3. Concurrent jurisdiction.
4. Application of Uniform Commercial Code of State of Minnesota.
5. Truth in Lending Act.
6. Consumer Protection Laws of State of Minnesota.

#### **§ 1. Purpose**

The purpose of this chapter is:

(a) To promote the general welfare, preserve and maintain justice, and to accord equal rights, equal protection and equal opportunity for all persons under the civil jurisdiction of the Non-Removeable Mille Lacs Band of Chippewa Indians by enacting a written law to establish standards for civil causes of action.

(b) To exercise inherent powers of government essential to the attributes of sovereignty by regulating the civil affairs of persons who enter or reside on lands subject to the jurisdiction of the Non-Removeable Mille Lacs Band of Chippewa Indians and to provide a forum for the redress of civil grievances and disputes between persons located on said lands.

(c) To provide a written code of civil law of the Non-Removable Mille Lacs Band of Chippewa Indians which may be invoked in the courts of any jurisdiction exterior to the Band, by any Band member who may be subject to the civil jurisdiction, of the State of Minnesota pursuant to the provisions of 28 USC 1360.

### Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.I, §1.

## § 2. Exclusive Original Jurisdiction

(a) The Court of Central Jurisdiction is hereby conferred exclusive original jurisdiction over all civil causes of action, involving any person, where said grievance or dispute arises concerning any property, personal or otherwise, located on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, except as otherwise provided in paragraph (b) below.

(b) The Court of Central Jurisdiction shall have exclusive original jurisdiction over all civil matters in which the Non-Removable Mille Lacs Band of Chippewa Indians, any of its political subdivisions or entities, or its officers, appointees or employees are parties in their official capacity; provided that the Court of Central Jurisdiction shall have no jurisdiction over any such civil matter if (1) the Band or any of its political subdivisions or entities, by written contract, consents to the jurisdiction of any other court or courts of competent jurisdiction, to the exclusion of the Court of Central Jurisdiction, and waives its sovereign immunity only to this extent and (2) the Band Assembly adopts a resolution ratifying the contract. Band Assembly ratification of a contract in which a political subdivision or entity of the Band waives that subdivision or entity's sovereign immunity shall not be construed as a waiver of the Band's own sovereign immunity. Nothing herein shall be construed as a waiver of sovereign immunity of the Band unless specifically authorized in accordance with Band law or by specific Band statute.

### Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.I, §2.  
Band Ordinance 08-93.

### Cross References

Subject matter jurisdiction, Court of Central jurisdiction, see 5 MLBSA §111.

## § 3. Concurrent jurisdiction

The jurisdiction invoked by this chapter over any person, cause of action or subject shall be concurrent with any valid jurisdiction over the same of the Courts of the United States; provided, however, this chapter does not recognize, grant or cede jurisdiction to any other political or governmental entity.

### Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.I, §3.

#### **Cross References**

Personal jurisdiction, see 5 MLBSA §113.  
Subject matter jurisdiction, see 5 MLBSA §111.

### **§ 4. Application of Uniform Commercial Code of State of Minnesota**

Pursuant to the provisions of 18 MLBSA §301, the provisions of Minnesota Statutes Chapter 336, the Uniform Commercial Code, shall apply to any applicable civil causes of action which arise pursuant thereto.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I, §17.

#### **Cross References**

Acceptance and counteroffer, see 24 MLBSA §107.

### **§ 5. Truth in Lending Act**

The provisions of the laws of the United States of America relative to truth in lending as set forth in 15 USC 1601, et seq. shall apply to all persons who are creditors and lessors as defined by the act. The justices of the Court of Central Jurisdiction shall be bound thereby to the provisions of said act.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I, §18.

#### **Cross References**

Banks and banking, see 17 MLBSA §1 et seq.  
Creditors' remedies, see 24 MLBSA §3301 et seq.  
Commercial practices, see 18 MLBSA §1 et seq.

### **§ 6. Consumer Protection Laws of State of Minnesota**

The Consumer Protection Laws of the State of Minnesota shall apply as the Consumer Protection Laws of the Non-Removable Mille Lacs Band of Chippewa Indians. The justices of the Court of Central Jurisdiction shall be bound thereby to enforce the provisions of said Consumer Protection Laws.

## Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.I, §19.

## SUBCHAPTER II CONTRACTS

### Section

101. Definition of contract.
102. Legal requirements.
103. Offer.
104. Interpretation.
105. Time for performance.
106. Persons capable of contracting.
107. Essential elements of consent.
108. Withdrawal of offer.
109. Object of contract.
110. Consideration.
111. Formation of contracts: expressed or implied.
112. Oral or written contracts: Statue of Frauds.
113. Public auctions.
114. Parolee Evidence Rule.
115. Explanation or supplementation of terms.
116. Unlawful contract provisions.
117. Defenses to judicial enforcement of contracts.
118. Rights and obligations of non-parties.
119. Breach of contract.
120. Remedies Of breach of contract.

### § 101. Definition of contract.

A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing. It may be oral or written, provided however that oral contracts as described in 24 MLBSA §112 are not enforceable.

## Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.I., §4.

### § 102. Legal requirements

The legal requirements necessary in forming a contract are:

- (a) Two or more parties, all of whom are legally capable of making a contract.

- (b) An offer by one party to do or refrain from doing a certain thing.
- (c) Acceptance of the offer by words or actions of the other party.
- (d) Consideration, or benefit, to one party in payment for the promise or actions of the other.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §4.01.

### **§ 103. Offer**

- (a) An offer is a proposal by one party to another party, showing a present intention to contract and giving the other party the right to accept to that the contract may be created.
- (b) To qualify as an offer, the words or acts shall meet the following basic requirements:
  - (1) The offer must indicated a present serious intention to contract.
  - (2) The essential terms of the offer must be definite and certain.
  - (3) The offer must be communicated to an identified party.
- (c) The four essential terms identified in paragraph (2) of subsection (b) are parties, subject matter, time for performance and price.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §§4.01.01 to 4.01.03.

## **§ 104. Interpretation**

A contract is to be interpreted according to the law and usage of the place where it is to be performed or, if it does not indicate a place or performance, according to the law and usage of the place where it is made, unless otherwise stated in the contract.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §4.02.

## **§ 105. Time for performance**

If no time is specified for the performance of an act, a reasonable time is allowed. If the act is capable of being done instantly, such as payment of money, it must be performed immediately when due and ascertained.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §4.03.

## **§ 106. Persons capable of contracting**

(a) All persons are capable of contracting except minors under the age of sixteen and persons of unsound mind. Minors have only such capacity as shall be specified in the Band Statutes relating directly to them.

(b) The contract of a minor if made while he is under the age of sixteen may be disaffirmed by the minor himself either before his majority or within one year's time afterwards.

(c) A minor cannot disaffirm a contract otherwise valid to pay the reasonable value of things necessary for his support or that of his family entered into by him when not under the care of a parent or guardian able to provide for him or them.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §5.

### **Cross References**

Children and families, see 8 MLBSA §1 et seq.

## **§ 107. Essential elements of consent.**

(a) Consent of the parties to a contract must be free, mutual and communicated by each to the other.

(b) Consent which is not free is not void but voidable and may be rescinded in the manner prescribed by the statutes on revision (24 MLBSA §117). An apparent consent is not real or free and is voidable when obtained through duress, fraud, undue influence or mistake.

(c) An offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances unless the offer clearly and expressly indicates, by its language or circumstances involved, that a specific method of acceptance is required.

(d) Consent is deemed to be fully communicated between the parties as soon as the party accepting the offer has put his acceptance in the course of transmission to the party making the offer in conformity with subsection (c).

(e) A definite expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms. Any acceptance that materially changes the offer is a counteroffer that must be accepted by the original offeree to form a contract, except for sales contracts that are subject to interpretation under the Uniform Commercial Code of the State of Minnesota.

(f) A voluntary acceptance of the benefit of a transaction is equivalent to consent to all the obligations arising from it so far as the facts are known, or ought to be known, to the party accepting.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §6.

### **Cross References**

Applicability of Uniform Commercial Code, see 18 MLBSA §301; 24 MLBSA §4.

## **§ 108. Withdrawal of offer**

(a) An offer may be withdrawn at any time before its acceptance is communicated to the party making the offer, but not afterwards with the exception of option contracts or in the case of detrimental reliance.

(1) When an offeree gives something of value in exchange for a promise by the offeror not to revoke an outstanding contract, this shall be called an option contract. The option shall be treated as a contract in which the offeror bargains away his or her right to revoke the offer. If the option agreement does not specify a time limit, the court shall require the offeror to hold the contract open to the offeree's acceptance for a reasonable period of time.

(2) When the offeree relies upon an outstanding offer and as a result, suffers harm or loss this shall constitute detrimental reliance. Detrimental reliance by the offeree on an outstanding offer, where the reliance was reasonable and foreseeable by the offeror, shall make the offer irrevocable for a reasonable period of time.

(b) An offer is withdrawn by the communication of notice of withdrawal by the party making the offer to the other party, and received by him, in the manner prescribed for communication of consent and acceptance, before his acceptance has been communicated to the former; or, by the lapse of time prescribed in such offer for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of acceptance; or beginning of performance if the reasonable method of acceptance; or, by the failure of the acceptor to fulfill a condition precedent to acceptance; or by the death or insanity of the offeror before acceptance of the offer; or by the supervening illegality of the proposed contract.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §§6.05, 6.06.

## **§ 109. Object of contract**

(a) The object of a contract is the thing which the party receiving the consideration agrees to do or not to do.

(b) The object of a contract must be lawful when the contract is made and possible and capable of being determined by the time the contract is to be performed.

(c) Where a contract has only a single object and such object is unlawful in whole or in part, or wholly impossible of performance, or so vaguely expressed as not to be wholly ascertainable, the entire contract is void.

(d) Where a contract has several distinct objects, one or more of which are lawful and one or more of which are unlawful in whole or in part, the contract is void as to the unlawful objects and valid as to the rest, if performance of the contract is possible after the exclusion of the unlawful part or parts.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §7.

### **§ 110. Consideration**

(a) Consideration is the price bargained for and paid for a promise. It may consist of an act, a forbearance, or a return promise.

(b) The test of a sufficient consideration is whether the act, forbearance, or return promise results in a benefit to the promisor or a detriment to the promisee.

(c) Consideration must be of some legal value. If there is no detriment or benefit, then the agreement is not enforceable. However, the amount of value is irrelevant. The court will uphold and enforce an agreement where there is consideration and will not impose its view as to whether the consideration was adequate or fair.

(d) No preexisting duty imposed by law or contract shall be consideration on a subsequent contract.

(e) The following shall be substituted for consideration.

(1) A promise to perform a legal duty created in the past transaction and owing to the promisee is enforceable without new consideration.

(2) If the promisee reasonably relied on promisor's promise to his detriment or forbearance, the contract will be enforced.

(f) A written instrument is presumptive evidence of a consideration.

(g) The burden of proof of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §§4.04, 8.

### **§ 111. Formation of contracts: expressed or implied**

A contract is either expressed or implied. An expressed contract is one the terms of which are stated in words. An implied contract is one the existence and terms of which are manifested by conduct of the parties.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §9.

### **§ 112. Oral or written contracts: Statute of Frauds**

(a) All contracts may be oral except such as are specially required by statute to be in writing.

(b) The following contracts shall not be enforceable by action unless the same or some memorandum thereof be in writing and subscribed by the party to be charged or his agent, thereunto authorized by law.

(1) An agreement that by its terms is not to be performed within a year from the making thereof.

(2) An agreement made upon consideration of marriage, other than a mutual promise to marry.

(3) An agreement for the sale of real estate or an interest therein or lease of the same for a period longer than a year, but this does not abridge the power of the Court of Central Jurisdiction to compel specific performance of any agreement for the sale of real estate in case of part performance thereof.

(4) A contract of sale or to sell any personal property of the value of \$500 or upward unless the buyer shall actually receive and accept part of the personal property sold or contracted, or give something in earnest or part payment to bind the bargain. These provisions apply to every sale or contract for sale of personal property.

(c) Where a contract which is required to be in writing is prevented from being put into writing by the fraud or deceit of a party thereto, any other party who is prejudiced by such fraud may enforce it against the fraudulent party.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §§9.01, 10.

### **§ 113. Public auctions**

Where a sale is made by public auction of any real or personal property, an entry by the auctioneer or clerk of sale, in his sale book at the time of the kind of property sold and description thereof sufficient for identification, the terms of sale, the price, and the name or names of the purchaser or person on whose account the sale is made is sufficient for memorandum to satisfy the requirements found in 24 MLBSA §115.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §10.02.

### **§ 114. Parolee Evidence Rule**

(a) In order to simplify the judicial interpretation of contracts by having a single, clear source of proof concerning the terms of the contract, the

Parole Evidence Rule as set forth in subsection (b) shall be exercised in the Court of Central Jurisdiction.

(b) The Parole Evidence Rule: Where the parties to a contract express their agreement in writing with the intent that it contain the complete and final expression of their bargain, any other expressions, whether written or oral made prior to or concurrent with the writing are inadmissible to change the terms of the writing.

(c) The parole Evidence Rule shall only apply when there is a writing that is intended to be the complete and final expression of the bargain. In the event that the writing is not intended to be the complete and final expression of the contract, then other expressions whether oral or written are admissible even if they vary or contradict the terms of the writing.

(d) The parole Evidence Rule shall only apply to evidence of agreements which change the final written expression. Evidence concerning oral or written agreements shall be admissible to aid in interpreting rather than changing the terms of the bargain. The party seeking to admit the evidence, however, must first produce evidence that the writing is ambiguous.

(e) The parole Evidence Rule shall not apply to situations in which the agreement itself is being challenged. Evidence concerning other oral or written expressions shall be admissible to show that no contract existed or that the entire agreement is unenforceable.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §13.

### **§ 115. Explanation or supplementation of terms**

Terms which are set forth in writing, intended by the parties as a final expression of their agreement with respect to such terms as are included therein, may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By evidence of prior course of dealing between the parties; and

(b) By evidence of terms as they are defined by the common usage particular to the subject of the contract; or

(c) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §10.03.

### **§ 116. Unlawful contract provisions**

(a) All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud or willful injury to the person or property of another or from violation of law whether willful or negligent, are against the public policy of the Non-Removable Mille Lacs Band of Chippewa Indians and shall be void.

(b) Every contract in which the amount of damage or compensation for the breach of an obligation is determined in anticipation thereof is void to that extent, except the parties may agree therein upon an amount presumed to be the damage for breach in cases where it would be impractical or extremely difficult to fix the actual damages.

(c) Every provision in a contract restricting a party from enforcing his rights under it by usual legal proceedings in the Court of Central Jurisdiction or limiting his time to do so, is void.

(d) Every contract restraining exercise of a lawful profession, trade or business is void to the extent, except:

(1) One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within a specified reservation or part thereof, so long as the buyer or person deriving title to the goodwill from him carries on a like business therein;

(2) Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same reservation, or part thereof, where the partnership business has been transacted;

(3) An employee may agree with an employer at the time of employment or at any time during such employment not to engage directly or indirectly in the same business or profession as that of his employer for any period not exceeding five years from the date of such agreement or within the boundaries of the same reservation.

(e) Usury is the exaction of interest or service charges or deferred payment on a sale of goods on a loan of money which interest or service charge is higher than the rate established by the laws of the State of Minnesota for similar transactions. Such a usurious contract is illegal and void.

(f) The law of the Non-Removeable Mille Lacs Band of Chippewa Indians will aid neither party to an illegal contract. If it is executory, neither party may enforce it. If executed, the Court of Central Jurisdiction shall not permit revision and recovery of what was given in performance.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §11.

### **§ 117. Defenses to judicial enforcement of contracts**

The following defenses to judicial enforcement of contracts shall be recognized in the Court of Central Jurisdiction:

(a) The lack of legal capacity to contract shall be an available defense to judicial enforcement of contracts. Nothing herein shall relieve minors of their right to affirm the provisions of a contract when they come of age or in the case of mentally incompetent persons when they become competent. Persons who lack legal capacity in matters where they affirm said contract shall be bound by the provisions of said contract even if they were unaware of the fact that the contract was previously voidable. In all cases, minors and persons who are mentally incompetent shall be liable for the reasonable value of any necessities for

sustaining life that may be conferred on them pursuant to the provisions of their contracts.

(b) Failure to comply with the Statute of Frauds (24 MLBSA §112) shall be an available defense to judicial enforcement of contracts. The Statute of Frauds shall be liberally construed so as to limit the substantial loss of property or money simply because a person failed to put an otherwise valid agreement into writing.

(c) The illegality of the contract shall be an available defense to judicial enforcement of contracts. Contracts in which either the subject matter of the contract or the purpose of the contract is illegal are void and unenforceable in regard to the illegal portion of the contract only.

(d) Fraud or duress shall be an available defense to judicial enforcement of contracts. Where a party signs a contract or gives oral assent based upon a false impression of the contract terms created by the other party, the contract shall be voidable by the innocent party. Where the consent of one party is obtained by force or threat of force against the party or members of the party's family, the contractual obligations of the victim are voidable. This shall be termed duress.

(e)(1) Unconscionability of a contract shall be a defense to judicial enforcement of contracts. The unconscionability of contract doctrine shall work to protect against one-sided bargains, called contracts of adhesion, in which one party with little or no bargaining power is subjected to oppressive terms by the other party. The Court of Central Jurisdiction shall consider the relative bargaining strength of the parties, economic justification for the terms, and injury to the party or to the public policy of the Non-Removable Mille Lacs Band of Chippewa Indians if the terms of the contract are enforced.

(2) It shall be the duty of the Court of Central Jurisdiction to prevent oppression

and/or surprise upon one party to the contract by refusing to enforce contract provisions containing warranty disclaimers, waivers of Statute of Limitations or of all defenses, disclaimers of liability or other unreasonable terms or requirements. Obscure or technical language in the contract which the party is obviously unable to comprehend shall also be justification for refusal to enforce the provisions of said contract.

(3) If the court finds a contract or any part of a contract to be unconscionable, the court may refuse to enforce the contract at all, or refuse to enforce the unconscionable terms or limit the enforcement of the terms in order to avoid the oppressive result.

(f) Mistake or ambiguity in the provisions of a contract shall be a defense to judicial enforcement of contracts. The standard rules of contract law regarding mistake or ambiguity shall be utilized in the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §12.

### **§ 118. Rights and obligations of nonparties**

(a) The rights and obligations of nonparties to any contract shall be recognized in the Court of Central Jurisdiction. A non-party shall be any person who was neither the offerer nor the offeree at the time that a contract was formed. The Court of Central Jurisdiction shall recognize three types of nonparties: the intended third-party beneficiary, the assignee of rights, and the delegate of duties.

(b) The legal status of intended third-party beneficiaries shall arise at the formation stage of the original contract. The legal status of assignees and delegates, shall arise subsequent to the formation stage, when either or both of the original parties seeks to transfer rights or assignments and/or to delegate duties to a third party.

(c) A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties rescind such contract.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §§5.03, 14.

### **§ 119. Breach of contract**

(a) The contract law of the Non-Removable Mille Lacs Bands of Chippewa Indians requires that the parties to a contract perform all of their promises pursuant to the provisions of said contract. When one party does not perform a promise pursuant to the terms of the contract, the other party shall have a breach of contract cause of action in the Court of Central Jurisdiction. However, not every breach of a promise made in a contract by one party shall automatically entitle the other party to judicial enforcement of the provisions of said contract. The breach may be justifiable as provided hereafter.

(b) The Court of Central Jurisdiction shall recognize the following as excuses or defenses for the breach of a contract, and said excuses shall not be exclusive.

(1) Impossibility of performance of the provisions of a contract.

(2) Supervening illegality.

(3) The other contracting parties prior breach of the provisions of a contract.

(4) The waiver of non-performance of the provisions of a contract by the other contracting party.

(5) A later change of the agreement by the parties.

(c) A breach of contract cause of action shall exist in the Court of Central Jurisdiction when a party refuses to perform, fails to perform, or

defectively performs a contractual obligation which is due and which has not been excused or discharged.

(d) In the event the breach of contract is substantial or material, the contract obligations of the non-breaching party may be discharged and the non-breaching party may no longer have to perform his or her contractual obligations.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §15.

### **§ 120. Remedies for breach of contract**

The following remedies for breach of contract shall be available to any party in a breach of contract matter:

(a) The Court of Central Jurisdiction may award monetary damages as a remedy aimed at making good the losses of the non-breaching party. Only damages which are consequential, foreseeable, unavoidable and certain shall be recoverable.

(b)(1) The Court of Central Jurisdiction may award specific performance as a remedy in which the breaching party is ordered to perform the contract according to its exact terms. In the event the party willfully disobeys a specific performance order of the court, he/she may be fined or may be subject to contempt of court sanctions pursuant to the laws of the Non-Removable Mille Lacs Band of Chippewa Indians.

(2) The Court of Central Jurisdiction shall award specific performance when other forms of relief or remedy authorized by law are deemed to be inadequate to compensate for any losses of the non-breaching party.

(c) The Court of Central Jurisdiction may award restitution to any non-breaching party to a contract. Restitution shall be awarded to prevent unjust enrichment by the breaching party and shall be measured by the gain of the breaching party as opposed to the non-breaching parties loss. Restitution recovery may be both monetary and tangible or intangible. Restitution may also be in a form so as to restore the parties to a previous

position by revision or cancellation of the contract or where a contract is reformed to reflect a more accurate statement of the parties agreement.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.I., §16.

#### **Cross References**

Damages, see 24 MLBSA §651 et seq.

## **SUBCHAPTER III**

### **ACTIONS FOR HARMFUL CONDUCT**

<b>Part</b>	<b>Section</b>
<b>A. General Provisions</b>	<b>201</b>
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#### **Part A**

#### **General Provisions**

##### **Section**

- 201. Rights and obligations of all persons
- 202. Responsibility for willful and negligent acts.
- 203. Right to peaceful possession of property.

## **§ 201. Rights and obligations of all persons**

Every person who invades the interest of another, as provided in this chapter, shall be liable to the injured person in accordance with the provisions of this chapter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II. §1.

## **§ 202. Responsibility for willful and negligent acts**

Every person is responsible for injury to the person, property, or rights of another caused by his willful acts or caused by his want of ordinary care or skill.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §2.

## **§ 203. Right to peaceful possession of property**

Every person is entitled to peaceful possession of his or her own personal property and violation of that interest in peaceful possession is actionable as provided in this chapter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §3.

### **Cross References**

Deprivation of property without due process of law, see 1 MLBSA §8.  
Intentional interference with personal property, see 24 MLBSA §255.  
Recovery of possession of personal property, see 21 MLBSA §501 et seq.  
Replevin, see 24 MLBSA §3501 et seq.  
Unreasonable searches and seizures, see 1 MLBSA §2.

## **Part B**

### **Intentional Harms**

#### **Section**

- 251. Assault and battery.
- 252. Infliction of mental distress.
- 253. False imprisonment.

254. Trespass to land.

255. Intentional interference with personal property.

## **§ 251. Assault and battery**

(a) A cause of action may be brought for assault or assault and battery. An assault is any willful and unlawful attempt or offer with force or violence, to hurt the person of another. It is any act of such a nature as to create an apprehension of battery. Words alone are not enough to constitute an assault. The apprehension must be one which would normally be aroused in the mind of a reasonable person. Battery is any willful and unlawful use of force or violence upon the person of another. Person includes any part of the body or anything so closely attached thereto that it is customarily regarded as a part thereof.

(b) Assault or battery is justifiable in the follow cases:

(1) When necessarily committed by a police officer in the performance of any legal duty or by any other person assisting him or acting by his direction;

(2) When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody;

(3) When committed either by the party about to be injured, or by any other person in his aid or defense; in preventing or attempting to prevent an offense against his person or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense;

(4) When committed by a parent or the authorized agent of any parent, or by any guardian or teacher in the exercise of a lawful authority to restrain or correct the child, ward, or student, provided restraint or correction has been rendered necessary by the child's refusal to obey the lawful command of such person, and the force or violence used is reasonable in manner and moderate in degree;

(5) When committed by any person to prevent any insane

person, or other person of unsound mind, including persons temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

(c)(1) The damages recoverable for assault are those for the plaintiff's mental or physical injury, or both. The establishment of the cause of action, without proof of harm, entitles the plaintiff to recover at least nominal damages.

(2) Proof of contact with the plaintiff's person entitles him to recover at least nominal damages. The establishment of this cause of action entitles him also to compensation for the mental disturbance inflicted upon him as well as for any physical harm that may arise.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§4, 39, 40.

#### **Cross References**

Children and families, see 11 MLBSA §1 et seq.  
Criminal assault and battery, see 24 MLBSA §1101, 1102.

### **§ 252. Infliction of mental distress**

A cause of action shall exist for the infliction of mental distress. Infliction of mental distress is an act which goes beyond the limits of accepted conduct in the community. The actor must intend that the person injured will suffer mental distress of a very serious kind. The mental distress must in fact exist and result from the act.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §5.

### **§ 253. False imprisonment**

(a) False imprisonment occurs when a person's freedom of movement has been intentionally and unlawfully restrained.

(b) A person is not liable for false imprisonment of another in the following circumstances:

(1) When making a lawful arrest;

(2) When exercising judicial authority or carrying out the order of a court.

(3) When temporarily detaining a person where there is probable cause to believe such person is attempting to remove unpurchased goods or merchandise without intention of paying the purchase price.

(c) A false imprisonment establishes a cause of action for at least nominal damages. The plaintiff may also recover any other damages that he can show were proximately caused by false imprisonment.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§6, 41.

#### **Cross References**

False arrest or unlawful restraint, criminal offenses, see 24 MLBSA §1108.

### **§ 254. Trespass to land**

(a) A person is subject to liability to another for trespass, irrespective of whether he thereby causes harm, if he intentionally and unlawfully:

(1) Enters land or any house or structure on the land in the rightful possession of the other or causes a thing or third person to do so;

(2) Remains on such property; or

(3) Fails to remove from such property a thing which he is under a duty to remove.

(b) Extent of liability: A trespasser under this section is liable for any physical harm to the possessor of the property, or to the land, or to any personal property located thereon, or to any persons who are lawfully on the premises or their personal property, caused by any act or activity of the trespasser.

(c)(1) Where a person is entitled to a judgment for harm to land resulting from an unlawful invasion and not amounting to a total destruction in value, and damages, at the plaintiff's election, include compensation for:

(A) The difference between the value of the land before the harm and the value after the harm or the cost of restoration which has been or reasonably may be incurred, or if a separable portion of the land has been damaged, the loss in its value, and

(B) The loss of use of the land; and

(C) Discomfort and annoyance, in an action brought by the occupant.

(2) The damages for past and prospective invasions of land include all detriment to the land past, present or future caused by such trespass.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§7, 42.

#### **Cross References**

Criminal trespass, see 24 MLBSA §1151.

### **§ 255. Intentional interference with personal property**

(a) Personal property includes any kind of property not amounting to an interest in real estate. Leases shall be considered as personal property for the purposes of this section.

(b) A trespass to a personal property may be committed by intentionally and unlawfully:

- (1) Dispossessing another of the personal property; or
- (2) Using or interfering with the use of personal property in the possession of another, where:
  - (A) the personal property is impaired as to its condition, quality or value; or
  - (B) the possessor is deprived of the use of the personal property for a substantial time; or
  - (C) bodily harm is caused to the possessor, or harm is caused to some person or thing in which the possessor has a legally protected interest.
- (3) Disposing of personal property entrusted to the person.
- (4) Mis-delivering personal property.
- (5) Refusing to surrender personal property to the person entitled thereto.

(c) One who interferes with personal property in any of the ways described in subsection (b) shall be subject to liability for the damages caused. Damages may be measured by the fair market value of the item if it is no longer available to the rightful possessor or cannot be restored to his use in the condition in which it was taken; or the fair rental value of the item if such value is ascertainable and any damages caused by reason of the unavailability of the personal property to the owner. Damages shall be in such form and amount as is deemed just by the court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§8 to 10.

#### **Cross References**

Malicious mischief, criminal offenses, see 24 MLBSA §1160.  
Right to peaceful possession of property, see 24 MLBSA §203.

## Part C

### Public Nuisance Ordinance

#### Section:

- 301. Purpose
- 302. Nuisance Defined
- 303. Other Definitions
- 304. Abatement Procedure
- 305. Emergency Abatement Procedure
- 306. Sovereign Immunity

#### Historical and Statutory Notes

The Introduction and Preamble to and § 307 of Band Ordinance 30-03 (this Part of this Subchapter) provide:

“This Public Nuisance Ordinance represents the law pertaining to nuisance on Band Lands. Prior Title 24 MLBSA Part C (Nuisance) §§ 301-304 and 24 MLBSA Subchapter VI, § 1254 are repealed and replaced in their entirety by this Ordinance.”

“**PREAMBLE:** The Mille Lacs Band of Ojibwe Indians believes every person has the right to live a quiet and peaceful life. The Band recognizes certain conditions and behaviors are nuisances, which threaten the health, safety and well-being of other persons.”

“**§ 307 Severability.** If the Court of Central Jurisdiction adjudges any provision of this Ordinance to be invalid, such judgment shall not affect any other provision of this Ordinance not specifically included in the judgment.”

#### § 301. Purpose

This Ordinance is created to minimize the impact of undesirable conditions and behaviors on Band Lands and to preserve the peace and tranquility of communities on Band Lands.

#### Historical and Statutory Notes

#### Source:

Band Ordinance 30-03, § 301

#### § 302. Nuisance Defined

A nuisance is any substance, matter, emission, sound or thing, which is found upon, is found in, or is being discharged or is flowing from, any street, highway, railroad right-of-way, vehicle, body of water, excavation, building, lot, grounds or other property on Band Lands, and which creates a dangerous or unhealthy condition on, or which threatens the public peace on or the health, safety or sanitary condition of Band Lands, or

which is offensive to or has a blighting influence on a community on Band Lands. Nuisances include, but are not limited to, the following:

(a) Abandoned Vehicle. Any vehicle that is parked for a period longer than thirty (30) days with either no tags or expired tags more than thirty (30) days overdue.

(b) Dangerous structure. A structure which is potentially hazardous to persons or property including, but not limited to:

(1) A structure which is in danger of partial or complete collapse; or

(2) A structure with any exterior parts which are loose or in danger of falling; or

(3) A structure with any parts such as floors, porches, railings, stairs, ramps, balconies or roofs, which are accessible and which have collapsed, are in danger of collapsing, or are unable to support the weight of normally imposed loads.

(c) Fire Hazards. Any thing or condition which creates a fire hazard or which is a violation of the fire code.

(d) Graffiti. Any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched upon a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure in violation of 24 MLBSA § 1161.

(e) Grass and Weeds. Grass or weeds in a yard surrounding a residence which have grown to a height of twelve (12) or more inches.

(f) Hazards. Any thing or condition on property which may contribute to the injury of any person present on the property, including, but not limited to, open holes, open foundations, open wells, dangerous trees or limbs, abandoned refrigerators or trapping devices.

(g) Health Hazards. Any thing or condition which creates a health hazard or which is a violation of any health or sanitation law.

(h) Insects, rodents and pest harborage. Conditions that are conducive to the presence, harborage or breeding of insects, rodents or other pests, provided that beekeeping and equipment and devices used for beekeeping shall not be considered under this Part of this Subchapter.

(i) Loud Music. Any music emitted from any car, house or music player so as to create a disturbance to the neighbors or community members between the hours of 10:00 p.m. and 8:00 a.m.

(j) Refuse, noxious substances, hazardous wastes. Refuse, noxious substances or hazardous wastes laying, pooled, accumulated, piled, left, deposited, buried or discharged upon or in, or being discharged or flowing from, any property, structure or vehicle, except for:

(1) Refuse deposited at places designated and provided for that purpose and in compliance with 11 MLBSA § 1005 or other applicable law.

(2) Refuse stored in accordance with this Ordinance and 11 MLBSA §§ 1002-1007 or other applicable law, or vehicle parts stored in an enclosed structure.

(3) Compost piles established and maintained for gardening purposes.

(k) Uncontrolled Party. Any social gathering that creates a disturbance so as to disrupt the peacefulness of the neighborhood or community due to loud noises and/or fights or other obnoxious behavior.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-03, § 302

### **§ 303. Other Definitions**

(a) Attractive Nuisance means any thing or condition located on property that could reasonably be viewed as attracting children to enter into or onto the property, thing or condition to play, and which pose a risk of injury or death to such children.

(b) Band Lands means lands owned by or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.

(c) Enforcement Officer means any officially designated Mille Lacs Band Housing Authority representative, Community Development representative, Health & Human Services representative, Tribal Police Officer or Department of Natural Resources warden or official.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-03, § 303

## § 304. Abatement Procedure

Except as provided in Section 305 of this Chapter, the following procedure will be used to abate a nuisance:

(a) Order. An Enforcement Officer shall serve a written order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The Enforcement Officer may also serve the written order upon any other known party to the nuisance. The order shall contain the following:

(1) A full and complete street address or a real estate description sufficient to identify the location of the nuisance.

(2) A description of the nuisance and the remedial action required to abate the nuisance.

(3) The abatement deadline, to be determined by the Enforcement Officer, allowing a reasonable time for the performance of any act required.

(4) A statement that the order may be appealed and a hearing in the Court of Central Jurisdiction obtained by filing a written request for hearing with the Court Clerk prior to the abatement deadline designated in the order.

(5) A statement that, if the remedial action is not taken nor a request for a hearing filed with the Court Clerk within the time specified, the Mille Lacs Band will abate the nuisance and charge all costs incurred therein against the person responsible for creation of the nuisance or the Owner or Tenant of the property on which the nuisance is located.

(b) Setting Hearing Date. In the event that a request for hearing is filed, the Court Clerk shall schedule the matter for hearing. In all instances, the Court Clerk shall set the hearing no longer than sixty (60) days from the filing of the request for hearing.

(c) Notice of Hearing Date. In the event a request for hearing is filed with the Court of Central Jurisdiction, the Court Clerk shall mail a notice of the date, time, place and subject of the hearing to the owner, tenant and/or known responsible parties. The Court Clerk shall also mail the notice to the District Community Center where the nuisance is located requesting that it be posted. The Court Clerk shall also notify the Enforcement Officer and the Solicitor General's Office.

(d) Hearing. If the Court ruling requires abatement, an Order shall be issued to fix a time when the nuisance must be abated and shall provide that, if the nuisance is not abated within the time specified, the Mille Lacs Band may abate the nuisance and assess the costs of the abatement to the person found responsible for the nuisance.

(e) Abatement. If the remedial action is not taken nor an appeal filed within the time specified, the Mille Lacs Band may abate the nuisance.

(f) Fines. Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance within the meaning of this Part of this Subchapter shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-03, § 304

### **§ 305. Emergency Abatement Procedure**

When an Enforcement Officer determines that a dangerous structure, an attractive nuisance, or any other nuisance as defined in this Ordinance exists on Band Lands and constitutes an immediate danger or hazard which, if not immediately abated, will endanger the health or safety of the public, and such danger cannot be removed in a timely manner by following the procedures of Section 304 of this Chapter, the Mille Lacs Band may abate the nuisance by the procedure described below:

(a) Order. The Mille Lacs Band may order emergency abatement by an administrative order to be signed by the Mille Lacs Band Commissioner of Community Development, Housing Authority Executive Director, Chief of Tribal Police, Commissioner of Health & Human Services, Commissioner of Administration, Assistant Commissioner of Administration, or their officially designated representative (“Responsible Official”). The Order must describe the nuisance, identify its location, summarize the bases on which the Enforcement Officer determined that an emergency abatement was appropriate under this section, and set forth the concurrence of the Responsible Official in that determination. Upon issuance of the Order, the Band will abate the nuisance in accordance with the Order, and an Enforcement Officer will serve a copy of the Order upon the party believed to be responsible for creation of the nuisance, if known, and upon the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance).

(b) Notice of Abatement. Following an emergency abatement, the Responsible Official shall file the administrative order with the Court of Central Jurisdiction and request that a hearing be scheduled before the Court following notice to the party believed to be responsible for the creation of the nuisance, if known, and to the Owner and Tenant of the property on which the nuisance is located (if different from the person believed to be responsible for creation of the nuisance). The notice shall attach a copy of the administrative order and shall contain:

- (1) a description of the nuisance;
- (2) the action taken;
- (3) the reasons for immediate action;
- (4) the costs incurred in abating the nuisance; and
- (5) the date, time and place of the hearing.

(c) Hearing. At the time of the hearing, the Court shall hear from the Enforcement Officer, the Responsible Official, and Commissioner or any other person who wishes to be heard regarding their personal knowledge of the nuisance.

(d) Fines and Assessments. Any person subject to the jurisdiction of the Mille Lacs Band who creates, allows or is responsible for a nuisance abated under this section shall be guilty of a civil misdemeanor. If, by a preponderance of the evidence, such person is found guilty of such charge, a fine may be imposed up to a maximum amount of \$1,000.00. In addition, if the Band proves by a preponderance of the evidence that the emergency abatement was appropriate under this section, the Court of Central Jurisdiction may levy an assessment for costs incurred by the Band in abating the nuisance.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 30-03, § 305

### **§ 306. Sovereign Immunity**

Nothing in this Part of this Subchapter shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

#### **Part D**

#### **Defamation**

**Section**

351. Defamation classified and defined.
352. Obligation to refrain from defamation.
353. Privileged communications.
354. Publication.
355. Damages.

## **§ 351. Defamation classified and defined**

Defamation is effected by:

**(a) Libel.** Libel is a false and unprivileged publication by writing, printing, picture, or other presentation to the eye which exposes any person to hatred, contempt, ridicule, or exposure to abuse, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

**(b) Slander.** Slander is a false and unprivileged oral statement other than libel, which:

(1) Charges any person with crime, or with having been indicted, convicted, or punished for crime;

(2) Imputes to him the present existence of an infectious, contagious or repulsive disease;

(3) Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profit.

(4) Imputes to him sexual misconduct.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §17.

## **§ 352. Obligation to refrain from defamation**

Every person is obligated to refrain from infringing upon the right of others not to be defamed.

## Historical and Statutory Notes

Source: Band Statute 1144-MLC-5, T.II, §16.

### § 353. Privileged communications

(a)(1) Fairness or fair comment as used in this section means that the statement was made, in part, at least, for the purpose of giving the public the benefit of comment which it is entitled to have rather than for the ulterior motive of causing harm to the plaintiff.

(2) The term malice or malicious as used in this section means the communication was made intentionally, with evil intent and without just cause or excuse; made for the purpose of annoying or injuring another. Malice may be inferred from proof that the defendant had knowledge of the falsity of the statement and/or acted with reckless disregard of whether the statement was true or false.

(b) No one can be held liable for a written or oral communication which is privileged.

(1) Absolute privilege: Any communication made in the course of legislative and judicial proceedings or, communications made in the discharge of a duty by an officer of government under authority of law is absolutely privileged and cannot be the subject of a defamation complaint so long as the communication is within the scope of the legislative, judicial, or executive proceedings of government.

(2) Qualified privilege: Communications made without malice and with honest belief in the truthfulness of the statement, is privileged in the following circumstances:

(A) A response to a legitimate inquiry;

(B) Communications regarding family or household matters;

(C) Communications regarding school matters;

(D) Communications regarding activities in organizations and societies;

(E) Communications between church members or members of cultural societies regarding the organizational or administrative matters of such societies;

(F) Statements made in an honest endeavor to protect one's reputation;

(G) Communications in aid of law enforcement;

(H) Communications to public authorities by a private person;

(I) Any petition for redress of grievance addressed to government;

(J) Any comment on a matter of public interest and concern, so long as the comment is fair, made for a bona fide public purpose and not malicious.

(K) Any communication dealing with political matters, public officers and candidates for office, so long as they are fair and not made maliciously.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §18 to 20.

## **§ 354. Publication**

In order to constitute actionable defamation, a communication must be to persons other than the plaintiff.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §21

## **§ 355. Damages**

An award of damages for defamation shall not exceed five hundred dollars (\$500).

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §22.

## **Part E**

### **Fraud and Deceit**

#### **Section**

401. Deceit.

402. What constitutes a fraudulent or deceitful act or statement.

### **Cross References**

Criminal fraud, see 24 MLBSA §1154.

## **§ 401. Deceit**

One who willfully deceives another, with intent to induce him to change his position to his injury or risk, is liable for any damage which that person suffers.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §23.

## **§ 402. What constitutes a fraudulent or deceitful act or statement**

In order to prove a case of fraud or deceit, the plaintiff must show that the defendant made a statement or representation which met the following requirements:

- (a) It was made as a statement of fact, not mere opinion;
- (b) It was untrue and known to be untrue by the party making it or else recklessly made;
- (c) That it was made with the intent to deceive and for the purpose of inducing the other party to act upon it;
- (d) That the plaintiff was reasonably entitled to rely upon said statement and did so;
- (e) That he was thereby induced to act upon the statement; and;
- (f) He suffered injury or damage.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §24.

### **Part F**

#### **Invasion of Privacy**

##### **Section**

451. Right of privacy.

452. Liability.

453. Damages.

#### **Cross References**

Interference with privacy, criminal offenses, see 24 MLBSA §1106.

Opening sealed letters, criminal offenses, see 24 MLBSA §1105.

### **§ 451. Right of privacy**

Everyone is entitled to protection against intrusion or disclosure on their personal and private affairs.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §25.

### **§ 452. Liability**

Any action which makes public private facts which would tend to damage the plaintiff's reputation or good name, or who discloses information contained in confidential records of the Band or any of its agencies to persons not authorized to receive such information shall be liable for damages to the person injured thereby.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §26.

### **§ 453. Damages**

The damages for invasion of privacy shall be within the discretion of the judge pursuant to the severity of the invasion or privacy and the limits of the Indian Civil Rights Act. (25 U.S.C.A. §1302.)

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §27.

## **Part G**

### **Negligence**

#### **Section**

- 501. Definition.
- 502. Establishing negligence.
- 503. Standard of care.
- 504. Comparative fault.

### **§ 501. Definition**

Negligence means the failure to exercise reasonable or ordinary care, which causes harm to persons or property.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §28.

## **§ 502. Establishing negligence**

To establish negligence, the plaintiff must show the following:

- (a) The defendant was under a duty to the plaintiff to use ordinary care;
- (b) The defendant breached that duty;
- (c) The breach caused the plaintiff's injury; and
- (d) The plaintiff sustained actual loss or damage.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §29.

## **§ 503. Standard of care**

The standard of care is the standard which can be expected to be followed by a reasonable person in the same or similar circumstances.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §30.

## **§ 504. Comparative fault**

Where the actions of two or more persons combined to cause the plaintiff's injury, the responsibility shall be proportioned to each in accordance with the degree of fault that each bears. Where the plaintiff himself or herself is partly to blame for their injury to damage, any award of damages shall be reduced by the proportion which their fault bears to the fault of all other parties.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §31.

## **Part H**

### **Wrongful Death**

#### **Section**

551. Wrongful death actions.

### **§ 551. Wrongful death actions**

When the death of a person is caused by the wrongful act, neglect or default of another, his personal representative may bring an action for damages against the person causing the death. Every such action shall be for the benefit of the spouse, child or children or the person whose death was caused. If there be no wife, husband, child or children, the action may be maintained for the benefit of the parents, minor sisters or brothers, provided that it is shown that they were dependent upon the deceased person for support or sustained some personal damages by reason of the death.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §32.

#### **Cross References**

Survival of actions, see 24 MLBSA §2015.

## **Part I**

### **Cultural Actions**

#### **Section**

601. Action for causing cultural harm.

602. Cultural harm.

603. Sanctions.

#### **Cross References**

Panel of elders, entry of decision as judgment and order, see 5 MLBSA §103.

Traditional theory of law, see 24 MLBSA §2003.

### **§ 601. Action for causing cultural harm**

Any person shall have a right to bring a cultural action against another for causing cultural harm.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §34.

## **§ 602. Cultural harm**

Cultural harm is established by showing that the defendant has engaged in conduct which:

- (a) Tends to harm the good health of the community by producing physical or moral degradation;
  
- (b) Raises fears and apprehension in the community.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §35.

## **§ 603. Sanction**

In the even any defendant is found to have committed a cultural offense, he court may impose such sanctions as it deems just and consistent with the traditions and beliefs of the Band which include but not be limited to injunctions, both positive and negative, removal and exclusion. It may also include orders for performance of community service or for payment of fines.

### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §36.

### **Cross References**

Exclusion, see 2 MLBSA §201 [Digitizer's note: Section not in digital copy] et seq.

## **Part J**

### **Damages**

#### **Section**

651. Applicability.

652. Measure of damages.

653. Exemplary (punitive) damages.

## **Cross References**

Commercial practices, damages against Band, see 18 MLBSA §5.  
Remedies for breach of contract, see 24 MLBSA §120.

### **§ 651. Applicability**

This Part J shall govern damage awards for harmful conduct described in this subchapter except where a different measure is specifically provided.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §37.

### **§ 652. Measure of damages.**

For any injury to person or property, the measure of damages, except where otherwise expressly provided by this chapter, is the amount which will compensate for all detriment proximately caused thereby, whether it could have been anticipated or not.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §37.01.

### **§ 653. Exemplary (punitive) damages**

In any action for injury to person or property, where the defendant has been guilty of fraud, malice, actual or presumed, or by willful and wanton misconduct, the court or jury, in addition to the actual damage, may give damages for the sake of example and by way of punishing the defendant, but in no event shall such damages exceed specified limits where provided in this chapter.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §38.

## **Part K**

### **Suits Against Band Officials**

#### **Section**

701. Immunity

## **§ 701. Immunity**

(a) No elected official or employee of the Mille Lacs Band of Chippewa Indians shall be subject to a lawsuit for money damages for actions taken in the course of their official duties or in the reasonable belief that such actions were within the scope of their official duties; unless, in the case of a Band employee who does not hold elected office, it is established that such action was taken with malicious intent and in bad faith.

(b) Any employee or appointee to a position in the civil service of the Mille Lacs Band of Chippewa Indians who shall act in a manner consistent with their statutory authority shall be immune from any civil cause of action in any court of competent jurisdiction. Burden of proof shall rest upon the complainant.

### **Historical and Statutory Notes**

**Source:** Band Statute 1096-MLC-28, §44.  
Band Statute 1303-MLC-4, §9.04.

### **Cross References**

Chief Executive and appointed officers, immunity, see 4 MLBSA §24.  
Consolidated Nay-Ah-Shing School Board, responsibility for unacceptable performance of duties, see 9 §13.  
Domestic abuse prevention, immunity of Law Enforcement Officers, see 8 MLBSA §415.  
Duty to report abuse or neglect, immunity, see 8 MLBSA §304.  
Government employees, see 6 MLBSA §1 et seq.  
Immunity for Justices and Judges, see 5 MLBSA §119.  
Solicitor General, Immunity, see 4 MLBSA §21.

## **CHAPTER 2**

### **CRIMINAL CAUSES OF ACTION**

<b>Subchapter</b>	<b>Section</b>
<b>I. General Provisions</b>	<b>1001</b>
<b>II. Department of Justice</b>	<b>1051</b>
<b>III. Offenses Involving Damage to the Person</b>	<b>1101</b>

**IV. Offenses Against Property** **1151**

**V. Offenses Against Public Administration** **1201**

**VI. Offenses Against Public Order, Health and Decency** **1251**

#### **Historical and Statutory Notes**

The Preamble to Band Statute 1164-MLC-6 provides:

"It is enacted, a statute for the protection of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. In order to protect the safety and general welfare of those persons under said jurisdiction, it has become necessary to prevent the commission of crime by impartially defining acts and commissions of behavior which shall be contrary to the norms of a law-abiding society and to design a system of measures under which persons who may violate the laws of the Band can be dealt with according to law and without prejudice or malice."

Band Statute 1164-MLC-6, §61 provides:

"Section 61. Severability. If any provisions of this Chapter or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity, shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable."

#### **Cross References**

Burial grounds protection, violations, see 10 MLBSA §1003.  
Court of Central Jurisdiction, subject matter jurisdiction over causes of action arising from this chapter, see 24 MLBSA §4002.  
Cultural actions, see 24 MLBSA §601 et seq.  
Environmental protection, criminal penalties, see 11 MLBSA §14.  
Executive Orders, Secretarial Orders, Commissioner's Orders, or Solicitor General opinions, violation, see 24 MLBSA §1212.  
Gasoline and petroleum products excise tax, offenses, see 22 MLBSA §309.  
Historical preservation, criminal offenses, see 10 MLBSA §602.  
Motor vehicles,  
    Fraudulent practices, see 19 MLBSA §301 et seq.  
    Nonregistration or improper registration, penalties, see 19 MLBSA §104.  
    Registration, minors, consent of parent or guardian, see 19 MLBSA §106.  
Parking privileges for physically handicapped persons, offenses, see 19 MLBSA §§603, 606, 607.  
Prohibited drugs, see 23 MLBSA §1 et seq.  
Sales and use taxes, offenses, see 22 MLBSA § 510.  
Tobacco excise taxes, unlawful activity, see 22 MLBSA §216.  
Traffic violations, see 19 MLBSA §401 et seq.  
Trespass, see 21 MLBSA §206.  
Unauthorized easements, see 21 MLBSA §205.  
Watercraft violations, enforcements, see 20 MLBSA § 401 et seq.

# SUBCHAPTER I

## GENERAL PROVISIONS

### **Section**

- 1001. Findings and determinations.
- 1002. General definitions.
- 1003. Civil actions not barred.
- 1004. Limitation of actions.
- 1005. Responsibility.
- 1006. Self-defense.
- 1007. Attempt.

### **§ 1001. Findings and determinations**

(a) The Band assembly hereby finds and determines that the purpose of this chapter is to protect all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians through the development of various measures which define in writing acceptable and non-acceptable behaviors or omissions in the behavior of those persons who are enrolled members and other Indians under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians and to provide equal justice to all who may come before the Court of Central Jurisdiction charged with a criminal offense.

(b) The Band Assembly hereby finds that the public safety and welfare of all persons under the jurisdiction of the Band will be enhanced by preventing the commission of crime through the deterring effect of the sentences authorized when the public safety and interest requires.

(c) The Band Assembly hereby finds that the Court of Central Jurisdiction shall be authorized to exercise its inherent jurisdiction in three types of legal matters:

(1) Civil litigation.

(2) Criminal litigation.

(3) Unwritten cultural law litigation.

(d) Notwithstanding anything to the contrary, the provisions of this chapter shall be construed according to the fair import of its terms, to

promote justice, and to effect its purpose, in the best interest of enhancing the customs and sovereign right of the people of the Non-Removable Mille Lacs Band of Chippewa Indians which are hereby declared.

#### Historical and Statutory Notes

**Source:** Band Statute 1164-MLC-6, §1.

#### Cross References

Jurisdiction of Court of Central Jurisdiction, see 5 MLBSA §111 et seq.

### § 1002. General definitions

Unless otherwise specified in a particular section, the following should apply:

**(a) Acts**--Has its usual and ordinary grammatical meaning and includes any bodily movement, and form of communication where relevant, includes a failure or omission to take action.

**(b) Bodily Harm**--Means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

**(c) Deceit**--Means a person knowingly and intentionally causes harm or damage to another by:

(1) Creating or confirming in another an impression which is false and which the offender does not believe to be true; or

(2) Failing to correct a false impression which the offender previously has created or confirmed; or

(3) Preventing another from acquiring information pertinent to the disposition of the property involved; or

(4) Selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is or is not of value or is not a matter of official record; or

(5) Promising performance which the offender does not intend to perform or know will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

**(d) Deprive**--Means to knowingly and intentionally withhold the property of another, permanently or for such a period as to appropriate a portion of the value or with the purpose to restore it only upon payment of reward or other compensation.

**(e) Enter or remain unlawfully**--A person who knowingly and intentionally enters or remains unlawfully in or upon any vehicle, or occupied structure or premises when he/she is not licensed, invited or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person, or unless such notice is given by posting in a conspicuous manner.

**(f) Gross Negligence**--A person acts with gross negligence whenever there is an intentional failure to perform a duty in reckless disregard of the consequences; such a gross wanter of care and regard for the rights of others as to justify the presumption of willfulness and wantonness.

**(g) Intentionally**--A person acts intentionally when his/her acts are willful and on purpose.

**(h) Knowingly**--A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense, when he/she is aware of his/her conduct or that the circumstance exists. When knowledge of the existence of a particular fact is aware of high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

**(i) Minor**--For purposes of this section, a minor shall be considered any person less than eighteen (18) years of age.

**(j) Obtain**--Means a person knowingly and intentionally in relation to property, to bring about transfer of interest or possession, whether to the

offender or to another and in relation to labor of services, to secure the performance thereof.

**(k) Occupied Structure**--Means any building, vehicle or other place suited for human occupancy or night lodging of person or for carrying on business, whether or not a person is actually present. Each unit of a building consists of two (2) or more units separately secured or occupied is a separate occupied structure.

**(l) Offender**--Means a person who has been or is liable to be arrested, charged, convicted or punished for a public offense.

**(m) Owner**--Means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful and without whose consent the offender has no authority to exert control over the property.

**(n) Person**--Includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

**(o) Possession**--Is the knowing control of anything for a sufficient time to be able to terminate control.

**(p) Premises**--Includes any type of structure or building and any real property.

**(q) Property**--Means anything of value. Property includes, for example, but is not limited to real estate, money, commercial instruments, written instruments representing or embodying rights concerning anything of value, labor or services, or otherwise of value to the owner, things growing on or affixed to, or found on land, or part of, or affixed to any building, birds, animals and fish, which ordinarily are kept in a state of confinement, etc.

**(r) Property of Another**--Includes property in which the offender himself/herself may have an interest, but does not have the authority to impair or defeat the interest of the other person in the property.

**(s) Public Places**--Means any place to which the public or any substantial group thereof has access.

**(t) Solicit or Solicitation**--Means to knowingly and intentionally command, authorize, urge, incite, request, or advise another to commit an offense.

**(u) Tamper**--Means to knowingly and intentionally interfere with something improperly, meddle with it, make unwarranted alternation in its existing condition, or deposit refuse upon it.

**(v) Threat**--Means a menace, however communicated, to knowingly and intentionally:

(1) Inflict physical harm on the person threatened or by any other person or on property; or

(2) Subject any person to physical confinement or restraint;  
or

(3) Commit any criminal offense; or

(4) Accuse any person of criminal offense; or

(5) Expose any person to hatred, contempt or ridicule; or

(6) Harm the credit or business reputation of any person; or

(7) Reveal any information sought to be concealed by the person threatened; or

(8) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(9) Testify or provide information or withhold testimony or information with respect to another legal claim or defense.

**(w) Weapons**--Means any instrument, firearm, article or substance which, regardless of this primary function, is readily capable of being used to produce death or serious bodily injury.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §8.

### **§ 1003. Civil actions not barred**

This chapter does not bar, suspend or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered and civil injury is not merged into the criminal offense.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §7.

### **§ 1004. Limitation of actions**

A prosecution for any offense may be commenced within one (1) year after it is committed. The period of limitations does not run under the following conditions:

(a) During any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of this Reservation; or,

(b) During any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(c) During a prosecution pending against one offender for the same conduct, even if the prosecution is dismissed.

**Historical and Statutory Notes**

**Source:** 1164-MLC-6, §7.01.

**§ 1005. Responsibility**

A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him/her capacity to appreciate the criminality of his/her conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

**Historical and Statutory Notes**

**Source:** 1164-MLC-6, §9.

**§ 1006. Self-defense**

(a) A person is justified in the use of force or threat to use force against another when and to the extent that he/she reasonably believes that such force is necessary to defend himself/herself or another person against another's imminent use of unlawful force or prevent other person's trespass on or tortuous or criminal interference with real or personal property which he/she or his/her family owns, possesses or has the legal duty to protect.

(b) However, a person is justified in the use of force likely to cause death or serious bodily harm only if he/she reasonably believes that such force is necessary to prevent imminent death or serious bodily injury to himself/herself or another person.

**Historical and Statutory Notes**

**Source:** 1164-MLC-6, §10.

## **§ 1007. Attempt**

(a) A person commits the offense of attempt when he/she knowingly and intentionally with the purpose to commit a specific offense, does any act toward the commission of such offense.

(b) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accuse to commit the offense attempted.

(c) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(d) A person shall not be liable under this section, if under circumstance manifesting a voluntary and complete renunciation of his/her criminal purpose, he/she avoided the commission of the offense attempted by abandoning his/her criminal effort.

(e) Proof of the completed offense does not bar conviction for the attempt.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6 §11.

## **SUBCHAPTER II**

### **DEPARTMENT OF JUSTICE**

#### **Section**

1051. Creation.

1052. Powers and duties of Department of Justice.

1053. Department of Justice members.

1054. Powers and duties of Solicitor General.

1055. Powers and duties of Chief Law Enforcement Officer.

1056. Meetings.

#### **Cross References**

Impersonating Tribal official or other person in authority, see 24 MLBSA §1213.

## **§ 1051. Creation**

There is hereby created a Department of Justice within the Executive Branch of Government in and for the constituent Bands of the Non-Removable Mille Lacs Band of Chippewa Indians for the expressed purpose of protecting the general welfare and safety of all those who enter lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §2.

## **§ 1052. Powers and duties of Department of Justice**

The Department of Justice is hereby authorized to promulgate policy governing the conduct and employment rules and regulations of all law enforcement of the Non-Removable Mille Lacs Band of Chippewa Indians in the interest of fair, equal and impartial enforcement of all laws of the Band. The Department of Justice shall have the power to review all actions of any law enforcement officer and to hold hearings upon receipt of any complaint from any enrolled member of the Non-Removable Mille Lacs Bands of Chippewa Indians. The Department of Justice shall have power to seek financial assistance from the United States, any of its subdivisions or any private foundation in the interests of enhancing the development of law enforcement and judiciary in general. The Department of Justice shall be authorized to take whatever lawful actions are deemed necessary in the interests of improving the general public interests, faith and confidence in the judicial systems.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §2.01.

## **§ 1053. Department of Justice members**

The Department of Justice shall consist of the Solicitor General, Deputy Solicitors General, and legal support staff; The Chief Law Enforcement Officer, Deputy Law Enforcement Officers and staff. The Solicitor General shall exercise day-to-day supervision over the Department of Justice.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §3.

## Cross References

Solicitor General, see 4 MLBSA §17 et seq.

### **§ 1054. Powers and duties of Solicitor General**

The Solicitor General shall be the leader of the department of Justice and have the following authority in exercising said authority of government:

- (a) To convene the department for due cause at any time. In the event that he/she fails to do so upon request of any two members of the Justice Department, the Department may be convened after 48 hours notice by any member of the Department.
  
- (b) The Solicitor General shall have cabinet level status and shall be responsible to the Chief Executive.
  
- (c) The Solicitor General shall have the responsibility for ensuring the enforcement of all the laws of the Non-Removable Mille Lacs Bands of Chippewa Indians.
  
- (d) The Solicitor General shall have a duty to supervise investigations of potential violations of the law.
  
- (e) The Solicitor General shall prosecute any and all violators of the law.
  
- (f) The Solicitor General's primary allegiance shall be to the laws of the Band and not to the Executive Branch. Hence, the Solicitor may conduct investigations and prosecute members of the Executive Branch, as well as the Legislative or Judicial Branches.
  
- (g) The Solicitor General shall have the supervisory and administrative control of the Justice Department including Deputy Solicitor, staff and Law Enforcement Officers.
  
- (h) The Solicitor General shall review the laws of the Non-Removable Mille Lacs Band of Chippewa Indians to assure their compliance with the Indian Civil Rights Act. (25 U.S.C.A. §1302.)

(i) The Solicitor General shall supervise and advise the Chief Law Enforcement Officer as to his duties and obligations.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §4.

#### **Cross References**

Division of powers, see 2 MLBSA §3.  
Solicitor General, see 4 MLBSA §17 et seq.

### **§ 1055. Powers and duties of Chief Law Enforcement Officer**

The Chief Law Enforcement Officer shall have the following authority in the exercise of enforcement powers of Band government:

(a) The Chief Law Enforcement Officer shall have the authority to enforce the laws of the Non-Removable Mille Lacs Bands of Chippewa Indians.

(b) The Chief Law Enforcement Officer shall have the duty to promote public safety, protect members of the Band and Band property, preserve the peace, and enforce all Band laws.

(c) The Chief Law Enforcement Officer shall have the authority to delegate his powers and duties to other officers under his command.

(d) The Chief Law Enforcement Officer and other Officers under his command shall have the authority to make arrests. Law Enforcement Officers all have the authority to carry handguns, other firearms, and other weaponry for their personal protection and protection of others.

(e) The Chief Law Enforcement Officer shall work with other law enforcement agencies to promote the peace.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §5.

### **Cross References**

Domestic abuse prevention, immunity of Law Enforcement Officers, see 8 MLBSA §415.  
Warrant, summons and arrest, see 24 MLBSA §4101 et seq.

### **§ 1056. Meetings**

The Department of Justice shall meet as it may deem necessary. Its meetings shall be tape recorded, transcribed and distributed to the Chief Executive, Speaker of the Assembly and the Chief Justice within five days following said meetings. The Solicitor General shall be responsible for compliance and he shall consider said minutes to be classified and prohibit any further distribution of such. The minutes shall be prima facie evidence of the facts therein state.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §6.

## **SUBCHAPTER III**

### **OFFENSES INVOLVING DAMAGE TO THE PERSON**

#### **Section**

- 1101. Assault.
- 1102. Assault and battery.
- 1103. Abduction.
- 1104. Obscene or harassing telephone calls.
- 1105. Opening sealed letter--Intercepted mail.
- 1106. Interference with privacy.
- 1107. Mistreatment of patients.
- 1108. False arrest or unlawful restraint.
- 1109. Intimidation of a Public Official.

### **§ 1101. Assault**

Any person who shall knowingly and intentionally intimidate or threaten immediate bodily harm to another person through unlawful force or violence shall be deemed guilty of assault, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, or a fine of not more than \$500.00, or both if so determined by the Court, furnish a peace bond in case in an amount to be designated by the Court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §12.

### **Cross References**

Civil actions for assault and battery, see 24 MLBSA §251.  
Domestic abuse prevention, see 8 MLBSA §401 et seq.  
Duty to report abuse or neglect, see 8 MLBSA §301 et seq.  
Government employees, summary dismissal, see 6 MLBSA §103.

## **§ 1102. Assault and battery**

Any person who shall knowingly and intentionally strike another person, or otherwise inflicts bodily injury, or negligently inflicts bodily harm on another with a weapon, or who shall be offering violence, cause another to harm himself/herself, shall be deemed guilty of assault and battery, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §13.

### **Cross References**

Civil actions for assault and battery, see 24 MLBSA §251.  
Domestic abuse prevention, see 8 MLBSA §401 et seq.  
Duty to report abuse or neglect, see 8 MLBSA §301 et seq.  
Government employees, summary dismissal, see 6 MLBSA §103.

## **§ 1103. Abduction**

Any person who shall knowingly take away, or detain another person against his/her will or without the consent of the parent or other person having lawful care or charge of him/her, shall be deemed guilty of abduction and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §14.

## **§ 1104. Obscene or harassing telephone calls**

Any person who by means of a telephone makes any comment, request, suggestion or proposal which is obscene, lewd or indecent or makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number or makes or causes the telephone another repeatedly or continuously to ring, with intent to harass any person at the called

number, or knowingly permits any telephone under his/her control to be used for any purpose prohibited by this section shall be guilty of an offense and upon conviction thereof, shall be sentenced to a fine not to exceed \$500.00, and/or be required to furnish a satisfactory bond to keep the proper use of a telephone.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §16.

### **§ 1105. Opening sealed letter--Intercepted mail**

Any person who knowing that he/she does not have the consent of either the sender or the addressee intentionally opens any sealed letter, telegram or package addressed to another, or who knowing that a sealed letter, telegram or package has been opened without the consent of either the sender or addressee, intentionally publishes any of the contents, or who knowingly intercepts any letter, telegram or package addressed to another person, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §17.

#### **Cross References**

Civil actions, invasion of privacy, see 24 MLBSA §451 et seq.

### **§ 1106. Interference with privacy**

Any person who enters upon another's property and surreptitiously gazes, stares, or peeps in the window of a house or place of dwelling of another with or without the intent to intrude upon or interfere with the privacy of a member of the household thereof, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or fine not to exceed \$500.00, in addition to any awards of damages for the benefit of the injured party.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §18.

#### **Cross References**

Civil actions, invasion of privacy, see 24 MLBSA §451 et seq.

## **§ 1107. Mistreatment of patients**

Any person who being in charge of or employed at any facility which provides care to another person, who intentionally abuses, ill-treats or culpably neglects any patient to his physical detriment, shall be deemed guilty of an offense and upon conviction shall be sentenced to incarceration for a period of time not to exceed 180 days, and/or a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §19.

### **Cross References**

Duty to report abuse or neglect, see 8 MLBSA §301 et seq.

## **§ 1108. False arrest or unlawful restraint**

Any person who shall knowingly and intentionally make, or cause to be made the unlawful arrest, detention or imprisonment of another person, or who shall knowingly and without lawful authority restrain another so as to interfere substantially with his/her liberty, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §20.

### **Cross References**

False imprisonment, civil causes of action, see 24 MLBSA §253.

## **§ 1109. Intimidation of a Public Official**

Any person who commits an offense contained in sections 1101, 1102, 1104 or 1106 of this Title against an elected or formerly elected office holder of the Band motivated primarily by the fact that the official is or was formerly an elected office holder shall be guilty of intimidation of a public official, and upon conviction thereof shall be sentenced to imprisonment for a term of up to one year or a fine of not more than \$5,000 or both.

## Historical and Statutory Notes

### Source:

Band Ordinance 39-98, § 16

### Cross References

Definition of Elected Officials for purposes of Band Ordinance 39-98, see 6 MLBSA § 1102

## SUBCHAPTER IV

### OFFENSES AGAINST PROPERTY

#### Section

- 1151. Trespass.
- 1152. Theft.
- 1153. Embezzlement.
- 1154. Fraud.
- 1155. Issuing a bad check.
- 1156. Forgery.
- 1157. Fraudulent long distance telephone calls.
- 1158. Receiving stolen property.
- 1159. Extortion.
- 1160. Malicious mischief.
- 1161. Graffiti.

#### § 1151. Trespass

(a) Any person who shall knowingly and intentionally go upon or pass over any cultivated or enclosed lands or premises of another person and shall refuse to go immediately therefrom on the request of the owner or occupant thereof, or who shall knowingly allow livestock to occupy or graze on the cultivated or enclosed lands of another person shall be deemed guilty of an offense and upon conviction thereof shall be punished by a fine not to exceed \$500.00, and/or shall be sentenced to labor for a period not to exceed 180 days, in addition to any award of damages made by the Court for the benefit of the injured party.

(b) Any person who shall go upon or pass over any lands which are under lease or any allotted lands of another person and shall refuse to immediately therefrom on the request of the lessee, or owner or occupant thereof, shall be deemed guilty of an offense and upon conviction shall be sentenced to a fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §21.

### **Cross References**

Trespass to land, civil causes of actions, see 24 MLBSA §254.

## **§ 1152. Theft**

Any person who shall knowingly and intentionally obtain or exert unauthorized control over property of the owner and has the purpose of depriving the owner of the property, or to deprive the owner of the property, or uses, conceals or abandons the property knowing such use, concealment or abandonment probably will deprive the owner of the property shall be deemed guilty of theft, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days or a fine not to exceed \$500.00, or by both fine and imprisonment, and may be ordered by the Court to make proper restitution.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §22.

### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

## **§ 1153. Embezzlement**

Any person who having lawful custody of property not his/her own, shall knowingly and intentionally appropriate the same to his/her own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution. As used in this section, embezzlement shall also include the spending a minor's funds by parents or guardians for other than the purpose for which the funds were placed in the custody of the parents or guardians.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §23.

### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

## **§ 1154. Fraud**

Any person who shall knowingly and intentionally by misrepresentation or deceit, or by false interpretation or by the use of false weights or measures, knowingly obtain any money or other property of value, shall be deemed guilty of fraud, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §24.

### **Cross References**

Dangerous drugs, fraud, see 23 MLBSA §3.  
Fraud and deceit, civil causes of action see 24 MLBSA §§401, 402.  
Government employees, summary dismissal, see 6 MLBSA §103.  
Motor vehicles, fraudulent practices, see 19 MLBSA §301 et seq.  
Pawnbrokers and junk dealers, see 18 MLBSA §209.  
Procurement sanctions, see 7 MLBSA §49.

## **§ 1155. Issuing a bad check**

Any person who knowingly and intentionally issues or delivers a check for the purpose of obtaining the property, labor or services of another, knowing that it will not be paid by the depository, commits the offense of issuing a bad check. If the offender has an account with the depository, failure to make good the check within 15 days, after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository. A person convicted of issuing a bad check shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.0.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §25.

## **§ 1156. Forgery**

Any person who shall, with intent to defraud falsely sign, or knowingly execute or alter any written instrument, shall be deemed guilty of forgery, and upon conviction thereof shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §26.

### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

### **§ 1157. Fraudulent long distance telephone calls**

Any person who obtains long distance telephone service by intentionally charging the cost thereof to a false or nonexistent telephone, or to the telephone number of another person without their knowledge or consent, or to a credit card number of another person or government or business without prior authority, shall be deemed guilty of an offense, and upon conviction may be sentenced to labor for a period of 180 days, and/or fine not to exceed \$500.00, in addition to any award of damages for the benefit of the injured party.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §15.

### **§ 1158. Receiving stolen property**

Any person who shall knowingly obtain control over stolen property knowing the property to have been stolen by another, and has the purpose of depriving the owner of the property, and knowingly uses, conceals or abandons, the property in such a manner as to deprive the owner of the property, or uses, conceals or abandons the property, knowing such use, concealment or abandonment probably will deprive the owner of the property, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §27.

### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

### **§ 1159. Extortion**

Any person who by making false charges against another or by any other means whatsoever, knowingly extorts any monies, goods, property or anything else of any value, shall be deemed guilty of extortion, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine of \$500.00.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §29.

## § 1160. Malicious mischief

Any person who shall knowingly disturb injure, destroy or tamper with any livestock or other domestic animals or other property of another, shall be deemed of malicious mischief, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine of \$500.00.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §30.

### Cross References

Government employees, summary dismissal, see 6 MLBSA §103.

Injury to public property, see 24 MLBSA §1201.

Intentional interference with personal property, civil causes of action, see 24 MLBSA §255.

## § 1161. Graffiti

(a) Any person subject to the jurisdiction of the Mille Lacs Band who is found, by a preponderance of the evidence, to have knowingly placed graffiti on any real or personal property on Band Lands, without the permission of the owner of the property or other legal authorization, is guilty of vandalism, which is a civil misdemeanor, and is subject to a fine and other penalties as set forth in this section. As used in this section 1161:

(1) “Graffiti” means any letter, word, name, number, symbol, slogan, message, drawing, picture, writing, or other mark of any kind visible to the public that is drawn, painted, chiseled, scratched or etched on a rock, tree, wall, bridge, roadway, fence, gate, building or other natural or man-made structure.

(2) “Band Lands” means lands owned or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe Indians, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.

(3) “Juvenile” means any person who is less than eighteen (18) years of age.

(b) In any case arising under this section, it shall be presumed that the Mille Lacs

Band and its entities did not give permission to any person to place graffiti on any property, vehicles, signs, fixtures, or furnishings belonging to the Mille Lacs Band or its entities unless such permission was in writing.

(c) Upon conviction of any person under this section for vandalism, the Court may, in addition to any fine and other penalties imposed, order the defendant to clean up, repair, or replace the damaged property. The Court may also order the defendant, and his or her parents or guardians if the defendant is a juvenile, to keep the damaged property or another specified property free of graffiti for up to one year.

(d) If a juvenile is personally unable to pay a fine imposed under this section, the parent(s) or guardian(s) of that juvenile shall be liable for payment of the fine.

(e) The Court may order any person ordered to perform community service or graffiti removal under this section to undergo counseling. If the person was under the influence of alcohol or other illegal substance, the Court may also require a drug and alcohol assessment and drug or alcohol treatment.

(f) Penalties.

(1) The maximum penalty for a first offense of vandalism under this section 1161 shall be a fine of \$250.00 and 80 hours of community service, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.

(2) The maximum penalty for a second offense shall be a fine of \$500.00 per offense and 160 hours of community service, plus full restitution to the victim. If the offender is a juvenile, then the penalty may be taken from the parent or legal guardian.

(3) The maximum penalty for a third and any subsequent offense of vandalism under this section 1161 is a \$1,000.00 fine and 200 hours of community service per offense, plus full restitution to the victim. If the defendant is a juvenile still in school, community service shall be performed in a manner not to interfere with school.

(4) Upon a third or subsequent conviction for vandalism under this section 1161, the defendant may be banned from entering all Mille Lacs Band Government buildings, except for employment, to conduct business at the District Government Centers, or to obtain medical treatment at Band medical facilities. The Court may suspend or modify this sentence for good cause shown by defendant.

(g) Prohibition against Selling or Furnishing Aerosol Paint to Minors.

(1) It shall be unlawful for any person, firm, or corporation subject to the

jurisdiction of the Mille Lacs Band, except a parent, legal guardian, or supervising adult, to provide to any person any aerosol container of paint that is capable of defacing property without first obtaining bona fide evidence in the form of a Band identity card or State driver's license that the person to whom the aerosol container is provided is 18 years of age or older.

(2) It shall be unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to purchase an aerosol container of paint that is capable of defacing property.

(3) Every Mille Lacs Band entity, and every retailer licensed by the Corporate Commission to do business with the Mille Lacs Band, which sells or offers for sale on or near Band Lands aerosol containers of paint, shall post a sign stating:

“Any person subject to the jurisdiction of the Mille Lacs Band who knowingly or intentionally defaces real or personal property with paint on Band Lands is guilty of vandalism under Band law and shall be prosecuted to the full extent of the law.”

(4) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band to carry on his or her person and in plain view to the public an aerosol container of paint into any posted Band facility, park, playground, swimming pool, beach, or recreational area without valid written authorization from the Band.

(5) It is unlawful for any person subject to the jurisdiction of the Mille Lacs Band who is under the age of 18 years to possess an aerosol container of paint while on any public highway, street, alley, way, or other public place on Band Lands, regardless of whether that person is or is not in any automobile, vehicle, or other conveyance.

(6) Any person who is found guilty, by a preponderance of the evidence, of violating subparagraphs (1), (2), (4) or (5) of this paragraph (g) shall be guilty of a civil misdemeanor and subject to a maximum fine in the amount of \$250 per offense. The Corporate Commission shall revoke the license to do business with the Band of any retailer who fails to post the sign required by subparagraph (3) of this paragraph after providing fourteen (14) days written notice of such requirement to such retailer.

(h) If the Court of Central Jurisdiction adjudges any provision of this section to be invalid, such judgment shall not affect any other provisions of this section not specifically included in the judgment.

(i) Nothing contained in this section shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

## Historical and Statutory Notes

**Source:**

Band Ordinance 29-03

## SUBCHAPTER V

### OFFENSES AGAINST PUBLIC ADMINISTRATION

**Section**

- 1201. Injury to public property.
- 1202. Misuse of USDA donated commodities.
- 1203. Bribery.
- 1204. Perjury.
- 1205. Resisting lawful arrest.
- 1206. Refusing to aid an officer.
- 1207. Obstructing justice.
- 1208. Escape.
- 1209. False report to law enforcement officers.
- 1210. Disobedience to lawful orders of Court; contempt.
- 1211. Violation of approved Tribal Ordinance.
- 1212. Violation of orders or opinions.
- 1213. Impersonating Tribal official or other person in authority.

#### **§ 1201. Injury to public property**

Any person who shall without proper authority, knowingly use or tamper with or knowingly or negligently injure any public property of the Band or property held for the benefit of the Tribes by the United States, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not exceed 180 days and/or a fine not to exceed \$500.00, and may be ordered by the Court to make proper restitution.

## Historical and Statutory Notes

**Source:** Band Statute 1164-MLC-6, §31.

## Cross References

Government employees, summary dismissal, see 6 MLBSA §103.  
Malicious mischief, see 24 MLBSA §1160.

#### **§ 1202. Misuse of USDA donated commodities**

Any person who shall, within the boundaries of the Non-Removable Mille Lacs Band of Chippewa Indians knowingly sell, trade, waste, or otherwise dispose of in an

unauthorized manner USDA donated commodities issued by the Band and any person who knowingly received from another person as part of a sale, trade or other transaction any USDA donated commodities issued to that person by the Band, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00. The Court shall notify the Band Commodity Certifying Officer of any convictions under the provisions of this section.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §32.

### **§ 1203. Bribery**

Any person who shall knowingly give or offer to give any money, property or services, or anything else of value to another person with the intent to influence another in the discharge of his/her public duties or conduct, and any person who shall knowingly accept, solicit or agree to solicit, or accept any bribe, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00, and may be required by the Band Assembly to forfeit any Tribal office held by such person.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §34.

#### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

### **§ 1204. Perjury**

Any person who shall knowingly in any judicial proceeding in the Court of Central Jurisdiction, falsely swear or interpret, or shall make a sworn statement or affidavit, knowing the same to be untrue, or shall induce or procure another person to do so, shall be deemed guilty of perjury and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §35.

## **§ 1205. Resisting lawful arrest**

Any person who shall knowingly, by force, violence or subterfuge, resist, or assist another person to resist a lawful arrest, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §36.

### **Cross References**

Warrant, summons and arrest, see 24 MLBSA §4101 et seq.

## **§ 1206. Refusing to aid an officer**

Any person who shall neglect or refuse, without good cause, when called upon by any law enforcement officer to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement, or in preventing the commission by another of an offense, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days, and/or a fine not to exceed \$500.00 provided that no responsibility shall attach to the person assisting a law enforcement officer at the officer's request.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §37.

## **§ 1207. Obstructing justice**

Any person who knowing a person is an offender, knowingly prevents or obstructs anyone from performing an act that might aid in the discovery or apprehension of an offender or suppresses by act of concealment, alteration or destruction any physical evidence that might aid in the discovery or apprehension of an offender, shall be deemed guilty of the offense of obstructing justice, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §38.

## **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

### **§ 1208. Escape**

Any person who being in lawful custody for any offense, shall knowingly escape or who shall knowingly permit or assist another person to escape from lawful custody, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00. For purpose of this section "lawful custody" shall mean imprisonment of a person charged with or convicted of an offense detention of a person pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained, or for the protection of society.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §39.

### **§ 1209. False report to law enforcement officers**

Any person who knowingly gives false information to any law enforcement officer with the purpose of implicating another, reporting an offense or incident that he/she knows he/she has no such information shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §40.

### **§ 1210. Disobedience to lawful orders of Court; contempt**

Any person who shall knowingly disobey any order, subpoena, warrant or command duly issued, made or given by the Court of Central Jurisdiction or any other officer thereof, or who shall knowingly fail to return to official detention following leave granted for a specific purpose or limited time, shall be deemed guilty of an offense and upon conviction thereof, shall be fined in an amount not exceeding \$500.00, and/or sentenced to labor for a period not to exceed 180 days. For purpose of this section "official detention" includes but is not limited to constraint incidental to release on bail.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §41.

### **Cross References**

Judicial authority see 5 MLBSA §101 et seq.

## **§ 1211. Violation of approved Tribal Ordinance**

Any person who knowingly violates an Ordinance promulgated by the Legislative Branch of Government and legally in force, shall be deemed guilty of an offense, and upon conviction thereof, shall be fined in an amount not exceeding \$500.00, and/or sentenced to labor for a period not to exceed 180 days, or subjected to any other penalty as prescribed in the Ordinance.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §42.

### **Cross References**

Legislative power, see 3 MLBSA §2.

Passage of laws, see 3 MLBSA §16.

## **§ 1212. Violation of orders or opinions**

(a) Any person who shall fail to comply with the provisions of any lawful Executive Order, Secretarial Order, Commissioner's Order or Solicitor's Opinion shall be deemed guilty of an offense against the government, and upon conviction thereof, shall be sentenced to a fine not to exceed five hundred dollars and possible forfeiture of any office or employment opportunity presently held.

(b) Any Band member who shall willfully violate any provision of any Executive Order, Secretarial Order, or Commissioner's Order shall be found guilty of a civil misdemeanor and may be sentenced to imprisonment for not more than 180 days and/or to a fine of not more than five hundred dollars (\$500.00) and/or revocation and suspension of all usufructuary rights under Band law for a period of up to five years.

### **Historical and Statutory Notes**

**Source:** Band Statute 1085-MLC-37, §68.

Band Statute 1092-MLC-25, §13.02.

### **Cross References**

Commissioner's Orders, see 4 MLBSA §7.  
Executive Orders, see 4 MLBSA §6.  
Secretarial Orders, see 3 MLBSA §7.  
Solicitor General's Opinions, see 4 MLBSA §18.

### **§ 1213. Impersonating Tribal official or other person in authority**

Any person who shall falsely impersonate or identify or represent himself/herself as an elected official, appointee(s), law enforcement or any other person of authority authorized by the Non-Removable Mille Lacs Band of Chippewa Indians, the United States, any State or any of its political subdivisions, for the purpose of inducing another to submit to such pretended official authority, or otherwise to act in reliance upon that pretense to his/her prejudice, shall be guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days, and/or not to exceed \$500.00.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §43.

### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.

## **SUBCHAPTER VI**

### **OFFENSES AGAINST PUBLIC ORDER, HEALTH AND DECENCY**

#### **Section**

- 1251. Carrying concealed weapons.
- 1252. Handgun registration.
- 1253. Disorderly conduct.
- 1254. Maintaining a public nuisance.
- 1255. Cruelty to animals.
- 1256. Game violations.
- 1257. Gambling.
- 1258. Liquor violations.
- 1259. Sanitation and public health.
- 1260. Contributing to delinquency of minor.
- 1261. Curfew.
- 1262. Off-road use of motor bikes, cycles or scooters.

## **§ 1251. Carrying concealed weapons**

Any person who shall 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, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period of 180 days, and/or a fine not to exceed \$500.00, and the weapons so carried may be confiscated by the Court of may be seized at officers discretion. This Section does not apply to any law enforcement officer.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §44.

## **§ 1252. Handgun registration**

All handguns shall be registered with the Department of Justice.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §44.01.

## **§ 1253. Disorderly conduct**

(a) Any person subject to the jurisdiction of the Mille Lacs Band of Ojibwe Indians who is found, by a preponderance of the evidence, to have engaged intentionally in any of the following behaviors on Band Lands or on a Mille Lacs Band school bus, knowing, or having reasonable grounds to know that such behavior will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a civil misdemeanor, and is subject to a fine in an amount not to exceed \$500.00 per offense:

(1) Engages in brawling or fighting; or

(2) Disturbs a lawful meeting or assembly of persons without lawful authority; or

(3) Engages in offensive, obscene, abusive, or abusive conduct tending reasonably to arouse alarm, anger, or resentment in others or uses offensive, obscene, or abusive words which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace; or

(4) Blocks vehicular or pedestrian traffic without lawful authority; or

(5) Prevents the free ingress or egress to public or private places without

lawful authority; or

(6) Makes a false report or warning of a fire, impending explosion or other catastrophe in a place in which such an occurrence would endanger human life; or

(7) Appears in a public or private place in an intoxicated and disorderly condition; or

(8) Creates a disturbance, while hosting or attending a party, so as to disrupt the peacefulness of the neighborhood or community through loud noises and/or fights or other obnoxious behavior; or

(9) Plays his/her music from any car, house or music player so as to create a disturbance to the neighbors or community members between the hours of 10:00 p.m. and 8:00 a.m.

(b) The Tribal Police shall have authority to investigate any disturbance on Band Lands or on a Mille Lacs school bus. Upon reasonable suspicion, which may be based on the complaint of another person, that any person subject to the jurisdiction of the Mille Lacs Band is engaging in or has engaged in disorderly conduct as defined in paragraph (a) of this section, the Tribal Police shall request that such conduct be immediately stopped. If the person refuses to immediately stop such conduct, such person shall be subject to arrest and to the maximum fine as stated in paragraph (a) of this section.

(c) As used in this section, Band Lands means lands owned or held in trust for the Minnesota Chippewa Tribe, the Mille Lacs Band of Ojibwe, or one or more members of the Mille Lacs Band of Ojibwe Indians, and subject to the jurisdiction of the Mille Lacs Band.

(d) If the Court of Central Jurisdiction adjudges any provision of this Ordinance to be invalid, such judgment shall not affect any other provisions of this Ordinance not specifically included in the judgment.

(e) Nothing contained in this section shall be construed as a waiver of sovereign immunity of the Mille Lacs Band of Ojibwe Indians.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-03

**Repeal of Prior Section**

The Preamble of Band Ordinance 27-03 (this Section) provides:

“This Disorderly Conduct Ordinance represents the law pertaining to disorderly conduct by persons subject to the jurisdiction of the Mille Lacs Band of Ojibwe Indians on Band Lands and on Mille Lacs Band school busses. Prior Title 24 MLBSA Subchapter VI, § 1253, is hereby repealed and replaced in its entirety by this Ordinance.”

## **§ 1254. Maintaining a public nuisance**

Repealed by Band Ordinance 30-03

### **Cross References**

Public Nuisance Ordinance, see 24 MLBSA § 301 et seq.

## **§ 1255. Cruelty to animals**

Any person who shall torture or cruelly mistreat any animals, shall be deemed guilty of an offense, and shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00, and to provide such care as the Court shall direct.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §47.

## **§ 1256. Game violations**

Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians or any persons under the jurisdiction of this Court, who shall knowingly sell, trade, or give away to a non-member or offer for sale or trade any edible portion of any game fish, game bird or game animal, or protect any person from being apprehended, or charged with a violation of an existing game law in force and effect, or fail to report, to the proper authorities any person who sells or attempts to sell any edible portion of any game bird, game fish or game animal, or violates any rules or regulations as provided by Chapter 7 of the Band Code for the conservation of the fish and game of the Reservation shall be sentenced to labor for a period not to exceed 180 days and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §48.

### **Cross References**

Natural Resource Protection Code, see 11 MLBSA §2001 et seq.

## **§ 1257. Gambling**

Any person who shall violate any law, rule or regulation established for the control or regulation of any game of chance on territories under the jurisdiction of the Non-

Removable Mille Lacs Band of Chippewa Indians, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §49.

#### **Cross References**

Gaming control, see 15 MLBSA §1 et seq.

### **§ 1258. Liquor violations**

(a) Any person under the age of 21 who shall knowingly and intentionally possess or use any wine, beer, ale, whiskey or any article whatsoever which produces any intoxication; or any minors who shall appear in any public or private place(s) while under the influence of intoxicating liquor to any degree, shall be deemed guilty of a liquor violation offense, and upon conviction thereof, may be sentenced to a community service labor for period not to exceed 10 days for the first offense and 20 days for any repeat offense, and/or a fine not to exceed \$50.00 for the first offense and \$100.00 for any repeated offense. Upon any conviction for a second or more liquor violations under this Section, said person shall forfeit his/her right to any employment or youth program participation for a period not to exceed 180 days.

(b) Any person who knowingly and intentionally purchases, transports or possesses any wine, beer, ale, whiskey, or any article whatsoever which produces alcoholic intoxication for or in any minor person or who shall consume any of the above with a minor person shall be deemed guilty of a liquor violation offense, and upon conviction thereof, may be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §50.

#### **Cross References**

Government employees, summary dismissal, see 6 MLBSA §103.  
Juvenile delinquency, criminal procedure, see 24 MLBSA §4301 et seq.  
Juvenile justice, see 8 MLBSA §101 et seq.

## **§ 1259. Sanitation and public health**

Any person who shall violate any rules or regulations enforced by any Administration of the Band with responsibility for the health and welfare of the persons under the jurisdiction of the Band as adopted by Commissioner's Order shall be guilty of an offense, and upon conviction thereof shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §51.

## **§ 1260. Contributing to the delinquency of minor**

Any person who shall knowingly contribute to the delinquency of a minor, shall be deemed guilty of an offense, and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §54.

### **Cross References**

Duty to report abuse or neglect, see 8 MLBSA § 301 et seq.  
Juvenile delinquency, criminal procedure, see 24 MLBSA §4301 et seq.  
Juvenile justice, see 8 MLBSA §101 et seq.  
Prohibited drugs, consumption by minors see 23 MLBSA §5.

## **§ 1261. Curfew -- [Digitizer's note: Repealed by Band Ordinance 31-03]**

### **Cross References**

Curfew Regulations, see 8 MLBSA §§ 71, 72.  
Duty to report abuse or neglect, see 8 MLBSA § 301 et seq.

## **§ 1262. Off-road use of motor bikes, cycles or scooters**

The use of motor bikes, motorcycles or motor scooters is restricted to existing roads, and any person who knowingly or negligently uses such a vehicle on any other Reservation land, including trails designed for horseback or pedestrian travel, shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to labor for a period not to exceed 180 days, and/or a fine not to exceed \$500.00.

## Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §33.

### Cross References

Traffic violations, see 19 MLBSA §501 et seq.

## CHAPTER 3

## PROCEDURE

Subchapter	Section
<b>I. General Provisions</b>	<b>2001</b>
<b>II. Appeals</b>	<b>2501</b>
<b>III. Certification of Questions of Law</b>	<b>3001</b>
<b>IV. Creditors' Remedies</b>	<b>3301</b>
<b>IV-a. Withholding from Earnings and Per Capita Payments</b>	<b>3351</b>
<b>IV-b. Collection of Debts and Fines Owed to the Mille Lacs Band</b>	<b>3401</b>
<b>V. Replevin</b>	<b>3501</b>
<b>VI. Criminal Procedure</b>	<b>4001</b>

## Historical and Statutory Notes

1303-MLC-4, §§1 to 3 and 9.03 provide:

"Section 1. Purpose. The Purpose of this Act [see Subchapters I to III of this chapter] is to promote the general welfare, preserve and maintain justice, and to protect the rights of all persons under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians consistent with a judicial philosophy of a search for truth and justice. This statute is enacted by the inherent aboriginal and sovereign rights of the members of the Non-Removable Mille Lacs Band of Chippewa Indians to be self-governing since time immemorial and by the authority invested in the Mille Lacs Reservation Business Committee under Article I, Section 3, Article VI, Sections 1 and 2, and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

"Section 2. Scope of Amending Provision. Band Statute 1143-MLC-4 is hereby repealed in its entirety and replaced by the provisions of this statute.

"Section 3. Severability. If any provision of this Act is held invalid, the invalidity shall not affect other provisions or applications of this Band Statute which can be given effect without the invalid provisions and to this end, the provisions of this Band Statute shall be severable."

"Section 9.03. Sovereign Immunity. Nothing contained in this act shall be deemed or construed to be a waiver of sovereign immunity by the Non-Removable Mille Lacs Band of Chippewa Indians."

#### **Cross References**

Commercial entity licenses, denial, suspension, or revocation, see 18 MLBSA §109.

## **SUBCHAPTER I**

### **GENERAL PROVISIONS**

#### **Section**

- 2001. Definitions.
- 2002. Judicial philosophy.
- 2003. Traditional theory of law of Mille Lacs Band.
- 2004. Principle of law of Mille Lacs Band.
- 2005. Causes of action.
- 2006. Effect of criminal cause of action.
- 2007. Law applicable in civil actions.
- 2008. Opinion and orders of Court.
- 2009. Full faith and credit.
- 2010. Proceedings of Court: public-at-large.
- 2011. Record of proceedings.
- 2012. Written decisions mandated.
- 2013. Statute of limitations.
- 2014. Trial by jury.
- 2015. Survival of actions.

#### **§ 2001. Definitions**

The following definitions shall be utilized for all cases before the Court of Central Jurisdiction.

(a) Elder - An elder for purposes of this statute shall be an enrolled Mille Lacs Band member who has reached the chronological age of 55.

(b) Guardian Ad Litem - A guardian who is appointed by a court to speak for or defend a minor or incompetent in any suit to which the minor or incompetent in any way may be a party.

(c) Incompetent - A person who is insane, an imbecile, or feeble-minded, or is not mentally able to manage their affairs.

(d) Minor - A person who is under the age of eighteen (18) years, unless otherwise specified.

(e) Parties - The persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding.

(f) Party Aggrieved - One whose right has been directly and injuriously affected by action of the court.

(g) Statute of Limitations - A specified length of time after which no cause of action or right to sue exists.

(h) Summons - A notice in writing to a defendant informing him/her that an action has been brought against him/her and judgment will be taken against him/her if he/she fails to answer the complaint within the prescribed time set forth therein.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §43.

**Prior Laws:** Band Statute 1143-MLC-4, T.IX, §4.

### **§ 2002. Judicial philosophy.**

The judicial philosophy of the Non-Removable Mille Lacs Band of Chippewa Indians is a product of the terms and conditions of our customs of life since time immemorial. Peace and harmony between the people of the Band is necessary to ensure the continued survival of the Anishinabe. At times the circle of peace and harmony amongst the people will be disrupted. This circle of life needs to be restored in a manner that permits the integrity of the individual to be maintained so that the community will continue to grow and prosper. It shall be the judicial philosophy of the Court of Central Jurisdiction to promote the traditional teachings of our elders that have served the people so well since the beginning of time; to apply these principles of life to resolve conflicts between individuals; to strengthen and help those who come before the Court so that they may

experience a good life. To this end, proceedings in the Court of Central Jurisdiction shall not be adversarial but shall be a search for truth and justice.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §4.

**Prior Laws:** Band Statute 1143-MLC-4, T.II, §1.

#### **Cross References**

Executive hearings, procedure, see 4 MLBSA §13.

### **§ 2003. Traditional theory of law of Mille Lacs Band**

The theory of law of the Non-Removable Mille Lacs Band of Chippewa Indians is based upon a high regard for the concept of sha wa ni ma. It is one of our ways of life according to custom. The purpose of sha WA ni ma is to keep the people together as one. This purpose is good for all people. It serves to balance the forces of life and brings stability to the people. To achieve this way of life, the laws of the Band shall be construed to balance the rights of the individual with the need to continue to co-exist in peace and harmony with one another. In this way, order will be preserved and justice shall be accorded to each person who has cause to appear before the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §5.

**Prior Laws:** Band Statute 1143-MLC-4, T.II, §2.

#### **Cross References**

Cultural actions, see 24 MLBSA §601 et seq.

### **§ 2004. Principle of law of Mille Lacs Band**

The principle of law in the Court of Central Jurisdiction shall be a cooperative search for truth and justice amongst all persons coming before the Court as well as the Court itself. All individuals coming before the court share an equal obligation and responsibility in bringing forth the fact surrounding a particular vent that has given rise to a matter before the Court of Central Jurisdiction. To achieve this goal, all individuals who appear before the Court must adhere to basic principles of honor, respect, integrity, pity and kindness. Therefore, it shall be the mission of the court of Central Jurisdiction to actively search for truth within the principles of individual rights, privileges, honor, respect, integrity, pity and kindness to and for all persons who have cause to utilize the judicial system of the

Non-Removable Mille Lacs Band of Chippewa Indians. To this end, the justices of the Court of Central Jurisdiction shall be bound.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §6.

**Prior Laws:** Band Statute 1143-MLC-4, T.II, §3.

### **§ 2005. Causes of action**

The Court of Central Jurisdiction shall recognize all suits as prescribed by law and cases in equity.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §24.

**Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §21.

### **§ 2006. Effect of criminal cause of action**

A criminal cause of action shall not bar any available civil relief arising from the same set of circumstances or events in the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §10.01.

**Prior Laws:** Band Statute 1143-MLC-4, T.I, §21.01.

#### **Cross References**

Criminal causes of action, see 24 MLBSA §1001 et seq.

### **§ 2007. Law applicable in civil actions**

(a) In all civil cases the Court of Central Jurisdiction shall apply the written statutory and case law of the Non-Removable Mille Lacs Band of Chippewa Indians. In the event of the lack of written Band law, the Court shall apply any pertinent laws of the United States of America. In the event of the lack of existence of said written law, the Court shall apply any laws of the State of Minnesota that do not conflict with the unwritten customs and traditions of the Band since time immemorial. Where any

doubt arises as to the customs and traditions of the Band, the court shall request the advice of qualified elders familiar with customs and tradition.

(b)(1) The Band Assembly hereby declares that the principles and rules of action, relating to the government of the Non-Removable Mille Lacs Band of Chippewa Indians and the security of those persons subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, which derive their authority solely from usages and customs of immemorial antiquity of the Non-Removable Mille Lacs Band of Chippewa Indians shall apply to civil causes of action in the Court of Central Jurisdiction, when such do not rest for their authority upon any expressed or positive declaration of the will of the Band Assembly.

(2) In all other causes of civil action that do not derive directly from usages and customs of immemorial antiquity of the Non-Removable Mille Lacs Band of Chippewa Indians or from any expressed and declared will of the Band Assembly in matters related to the government of the Band or the security of persons and property under the jurisdiction of the Band, the common laws of the United States of America shall prevail in the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §27. **Prior Laws:** Band Statute 1143-MLC-4, T.I, §20. Band Statute 1087-MLC-44, §68.

### **§ 2008. Opinion and orders of Court**

Each Justice and Judge shall be bound by the provisions of the Constitution of the Minnesota Chippewa Tribe, the laws of the Non-Removable Mille Lacs Band of Chippewa Indians and any applicable laws of the United States. Prior to the issuance of any opinion and order of the Court, each Justice and Judge shall consider and weigh unwritten cultural law, historical tribal legal opinions, and precedents of the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §29. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §29.

## **§ 2009. Full faith and credit**

Full faith and credit shall be given to public acts, records and civil judicial proceeding of all other reservations and all Federal and State jurisdictions that have enacted a full faith and credit provision in their Constitution or Statutes or on a case-by-case basis, have granted full faith and credit to judicial determinations of the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §25. **Prior Laws:** Band Statute 1143-MLC-4, T.VII, §5.

## **§ 2010. Proceedings of Court: public-at-large**

The proceedings of the Court of Central Jurisdiction shall be open to the public except in matters involving minors. The presiding judge or justice may exclude the public from a proceeding upon the motion of any party or upon the Court's own motion for good cause as the court determines.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §35. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §29.

## **§ 2011. Record of proceedings**

The Court of Central Jurisdiction shall maintain a record of all proceedings of the Court, which record shall include the title of the case, the parties, the names and addresses of all witnesses, the date of the hearing or trial, the name of the presiding judge, and the judgment together with any other facts or circumstances deemed important to the case.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §33. **Prior Laws:** Band Statute 1143-MLC-4, T.I, §19.

## **§ 2012. Written decisions mandated**

The Court of Central Jurisdiction shall in all cases give written decisions, which shall be filed with the Clerk of Court along with all other papers in the case.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §34. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §8.

### **§ 2013. Statute of limitations**

The following limitations on actions shall be utilized for civil cases before the Court of Central Jurisdiction:

(a) An action may be commenced only within the time stated in this section unless a different time is specified by law. The time within which the action may be commenced starts at the time the act complained of was discovered, unless otherwise provided for by law.

(b) All civil actions shall be commenced within six (6) years from the time the cause of action occurred in the case of contracts and within three (3) years in the case of harmful conduct, one (1) year from the time a cause of action arose as a result of an employee-employer relationship or the hiring or termination of an individual from employment, unless a different time is otherwise prescribed by law. An action shall be deemed to have been commenced for the purposes of this Section when a written complain has been filed. The Statute of limitations shall not run while a person is a minor, incompetent, or serving in the armed forces of the United States. The time is tolled as to persons absent from the jurisdiction of the Band for the purpose of avoiding process.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §26. **Prior Laws:** Band Statute 1143-MLC-4, T.II, §5.

### **Cross References**

Finality of adoption judgment, see 8 MLBSA §626.

### **§ 2014. Trial by jury**

(a) The right to a trial by jury shall exist in criminal matters where a defendant is exposed to a fine great than \$500 or where an individual may be imprisoned and in civil cases where the plaintiff's claim exceeds one thousand dollars (\$1000). A trial by jury shall not be available in domestic relations, probate or cases in equity matters.

(b)(1) In cases where a jury may be requested, the request for a jury must be made in writing to the Clerk. The request for a jury may be made at any time after commencement of an action, but no later than five (5) days after the filing of the last pleading. The request for a trial by jury in civil matters must be accompanied by a case or surety bond in the amount of one hundred (\$100) to cover the costs of the jury trial.

(2) The failure of a party to request a jury, as required in paragraph (1) constitutes a waiver of a trial by jury.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §37. **Prior Laws:** Band Statute 1143-MLC-4, T.VI, §1.

#### **Cross References**

Criminal procedure, jury trial, see 24 MLBSA §4201.  
Right to a trial by jury, see 1 MLBSA §10.

### **§ 2015. Survival of actions**

In the event any person has a claim against another person, whether arising on a contract or otherwise, and such person dies prior to final adjudication of said claim, that action may be continued or maintained by the descendant's personal representative.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, §33.

#### **Cross References**

Death of adoption petitioner prior to adoption, see 8 MLBSA §618.  
Wrongful death actions, see 24 MLBSA §551.

## SUBCHAPTER II

### APPEALS

#### Section

- 2501. Notice of appeal.
- 2502. Basis of appeals.
- 2503. Nature of appeal.
- 2504. Decision of Court of Appeals.
- 2505. Authority.

#### Cross References

Indian employment rights, appeal of Administration Policy Board decisions, see 18 MLBSA §424.  
Juvenile offenders, appeals, see 8 MLBSA §148.  
Prohibited drugs, automatic appeal of convictions, see 23 MLBSA §10.

#### § 2501. Notice of appeal

A party aggrieved by a final judgment or other final order of the Court shall within thirty (30) days after the date of such judgment or order, file with the Clerk of Court a notice of intent to appeal, along with a twenty (\$20) dollar filing fee.

#### Historical and Statutory Notes

**Source:** Band Statute 1303-MLC-4, §38. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §2.

#### § 2502. Basis of appeals

The following shall constitute lawful reasons for an appeal, which may include but not be limited to:

- (a) Irregularity in the proceedings of the Court, jury, or adverse party, or error of the Court, or abuse of discretion by which either party was prevented from having a fair trial; or
  
- (b) Misconduct of the jury if any one(1) or more jurors have been induced to assent to any general or special verdict to a finding on any question submitted to them by the Court; or
  
- (c) Surprise which ordinary foresight could not have guarded against; or

(d) Newly discovered evidence which could not, with reasonable care, have been discovered and produced at the trial; or

(e) Insufficiency of the evidence to justify the verdict or other decision or that which is against the law; or

(f) Error of law occurring at the trial as in ruling in the admission of evidence or in charging the jury or judicial rulings founded in objections; or

(g) Prejudice on the part of the trial judge or abuse of discretion.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §39. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §3.

### **§ 2503. Nature of appeal**

All appeals taken before the Court of Appeals shall be heard on the basis of the record of the proceedings, except where the petitioner is unable to procure a transcript of the proceedings through no fault of their own.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §40. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §5.

### **§ 2504. Decision of Court of Appeals**

The concurrence of a majority of the Justices of the Court of Central Jurisdiction is necessary to pronounce judgment. If a majority of justices does not concur, a judgment or order is affirmed. The Chief Justice shall assign a Justice the task of preparing a written opinion of the Court. Minority opinions shall not be permitted as official parts of the Court record. The opinion of an individual justice on any case shall not be disclosed to the public.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §42. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §7.

## **§ 2505. Authority**

The Court of Appeals shall have all the power and authority necessary to carry into effect all of its judgments, decrees and deliberations in the matters over which it has jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §41. **Prior Laws:** Band Statute 1143-MLC-4, T.VIII, §6.

## **SUBCHAPTER III**

### **CERTIFICATION OF QUESTIONS OF LAW**

#### **Section**

- 3001. Certification of questions from exterior courts.
- 3002. Orders, petitions or motions for answers to questions.
- 3003. Certification of questions to exterior courts.
- 3004. Uniformity of construction.

## **§ 3001. Certification of questions from exterior courts**

The Court of Appeals may answer questions of law certified to it by an exterior court when requested. The Court of Central Jurisdiction may answer questions of law of the Mille Lacs Band which may be determinative of a cause then pending in the certifying court when there is no controlling precedent in the decisions of the Court of Central Jurisdiction.

### **Historical and Statutory Notes**

**Source:** Band Statute 1303-MLC-4, §28. **Prior Laws:** Band Statute 1143-MLC-4, T.I, §6.

## **§ 3002. Orders, petitions or motions for answers to questions**

The provisions of 24 MLBSA §3001 may be invoked by legislative order, executive order or upon a petition of the Solicitor General or upon the Court's own motion or upon the motion of a party.

#### Historical and Statutory Notes

**Source:** Band Statute 1303-MLC-4, §28.01.

**Prior Laws:** Band Statute 1143-MLC-4, T.I., §6.01.

### § 3003. Certification of questions to exterior courts

The Court of Central Jurisdiction may order certification of questions of law to an exterior court when there are involved in any proceeding before the Court of Central Jurisdiction questions of law in the receiving jurisdiction which may be determinative of the cause then pending when there are no controlling precedents in the decisions of the foreign jurisdiction.

#### Historical and Statutory Notes

**Source:** Band Statute 1303-MLC-4, §28.02.

**Prior Laws:** Band Statute 1143-MLC-4, T.I., §6.05.

### § 3004. Uniformity of construction

This subchapter shall be construed so as to make uniform the law among those jurisdictions which have enacted a uniform certification of questions of law act.

#### Historical and Statutory Notes

**Source:** Band Statute 1303-MLC-4, §28.03.

**Prior Laws:** Band Statute 1143-MLC-4, T.I., §6.07.

## SUBCHAPTER IV

### CREDITORS' REMEDIES

#### Section

- 3301. Due process.
- 3302. Property defined.
- 3303. Petitions to Court of Central Jurisdiction.
- 3304. Notice of hearing.
- 3305. Findings, orders and bond.
- 3306. Protection of petitioner's rights.
- 3307. Order for seizure of property.

3308. Wage deductions.

3309. Unlawful removal or disconnection of property.

#### **Cross References**

Applicability to motor vehicle liens, see 19 MLBSA §18 [Digitizer's note: Section not in digital copy].

Applicability to watercraft liens, see 20 MLBSA §11.

Application of Truth in Lending Act, see 24 MLBSA §5.

Credit at seller's risk, see 18 MLBSA §202.

### **§ 3301. Due process**

Any creditor be they a person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity who engaged in any commercial activity whether it be selling in any goods or services of any material value or any other type of commercial transaction for the purchase of any goods or services with any person who resides on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who has not received monetary compensation for the provision of said goods or services or any licensed commercial entity who provides a services, received payment for the service and failed to perform or deliver the goods or services, whereby such written or oral agreement has been entered into or said service or property was consumed or is located on lands subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall not deprive any person of any property, real or personal, or any service absent due process of law in the Court of Central Jurisdiction pursuant to 1 MLBSA §8 and Article XIII of the Constitution of the Minnesota Chippewa Tribe.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.

### **§ 3302. Property defined**

Property includes, but is not limited to, everything which is subject to ownership corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value which is or may be the subject of ownership, legal or beneficial or private as a result of a transaction of any type from one party to another. Services provided by public/private cooperatives, utilities, or public or private commercial entities are specifically included.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.01.

### **§ 3303. Petitions to Court of Central Jurisdiction**

Any person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity including financial institutions who seek to deny any person subject to the jurisdiction of the Band of any property, with or without just cause, shall first petition the Court of Central Jurisdiction for a show cause hearing and a determination that said property may be lawfully removed from any said person or that services may be lawfully denied, or that compensation should be received or any other relief deemed appropriate and reasonable.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.02.

### **§ 3304. Notice of hearing**

The Clerk of Court shall schedule a hearing within 30 days after receipt of the Petition. The Clerk shall submit a Notice of Hearing to the person against whom the action is being instituted. The Notice shall state that the person has a right to appear at this hearing on his own behalf or with an attorney. The person shall have a right to present defenses to the claim and to state the reasons why the property or service described in the Petition should not be taken or denied. The Petition shall clearly state a claim to the goods sought to be recovered or the services sought to be requested or denied. Finally, the Notice shall clearly state that if the person fails to appear at the hearing the Court has the authority to enter a default judgment on behalf of the Petitioner and direct that the above-described property be immediately taken from their possession or that services may be lawfully denied or that services must be performed or that compensation should be received or whatever appropriate or reasonable relief is requested.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.03.

### **§ 3305. Findings, orders and bond**

After a hearing, the Court shall order seizure of the property or denial of services from the person and deliver to the Petitioner, if the Petitioner has demonstrated the probability of success on the merits entitling the Petitioner to payment, possession or repossession or disconnection of property or service unless the Court makes the following findings: The person has show a defense to the merits of the Petitioner's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle the person to retain possession of the property. In such cases where a defense on the merit is found to be fair, the person shall post a bond in the amount plus one-quarter of the

Petitioner's monetary claim. This bond shall indicate said persons good faith to compensate the Petitioner in the even that the Court rules in favor of the Petitioner.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.04.

### **§ 3306. Protection of petitioner's rights**

If the Court makes the findings prescribed by 24 MLBSA §3305 and orders that the person may retain possession pending final decision on the merits, the Court shall enter a further order protecting the rights of the Petitioner to the extent possible. The order may require that the person make partial payment of the debt which may be due and that the payment shall be made either directly to Petitioner or into an escrow account that the person post a bond in an amount set by the Court, that the person make the property available for inspection from time to time, that the person be restrained from certain activities, including, but not limited to selling, disposing or otherwise encumbering the property, or any other provision the Court may deem just and appropriate.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.05.

### **§ 3307. Order for seizure of property**

An order for seizure of property shall: Identify the property to be seized or the disconnection of the serviced property; direct a law enforcement officer to seize the property or to accompany any Petitioner to seize or disconnect property pursuant to court order and specify that the Petitioner is authorized immediately or after a specified reasonable period of time to seek or otherwise dispose of property as a method of collection of any judgment debt.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.06.

### **§ 3308. Wage Deductions**

Repealed by Band Ordinance 27-01

## **§ 3309. Unlawful removal or disconnection of property.**

Any creditor be they a person, company, corporation, association, partnership, cooperative, utility and any other public or private commercial entity, who absent a lawful order from the Court of Central Jurisdiction, who shall attempt to remove or disconnect any property from any person under the jurisdiction of the Band, shall be deemed to have committed a property trespass offense in violation of 2 MLBSA §304(m) [Digitizer's note: Section not in digital copy] and the Solicitor General shall initiate civil action against said person seeking their removal and exclusion from lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians for a period of time not to exceed 180 days.

### **Historical and Statutory Notes**

**Source:** Band Statute 1090-MLC-47, §21.08.

## **SUBCHAPTER IV-a WITHHOLDING FROM EARNINGS AND PER CAPITA PAYMENTS**

### **Section**

- 3351. Definitions
- 3352. Withholding from Earnings
- 3353. Withholding from Per Capita Payments
- 3354. Ripeness
- 3355. Notice to Debtor; Hearing
- 3356. Priority
- 3357. Full Payment of Debts
- 3358. Notice to Creditor
- 3359. Duty of Creditor
- 3360. Sovereign Immunity of the Band
- 3361. Civil Procedure

### **Historical and Statutory Notes**

The Preamble and §§ 1, 13 and 14 of Band Ordinance 27-01 (this Subchapter) provide:

“Preamble. It is enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of amending Title 24 of the Mille Lacs Band Statutes Annotated and repealing and replacing 24 MLBSA § 3308 and Court Order #38. The Band Assembly determines that it is in the best interests of the Band to limit the amount of earnings or other income that may be withheld from individuals under the jurisdiction of the Mille Lacs Band. The Band Assembly seeks to establish policies and procedures for a fair and effective method of debt collection in the Court of Central Jurisdiction.”

“**§ 1. Amendment to Title 24 and Repealing and Replacing 24 MLBSA § 3308.** 24 MLBSA § 3308 is repealed and replaced in its entirety by the provisions of § 2 of this Act and Title 24 of the Mille Lacs Band Statutes Annotated is amended to include the remaining sections of this Act.”

“**§ 13. Severability.** If any section, term or provision of this Act is held by the courts of the Mille Lacs Band to be illegal or in conflict with any existing Band Statute or other applicable law, the validity of

the remaining sections, terms and/or provisions of this Act shall not be affected and shall retain the force of Band law.”

“§ 14. **Effective date.** The effective date of this Act shall be the day after it becomes law.”

### **§ 3351. Definitions**

For the purpose of this Subchapter:

(a) The term "actual damages" means an amount assessed pursuant to an adjudicated matter before a court of competent jurisdiction for damages actually incurred. Such damages do not include nominal, exemplary or punitive damages, or court costs or attorney fees.

(b) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, or otherwise, and includes periodic payments to a personal retirement program.

(c) The term "disposable income" means that part of the income of any individual remaining after the required deduction from that income of any amounts, such as but not limited to, federal income tax, social security, state income tax, if any, pension deductions, and cost of health insurance coverage for obligor and dependents. Disposable income shall also include per capita payments.

(d) The term "garnishment" means any legal or equitable procedure through which the earnings of an individual are withheld for payment of any lawful debt.

(e) The term "per capita payment" means any distribution of gaming proceeds to members of the Mille Lacs Band in accord with the net gaming distribution plan as approved by the Secretary of Interior pursuant to 25 U.S.C. § 2701 et seq. or as may otherwise be defined by Band Statute.

(f) The term "political subdivision" shall mean the Mille Lacs Reservation Housing Authority as defined in Title 12 of the Mille Lacs Band Statutes Annotated and the Corporate Commission of the Mille Lacs Band as defined in Title 16 of the Mille Lacs Band Statutes Annotated or any other entity defined in Band statutes as a political subdivision of the Band.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 2

### **§ 3352. Withholding from Earnings**

As an ancillary proceeding to (1) a civil action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record

granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBSA § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBSA § 111, to order the Office of Management and Budget to deduct from the earnings of any person to which a debt judgement or judgement for child support has been obtained and remit the amount deducted to the judgement creditor. Except in circumstances of child support payments and arrearages, the earnings of an individual shall not be taken in excess of ten percent (10%) of the individual's disposable income.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 3

### **§ 3353. Withholding from Per Capita Payments**

As an ancillary proceeding to (1) a civil action for the recovery of money filed in the Court of Central Jurisdiction, or (2) a civil judicial proceeding, public act or record granted full faith and credit by the Court of Central Jurisdiction pursuant to 24 MLBSA § 2009, the Court of Central Jurisdiction shall have the authority, pursuant to its subject matter jurisdiction as described in 5 MLBSA § 111, to order the Office of Management and Budget to withhold portions of per capita payments from Band members against whom a debt judgement or judgement for child support has been obtained and remit the amount withheld to the judgement creditor. Except in circumstances of child support payments and arrearages, such amounts shall not exceed thirty percent (30%) of a payment. In cases involving child support payments and arrearages, such amount shall not exceed seventy percent (70%) of a payment.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 4

### **§ 3354. Ripeness**

The Court of Central Jurisdiction shall not initiate a withholding proceeding pursuant to this Subchapter for any debt that is not at least 60 days past due, except in circumstances of current child support payments and arrearages.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 5

### **§ 3355. Notice to Debtor; Hearing**

In any withholding proceeding pursuant to this Subchapter, the debtor shall receive notice as required by the Mille Lacs Band Rules of Civil Procedure. Upon such notice to the debtor, the Court of Central Jurisdiction shall hold a hearing, at the debtor's request, to permit the debtor to dispute the financial obligation in question. The burden of proof shall be on the debtor to show that a proposed garnishment would be improper.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 6

### **§ 3356. Priority**

The Court of Central Jurisdiction shall order any deduction from a per capita payment in the following order:

- (a) child support payments or arrearages;
- (b) Debts owed to the Band or any political subdivision thereof;
- (c) Federal creditor obligations;

(d) Debts owed to other creditors who have obtained a judgement in a court of competent jurisdiction, if such judgement is been granted full faith and credit by the Court of Central Jurisdiction.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 7

### **§ 3357. Full Payment of Debts**

The Court of Central Jurisdiction shall order the payment of debts recognized pursuant to section 3352 or 3353 of this Chapter from the Band member's per capita payments until such debts are repaid in full or discharged by the creditor or a court under the following conditions:

(a) child support payments and arrearages, regardless of when incurred, shall at all times have priority over debts recognized pursuant to paragraphs (b), (c) and (d) of § 3356 of this Chapter.

(b) At no time shall the Court of Central Jurisdiction order deductions from a per capita payment in excess of 70% of such payment.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 8

**§ 3358. Notice to Creditor**

The Court of Central Jurisdiction shall duly inform any creditor whose prior judgement has been modified by the Court due to a judgement granted in favor of a subsequent creditor with higher priority.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 9

**§ 3359. Duty of Creditor**

Failure by the Creditor to inform the Court of Central Jurisdiction when a debt has been repaid in full or discharged by the creditor or a court shall constitute grounds for a finding of contempt of court by the Court of Central Jurisdiction.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 10

**§ 3360. Sovereign Immunity of the Band**

Nothing contained in this Act shall be construed as a waiver of the sovereign immunity of the Mille Lacs Band of Ojibwe or any of its political subdivisions.

**Historical and Statutory Notes**

**Source:**

Band Ordinance 27-01, § 11

**§ 3361. Civil Procedure**

All actions pursuant to this Act shall be conducted in accordance with the Mille Lacs Band Rules of Civil Procedure. The Office of Solicitor General shall develop

appropriate forms for use in any action pursuant to this Act. The Court of Central Jurisdiction shall retain copies of such forms for use by any party.

## **SUBCHAPTER IV-b COLLECTION OF DEBTS AND FINES OWED TO THE MILLE LACS BAND**

### **Section**

- 3401. Finding and Determinations
- 3402. Authority
- 3403. Notice of Process

### **Historical and Statutory Notes**

The Preamble to Band Ordinance 41-94 (this Subchapter) provides:

“Preamble. Be it enacted by the Band Assembly of the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of amending Band Statute 1090-MLC047.”

### **§ 3401. Finding and Determination**

(a) The Ban Assembly hereby finds and determines that the Non-Removable Mille Lacs Band of Chippewa Indians desires to be a government that is consistently financially responsible in order to better serve our people now and in the future.

(b) The Band Assembly finds and determines that the Personal Loan Program(s) of the Non-Removable Mille Lacs Band of Chippewa Indians have many delinquent loans outstanding.

(c) The Band Assembly finds and determines that the Court of Central Jurisdiction has imposed fines, many of which are unpaid or uncollectable.

(d) The Band Assembly finds and determines that outstanding or delinquent loans and unpaid court-imposed fines are a threat to the financial and political integrity of the Non-Removable Mille Lacs Band of Chippewa Indians.

### **Historical and Statutory Notes**

#### **Source:**

Band Ordinance 41-94, § 1

### **§ 3402. Authority**

(a) Under this Subchapter, the Secretary/Treasurer of the Mille Lacs Band shall exercise the authority of the Mille Lacs Band, to withhold any funds that may be payable to any person, for use as a set-off against any debt or court ordered fine owed by that person to the Mille Lacs Band.

(b) The Secretary of Treasury shall withhold any funds payable to individuals only if the debt or fine owed is delinquent by 45 days or more.

(c) The Secretary of Treasury shall give 20 days written notice prior to any set-off withholding that may occur.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-94, § 2

### **§ 3403. Notice of process**

(a) For purposes of this Subchapter, notice is given by the Secretary/Treasurer placing a Notice of Withholding in the mail and a sending of notice by certified mail return receipt requested to the last known address. If either of the two Notice of Withholding mailings does not return to the Secretary/Treasurer within a 10 day time period notice has been given.

(b) In the event that an individual disputes the set-off withholding they have 10 days from the date of the mailing of the notice to file a petition with the Court of Central Jurisdiction. The burden of proof shall be on the petitioning party to show that the withholding is improper or that they were not given notice.

(c) The Court shall hold a hearing within 10 days of the filing of a petition pursuant to this Subchapter. Notice must be given to the Secretary/Treasurer within 5 days of the filing of a petition as described in paragraph (b) of this Section or by any disinterested third-party personally serving the Secretary of Treasury.

(d) Relief that the Court may grant pursuant to this Subchapter is limited to a determination of whether the set-off withholding is proper.

(e) The withholding provisions of this Subchapter are in addition to any other withholding provisions in Band Law.

(f) The provisions of this Subchapter are intended to apply retroactively to any debt that was incurred previous to the enactment of this Subchapter.

#### **Historical and Statutory Notes**

**Source:**

Band Ordinance 41-94, § 3

## SUBCHAPTER V

### REPLEVIN

#### Section

- 3501. Applicability.
- 3502. Claim for immediate delivery of property.
- 3503. Affidavit.
- 3504. Direction to law enforcement officer.
- 3505. Security furnished by plaintiff.
- 3506. Seizure of property.
- 3507. Service of defendant.
- 3508. Third party claims or return to defendant.
- 3509. Sureties and deposits.
- 3510. Officer's report.

#### Cross References

Recovery of possession of person property, see 21 MLBSA §501 et seq.  
Right to peaceful possession of property, see 24 MLBSA §203.

#### § 3501. Applicability

The replevin procedure set out in this subchapter shall be utilized for all cases before the Court of Central Jurisdiction.

#### Historical and Statutory Notes

**Source:** Band Statute 1144-MLC-5, T.II, §11.

#### § 3502. Claim for immediate delivery of property

The plaintiff, in an action to recover the possession of personal property, at the time of issuing the summons or at any time before answer, may claim the immediate delivery of such property as provided in this subchapter.

#### Historical and Statutory Notes

**Source:** Band Statute 1144-MLC-5, T.II, §11.01.

#### § 3503. Affidavit

When an immediate delivery is claimed, an affidavit must be made by the plaintiff or by someone in his behalf stating that the plaintiff is the owner of the property claimed, is lawfully entitled to the possession of it, or that he had a lawful lien against such property,

payment of which is in default. The facts of such ownership or right to possession must be set forth along with a detailed description of the property. Said affidavit must state that the property is wrongfully detained by the defendant and that the alleged cause of the detention of the property, according to his best knowledge, information, and belief that the property has not been taken for a tax, assessment against the property of the plaintiff, or, if so seized, that it is by law exempt from such seizure. Said affidavit must also state the actual value of the property.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §11.02.

### **§ 3504. Direction to law enforcement officer**

The plaintiff, after completing and endorsing the affidavit required by 24 MLBSA §3503, may require any law enforcement officer of the Non-Removable Mille Lacs Band of Chippewa Indians to take the property from the defendant and deliver it to the plaintiff.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §11.03.

### **§ 3505. Security furnished by plaintiff**

Before possession of any property may be taken by the plaintiff, he must furnish to the Court sufficient security in the form of cash or sureties. The surety shall be at least double in amount the value of the property as stated in the affidavit. If the defendant shall be later adjudged the rightful owner of the property or shall be entitled to possession of the property, the security provided by the plaintiff shall be used in any recovery by the defendant against the plaintiff.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §11.04.

### **§ 3506. Seizure of property**

Upon receipt of the affidavit, endorsement, and security by the Band law enforcement officer, the officer shall take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall keep it in a safe place and deliver it to the party entitled property. If the property of any part thereof be concealed in a building or enclosure, the officer shall publicly demand its deliver. If it is not delivered, then the officer must obtain a search warrant from the Court of Central Jurisdiction.

### Historical and Statutory Notes

**Source:** Band Statute 1144-MLC-5, T.II, §11.05.

### Cross References

Search warrants, see 24 MLBSA §4107.

Unreasonable searches and seizures, see 1 MLBSA §2.

## § 3507. Service of defendant

The officer, at the time of taking any property, shall serve on the defendant a copy of the affidavit, endorsement, and proof of security or cash bond and notice of levy showing the property taken by delivering the same to the defendant personally, if he can be conveniently found, or to his agent from whose possession the property is taken; if neither can be found, by leaving the papers at the usual place of abode of either, with some person of suitable age and discretion.

### Historical and Statutory Notes

**Source:** Band Statute 1144-MLC-5, T.II, §11.06.

## § 3508. Third party claims or return to defendant

(a) If the property taken be claimed by any other person than the defendant or his agent, and such person shall make an affidavit of his title thereto and right to possession thereto, stating such right and title, and serve the same upon the officer, the officer shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff shall indemnify the officer against such claim by deposit with the Clerk of Court of security in amount and sufficiency as required in the original affidavit for the delivery. No claim to such property by any other person than the defendant or his agent shall be valid against the officer, unless made as provided; and notwithstanding such claim when so made, he may retain the property a reasonable time to demand such indemnity.

(b) The defendant may retain or require the return of the property by giving the Clerk of Court, within three (3) days after the taking, sufficient security or cash deposit of an amount not less than was required by the plaintiff for the delivery.

(c) If the defendant or a third party does not require a return of the property within three (3) days after the taking and service of papers on the defendant, the property shall be delivered to the plaintiff.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§11.07 to 11.09.

### **§ 3509. Sureties and deposits**

(a) Sureties may be provided by any person or company allowed by the Court. Security may be given in the form of a cash deposit. A receipt shall be given by the Clerk of Court and the deposit shall remain in the custody of the Court until the Court shall make an order disposing of it.

(b) The defendant or plaintiff may require the surety of the other to prove the validity of their sureties. The plaintiff and defendant shall be given seven (7) days from date of service of a copy of the affidavit to question the validity of the surety. If it is not questioned within seven (7) days, it shall be deemed waived and cannot later be questioned by either party.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §11.10 to 11.11.

### **§ 3510. Officer's report**

(a) Within twenty (20) days after taking the property, the officer shall be notified by the Clerk of the Court in writing to make a verified report of his proceedings in taking and disposing of the property, and file the same together with the original affidavit, endorsement, or security and a notice of his copy of levy, with the Clerk of the Court.

(b) The failure or neglect of the officer to make such verified report of his proceedings shall not, however, void his proceedings under the affidavit and endorsement but shall render him liable for contempt of court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1144-MLC-5, T.II, §§11.12, 11.13.

**SUBCHAPTER VI**  
**CRIMINAL PROCEDURE**

<b>Part</b>	<b>Section</b>
<b>A. General Provisions</b>	<b>4001</b>
<b>B. Complaint</b>	<b>4051</b>
<b>C. Warrant, Summons and Arrest</b>	<b>4101</b>
<b>D. Preliminary Proceedings</b>	<b>4151</b>
<b>E. Trial</b>	<b>4201</b>
<b>F. Sentence</b>	<b>4251</b>
<b>G. Juvenile Delinquency</b>	<b>4301</b>

**Historical and Statutory Notes**

Band Statute 1164-MLC-6, §61 provides:

"Section 61. Severability. If any provision of this Chapter [see this subchapter and Chapter 2 of this title] or the application thereof to any person, business, corporation or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Chapter which can be given effect without the invalid provision or application and to this end the provisions of this Chapter are declared severable."

**Cross References**

Historical preservation, criminal offenses, see 10 MLBSA §602.

**Part A**

**General Provisions**

**Section**

4001. Definitions.

4002. Court of Central Jurisdiction.

4003. Jurisdiction over persons.

4004. Rights of defendant.

4005. Deposit and disposition of fines, fees and other payments made to court.

## **§ 4001. Definitions**

(a) Arraignment is the bringing of an accused before the Court, informing him/her of his/her rights and of the charge against him/her, receiving his/her plea and setting bail as appropriate in accordance with 24 MLBSA §4158 and Court orders promulgated thereof.

(b) Arrest is the taking of a person into custody in the manner authorized by law, in order that he/she may be held to answer for a criminal offense.

(c) Bail is the security given for the purpose of insuring that the accused is present at the impending criminal proceedings.

(d) A complain is a written statement sworn to by the complaining witness and charging that a named individual has committed a particular criminal offense.

(e) A search warrant is a written order in the name of the Band, signed by a Justice of the Court of Central Jurisdiction and directed to a law enforcement officer ordering him/her to conduct a search, to seize items or property or place to be searched and shall particularly describe the items to be seized and brought before the Justice.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §§62, 67, 71, 75.

## **§ 4002. Court of Central Jurisdiction**

The Court of Central Jurisdiction is hereby granted subject matter jurisdiction for any cause of action which arises from 24 MLBSA Chapter 2 (§1001 et seq.) or this subchapter. Nothing in this subchapter shall be construed as a waiver of sovereign immunity of the Non-Removable Mille Lacs Band of Chippewa Indians in any state or federal court of competent jurisdiction. Associate Justices of the Court of Central Jurisdiction shall have original jurisdiction over all causes of action which arise from any provisions of 24 MLBSA Chapter 2 and this subchapter. A Criminal Division is hereby created in the Court of Central Jurisdiction to here causes of actions arising from 24 MLBSA Chapter 2 and this subchapter.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §59.

### **Cross References**

Subject matter jurisdiction, Court of Central Jurisdiction, see 5 MLBSA §111.

## **§ 4003. Jurisdiction over persons**

The criminal jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall extend and apply to enrolled members of the Non-Removable Mille Lacs Band of Chippewa Indians, enrolled members of any of the other five Bands of the Minnesota Chippewa Tribe and those Indian Persons who reside on Lands subject to the territorial jurisdiction of the Band.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §60.

### **Cross References**

Court of Central Jurisdiction, criminal jurisdiction over persons, see 5 MLBSA §112.

## **§ 4004. Rights of defendant**

In all criminal prosecutions, the defendant shall have the following rights: the right to be present throughout the proceeding and to defend himself/herself with proper decorum or at his/her own expense by counsel, the right to know the nature and cause of the charge and to receive a copy of the complaint, the right to meet the witnesses against him/her face to face, the right to compulsory process to obtain the testimony of witnesses in his/her behalf and physical evidence, the right to a speedy public trial by an impartial jury, but the defendant may waive the right to a speedy trial by requesting a delay, the right not to testify. The failure of the defendant to testify shall not be construed against him/her or commented upon by the Solicitor General.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §85.

### **Cross References**

Civil Rights Code, see 1 MLBSA §1 et seq.

## **§ 4005. Deposit and disposition of fines, fees and other payments made to court**

All monies paid to the Court of Central Jurisdiction as a result of the provisions of this subchapter or 24 MLBSA Chapter 2 (§1001 et seq.) or other lawful orders of the Court, shall be paid to the Clerk of Court, who shall issue a receipt.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §90.

### **Cross References**

Special surcharge tax on fines, see 22 MLBSA §509.

## **Part B**

### **Complaint**

#### **Section**

- 4051. Initiation of prosecution.
- 4052. Form and content of complaint.
- 4053. Screening and submission of complaints.
- 4054. Joinder of offenses.
- 4055. Joinder of defendants.
- 4056. Amendment of complaint.

## **§ 4051. Initiation of prosecution**

All criminal prosecutions for violation of the Code of Offenses shall be initiated by complaint. A complaint may be initiated by the Solicitor General, any law enforcement officer of the Band or any person under the jurisdiction of the Band.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §62.

## **§ 4052. Form and content of complaint**

Complaints shall:

- (a) Be in writing and in the name of the Non-Removable Mille Lacs Band of Chippewa Indians and be signed by the complaining witness sworn to

and witnessed before the Court of Central Jurisdiction's Solicitor General and/or before a duly qualified Justice of the Court of Central Jurisdiction.

(b) Contain a statement by the complaining witness describing in ordinary language the nature of the offense committed, including the time and place as nearly as may be ascertained,

(c) State the name or description of the person alleged to have committed the offense, and

(d) State the section of 24 MLBSA Chapter 2 which has been violated.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §62.01.

### **§ 4053. Screening and submission of complaints**

The Chief Justice of the Court of Central Jurisdiction may designate an individual or individuals who shall be available to assist persons in drawing up complaints and who shall screen them for sufficiency. Complaints shall then be submitted without delay to a Justice of the Court of Central Jurisdiction to determine whether probable cause exists and whether a warrant or summons shall be issued. However, provisions of Band Statute which required mediation and Court orders which require Show Cause Hearings shall apply prior to any formal filing of a complaint with the Clerk of Court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §62.02.

### **§ 4054. Joinder of offenses**

A complaint may charge two or more different offenses connected together in their commission arising out of the same incident. If two or more complaints are filed against the same defendant in same Court, the Court may order them to be consolidated. The Solicitor General is not required to elect between the different offenses or counts set forth in the complaint, but the defendant may be convicted of any number of offenses charged and each offense which the defendant is convicted may be stated in the verdict or the finding of the Court. However, the Court may in the interests of justice and for good cause shown, in its discretion, order that the different offenses counts set forth in the complaint be tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §63.

### **§ 4055. Joinder of defendants**

Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same series of acts constituting an offense or offenses. All of the defendants need not be charged in each count. When two or more persons are included in the same charge, at any time before the defendants begin their defense, on the application of the Solicitor General, the Court may direct any defendant to be discharged so that he/she may be a witness for the Band. When two or more persons are included in the same complaint, and the Court is of the opinion that there is not sufficient evidence against one defendant, it must order him/her to be discharged before the evidence is closed, so that he/she may be a witness for his co-defendant.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §63.01.

### **§ 4056. Amendment of complaint.**

A complaint may be amended in matters of substance at any time before the defendant pleads, without leave of Court. The Court may permit any charge to be amended as to form at any time before verdict or the finding of the court if no additional or different offense is charged and if the substantive rights of defendants are not prejudiced. No charge will be dismissed because of a defect in form which does not prejudice a substantial right of the defendant.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §64.

## **Part C**

### **Warrant, Summons and Arrest**

#### **Section**

- 4101. Arrest warrants.
- 4102. Summons in lieu of warrant to arrest.
- 4103. Prerequisites for arrest.
- 4104. Time of making arrest.
- 4105. Summons in lieu of arrest.
- 4106. Notification of rights at time of arrest.

- 4107. Search warrants.
- 4108. Search without warrant.
- 4109. Stop and frisk.
- 4110. Inventory of seized property.

### **Cross References**

- Chief Law Enforcement Officer, powers and duties, see 24 MLBSA §1055.
- Juvenile justice, warrants and taking into custody, see 8 MLBSA §102 et seq.
- Motor vehicles, police powers, see 19 MLBSA §501 et seq.
- Natural resources, officers, powers and duties, see 11 MLBSA §2601 et seq; 19 MLBSA §§501, 503.
- Resisting lawful arrest, see 24 MLBSA §1205.
- Unreasonable searches and seizures, see 1 MLBSA §2.
- Watercraft violations, arrest without warrant, and notice in lieu of summons, see 20 MLBSA §§405, 406.

## **§ 4101. Arrest warrants**

(a) If it appears from the complaint, or from an affidavit or affidavits filed with the complaint, or from examination upon oath of witnesses, that there is probable cause to believe an offense has been committed, a warrant for the arrest of the defendant shall be issued by the Court. Every Justice of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall have the authority to issue such warrants. An arrest warrant shall be in writing and in the name of the Non-Removable Mille Lacs Band of Chippewa Indians, specify the name or description and address, if known, of the person to be arrested, state the date of issuance of the warrant, describe the offense charged, be signed by the issuing Justice, command that the person against whom the complaint was made be arrested and brought before the Court issuing the warrant.

(b) A warrant to arrest shall be by a duly qualified enforcement officer. No warrant to arrest shall be valid unless it bears the signature of a duly qualified Justice of the Court of Central Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. The warrant may specify the amount of bail.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §65.

## **§ 4102. Summons in lieu of warrant to arrest**

When authorized to issue a warrant of arrest, a duly qualified Justice of the Court of Central Jurisdiction may, in lieu thereof, issue a summons commanding the accused to appear before the Court at a specified time and place, to answer to the charge. If a

defendant fails to appear in response to a summons, a warrant for his arrest shall be issued.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §66.

### **§ 4103. Prerequisites for arrest**

(a) No law enforcement officer shall arrest any person for a violation of 24 MLBSA Chapter 2 except when the officer shall have a warrant signed by a Justice of the Court of Central Jurisdiction commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued, or the offense shall occur in the presence of the arresting officer, or the officer shall have probable cause to believe that the person to be arrested has committed an offense and the existing circumstances require an immediate arrest.

(b) When the accused has been arrested without a warrant, a complaint shall be filed forthwith for the Court of Central Jurisdiction to review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of the arraignment.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §§67.01, 67.02.

### **§ 4104. Time of making arrest**

An arrest may be made on any day and at any time of day or night, except that a person cannot be arrested pursuant to an arrest warrant, in his/her home at night, unless so directed by the Justice in writing on the arrest warrant.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §68.

### **§ 4105. Summons in lieu of arrest**

When otherwise authorized to arrest a suspect without a warrant, a law enforcement officer may instead issue to such person a summons to appear before the Court of Central Jurisdiction at a stated time and place, and answer to the charge. The summons shall contain the same information as a warrant, except that it may be signed by a law

enforcement officer. If a defendant fails to appear in response to such a summons, a warrant for his/her arrest shall be issued.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §69.

### **§ 4106. Notification of rights at time of arrest**

Upon arrest the suspect shall be advised of the following rights: that he/she has the right to remain silent, that any statements made by him/her may be used against him/her in Court, that he/she has the right to obtain counsel at his/her own expense.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §70.

#### **Cross References**

Assistance of counsel, see 1 MLBSA §6.

Self-incrimination, see 1 MLBSA §4.

### **§ 4107. Search warrants**

(a) Every Justice of the Court of Central Jurisdiction shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of the Court.

(b) No warrant of search and seizure shall be issued except upon statement of fact sufficient to show probable cause that a search will discover stolen, embezzled, contraband, or otherwise criminally possessed property, property which has been or is being used to commit a criminal offense, or property which constitutes evidence of the commission of a criminal offense. Such probable cause shall be supported by a written and sworn statement based upon reliable information and particularly describing the place or things to be searched and things to be seized.

(c) Warrants of search and seizure shall only be executed by law enforcement officers. The executing officer shall return the warrant to the Court of Central Jurisdiction within the time limit shown on the face of the warrant, which in no case shall be longer than ten days from the date of issuance. Warrants not returned within such time limits shall be void.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §71.

### Cross References

Replevin, seizure of property, see 24 MLBSA §3506.

## § 4108. Search without warrant

No law enforcement officer shall conduct any search without a valid warrant except incident to making a lawful arrest or with consent of the person being searched, or person lawfully in possession of the object or place to be searched, or who is reasonably believed to be in lawful possession or when he/she has probable cause to believe that the person searched may be armed and the officer conducts a frisk search, or when the search is of a moving vehicle and the officer has probably cause to believe that it contains contraband, stolen or embezzled property.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §72.

### Cross References

Prohibited drugs, possession in motor vehicle, see 23 MLBSA §7.

Seizure and confiscation, certain substances and vehicles containing them, see 19 MLBSA §503.

## § 4109. Stop and frisk

(a) A law enforcement officer may stop any person he/she observes in circumstances that give the law enforcement officer reasonable cause to suspect that the person has committed, or is committing, or is about to commit an offense involving the use or attempted use of force against a person, or theft, damage or destruction of property, if the stop is reasonable necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(b) A law enforcement officer may stop any person he/she finds near the scene of the offense that the law enforcement officer has reasonable cause to suspect has just been committed if the law enforcement officer has reasonable cause to suspect that the person has knowledge of material facts needed to aid to the investigation of the offense, or the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(c) A law enforcement officer who has lawfully stopped a person under this section may frisk that person and take other reasonable cause to suspect that the person is armed and presently dangerous to the law enforcement officer or another person present, and take possession of any object that the law enforcement officer discovers during the frisk if the law enforcement officer has probable cause to believe the object is a deadly weapon.

(d) A law enforcement officer who has lawfully stopped a person under this section may demand of the person his/her name and his/her present or last address.

(e) A law enforcement officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances, and in any case before questioning the person, that he/she is a law enforcement officer and that the stop is not an arrest, but rather a temporary detention for an investigation, and that upon complete of the investigation the person will be released unless he is arrested.

(f) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the law enforcement officer shall allow the person to go unless he/she has arrested the person.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §73.

### **§ 4110. Inventory of seized property**

Law enforcement officers shall make an inventory of all property seized by warrant or otherwise, and a copy of such inventory shall be left with the persons from whom the property was taken.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §74.

## Part D

### Preliminary Proceedings

#### Section

- 4151. Time of arraignment.
- 4152. Reading of complaint and advice of rights.
- 4153. Appearance at arraignment.
- 4154. Receipt of pleas at arraignment.
- 4155. Record.
- 4156. Bail--Release prior to trial.
- 4157. Bail--Release by law enforcement officer.
- 4158. Dismissal.
- 4159. List of witnesses.
- 4160. Production of evidentiary materials for inspection.
- 4161. Notice of interposed defense.
- 4162. Suppression of evidence illegally seized or involuntary confession or admission.
- 4163. Time to prepare for trial.

#### **§4151. Time of arraignment**

Arraignment shall be held in open Court without unnecessary delay after the accused is taken into custody, and in no instance, shall arraignment be later than 72 hours after an accused is detained, taken into custody, or held under the temporary commitment order signed by a Justice of the Court of Central Jurisdiction.

#### Historical and Statutory Notes

**Source:** Band Statute 1164-MLC-6, §75.01.

#### **§ 4152. Reading of complaint and advice of rights**

Before an accused is required to plead to any criminal charge, the Justice shall provide the accused with a copy of the complaint, read to the accused and determine that he/she understands the complaint and the section of the Mille Lacs Band Statutes Annotated which he/she is charged with violating, including the maximum authorized penalty, and advise the accused that he/she has the right to remain silent, to secure bail, to be tried by jury, to cross-examine the witnesses against him/her, to call witnesses in his/her behalf, to be represented by counsel at his/her own expense and that the arraignment will be postponed should he/she desire to consult with lay or professional counsel.

#### Historical and Statutory Notes

**Source:** Band Statute 1164-MLC-6, §75.02.

### **§ 4153. Appearance at arraignment**

The accused has the right to appear personally for the arraignment; however, the accused may elect to appear through counsel.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §75.03.

### **§ 4154. Receipt of pleas at arraignment**

(a) If the accused pleads "not guilty" to the charge, the Justice shall then inform him/her of a trial date and set conditions for bail prior to trial.

(b) If the accused pleads "guilty" to the charge, the Justice shall determine that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights which he/she is waiving by the plea. The Justice may then impose sentence, or defer sentencing for a reasonable time, in order to obtain any information he/she deems necessary for imposition of a just sentence. The accused shall be afforded an opportunity to inform the Court of extenuating circumstances or facts in mitigation of the sentence.

(c) If the accused refuses to plead, the Justice shall enter a plea of not guilty on his/her behalf.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §76.

### **§ 4155. Record**

The Court must prepare and keep a record of all arraignment proceedings.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §76/03.

## **§ 4156. Bail--Release prior to trial**

Every person charged with any offense before the Court of Central Jurisdiction shall be entitled to release from custody, pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

- (a) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times.
  
- (b) Release to the custody of a designated person or organization agreeing to assure the accused's appearance.
  
- (c) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release.
  
- (d) Release after deposit by the accused or a bondsman of the bond, in either cash or other sufficient collateral in an amount specified by the Justice or bail schedule. The Justice, in his/her discretion, may require that the accused post only a portion of the total bond. The full sum becomes due if the accused fails to appear as ordered. In all cases wherein the bail is determined to be necessary, bail must be reasonable in amount and the amount shall be sufficient to assure compliance with the conditions set forth in the bail, not oppressive, commensurate with the nature of the offense charged, considerate of the financial ability of an accused, considerate of the defendant's record, employment status and family background.
  
- (e) Release after execution of a bail agreement by two reliable members of the Band who shall appear before a Justice of the Court of Central Jurisdiction and execute whatever agreement is necessary to assure the appearance of the person at any time lawfully required.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §77.

### **Cross References**

Excessive bail, see 1 MLBSA §7.

### **§ 4157. Bail--Release by law enforcement officer**

Any law enforcement officer authorized to do so by the Court of Central Jurisdiction may admit an arrested person to bail pursuant to the bail schedule or release upon personal recognizance. The law enforcement officer shall have available a bail schedule prepared by the Court of Central Jurisdiction which shall be used for setting money bond, where such condition or release is deemed necessary. Any law enforcement officer who refuses to release an accused on bail, or who specifies a bail condition which the accused is unable to satisfy shall bring such accused before a Justice of the Court of Central Jurisdiction for review of the release conditions at the first available opportunity and without unnecessary delay.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §78.

#### **Cross References**

Excessive bail, see 1 MLBSA §7.

### **§ 4158. Dismissal**

The Court may either on its own motion or upon the application of the Solicitor General and in furtherance of justice, order a complaint to be dismissed. The reasons for the dismissal shall be set forth in an order entered upon the minutes.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §79.

### **§ 4159. List of witnesses**

The prosecution shall furnish the defendant a current list of witnesses to be used in connection with the trial. This list shall include the names and addresses of the witnesses.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §80.

### **§ 4160. Production of evidentiary materials for inspection**

Upon a motion of either party, within a reasonable time before trial, the Court may require all parties to produce all documents, papers or things which each party intends to

use as evidence at the trial. Inspection of such materials shall take place in the Court's presence. The Court shall exclude from evidence all materials not presented for inspection unless good cause is shown for failure to comply.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §80.01.

**§ 4161. Notice of interposed defense**

At the time of entering a plea of not guilty, or later if for good cause, the Court permit, the defendant shall furnish the prosecution written notice of intent to interpose the defense of insanity, self-defense or alibi. The defendant shall also furnish a list of witnesses to be called in support of such defense.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §80.02.

**§ 4162. Suppression of evidence illegally seized or involuntary confession or admission**

A defendant may move the Court to suppress any confession or admission given by him/her on the grounds that it was not voluntary. A defendant may move the Court to suppress any evidence obtained by an unlawful search and seizure. Such motions must be in writing and served upon the prosecution before trial, unless good cause is shown. At least 10 days notice of such motions must be given upon hearing, if the motion is granted, the confession, admission or evidence shall not be admitted as evidence against the defendant.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §81.

**§ 4163. Time to prepare for trial**

After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §82.

## **Part E**

### **Trial**

#### **Section**

- 4201. Jury trial.
- 4202. Order of procedure.
- 4203. Special instructions.
- 4204. Verdict.

### **§ 4201. Jury trial**

Any person accused of an offense for which imprisonment is a possible penalty shall be granted a jury trial, upon his/her request made at the time of arraignment. The Justice shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of that law. The jury shall deliberate in secret and return a verdict of guilty or not guilty. The Justice shall render judgment in accordance with the jury verdict.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §83.

#### **Cross References**

Jury trial, generally, see 24 MLBSA §2014.  
Right to jury trial, see 1 MLBSA §10.

### **§ 4202. Order of procedure**

The rules of Court procedure relating to the conduct of trials shall apply to trials held pursuant to this subchapter, with the additional provisions set out in 24 MLBSA §§4203 and 4204.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §84.

### **§ 4203. Special Instructions**

When the evidence is concluded if either party desires special instructions to be given to the jury, such party should submit them to the Justice in writing. Outside the presence of the jury, the opposing party or parties and their counsel shall have reasonable time to

examine the requested instructions and argue to the Court for their adoption or rejection. The instructions shall then be settled by the Justice.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §84.01.

#### **§ 4204. Verdict**

After the close of evidence, the Justice shall render a verdict or in a jury trial, the Justice may direct a verdict of acquittal. Except in case of directed verdict, the jury shall retire to determine a verdict after the charge. All instructions, physical evidence and notes taken by the jurors shall be available to them. The jury shall remain in the charge of the bailiff appointed by the Court until discharged by the Justice. During its deliberation, the jury may return to Court to request further instructions from the Justice or request that the Clerk read portions of the transcript of any testimony in the case. The jury must render a verdict of "guilty" by a two-thirds vote or "not guilty" on every allegation in the complaint. After the verdict of the jury has been announced to the Justice, or in case the jury is unable to reach a verdict, the Justice shall discharge the jury.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §84.02

### **Part F**

#### **Sentence**

##### **Section**

- 4251. Acquittal.
- 4252. Penalties.
- 4253. Payment of fines by installments.
- 4254. Considerations in sentencing.
- 4255. Probation.
- 4256. Parolee.

#### **Cross References**

Excessive fines or cruel and unusual punishments, see 1 MLBSA §7.  
Pardons and commutations of sentences, see 4 MLBSA §6.

#### **§ 4251. Acquittal**

If a judgment of acquittal is rendered the defendant must be immediately released.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §86.

### § 4252. Penalties.

(a) Any person who has been convicted in the Court of Central Jurisdiction of an offense shall be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the provision defining the offense, which in no case shall be greater than six months, and which can also include a work or school release program.

(2) A money fine in an amount not to exceed the maximum permitted by the provision defining the offense, which in no case shall be greater than \$5,000.00 per offense.

(3) Community Services for the benefit of the Band.

(4) Rehabilitative measures.

(b) In addition or in lieu of any of the above penalties, the Court may require an offender who has inflicted injury upon the person or property of another to make restitution or compensate the injured person through the surrender of the property, the payment of money damages, or the performance of any other act for the benefit of the injured party.

### Historical and Statutory Notes

Source: Band Statute 1164-MLC-6, §§86.01, 86.02

### Cross References

Special surcharge tax on fines, see 22 MLBSA §509.

### § 4253. Payment of fines by installments

If a convicted offender is unable to pay forthwith a money fine assessed under 24 MLBSA §4252, the Court shall allow him/her to make reasonable installment payments to the Clerk of Court at specified intervals until the entire sum is paid, or sentence

him/her to labor for the benefit of the Band in order to discharge a fine at the rate of \$10.00 per day. If the offender defaults on such payments the Court may fine him/her in contempt of Court and imprison him/her accordingly, or after notice to the offender, collect the unpaid balance from the offender's per capita payments or other property.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §86.03

**§ 4254. Considerations in sentencing**

In determining the character and duration of the sentence which shall be imposed, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed and whether the offense was malicious or willful, and whether the offender has made efforts to make amend and shall give due consideration to the extent of the defendant's resources and the needs of his/her dependents.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §86.04.

**§ 4255. Probation**

(a) Where a sentence of imprisonment has been imposed on a convicted offender, the Court of Central Jurisdiction may in its discretion, suspend the serving of such sentence and release the person on probation under any reasonable conditions deemed appropriate by the Court, provided that the period of probation shall not exceed the maximum term of sentence set for such offense.

(b) Any person who violates the terms of his/her probation may be required by the Court to serve the sentence originally imposed or such part of it as the Court may determine to be suitable, giving consideration to all the circumstances provided that such revocation of probation shall not be ordered without a hearing before the Court at which time the offender shall have the opportunity to explain his/her actions.

**Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §87.

## **§ 4256. Parolee**

(a) Any person who shall without misconduct, serve one-half of the sentence imposed shall be eligible for parolee under such reasonable conditions as set by the Court.

(b) Any person who violates the conditions of his/her parolee may be required by the Court to serve the whole of the original sentence, provided that such revocation of parolee shall not be ordered without a hearing before the Court at which time the offender shall have the opportunity to explain his/her actions.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §88.

## **Part G**

### **Juvenile Delinquency**

#### **Section**

4301. Exclusion of public from hearing.

4302. Rights of accused.

4303. Disposition in lieu of sentence.

4304. Records.

4305. Violations heard in Criminal Division.

#### **Cross References**

Contributing to delinquency of minor, see 24 MLBSA §1260.

Juvenile offenders, see 8 MLBSA §101 et seq.

Liquor violations, see 24 MLBSA §1258.

## **§ 4301. Exclusion of public from hearing**

Whenever the person under the ages of 14 years is accused of committing one of the offenses of this Band Statute, the general public shall be excluded from the hearing, except under petition of the juvenile, the Court in its discretion, may hear and determine the case in a public hearing.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §89.

### **§ 4302. Rights of accused**

The juvenile shall be entitled to have counsel with him/her at his/her own expense, shall be allowed to present, confront and cross-examine witnesses under oath, shall be entitled to adequate notice of charges against him/her and the privilege against self-incrimination shall apply to any statement the juvenile may have made before the trial and at the trial. Adequate notice of the charges against a juvenile shall also be given to the parents or guardian of the juvenile. A standard of guilt to be employed is that the juvenile must be found guilty beyond a reasonable doubt.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §89.01.

#### **Cross References**

Civil Rights Code, see 1 MLBSA §1 et seq.

### **§ 4303. Disposition in lieu of sentence**

In lieu of sentence the Court may place the juvenile under supervision of a responsible person or institution, selected by the Justice for a designated period or may take such other action as may be deemed advisable in the circumstances.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §89.02.

### **§ 4304. Records**

(a) All law enforcement records concerning a juvenile except traffic records, shall not be open to public inspection of their contents disclosed to the public, unless ordered by the Court.

(b) All law enforcement records and records of the Court pertaining to a juvenile shall be physically sealed when the youth reaches the age of 18 years. These records shall not be open to inspection except by a written order from the Court.

#### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §89.04.

## **§ 4305. Violations heard in Criminal Division**

Exceptions to 24 MLBSA §4303 are that the following violations may be heard in either the Criminal Division or the Human Resources Division of the Court of Central Jurisdiction and the records may be open to inspection if tried in either the Criminal Division on any traffic, liquor law, or fish and game violation.

### **Historical and Statutory Notes**

**Source:** Band Statute 1164-MLC-6, §89.05.

### **Cross References**

Natural Resource Protection Code, enforcement, see 11 MLBSA §2601 et seq.  
Traffic violations, 19 MLBSA §401 et seq.

