

**Child Support in the Mille Lacs
Band of Ojibwe Tribal Court**

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OVERVIEW

- BACKGROUND
- TRIBAL COURT JURISDICTION
- ENFORCEMENT
- FOREIGN ORDERS
- “TRANSFERS”

BACKGROUND

- In 2011 the Mille Lacs Band of Ojibwe Child Support Enforcement Program became comprehensive
- Main purposes:
 - Provide for the establishment of child support obligations that are consistent with traditional Ojibwe values and that motivate parents to provide their children with regular and adequate support in accordance with the parents’ resources and abilities
 - Exercise Band’s sovereignty by providing for the exercise of Band jurisdiction over child support and paternity cases involving Band children and families

BACKGROUND

- Minnesota influence
 - Mille Lacs Band Child Support Statutes are very similar to Minnesota
 - Tribal Court Judge finds Minnesota child support case law highly persuasive
 - Eg., Follows *Sefkow v. Sefkow*, 427 N.W. 2d 203 (Minn. 1988) for split custody cases
- Tribal Court System
 - District Court: held at 3 districts
 - Court of Appeals: no child support cases yet

BACKGROUND

- IV-D case initiation
 - Application
 - Anyone can apply
 - If case does not fall under the Mille Lacs Band’s jurisdiction → forward to appropriate jurisdiction
 - Referral
 - Shared interest case referred to CSEP

TRIBAL COURT JURISDICTION

- 8 MLBSA § 2005(a)
 - The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include but not be limited to:
 - Band members
 - Members of other tribes residing on Band land
 - Parents of children the Court has jurisdiction over
 - People who consent to the jurisdiction of the Band

TRIBAL COURT JURISDICTION

- *Montana v. U.S.*, 450 U.S. 544 (1981)
 - Tribes do not have civil jurisdiction over non-members
 - Two exceptions:
 1. Actions that threaten the political integrity, economic security or the health or welfare of the tribe
 2. Consensual relationships
 - Both exceptions interpreted narrowly
- Non-member seeks to establish in Tribal Court
 - Consents to jurisdiction
- Non-member respondent
 - *Montana* exceptions probably do not apply
 - Must raise jurisdiction objection
 - Many choose to remain in Tribal Court
 - No arrears interest
 - No R&D fees
 - No Court fees

ENFORCEMENT

- The CSEP does:
 - Wage withholding
 - Can withhold up to 30% of wages
 - Per Capita withholding (24 MLBSA § 3353)
 - Can withhold up to 50% of Band member's per capita distributions for child support and arrears
 - Currently \$466.50/month
 - Takes priority over other withholding except Federal tax liens
- The CSEP is trying to:
 - Withhold unemployment benefits
 - Working with DHS to convince DEED
 - Withhold federal tax returns

ENFORCEMENT

- The CSEP does not:
 - Suspend driver's licenses
 - Tribe cannot force a state to revoke a state license
 - Questionable effectiveness
 - Suspend hunting and fishing licenses
 - No authority over state licenses, but tribal licenses exist
 - Take on an important cultural element
 - Frequently important source of food
 - Incarcerate
 - Band does not have a jail
 - Currently do not have an agreements with counties

ENFORCEMENT

- Themes
 - Relatively few enforcement options available
 - Able to send IV-D case to MN for enforcement, but cannot be selective
 - Actively working to expand enforcement through coercive and non-coercive methods
 - Upfront with parties about enforcement limitations and options

FOREIGN ORDERS

- 1,136 cases have been registered in tribal court for enforcement
- Per Capita withholding
 - Band will withhold up to 50% of per capita payments for child support orders
 - Equitably distribute between multiple orders
- Wage withholding
 - Band will withhold up to 30% for child support orders
 - Equitable distribute between multiple orders
- Prefer to withhold from per capita first due to stability

FOREIGN ORDERS

- How to register for enforcement
 - Transmittal #1
 - IWO
 - Affidavit of Arrears
 - Registration of Foreign Judgment Form (Tribal Court)
 - Copy of County Court Order
 - COLA notices (if applicable)
- How to amend
 - Transmittal #1
 - IWO
 - Affidavit of Arrears
 - Amended County Court Order (if applicable)

FOREIGN ORDERS

- Delay on Enforcement
 - CSEP must send written notice of income withholding at least 20 days prior to withholding (8 MLBSA § 2052)
 - Obligor must be at least 30 days in arrears (*Id.*)
 - Obligor has opportunity to object only on the following grounds:
 1. Not in arrears
 2. Mistake of fact with respect to the amounts
 - Obligor cannot argue that the county court should have ruled differently
 - Obligor must go back to county to seek modification

FOREIGN ORDERS

- Differences in arrears only cases
 - State:
 - Current support @ \$100
 - 20% arrears = \$20
 - Total withholding = \$120
 - Continue withholding \$120 when current support ends
 - When current support ends, CSEP can only withhold \$20 (8 MLBSA § 2054)
 - Actively trying to change this
 - Always ask NCP to voluntarily agree to continue \$120 withholding

FOREIGN ORDERS

- What if mandatory withholding does not cover all support orders?
 - Always ask NCP to voluntary agree to more withholding
 - If still does not cover → equitable adjustment
 - Example:
 - County order for \$400/month and Tribal Court order for \$300/month = \$700 total ordered
 - Only \$466.50 is available from per capita withholding

County:	$\$400/\$700 = 57.14\%$
	$.5714 \times \$466.50 = \mathbf{\$266.56}$
Tribes:	$\$300/\$700 = 42.86\%$
	$.4286 \times \$466.50 = \mathbf{\$199.94}$

“TRANSFERS”

- Mille Lacs Band has not adopted UIFSA
- Minnesota transfer rules do not apply to tribes
- Must follow the Full Faith & Credit for Child Support Orders Act (28 USC § 1738B)
 - Explicitly applies to tribes – treats them as States
 - Never uses the word “transfer”
 - Registration for Modification
 - No individual contestant or child residing in the issuing State, the party or agency seeking to modify a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant

“TRANSFERS”

- Assuming continuing, exclusive jurisdiction over the order
 - Court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child’s State or the residence of any individual contestant; or
 - Each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order

“TRANSFERS”

- CSEP hasn’t used “Registration for Modification”
 - Few states used this option in Tribal Court
- Close to using the “nobody living in original state option”
 - Never came to fruition
- Uses the “consent” option if it already has the IV-D case
 - FFCSOA does not outline a detailed procedure to follow
 - Beltrami Co. had a Stipulation and Order template
 - Modified template and met with Mille Lacs Co.
 - Band drafts the Stipulation & Order and obtains signatures
 - Send to Mille Lacs Co. for review, signature and filing
 - Mille Lacs Co. Dist. Ct. enters order and sends copy to Tribal Court

NON-REMOVABLE MILLE LACS BAND OF CHIPPEWA INDIANS
District of NAY AH SHING

IN THE COURT OF CENTRAL JURISDICTION

IN THE MATER OF:

CASE# _____

Petitioner

Original/New Withholding

VS

Respondent

Registration of Foreign Judgments
For Enforcement from debtor's

Social Security Number

___ Per Capita Payment

___ Wages

To the Honorable Clerk of Court of the Court of Central Jurisdiction of the Mille
Lacs Band of Ojibwe Indians:

The undersigned hereby registers the attached foreign judgment for the
enforcement within the jurisdiction of you Court.

1. The name and address of the judgment debtor/obligor is:

Obligor's Social Security Number: _____

2. The name and address of the attorney of the judgment debtor is:

3. The name and address of the judgment creditor is:

4. The name and address of the attorney for the judgment creditor is:

5. The amount of the judgment sought to be enforced is :
- \$ _____ Current Child Support per month
- \$ _____ Arrears Balance
- \$ _____ Other: _____(Please list)

6. Name and address of debtor's Employer/Mille Lacs Band Per Capita:

7. The undersigned respectfully requests that the Court take its fee from the garnishment of judgment debtor wages.

I certify that the above information is true to the best of my belief. I have attached a certified copy of the originating court's order for this case.

Signed this ____ day of _____, 20__.

Signature

Print name, Address and Phone Number

Telephone: _____

Subscribed and sworn to before me
this ____ day of _____, 20__.

Notary Public

Petitioner,

v.

**STIPULATED FINDINGS OF FACT
AND ORDER REGARDING
REGISTRATION FOR MODIFICATION
IN TRIBAL COURT**

Respondent,

Court File No.

WHEREAS, the County of Mille Lacs and the above-named individual parties agree that they have received and reviewed all documents necessary for the preparation of this Stipulation and Order, that they wish to settle the above-entitled matter without a hearing and that an order containing the provisions as herein agreed to may be immediately entered upon approval by the Court without further notice to any party.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned that the above-named court may enter its order as follows:

The above-entitled matter came on without hearing before the undersigned Child Support Magistrate. The Court, upon reviewing the files, affidavits and proceedings herein, and upon reviewing Stipulation presented, and being fully advised, hereby makes the following:

FINDINGS OF FACT

1. That _____ is the parent of the following children of this matter and owes said children a duty of support:

Name of Child

Date of Birth

xx/xx/1998

xx/xx/xxxx

2. That by an Order dated April xx, 20xx, support for the above-named child was addressed in the above referenced Court File.
3. The parents agree that this Stipulation and Order, and all previously entered support Order(s) in this action shall be registered for purposes of child support modification with the Mille Lacs Band of Ojibwe Court of Central Jurisdiction pursuant to 28 U.S.C 1738B (Full Faith and Credit for Child Support Orders Act). Upon registration of the orders, the Mille Lacs Band of Ojibwe Court of Central Jurisdiction shall have continuing exclusive jurisdiction to modify child support.
4. The parties understand that upon assuming continuing exclusive jurisdiction for child support modification, the Mille Lacs Band of Ojibwe Court of Central Jurisdiction shall retain jurisdiction to modify support so long as either parent or the child continues to reside on within the territorial boundaries of the Mille Lacs Band of Ojibwe or until all parties file a written agreement with the Court of Central Jurisdiction to have another State or Tribe assume continuing exclusive jurisdiction for modification of support.
5. The parties acknowledge pursuant to 28 U.S.C. 1738B (g) the Mille Lacs County, Minnesota District Court retains jurisdiction to enforce its order(s) with respect to any non-modifiable support obligations, unsatisfied support obligations, and issues unrelated to support.
6. That the Mille Lacs Band of Ojibwe Child Support Enforcement Program (hereinafter CSEP), a public authority, is currently providing IV-D services. The parties agree that upon registration for support modification, the CSEP will continue to provide IV-D services. Upon said registration for support modification, the Mille Lacs County Attorney's Office shall no longer be the attorney of record for the public authority party, and Mille Lacs Band of Ojibwe Office of the Solicitor General shall be the attorney of record for the Mille Lacs Band of Ojibwe Child Support Enforcement Program.
7. That _____ currently receives MFIP (TANF) and Medical Assistance.
8. That _____ date of birth is xx/xx/xxxx and she resides at
xx.
9. That _____ date of birth is xx/xx/xxxx and he resides at
xx.

10. That neither party is a member of the Armed Services.
11. The parties agree that any arrears currently owed to _____ will continue to be owed once the Court of Central Jurisdiction assumes jurisdiction.
12. That the parties agree that collection will continue for any arrears which are owed to the State of Minnesota and/or Mille Lacs County until paid in full.
13. If payments are made under any order, the amounts collected will be credited against the amounts accruing or accrued for the same period under all support orders issued, except that if an in-kind payment is made, the dollar value must be established in a specific amount for such credit to apply. The public authorities for child support and tribunals shall cooperate in providing certified statements by the custodian of the record of amounts and dates of all payments received.
14. That _____ and _____ agree to accept service of a copy of this Order upon them by U.S. Mail at the address provided in the Findings of Fact, or if represented, upon an individual party's attorney.
15. That the parties agree that if _____ Minnesota driver's, recreational or occupational license has been suspended by court order, that upon entry of this Order said license shall be reinstated.
16. The relevant social security numbers are set forth in the Confidential Information Form previously filed with the Court.
17. The individual parties acknowledge that the Mille Lacs County Attorney's Office represents only Mille Lacs County, and does not represent either parent or the child.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. That upon entry of this Order the Mille Lacs County Court Administrator's Office shall send to the Mille Lacs Band of Ojibwe Court of Central Jurisdiction, (43408 Oodena Drive, Onamia, MN 56359) a certified copy of this Order and all prior Orders entered in this action purposes of registration for modification with the Mille Lacs Band of Ojibwe. Upon registration, the Mille Lacs Band of Ojibwe Court of Central Jurisdiction shall assume continuing exclusive jurisdiction for purpose of modification of child support and provide notice to the Mille Lacs County Court Administrator's Office of said registration, which notice shall be filed in this Court File.

2. Upon registration for modification, the Mille Lacs Band of Ojibwe Child Support Enforcement Program shall be substituted for the County of Mille Lacs, the public authority party, and the caption deemed amended accordingly for purposes of subsequent pleadings and orders. Upon said substitution of the public authority party, the Mille Lacs County Attorney's Office shall no longer be the attorney of record for the public authority party, and the Mille Lacs Band of Ojibwe Office of the Solicitor General shall be the attorney of record for the Mille Lacs Band of Ojibwe Child Support Enforcement Program.
3. If an order is subsequently entered in by either the Mille Lacs Band of Ojibwe Court of Central Jurisdiction or the Mille Lacs County, Minnesota District Court, a certified copy of the order shall be submitted for filing by the issuing tribunal with the other tribunal for informational purposes. The filing of said order shall be deemed a registration of the order for enforcement purposes only. An order may also be registered for modification by a party or a public authority providing IV-D services by agreement of all parties or by proceeding to register the order for modification under 28 USC 1738B(i).
4. If Minnesota driver's, recreational or occupational license has been suspended by a Minnesota court order, upon entry of this Order said license shall be reinstated.
5. A copy of this Order served upon the parties by U.S. Mail at the address provided in the Findings of Fact, or if represented, upon an individual party's attorney, shall be due and proper service for all purposes.
6. All payments ordered shall continue to be made to the Mille Lacs Band of Ojibwe Child Support Enforcement Program, 43408 Oodena Drive, Onamia, MN 56359.
7. Upon registration of this Order for modification with the Mille Lacs Band of Ojibwe Court of Central Jurisdiction, all payments shall continue to be made to the Mille Lacs Band of Ojibwe Child Support Enforcement Program, 43408 Oodena Drive, Onamia, MN 56359.
8. If payments are made under any order, the amounts collected will be credited against the amounts accruing or accrued for the same period under all support orders issued, except that if an in-kind payment is made, a dollar value must be determined in a specific amount for such credit to apply. The public authorities for child support and tribunals

shall cooperate in providing certified statements by the custodian of the record of amounts and dates of all payments received.

Petitioner

Date

Subscribed and sworn to before me this _____ day of _____, 2012.

Notary Public

Respondent

Date

Subscribed and sworn to before me this _____ day of _____, 2012.

Notary Public

Assistant Mille Lacs County Attorney
Attorney Reg. #
225 6th Ave SE
Milaca, MN 56353
320-983-8305

Date

The foregoing Stipulation and Order having been duly presented, considered and approved by the Court.

Dated: _____.

BY THE COURT:

Child Support Magistrate