

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

“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