

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #01/09, AS AMENDED

PROCEDURES GOVERNING SMALL CLAIMS ACTIONS
BEFORE THE FOND DU LAC TRIBAL COURT

Adopted by Resolution #1190/09 of the Fond du Lac Reservation
Business Committee on May 12, 2009.

Amended by Resolution #1032/11 of the Fond du Lac Reservation
Business Committee on February 1, 2011.

Amended by Resolution #1130/13 Fond du Lac Reservation Business
Committee on April 17, 2013.

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CHAPTER 1

AUTHORITY, PURPOSE AND SCOPE

Section 101 Authority

This Ordinance is enacted by the Fond du Lac Reservation Business Committee pursuant to the inherent sovereign authority of the Fond du Lac Fond du Lac Band of Lake Superior Chippewa, as recognized and reserved under the Treaty of LaPointe, 10 Stat. 1109; Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; Section 106 of the Fond du Lac Civil Code, FDL Ord. #04/02; and under the common law of the United States.

Section 102 Findings and Purposes

The Fond du Lac Reservation Business Committee finds that there is a need to provide a judicial forum for the resolution of private disputes involving small claims arising on the Fond du Lac Reservation where at least one of the parties is an enrolled member of the Fond du Lac Band.

Section 103 Reservation of Rights

The Reservation Business Committee reserves the right to amend or repeal all or any part of this Ordinance at any time. There shall be no vested private right of any kind created by this Ordinance. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the powers of the Fond du Lac Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Fond du Lac Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.

CHAPTER 2

DEFINITIONS AND INTERPRETATION

Section 201 Definitions

For the purposes of this Ordinance, the following definitions shall apply:

- (a) **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- (b) **"Band lands"** means any lands owned in trust or in fee by the Fond du Lac Band over which the Band possesses regulatory authority.
- (c) **"Court Clerk"** or **"Clerk"** shall mean the Clerk of the Tribal Court.
- (d) **"Defendant"** shall mean the person or persons that the Plaintiff has filed suit against.
- (e) **"Judge"** shall mean any Judge of the Tribal Court.
- (f) **"Plaintiff"** shall mean the person or persons filing the claim.
- (g) **"Reservation"** means the Fond du Lac Reservation.
- (h) **"Reservation Business Committee or "RBC"** means the governing body of the Fond du Lac Band of Lake Superior Chippewa.
- (i) **"Small Claims"** shall mean claims of \$5,000 or less.
- (j) **"Tribal Court"** or **"Court"** shall mean the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa."

Section 201 Interpretation

The provisions of this Ordinance shall be interpreted in a manner which gives plain effect to its terms and purposes, and to avoid unnecessary conflicts of law.

CHAPTER 3

SMALL CLAIMS FILING PROCEDURES

Section 301 Requirements For a Claim

A claim may be filed with the Tribal Court only when the following conditions are met:

- (a) The claim is for the recovery of money and/or specific personal property; or performance of a contract;
- (b) The total amount of the claim, including goods or services, is \$5,000 or less;
- (c) One party must be an enrolled member of the Fond du Lac Band;
- (d) The debt or injury must have been incurred within the Reservation or for a contract claim, the contract must have been executed or intended to be performed within the Reservation;
- (e) A good faith effort was made by the plaintiff to resolve the dispute; and
- (f) The plaintiff has read the Small Claims Brochure.

Section 302 Time Limit on Actions

No claim may be filed more than one (1) year after the date that the plaintiff knew or should have known of the damage or injury that the claim is based on.

Section 303 Statement of What Can be Recovered

- (a) The plaintiff may only recover one of the following, after a final judgment has been entered:
 - (1) Money for the value of the claim;
 - (2) The objects in controversy and the value of any loss/damage to the objects;
 - (3) Work to be performed under a contract in dispute; or
 - (4) In kind payment, either in goods or services.
- (b) Interest can also be recovered on the value of the claim.

Section 304 Filing a Claim With the Court Clerk; Content and Form

A case shall begin upon filing with the Clerk of Court a verified claim in the form that the Court has prescribed. The plaintiff shall sign the claim and verify under oath that as of the date of its filing each requirement in Section 301 has been met. The claim shall contain the name and mailing address of the plaintiff and of the defendant, followed by a simple statement of the claim. This statement shall include the amount of the claim and the date the actions allegedly occurred. With the claim, the plaintiff shall include an affidavit stating that the claim meets all of the requirements in Section 301 of this ordinance, including the date that the damage or injury the claim is based on occurred.

Section 305 Notice; Content; Service

Upon the filing of a claim, the Court Clerk shall issue a notice in the form prescribed by the Court, directed at the defendant, and shall attach a copy of the claim. The Court Clerk shall attempt to serve the notice and claim upon the defendant by certified mail. If service by certified mail is unsuccessful, the plaintiff will be responsible for serving the notice and claim upon the defendant.

Section 306 Counterclaims

A defendant may make a counterclaim on any claim that the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff. The counterclaim must be filed with the Tribal Court Clerk within twenty-one (21) days after service of the claim filed by the plaintiff. The Court Clerk shall attempt to serve the plaintiff with the counterclaim by certified mail. If service by certified mail is unsuccessful, the defendant will be responsible for serving the counterclaim upon the plaintiff. The defendant is limited to recovery of the same amount, goods and services, as in Sections 301 and 303.

CHAPTER 4

COURT PROCEDURES FOR SMALL CLAIMS

Section 401 Hearing

The Court Clerk shall mail or serve the parties with a notice of the hearing. In the notice of the hearing, the Court Clerk shall instruct the parties that they need to bring witnesses, documents and other evidence pertinent to the controversy. The notice of the hearing may be served along with the claim or counterclaim. No formal pleading other than the claim shall be necessary. The hearing will be informal and only the parties and their witnesses, as well as spokespersons who appear at no charge and are immediate family members of a party, will be allowed to address the court.

Section 402 No Attorneys

Notwithstanding any provision of tribal law to the contrary, attorneys are not permitted to represent a party in a small claims court case.

Section 403 Time Extension

If one of the two parties wishes to extend the time, in order to make formal appearances to the Court, the party must file a written request with the court. The requested extension can be no longer than thirty (30) days. The Court may only grant one extension per party.

Section 404 Default

If the defendant fails to appear for the scheduled hearing, upon request from the plaintiff, the clerk shall enter a judgment against the defendant for the relief claimed plus the amount of the small claims filing fees and service expenses paid by the plaintiff. If the plaintiff fails to show up for the hearing, upon written request from the defendant, the Clerk shall dismiss the case, or if a counterclaim has been filed, enter a judgment for the amount of the claim plus fees and service expenses paid by the defendant. A default judgment may not be entered for failure to appear at the hearing through no fault of the party who failed to appear.

Section 405 Final Judgment as Final Decree

When entered, the final judgment shall document a final decree of the rights and obligations of both parties regarding the claims and counterclaims made by the plaintiff and the defendant. The judgment will remain valid for seven years.

Section 406 Action/Petition to Set Aside Final Judgment

- (a) A final judgment entered shall not influence nor bar the rights of either party to petition the Court to set aside or amend the final judgment for fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal Law.
- (b) The Court may retain jurisdiction of a case for one (1) year following the entry of final judgment in all matters.

Section 407 Applicable Law

The Court in resolving claims under this Ordinance will rely, to the greatest extent possible upon the laws of the Fond du Lac Band and the Minnesota Chippewa Tribe, supplemented in the sound discretion of the Court by the substantive laws of the State of Minnesota.

Section 408 Brochure Describing Proceedings; Content, Form and Distribution

The Court shall develop and print a brochure describing the requirements, nature and effect of the proceedings. The brochure shall be distributed by the Court and shall state in clear English the following:

- (a) A short summary of the provisions and procedures established by this Ordinance.
- (b) A statement in boldface type that with the entry of a final judgment all rights and obligations of both parties including property and monetary gains will be permanently ended without right of appeal, except that either person may petition the Court to set aside the final judgment for fraud, duress, accident, mistake or other grounds recognized under tribal law.
- (c) A list of the items or services that a party can receive if the judge rules in favor of that party.

Section 409 Fees

The Court shall collect a \$20 fee from the plaintiff for filing a claim and a \$20 fee from the defendant if a counterclaim is filed. If a claim involves more than one defendant, the Court shall collect an additional \$10 for each additional defendant. These fees will partially offset the cost of the Court's time and the distribution of the brochure, and other costs the Court may incur in processing the case.

CHAPTER 5
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 501 Effective Date

The provisions of this Ordinance shall become effective thirty (30) days from adoption by the Reservation Business Committee.

Section 502 Amendment or Recission

The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

Section 503 Severability

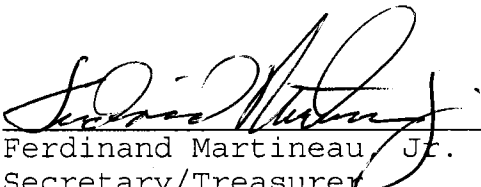
If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #01/09 was duly presented and adopted by Resolution #1190/09 by a vote of 4 for, 0 against, 0 silent, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on May 12, 2009, on the Fond du Lac Reservation, and subsequently amended by Resolution #1032/11 on February 1, 2011, and by Resolution #1130/13 on April 17, 2013.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer