

**FOND DU LAC BAND OF LAKE SUPERIOR
CHIPPEWA
TRIBAL COURT**

**SMALL CLAIMS PACKET
DEFENDANT**



These instructions, information and forms are not a complete statement of the law. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. For legal information visit your local law library. Attorneys are not permitted to represent a party in a small claims action in Tribal Court.

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

TRIBAL COURT
DEFENDANT'S SMALL CLAIMS PACKET

Enclosed are the instructions and forms to respond to a small claims complaint in Tribal Court. Read the instructions and the Tribe's Small Claims Ordinance carefully to identify what is required.

Please make sure you have the right packet. If you need to file a small claims complaint, you should obtain a copy of the packet titled "Small Claims Packet Plaintiff" from the Tribal Court.

If you have any questions you should contact the Tribal Court Clerk at **(218) 878-7151**. Please understand, however, that the Tribal Court Clerk cannot give you legal advice. If you need legal advice about filing a small claims case, you should consult an attorney.

Contents of Packet:

1. Instructions
2. Forms
 - a. Counterclaim
3. Band's Small Claims Ordinance

NOTICE ABOUT THESE INSTRUCTIONS AND INFORMATION

These instructions and information are not a complete statement of the law. They cover basic information for responding to a small claims complaint in Tribal Court. For legal information visit your local law library. Attorneys are not permitted to represent a party in a small claims court case, but you may consult an attorney if you wish.

If you wish to properly respond to the small claims complaint in Tribal Court, it is important for you to read, very carefully, THE ENTIRE INSTRUCTION PACKET, AS WELL AS THE TRIBAL SMALL CLAIMS COURT ORDINANCE.

I. REQUIREMENTS FOR FILING A SMALL CLAIMS ACTION

The Plaintiff in this matter has filed a small claim and affidavit against you, the Defendant. A claim may be filed with the Tribal Court only when the following conditions are met

1. The claim is for the recovery of money and/or specific personal property; or performance of a contract;
2. The total amount of the claim, including goods or services, is \$5,000 or less;
3. One party must be a Band member;
4. If the Plaintiff is not a Band member, the Plaintiff must waive the right to contest jurisdiction;
5. For a contract or loan claim, the contract must have been made or must have required performance within the boundaries of the Fond du Lac Reservation;
6. For an injury claim, the injury must have occurred within the boundaries of the Fond du Lac Reservation;
7. A good faith effort must have been made to collect the claim;
8. The complaint must be filed no more than one (1) year after the date the Plaintiff knew or should have known of the damage or injury the claim is based on; and
9. The Plaintiff must read this packet and these instructions.

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.

You should make sure that the Plaintiff's complaint satisfies each of these requirements. If you believe that the Plaintiff's complaint does not satisfy one of these requirements, you should inform the Court.

II. WHAT CAN BE RECOVERED

A Plaintiff in a small claims action in Tribal Court may only recover the following:

1. Money for the value of the claim;
2. The object in controversy and the value of any loss/damage to the object.
3. Work to be performed under a contract in dispute.
4. In kind payment, either in goods or service.
5. Interest on the value of the claim.

If the Plaintiff is seeking to recovery something not listed above, you should inform the Court.

III. RESPONDING TO A SMALL CLAIMS ACTION IN TRIBAL COURT

After the Plaintiff files a small claims complaint, the Defendant will be served with a Summons and a copy of the Small Claims Complaint and Affidavit by certified mail.

The Defendant is not required to file any paperwork in response to your complaint. The Defendant has the right to simply show up at the scheduled hearing and respond to your complaint at the hearing. The Defendant may, however, choose to file a counterclaim in response to your complaint. The Defendant has twenty-one days after being served to file a counterclaim.

1. Counterclaims.

The Defendant is not required to file a counterclaim. If the Defendant chooses to file a counterclaim, the counterclaim must be filed within twenty-one (21) days after the Defendant is served with the Summons and Small Claims Complaint and Affidavit.

To file a counterclaim, you should fill out the attached “Counterclaim” form.

The counterclaim must arise out of the same transaction or occurrence that is the subject of the original claim. The counterclaim must satisfy all of the requirements listed in Section I above. The counterclaim can only request the types of relief listed in Section II above.

The counterclaim must be notarized. The notary may require picture identification. **DO NOT SIGN THE COUNTERCLAIM UNTIL YOU ARE IN THE PRESENCE OF A NOTARY.** The Court Clerk is a notary and is available to notarize your documents.

The counterclaim must be filed with the Tribal Court. The Courtroom is located in the Fond du Lac Band of Lake Superior Chippewa Tribal Court/Resource Management Building at:

Fond du Lac Tribal Court
28 University Road
Cloquet, Minnesota 55720.

The counterclaim may be mailed to the above address or be filed in person at the address above during normal operating hours. Please call the Court Clerk at (218) 878-7151 to find the current operating hours.

There is a \$20.00 filing fee for filing the counterclaim. The fee must be paid at the time of filing.

The Court Clerk will mail the Plaintiff a copy of the counterclaim.

The Plaintiff can respond to the allegations in the counterclaim at the scheduled hearing.

IV. THE HEARING AND JUDGMENT

1. The Hearing.

After the Defendant's time for filing an a counterclaim has elapsed, the Court Clerk will schedule a hearing and will issue a Notice of Hearing. The Court Clerk will mail the Notice of Hearing to the Plaintiff and Defendant.

The Notice of Hearing will contain the date and time of the hearing. Both the Plaintiff and Defendant must appear at the hearing.

Parties are responsible for bringing witnesses, documents and other evidence pertinent to the dispute.

The hearing will be informal and only the parties and their witnesses will be allowed to address the Court. The Court may allow a party to have the assistance of a spokesperson, if the spokesperson is not receiving a fee for their assistance and if the spokesperson is not an attorney.

2. Default/Dismissal.

If the Defendant fails to appear at the scheduled hearing, the Plaintiff may request a default judgment. The Plaintiff must ask the Court to enter the default judgment. If the Defendant was properly served with notice of the hearing and has not contacted the Court, the Court may issue the default judgment.

If the Plaintiff fails to appear at the scheduled hearing, the Court may dismiss the Plaintiff's complaint. In addition, if the Defendant filed a counterclaim, the Court may enter a default judgment against the Plaintiff based on the counterclaim. The Defendant must ask the Court to dismiss the complaint or to enter a default judgment against the Plaintiff.

3. Final Judgment.

A final judgment is a final decision about the rights and obligations of both parties. There is no right of appeal except that either party may petition the Court to set aside the final judgment for fraud, duress, accident, mistake or other grounds recognized under Tribal law.

The judgment will remain valid for seven years.

4. Collecting on the Judgment.

If a judgment is entered and one party fails to make court-ordered payments, the other party may request a Writ of Execution. The Writ of Execution will allow you to seize

certain property. For example, a Writ of Execution can be used to garnish a Band member's per capita payments. In order to apply for a Writ of Execution, you should obtain the packet titled "Writ of Execution Packet (Small Claims Collections)" from the Tribal Court.

V. GENERAL INFORMATION

The Court will apply the law of the Fond du Lac Band and the Minnesota Chippewa Tribe, to the greatest extent possible. The Court may use the substantive law of the State of Minnesota to supplement tribal law.

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

TRIBAL COURT

In the Matter of:

Case No.: _____

_____,
Plaintiff(s),

COUNTERCLAIM

v.

_____,
Defendant(s).

I am the defendant in this matter and I declare that the following facts are true on the date that this Counterclaim is filed with the Court:

1. **Counterclaim:** My counterclaim is for: (CHECK ALL THAT APPLY. IF APPLICABLE, ATTACH COPY OF CONTRACT.)

Recovery of money in the sum of \$_____. (DESCRIBE YOUR CLAIM AND THE DATE THE ACTIONS ALLEGEDLY OCCURRED):

Recovery of the following specific property, and the value of loss or damage to the property, if any: (DESCRIBE YOUR CLAIM AND THE DATE THE ACTIONS ALLEGEDLY OCCURRED; DESCRIBE THE LOSS OR DAMAGE TO THE PROPERTY AND THE VALUE):

Performance of a contract: (DESCRIBE YOUR CLAIM AND THE DATE THE ACTIONS ALLEGEDLY OCCURRED):

In-kind payment, either in goods or services: (DESCRIBE YOUR CLAIM AND THE DATE THE ACTIONS ALLEGEDLY OCCURRED)

2. **Jurisdiction:** The Tribal Court has jurisdiction based on the type of counterclaim described above and the following facts:

a. **Amount:** The total amount or value of my counterclaim, including goods or services, is \$ _____. I am seeking to recover interest on the value of my claim from _____ until paid.

b. **Enrollment Status:** (CHOOSE ONE)

I am a Fond du Lac Band Member, enrollment number _____.
(ATTACH A COPY OF YOUR TRIBAL IDENTIFICATION CARD OR OTHER PROOF OF ENROLLMENT.)

I am not a Band Member, but Plaintiff is a Band member and I hereby consent to the jurisdiction of the Tribal Court.

c. **Location:** (CHECK ALL THAT APPLY)

The loan or injury occurred within the boundaries of the Fond du Lac Reservation at:
(ADDRESS) _____

The contract was executed or to be performed within the boundaries of
the Fond du Lac Reservation at: (ADDRESS) _____

d. I made a good faith effort to collect this counterclaim prior to filing.

e. The date on which the damage or injury occurred on which my counterclaim is based is:

_____.

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.

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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**

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 Clerk of Court shall issue a notice in the form prescribed by the Court, directed at the defendant, and shall contain a copy of the claim. The Court shall serve the notice and claim upon the defendant by certified mail at the defendant's last known address. The envelope shall be marked "Deliver to Addressee only" and "Return Receipt Requested", and the date on the return slip will serve as the date upon which the notice and claim were served on 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 receiving the claim filed by the plaintiff. The Court Clerk will then serve the plaintiff with the counterclaim by certified mail at the plaintiff's last known address. 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 Clerk of Court shall mail to the parties 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. If a counterclaim was filed by the defendant, the notice of hearing shall be accompanied by such counterclaim. No formal pleading other than the claim shall be necessary. The hearing will be informal and only the parties and their witnesses, and 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

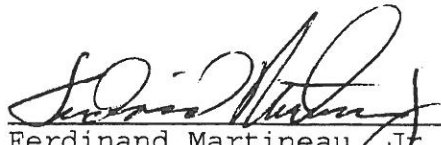
If any section, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance will not be affected thereby.

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