

ORDINANCE #04/92, AS AMENDED,
OF THE FOND DU LAC RESERVATION BUSINESS COMMITTEE
ADOPTING THE
CIVIL CODE OF THE FOND DU LAC BAND OF
LAKE SUPERIOR CHIPPEWA

Adopted by Resolution #1135/92 of the Fond du Lac Reservation Business Committee on May 5, 1992.

Amended by Ordinance #09/98, adopted by Resolution #1221/98 of the Fond du Lac Reservation Business Committee, dated July 16, 1998.

Amended by Resolution #1352/01 of the Fond du Lac Reservation Business Committee on January 24, 2002.

CHAPTER 100

FOND DU LAC COURT RULES OF CIVIL PROCEDURE

101. PURPOSES. The purposes of this Code are to promote the health, welfare, economic security and political integrity of the Fond du Lac Band of Lake Superior Chippewa; to preserve and maintain justice and the rule of law; to accord the equal protection of the laws; and to provide a forum and a civil procedure for the hearing and redress of grievances and disputes involving the Fond du Lac Band of Lake Superior Chippewa or persons within the civil jurisdiction of the Fond du Lac Band of Lake Superior Chippewa.

102. AUTHORITY. This Code is adopted pursuant to the inherent authority of the Fond du Lac Band of Lake Superior Chippewa, as granted by Article VI of the Constitution of the Minnesota Chippewa Tribe, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476.

103. APPLICATION OF TRADITIONAL PRACTICES. The Fond du Lac Court shall, in all matters, give judicial notice and attach primary importance to the native traditions, customs, and usages of the Fond du Lac Band of Lake Superior Chippewa, and shall regard all other evidentiary standards as suppletive to traditional values, except where expressly prohibited by federal law.

104. REPEAL OF INCONSISTENT ORDINANCES, RESOLUTIONS AND PROVISIONS. All ordinances, resolutions or provisions, or parts thereof, which are inconsistent with the operation of the Fond du Lac Court as prescribed under the provisions of this Code are hereby repealed, except where such ordinances, resolutions or provisions are specifically applicable to actions elsewhere authorized under the Fond du Lac Rules of Court.

105. ONE FORM OF ACTION. There shall be one form of action known as a 'civil action.'

106. ORIGINAL JURISDICTION. The Fond du Lac Court shall exercise exclusive original jurisdiction over all civil actions to which the Fond du Lac Band of Lake Superior Chippewa is a party, where such action arises within the exterior boundaries of the Fond du Lac Reservation, or upon other Indian Country within the possession or control of the Fond du Lac Band of Lake Superior Chippewa, or where such action concerns the regulation of treaty rights as vested in the Fond du Lac Band of Lake Superior Chippewa: original

jurisdiction lies where such action is brought pursuant to the provisions of this Code; the inherent authority of the Fond du Lac Band of Lake Superior Chippewa; under the Constitution of the Minnesota Chippewa Tribe; by the laws of the Fond du Lac Reservation Business Committee; or as is recognized under the Constitution and laws of the United States, where all parties to the action are real parties in interest.

107. CONCURRENT JURISDICTION. The Fond du Lac Court shall exercise concurrent jurisdiction with other courts of competent jurisdiction over those civil actions arising within the exterior boundaries of the Fond du Lac Reservation or upon other Indian Country within the possession or control of the Fond du Lac Band of Lake Superior Chippewa and where such action is recognized as a civil cause of action by the Fond du Lac Court, or involves the health, welfare, economic security or political integrity of the Fond du Lac Band of Lake Superior Chippewa, and to which at least one of the real parties in interest is an enrollee of the Fond du Lac Band of Lake Superior Chippewa.

108. SOVEREIGN IMMUNITY OF THE FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA. The Fond du Lac Band of Lake Superior Chippewa possesses inherent sovereign immunity from suit, and the provisions of these Rules shall not be construed as a waiver of such immunity, unless the Fond du Lac Reservation Business Committee has given its express consent to such suit.

109. ADMISSION TO PRACTICE. Any person admitted to practice and is in good standing before the bar of any State or the District of Columbia shall be deemed to be admitted to practice before the Fond du Lac Court. The Court may, in its sound discretion, admit non-attorneys to practice before it, provided that such individuals have demonstrated familiarity with the principles of Indian law and conduct themselves in a manner consistent with the ethical standards and rules of decorum of the Fond du Lac Court.

110. ACTIONS, PARTIES, COMMENCEMENT. The party making a complaint in a civil action before the Fond du Lac Court shall be called the Plaintiff, and the party against whom the complaint is made shall be called the Defendant. A civil action is commenced against each defendant by filing a complaint, along with a twenty dollar (\$20.00) filing fee, with the Fond du Lac Clerk of Court. Commencement of an action shall be ineffectual unless a summons is actually served upon the Defendant with the Complaint.

111. LIMITATIONS OF TIME. Subdivision 1. Application; Limitation. Actions can only be commenced within the periods prescribed by these Rules after the cause of action has accrued. Except as otherwise prescribed, the following actions shall be commenced within three (3) years:

- (a) Upon a contract, express or implied.
- (b) Upon a liability created by the Fond du Lac Civil Code.
- (c) Trespass upon real estate, forcible entry or unlawful detainer.
- (d) For taking, detaining or injury to personal property, including actions for the specific recovery thereof.
- (e) For criminal conversion, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated.
- (f) For libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury.

Subdivision 2. Periods of Disability Not Counted. Any of the following grounds of disability existing at the time when a cause of action accrued, or arising any time during the period of limitation, shall suspend the running of the period of limitation until such disability is removed:

- (a) That a party has not attained the age of 18.
- (b) A party's insanity.
- (c) A party is not a resident of the Fond du Lac Reservation.

Where two or more disabilities coexist, the suspension shall continue until all are removed.

Subdivision 3. Exceptions. Exceptions to the three-year period during which a suit must be brought are as follows:

- (a) Where a party is incarcerated;
- (b) Where a party is in military services; or
- (c) Where a party is willfully absent for the purpose of avoiding suit.

112. COMPLAINT. A complaint shall contain the following information:

- (a) The name of the Fond du Lac Court;
- (b) The names of the parties;
- (c) Date(s) of the violation(s);
- (d) A short and plain statement of the claim showing that the pleader is entitled to relief; and
- (e) A demand for judgment for the relief to which the pleader deems himself to be entitled. If the demand is for property, a definite description of the property shall be made. If the demand is for money, the amount demanded shall be stated.

113. SUMMONS. A summons shall contain the following:

- (a) The name of the Fond du Lac Court;
- (b) The names of the parties;
- (c) The signature of the Judge of the Fond du Lac Court;
- (d) It shall state that the Defendant has 20 days following service in which to serve his answer; and
- (e) It shall notify the Defendant that failing to answer the complaint and to serve his answer within 20 days will result in a default judgment against him and an award by the Court for the relief requested in the complaint.

114. SERVICE OF COMPLAINT. A copy of the complaint shall be served with the summons.

115. SERVICE. Service of a summons within the exterior boundaries of the Fond du Lac Reservation or upon Indian country otherwise within the possession or control of the Fond du Lac Band of Lake Superior Chippewa shall be made upon an individual residing or physically present on the Fond du Lac Reservation by delivering a copy of the complaint and summons to him personally, to his attorney, or by a copy of the complaint and summons at his usual place of abode with some person of suitable age and discretion residing there. As an alternative to personal service, a copy of the complaint and summons may be mailed to the Defendant at his last known address by Certified Mail with a return receipt requested.

116. SERVICE: WHEN REQUIRED. Service is required, pursuant to Rule 115, for all claims, pleadings, notices, appearances, motions other than those heard ex parte, orders and judgments of the Court and appeals, except that no service shall be required where a party has defaulted for failure to appear or where the party has received notice by the Court.

117. SERVICE: HOW MADE. Service by the Fond du Lac Court may be made by any peace officer of the Fond du Lac Reservation or by a designated agent of the Court who is not a party to the action, or any person within the jurisdiction of the Court or their competent agent or representative.

118. RETURN OF SERVICE. The officer or person causing the service to be made shall attach to the summons and file with the Fond du Lac Clerk of Courts a Return of Service stating the place, date, time, and person on whom the service was made. If service was made by Certified Mail, the return receipt shall be filed with the Clerk of Courts.

119. FILINGS. All pleadings, affidavits, and other papers in connection with a civil action shall be filed with the Clerk of Courts unless otherwise provided by this Code or by order of the Court.

120. FACSIMILE TRANSMISSION. Any paper may be filed with the Court by facsimile transmission, provided that the original signed document is filed with the Court within 5 days, along with the \$5 transmission fee and any applicable filing fee. Failure to comply with this rule may result in a striking by the Court of any subject pleadings or parts thereof, staying of further proceedings until compliance is complete, or dismissing the action, proceeding, or any part thereof.

121. ANSWER. Subdivision 1. Generally. The Defendant shall state, in short and plain terms, his defenses to each claim asserted by the Plaintiff. The original answer shall be filed with the Fond du Lac Clerk of Courts, and a copy of the answer shall be mailed by the Defendant to the Plaintiff within the time period prescribed by Rule 111.

Subdivision 2. Types of Defenses. The answer may contain the following types of defenses to the claim asserted by the adverse party:

- (a) Admission to the entire claim or to any part of the claim.
- (b) Denial of the entire claim or of any part of the claim.
- (c) A statement that the pleading party is without knowledge or information sufficient to form a belief as to the truth of the claim or any part of the claim. This statement shall have the same effect as a denial of the claim.

- (d) A statement that the Court lacks jurisdiction over the subject matter of the action or over the parties.
- (e) A statement that the facts stated by the adverse party do not constitute a cause of action for which relief can be granted.
- (f) A statement that the action is barred by the statute of limitations.
- (g) Any and all other matter constituting avoidance of the claim shall also be stated.

122. FILING ANSWER. The Defendant's answer to the complaint shall be filed with the Fond du Lac Clerk of Courts.

123. COUNTERCLAIM. The defendant may assert in his answer a counterclaim stating any claims that he has against the Plaintiff relating to the same subject matter, and in that event the Plaintiff shall have 10 days from the date of service of the counterclaim upon him to file an original of his reply to the counterclaim with the Fond du Lac Clerk of Courts and to serve a copy of the reply upon the Defendant. The original reply to the counterclaim shall be filed by the Clerk of Courts.

124. THIRD-PARTY INTERVENTION. Any third party seeking to intervene as a plaintiff or defendant in an action brought before the Fond du Lac Court may file such motions as appear necessary, together with supporting briefs and affidavits, where such party's interest is direct and substantial and is otherwise brought in accordance with the provisions of this Code. The standing of such party and the disposition of such claims shall rest with the sound discretion of the Court.

125. TIME. In computing any period of time prescribed or allowed by these rules, Saturdays, Sundays, or holidays recognized by the Fond du Lac Band of Lake Superior Chippewa shall not be counted.

126. PRE-TRIAL CONFERENCES. Within 15 days after the answer has been filed with the Fond du Lac Clerk of Courts, the Clerk shall schedule a pre-trial conference and shall notify the parties of the time, date, and place of the conference. At the pre-trial conference, the presiding judge shall ascertain the following:

- (a) Whether or not some or all of the issues in the dispute can be settled without adjudication;

- (b) Where or not justice requires any party to answer written interrogatories, produce any documents or other evidence, or otherwise engage in any pre-trial discovery considered proper by the judge. If the judge determines that pre-trial discovery is proper, he shall set forth the nature, extend and time schedule for its completion;
- (c) Whether or not the claim is ready for trial: (1) if the claim is ready for trial, the judge shall set a date for trial as soon as practicable; or (2) if the claim is not ready for trial, the judge shall set a subsequent date for trial; and
- (d) Whether resolution is required of constitutional or evidentiary issues. Constitutional and evidentiary issues must be raised in writing at the first pre-trial conference.

127. ISSUANCE OF SUBPOENAS. Subdivision 1. Upon request of any party or upon the Court's own initiative, the Court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. An officer of the Court may issue a subpoena on behalf of the Court where it has been signed by a judge and when~where it is to be served within the exterior boundaries of the Fond du Lac Reservation or upon other territory within the possession or control of the Fond du Lac Band of Lake Superior Chippewa.

Subdivision 2. A subpoena shall bear the name of the Fond du Lac Court and the signature of the authorizing judge, shall state the name of the person or a description of the physical evidence subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

128. SERVICE OF SUBPOENAS. A subpoena shall be served in the manner prescribed under Sections 115-118 of this Code.

129. FAILURE TO OBEY A SUBPOENA. In the absence of a compelling justification, a party who fails to obey a subpoena issued by the Fond du Lac Court in accordance with the provisions of this Code may be cited and held in contempt of Court.

130. TRIALS. All trials shall be court trials.

131. TRIAL PROCEDURE. In a civil case, the trial shall proceed in the following order:

- (a) The Plaintiff shall orally state his case and then shall produce the evidence and witnesses on his part.
- (b) The Defendant may then state his case and produce his evidence and witnesses in support of his case.
- (c) The parties may then respectively offer rebuttal evidence only.
- (d) When the evidence has been concluded, the parties may present closing arguments with the Defendant proceeding first.
- (e) When the arguments are closed, the Court shall deliberate, and may issue a ruling from the bench or render a written opinion within 10 days.

132. STANDARDS OF EVIDENCE AND PROOF. Subdivision 1. Testimonial and Physical Evidence. All testimony of witnesses shall be given orally under oath in open Court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open Court. Findings shall be based upon competent evidence only. The hearing shall be conducted so as to ascertain the substantial rights of the parties.

Subdivision 2. Standard of Proof. The party asserting a claim in a civil matter before the Fond du Lac Court shall have the burden of proving the claim so asserted by a fair preponderance of all the evidence.

133. APPLICATION OF FEDERAL RULES. The Fond du Lac Court may, in its sound discretion, resolve interpretational, procedural or evidentiary issues arising under this Code by reference to the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

134. COURT DATES. The Fond du Lac Court shall convene on the first Monday of each month, and on the third Monday of each month if deemed necessary by the Chief Judge. If the regularly scheduled court date falls on a Monday which is recognized as a holiday by the Reservation Business Committee, the Court shall convene on the following Monday.

135. Contempt of Court. Any person who demonstrates intentional disobedience or disregard towards the authority of the Fond du Lac Court, or who engages in the disorderly disruption of the proceedings of the Court, shall be held in contempt of court and shall be subject to a civil fine not to exceed two hundred dollars (\$200.00), and/or removal from the courtroom.

CHAPTER 200

JUDGMENTS

201. **DEFINITIONS: REQUIREMENTS.** A judgment shall be entered in each civil case. The Judgment shall be for money, for other relief, or for dismissal. A judgment is complete and is entered when it is signed by the judge and filed with the Fond du Lac Clerk of Courts. A judgment may include, in the court's discretion, all reasonable costs and disbursements made by the prevailing party in pursuing or defending the action, including, but not limited to, filing fees, service of process fees and mileage, attorneys fees, witness fees, discovery fees, or other costs reasonably incurred in the maintenance of the action.

202. **JUDGMENT BY DEFAULT.** When a party against whom a judgment for relief is sought has failed to defend or otherwise answer the claim in accordance with the provisions of this Code, and that fact is made to appear by an affidavit, judgment by default shall be entered by the presiding Judge against the non-answering party for the relief in which the party in whose favor the judgment is rendered, sought in his pleading. The judgment by default shall not be different in kind or exceed in amount that prayed for in the demand for judgment.

203. **SATISFACTION OF JUDGMENT.** A judgment may be satisfied in whole or in part as to any or all of the judgment debtors by the owner of the judgment executing under oath and filing with the Clerk of Courts an acknowledgment of satisfaction specifying the amount paid and whether it is full or partial satisfaction.

204. **JUDGMENT CONSTITUTES A LIEN.** A judgment shall constitute a lien on any property subject to judgment as defined by Section 209 of this Code. Notice of this lien may be placed by the judgment creditor with the appropriate public agency.

205. **LIFE OF JUDGMENT.** No judgment of the Court for money shall be enforceable after five (5) years of filing with the Clerk of Courts, unless application to renew the judgment has been filed before the expiration pursuant to Section 206.

206. **RENEWAL OF JUDGMENT.** Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the filing of a judgment for the payment of money, the Clerk of Courts shall renew the judgment and extend it for an additional five (5) years.

207. **ENFORCEMENT OF JUDGMENT.** If any final judgment for money rendered by the Fond du Lac Court is not satisfied within thirty (30) days of its filing by the Clerk of Courts, it may be executed or enforced in a manner consistent with Sections 209 and 210 of this Code, provided that a certified copy of the judgment has been served upon the party to whom it is directed, and if that party refuses to obey the judgment, he may be held in contempt of court.

208. **STAY OF JUDGMENT.** Except as provided in this section, no execution or enforcement of a judgment shall be issued until the expiration of the 30 days after its filing. When an appeal has been taken from the judgment, the Court may stay the enforcement of its judgment or it may stay or grant an injunction during the pendency of the appeal on such terms as it considers just for the security of the adverse party to the appeal.

209. **PROPERTY SUBJECT TO JUDGMENTS.** The following property of the judgment debtor shall be subject to the satisfaction of judgments issued by the Fond du Lac Court:

(a) Up to fifteen percent of the judgment debtor's net earnings as an employee of the Fond du Lac Reservation Business Committee or any of its subdivisions.

(b) Any moneys held by the Reservation Business Committee or its subdivisions in the name of the judgment debtor, except to the extent prohibited by federal law.

210. **EXECUTION OF JUDGMENT.** Upon application to the Court by the judgment creditor, the Court shall issue a Writ of Execution. The Writ of Execution shall refer to the judgment, the names of the parties to the judgment, the amount of the judgment, and the date and time that the judgment was entered. The Writ shall then be directed to the appropriate officer or division of the Fond du Lac Reservation Business Committee.

We do hereby certify that the foregoing Ordinance #04/92, was duly adopted by Resolution #1135/92 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 5, 1992 on the Fond du Lac Reservation, and subsequently amended by Ordinance #09/98, adopted by Resolution #1221/98 on July 16, 1998; and by Resolution #1352/01 on January 24, 2002.


Robert B. Peacock, Chairman


Peter J. Defoe Sec./Treas.