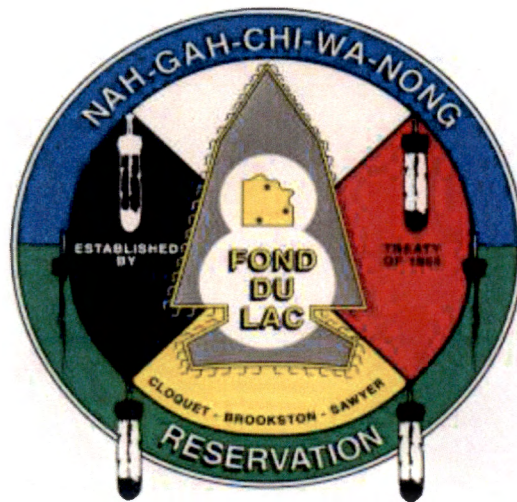


FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL COURT

WORKERS' COMPENSATION APPEAL PACKET



Enclosed are the instructions and forms for appealing a workers' compensation decision to Tribal Court. Read the instructions and the Band's Workers' Compensation Appeals Ordinance carefully to identify what is required.

Contents of Packet:

1. Instructions
2. Forms
 - a. Notice of Appeal
 - b. Certificate of Service
3. Workers' Compensation Appeals Ordinance

Workers' Compensation Appeal Packet Instructions

NOTICE ABOUT THESE INSTRUCTIONS AND INFORMATION

These instructions and forms are not a complete statement of the law. They cover basic information for appealing a workers' compensation decision to Tribal Court. For legal information visit your local law library or consult an attorney.

If you wish to have your workers' compensation appeal reviewed by the Tribal Court, it is important for you to read, very carefully, **THE ENTIRE INSTRUCTION PACKET, AS WELL AS THE WORKERS' COMPENSATION APPEALS ORDINANCE.**

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

You are not required to use the forms prepared by the Court. These forms are provided for your convenience only.

I. REQUIREMENTS FOR APPEALING A WORKERS' COMPENSATION DECISION

In order to appeal a workers' compensation decision to Tribal Court:

1. The appeal must involve a workers' compensation plan that provides for appeals to Tribal Court; and
2. A decision concerning legal issues must have been issued by a hearing examiner; and
3. You must serve a copy of the Notice of Appeal (including a copy of the decision being appealed) on all other parties **BEFORE** you can file the Notice of Appeal with the Court; and
4. You must file a certificate of service demonstrating that you have served a copy of the Notice of Appeal on all other parties when you file the Notice of Appeal with the Court; and
5. The Notice of Appeal must be filed within 30 business days of the date of the decision you are appealing; and
6. You must pay a filing fee of \$25.00 when you file the Notice of Appeal.

II. PREPARING THE NOTICE OF APPEAL

To prepare the notice of appeal using the court-provided forms, you must write your name and in the caption as the Appellant. Write the name(s) of the other party or parties in the caption as Appellee(s). Write your name in the blank space on the first line. The Court Clerk will provide you with a case number when you file the Notice of Appeal.

In Section 2, you must fill in the date that the hearing examiner issued his or her decision and you must attach a copy of the decision.

In Section 3, you must state your reason(s) for appeal. If you need to attach additional pages, please check the box on the second page.

After you have filled out the form, you must sign and date the form. You must fill in the address at which you wish to receive court mailings about this appeal. You must also include a telephone number at which you can be reached.

III. SERVING THE OPPOSING PARTY AND PREPARING THE CERTIFICATE OF SERVICE

In addition to preparing the Notice of Appeal, you must also serve the Notice of Appeal on the other party or parties and prepare a Certificate of Service.

In order to establish that you have served the Notice of Appeal, you must fill out a Certificate of Service form. This form must be filed with the Notice of Appeal. A form for certifying service is provided for your convenience. You are not required to use the Court's form.

If the Appellee is the Fond du Lac Band or any Band entity, you may serve the Notice of Appeal on the Fond du Lac Legal Affairs Office, 1720 Big Lake Road, Cloquet, MN 55720.

IV. FILING THE NOTICE OF APPEAL AND CERTIFICATE OF SERVICE

After you have prepared the Notice of Appeal and the Certificate of Service, both documents must be filed at the Tribal Court. The Notice of Appeal and the Certificate of Service must be filed within 30 days of the date of the decision being appealed.

The Tribal Court is located in the Fond du Lac Band of Lake Superior Chippewa Resource Management and Tribal Court Building at:

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

Please call the Court Clerk at (218) 878-7151 to find the current operating hours.

The mailing address for the Court is:

Fond du Lac Tribal Court
1720 Big Lake Road
Cloquet, MN 55720

There is a \$25.00 filing fee for filing the Notice of Appeal. **The fee must be paid at the time of filing.**

V. AFTER THE NOTICE OF APPEAL IS FILED

Please review the attached Ordinance for information about what will happen after the Notice of Appeal is filed. You should carefully review any documents you receive from the Court or from another party regarding the Notice of Appeal.

You should carefully review the record that is produced by the Band after the Notice of Appeal is filed. If you identify additional documents or information that you believe should be part of the record, you must notify the Court in writing identifying what other documents or information you believe should be part of the record. This request must be made within five (5) business days of your receipt of the record.

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

1
2 _____,) **CASE NO.:** _____
3 **APPELLANT,**)
4 **v.**)
5 _____,) **CERTIFICATE OF SERVICE**
6 **APPELLEE.**)

7 I, _____, Appellant in this matter, do hereby certify that I served a
8 true copy of the NOTICE OF APPEAL, as follows (CHOOSE ONE):

9 by placing the same in the United States Mail, postage paid, addressed to:

10 _____
(Name of Person)

11 at _____
(Address)

12 _____
(City, State, Zip Code)

13 on _____, 20_____.

14 by hand delivering the same to:

15 _____
(Name of Person)

16 at _____
(Address)

17 _____
(City, State, Zip Code)

18 on _____, 20_____.

19 Certified this _____ day of _____, 20_____.

20
21
22 _____
23 **Print Name of Appellant**

Signature of Appellant

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #05/15

WORKERS' COMPENSATION APPEALS

Adopted by Resolution #1348/15 of the Fond du Lac Reservation Business Committee on November 18, 2015.

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FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #05/15

WORKERS' COMPENSATION APPEALS

**CHAPTER 1
AUTHORITY; PURPOSE; 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 Band of Lake Superior Chippewa, as reserved under the Treaty of LaPointe, 10 Stat. 1109, and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe; under Section 302 of the Minnesota Chippewa Tribe Revised Land Ordinance #2; and under the common law of the United States.

Section 102 Purpose

The purpose of this Ordinance is to provide additional due process and an opportunity to appeal for employees protected by the Band's workers' compensation policy.

Section 103 Scope

This Ordinance only applies to appeals involving workers's compensation plans that provide for appeals to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.

Section 105 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
TRIBAL COURT APPEALS

Section 201 Tribal Court Appeals

- (a) Right to an Appeal. A decision by a hearing examiner concerning legal issues, whether the result of an evidentiary hearing or no hearing, may be appealed by either party to the Tribal Court of the Fond du Lac Band of Lake Superior Chippewa.
- (b) Filing an Appeal. A Notice of Appeal must be filed with the Tribal Court in writing within 30 business days of the date of the decision. The Notice of Appeal shall specify the order appealed from and the basis for the appeal. A copy of the order appealed from shall be attached to the Notice of Appeal. Prior to filing an appeal with the Tribal Court, the appealing party shall serve copy of the Notice of Appeal and the order appealed from on all other parties. Proof of such service shall be filed with the Tribal Court together with the Notice of Appeal. There shall be a \$25 filing fee for the Notice of Appeal.
- (c) Production of the Record. Within thirty (30) business days following the date a Notice of Appeal is filed, the Band shall transmit to the Tribal Court the entire underlying record before the hearing examiner relating to the decision being appealed. A copy of the record provided to the Tribal Court shall be transmitted by the Band to each party to the appeal. Within five (5) business days of receipt of the record submitted to the Tribal Court, a party may file a written request with the Court identifying additional documents or information which the party believes should be included in the record. If it is shown to the satisfaction of the Tribal Court that the additional documents or information cited by the party were part of the underlying record, the Tribal Court shall order that such documents or information be included in the record to be considered by the Tribal Court.
- (d) Briefing Schedule. After receiving a Notice of Appeal, the Tribal Court shall issue a briefing schedule setting forth the deadlines for filing briefs and the oral argument date, if any. In order to set the brief schedule, the Tribal Court may schedule a conference to deal with matters such as:
- i. Supplementation or shortening of the record;
 - ii. Clarification of the specific issues presented on appeal;
 - iii. Scheduling of briefs or other written argument;
 - iv. Setting the date and time for oral argument;
 - v. Such other deadlines and other matters as may expedite the orderly and prompt resolution of the issues presented by the appeal.

- (e) Scope of Review. The Tribal Court's review will be based upon the record established by the Hearing Examiner. The Tribal Court may not hold an evidentiary hearing or make new factual determinations. In determining whether the hearing examiner made an error of law or an arbitrary and capricious application of the law, the Tribal Court may be guided by State of Minnesota workers' compensation caselaw.
- (f) Decision. After reviewing the briefs and conducting a hearing, if any, the Tribal Court shall issue a decision. The Tribal Court may decide as follows:
 - (i) If the Tribal Court determines that the factual record is inadequate, the Court may remand the matter to the hearing examiner for additional factual determinations.
 - (ii) If the Tribal Court determines that the hearing examiner's decision was based on an error of law, the Tribal Court may reverse the hearing examiner's decision, modify the hearing examiner's decision, or reverse and remand for further proceedings.
 - (iii) If the Tribal Court determines that the hearing examiner's decision was based on an arbitrary and capricious application of the law to the facts, the Tribal Court may reverse the hearing examiner's decision, modify the hearing examiner's decision, or reverse and remand for further proceedings.
 - (iv) If the factual record is adequate, the hearing examiner's decision was not based on an error of law, and the hearing examiner's decision was not arbitrary and capricious, the Tribal Court shall affirm the hearing examiner's decision.
- (g) No Further Appeals. The decision of the Tribal Court judge shall be final and not subject to further appeal.

CHAPTER 3
EFFECTIVE DATE; AMENDMENTS; SEVERABILITY

Section 501 Effective Date

The provisions of this Ordinance shall become effective January 1, 2016.

Section 502 Amendment or Recission

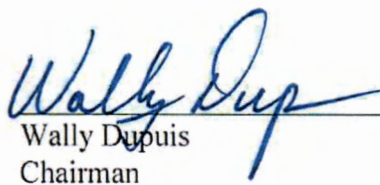
The Reservation Business Committee may amend this Ordinance as it deems necessary to protect the public health, safety and welfare of the Fond du Lac Reservation. The provisions of this Ordinance may be amended by resolution of the Reservation Business Committee.

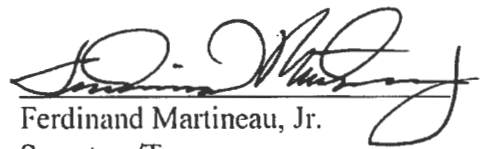
Section 503 Severability

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 #05/15 was duly presented and adopted by Resolution #1348/15 by a vote of 2 for, 0 against, 0 silent, with a quorum of 3 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on November 18, 2015, on the Fond du Lac Reservation.


Wally Dupuis
Chairman


Ferdinand Martineau, Jr.
Secretary/Treasurer