

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL COURT

WRIT OF EXECUTION PACKET (SMALL CLAIMS COLLECTIONS)



This packet contains the instructions and forms for obtaining a Writ of Execution to collect a small claims judgment. In order to apply for a Writ of Execution, you first need to obtain a small claims judgment. If you need to obtain a small claims judgment, you should use the Small Claims Plaintiff Packet.

Contents of the Packet:

1. Instructions
2. Forms:
 - a. Motion and Affidavit for Writ of Execution

Please make sure that your packet contains all of the listed contents.

Writ of Execution Packet (Small Claims Collections) Instructions

Introduction

These instructions will guide you through the process of obtaining a Writ of Execution to collect a small claims judgment. Please read the instructions carefully. If you have questions about filling out the Motion and Affidavit for a Writ of Execution, you can 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 a Writ of Execution, you should consult an attorney.

Eligibility

A Writ of Execution will allow you to seize assets in order to collect on a small claims judgment. For example, you can use a Writ of Execution to deduct money from a Fond du Lac Band member's per capita account.

In order to obtain a Writ of Execution, you must first obtain a small claims judgment. If you haven't already gone to tribal court for your small claims case, you will first need to obtain the Small Claims (Plaintiff) Packet. The Small Claims Plaintiff Packet contains the instructions and forms for filing a small claims suit in Tribal Court.

When you submit a Motion and Affidavit for a Writ of Execution, you are telling the court that the defendant/judgment debtor has not paid you the money owed. Before you submit the Motion and Affidavit, you must swear before a notary public that the information contained in the Motion and Affidavit is correct. If the defendant/judgment debtor has paid the full amount of the money owed, you should not file the Motion and Affidavit for a Writ of Execution.

You should give the defendant time to pay before you apply for a Writ of Execution. In general, the Court will want you to wait at least 30 days before submitting a Motion and Affidavit.

Filling Out the Form

The packet contains a Motion and Affidavit for a Writ of Execution form with 9 blank spaces. Each space is numbered. The Motion and Affidavit must be signed and dated in front of a notary public. You should not sign and date the Motion and Affidavit until you are in front of a notary public. You should fill out each space as follows:

- (1) **Plaintiff/Judgment Creditor.** Write your name.
- (2) **Case No.** Write the case number from your small claims case. You can find your case number on your small claims judgment or other small claims paperwork. If you can't find your small claims paperwork, the Tribal Court Clerk may be able to find the case number for you.

- (3) **Defendant/Judgment Debtor.** Write the name of the defendant/judgment debtor. This is the person who you are trying to collect money from.
- (4) **Judgment Amount.** This is amount of money that the court awarded you. This amount will be on the small claims judgment.
- (5) **Judgment Date.** Write the date when you received the judgment.
- (6) **Your Name.** Write your name again in this space.
- (7) **Amount Owed.** Write the amount the defendant still owes. If the defendant/judgment debtor has not made any payments, this will be judgment awarded by the Court. If the defendant/judgment debtor has made partial payments, you should write the amount of money still due.

STEPS 8 AND 9 MUST BE DONE IN FRONT OF A NOTARY

- (8) **Date.** Write the date when you are signing the Motion and Affidavit for a Writ of Execution. You must date the Motion and Affidavit in front of a notary
- (9) **Signature.** Sign your name in this space. You must sign the Motion and Affidavit in front of a notary.

Notarizing the Motion and Affidavit

Before you submit the Motion and Affidavit, you must have the document notarized. You must sign and date the Motion and Affidavit in front of a notary public. The notary public will fill out the remaining blank spaces on the document. The Tribal Court Clerk is a notary public and is available to notarize your document.

Submitting the Motion and Affidavit

After you fill out the Motion and Affidavit for a Writ of Execution and have it notarized, you must file the Motion and Affidavit with the Tribal Court Clerk. The clerk will present the application to the Tribal Court Judge, who will decide whether to grant the Motion or to schedule a hearing on the matter. If the judge grants the Motion, you will receive a copy of the Writ of Execution in the mail. If the judge decides to schedule a hearing on the matter, you will receive a notice informing you of the date and time of the hearing.

After a Writ of Execution is Issued

After a Writ of Execution is issued, the Tribal Court will forward the writ to the Band's accounting department. Garnishments of a Band employee's pay will be done in accordance with the Civil Code, FDL Ord. #04/92, and the Garnishment Procedures, FDL Ord. #02/99. Deductions from a Band member's per capita account will be done in accordance with the Policy for Voluntary and Involuntary Deductions from the Per Capita Accounts of Fond du Lac Band Members.

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

_____, Plaintiff/Judgment Creditor,)	Case No. _____
v.)	
_____, Defendant/Judgment Debtor.)	MOTION AND AFFIDAVIT FOR A WRIT OF EXECUTION
)	
Judgment Amount: _____)	
Judgment Date: _____)	

COMES NOW, _____, judgment creditor in the matter referred to above, to make application for a Writ of Execution pursuant to Section 210 of the Fond du Lac Civil Code.

The undersigned judgment creditor states, under penalty of perjury, that the judgment debtor has not fully satisfied the court's judgment and therefore requests that a Writ of Execution be issued in the following amount: _____, plus interest as ordered in the judgment.

Date: _____

Plaintiff/Judgment Creditor

State of _____)
) ss.
 County of _____)

Signed and sworn to before me this _____ day of _____, 20____.

Notary Public

(seal)

My Commission Expires: _____

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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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 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