

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

ORDINANCE #04/07

FULL FAITH AND CREDIT
FOR FOREIGN PROTECTION ORDERS

Adopted by Resolution #1406/07 of the Fond du Lac Reservation Business Committee
on October 18, 2007.

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CHAPTER 1
AUTHORITY, PURPOSE & SCOPE

SECTION 101 AUTHORITY

This Ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476, and Article VI of the Revised Constitution of the Minnesota Chippewa Tribe.

SECTION 102 FINDINGS & PURPOSE

a. Findings. The Reservation Business Committee finds that:

1. The problem of domestic violence and stalking on the Fond du Lac Reservation has a serious impact on the ability of the Band to provide for the health and well-being of its members and threatens the political integrity of the Band because of its detrimental effect upon victims and their families to function in our community.
2. The federal Violence Against Women Act, 18 U.S.C. § 2265, requires state and tribal courts to honor protection orders entered by the courts of other jurisdictions.

b. Purpose. It is accordingly the purpose of this Ordinance to ensure that domestic violence protection orders issued by other jurisdictions, including tribal and state courts, be honored and enforced by the Fond du Lac Band through its law enforcement officers and Tribal Court, to the extent that such enforcement does not undermine other rights vested to Band members under federal and tribal law.

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 and there shall be no vested rights of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Ordinance or by acts done pursuant thereto shall exist subject to the power of the Reservation Business Committee to amend or repeal this Ordinance or any part herein at any time. 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 forum not expressly authorized to exercise jurisdiction under this Ordinance. Any provision of this Ordinance which is inconsistent or incompatible with applicable federal law shall be invalid and unenforceable to the extent of such inconsistency or incompatibility, provided, however, that all remaining provisions shall be given full force and effect.

CHAPTER 2
DEFINITIONS & INTERPRETATION

SECTION 201 DEFINITIONS

- a. **"Band"** means the Fond du Lac Band of Lake Superior Chippewa.
- b. **"Enforcing Court"** means a tribal or state court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal or state court.
- c. **"Ex Parte Protection Order"** means a temporary order issued by a tribal or state court which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.
- d. **"Fond du Lac Reservation"** means all lands set aside under treaty or statute as the lands of the Fond du Lac Band.
- e. **"Full Faith and Credit"** means the act of enforcing an ex parte or permanent order of protection from another tribal or state court as if it were the order of the Tribal Court of the Fond du Lac Band. In enforcing said order of protection, the Fond du Lac Band shall utilize any applicable laws of the Band, and any delegated authority under federal or state law, including mandatory arrest for violations of protection orders. Registration of a protection order with the Tribal Court is not a prerequisite to enforcement under this Ordinance.
- f. **"Issuing Court"** means a tribal or state court that issues an ex parte or permanent order of protection against a person.
- g. **"Mutual Protection Order"** means an order issued by a tribal or state court which restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person(s). In order to be enforced by the Fond du Lac Band, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing Court

finding that each of the persons to a mutual protection order have committed an act of domestic violence under the laws of the issuing jurisdiction.

- h. **"Permanent Order of Protection"** means an order issued by a tribal or state court which restrains any person, Indian or non-Indian, either permanently or for a specified period of time, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person.
- i. **"Registration"** means the act of filing a protection order issued by another tribal or state court with the Fond du Lac Band through its Police Department.
- j. **"Reservation Business Committee"** shall mean the elected governing body of the Fond du Lac Band.

SECTION 202 INTERPRETATION

The provisions of this Ordinance, and all laws and regulations adopted hereunder, shall be interpreted and administered in a manner which secures and maintains, to the greatest degree permissible under law, the independent right of self-government of the Fond du Lac Band over its lands and operations.

CHAPTER 3
ENFORCEMENT OF FOREIGN PROTECTION ORDERS

SECTION 301 EFFECT OF FOREIGN PROTECTION ORDERS ON THE FOND DU
LAC BAND RESERVATION

- a. Full Faith and Credit. Whenever any law enforcement officer of the Fond du Lac Band or the Tribal Court is presented with an order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another tribal or state court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the Fond du Lac Tribal Court.
- b. Role of Law Enforcement in Enforcing this Section. If a law enforcement officer of the Fond du Lac Band is presented with a protection order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, the officer shall enforce such order as if it had been entered by the Fond du Lac Tribal Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person.
- c. Immunity for Good Faith Enforcement of Foreign Protection Order. An officer or any other law enforcement official of the Fond du Lac Band who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a tribal officer who effects the arrest of a non-Indian for violation of a protection order.
- d. Role of Tribal Court in Enforcing This Section. The Fond du Lac Tribal Court shall enforce a protection order, either ex parte or permanent, and all provisions of that protection

order, including child custody and property awards, if all the following are satisfied:

1. The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
2. The order remains in effect in the issuing jurisdiction;
3. The issuing court had jurisdiction over the parties and subject matter; and
4. The respondent was afforded reasonable notice and the opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he may have to the issuance of a permanent protection order.

SECTION 302 REGISTRATION OF FOREIGN PROTECTION ORDER WITH THE TRIBAL COURT

Any person who has received a protection order, either ex parte or permanent, from another tribal or state court, may file the protection order with the Clerk of the Fond du Lac Tribal Court and request that the Tribal Court grant full faith and credit to that protection order. Immediately upon the filing of that protection order with the Court, a Tribal Court Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of Section 301 shall enter an order recognizing the protection order. Said order shall immediately be forwarded to tribal and local law enforcement. A person shall not be charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another tribal or state court need not file that protection order with the Tribal Court in order to receive law enforcement protection from the Respondent under this Ordinance.

SECTION 303 EXCEPTIONS

- a. Nothing in this Chapter shall be construed to divest a person of his or her individualized right to occupancy of tribal trust land or of a dwelling located on tribal trust land as established under federal or tribal law.

- b. The Tribal Court and law enforcement shall administer this Chapter in a manner which minimizes disruption of the programs or business operations of the Fond du Lac Band.

SECTION 304 VIOLATION OF FOREIGN PROTECTION ORDER

Any person who violates a protection order, either ex parte or permanent, issued by any state or tribal court, shall be subject to (1) removal from Band lands by law enforcement; (2) incarceration as provided under applicable law; and (3) future banishment or exclusion from Band lands in accordance with Band law. It is not a defense to this section that a protected person has not notified or registered the protection order with the Tribal Court prior to the violation.

ARTICLE 4
EFFECTIVE DATE; AMENDMENT OR RESCISSION

SECTION 401 EFFECTIVE DATE

The provisions of this Ordinance shall be effective on the date of adoption by the Reservation Business Committee.

SECTION 402 AMENDMENT OR RESCISSION

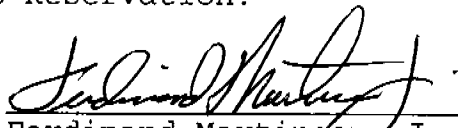
The provisions of this Ordinance may be amended or rescinded by Resolution of the Fond du Lac Reservation Business Committee.

CERTIFICATION

We do hereby certify that the foregoing Ordinance #04/07 was duly presented and adopted by Resolution #1406/07 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 October 18, 2007 on the Fond du Lac Reservation.



Karen R. Diver
Chairwoman



Ferdinand Martineau, Jr.
Secretary/Treasurer

Fond du Lac Reservation

Business Committee

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Cloquet, MN 55720
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RESOLUTION #1406/07

ENACTING AN ORDINANCE GOVERNING ENFORCEMENT OF PROTECTION ORDERS ISSUED BY OTHER JURISDICTIONS



Chairwoman
Karen R. Diver

Secretary/Treasurer
Ferdinand Martineau, Jr.

Dist. I Councilman
Eugene Reynolds

Dist. II Councilperson
Sandra M. Shabiash

Dist. III Councilman
Roger "Bouda" Smith, Sr.

The Fond du Lac Reservation Business Committee, on behalf of the Fond du Lac Band of Lake Superior Chippewa, hereby enacts the following Resolution:

WHEREAS, the Fond du Lac Reservation is a sovereignty, created by the Treaty of September 30, 1854, 10 Stat. 1109, as the permanent home of the Fond du Lac Band of Lake Superior Chippewa, which possesses the inherent jurisdiction and authority to exercise regulatory control within the boundaries of the Fond du Lac Reservation; and

WHEREAS, it is the sovereign obligation of the Fond du Lac Reservation Business Committee, as the Governing Body of the Fond du Lac Band, under the Indian Reorganization Act, 25 U.S.C. § 461 et seq., and in accordance with the Indian Self-Determination Act, 25 U.S.C. § 450 et seq., to assume the responsibilities of self government; and


WHEREAS, the federal Violence Against Women Act, 18 U.S.C. § 2265, requires that states and tribes accord full faith and credit to orders for protection issued by other states and tribes, and enforce such orders as if they were issued by the enforcing state or tribe; and

WHEREAS, the Reservation Business Committee has determined that it is in the best interests of the Fond du Lac Band to adopt an ordinance governing the enforcement of protection orders issued by other jurisdictions on the Fond du Lac Reservation;


NOW THEREFORE BE IT RESOLVED, that the Fond du Lac Reservation Business Committee hereby adopts and enacts Ordinance #04/07, entitled "Full Faith and Credit for Foreign Protection Orders", to become effective thirty (30) days from this enactment.

CERTIFICATION

We do hereby certify that the foregoing Resolution was duly presented and acted upon 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 October 18, 2007 on the Fond du Lac Reservation.



Karen R. Diver,
Chairwoman



Ferdinand Martineau, Jr.,
Secretary/Treasurer