

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE #08/94, AS AMENDED
FOND DU LAC COURT OF APPEALS

Adopted on April 25, 1994 by Resolution #1157/94 of the Fond du Lac Reservation Business Committee.

Amended by Ordinance #07/96, adopted by Resolution #2081/96 of the Fond du Lac Reservation Business Committee on June 18, 1996.

Amended by Ordinance #03/17, adopted by Resolution #1248/17 of the Fond du Lac Reservation Business Committee on July 11, 2017.

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA
ORDINANCE #08/94, as amended**

FOND DU LAC COURT OF APPEALS

Section 101 Authority

The Fond du Lac Reservation Business Committee, as the governing body of the Fond du Lac Band of Lake Superior Chippewa, enacts this Ordinance pursuant to the authority granted under Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and pursuant to its inherent sovereign authority as recognized by the United States under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476.

Section 102 Jurisdiction

The Fond du Lac Court of Appeals shall have exclusive jurisdiction to hear appeals from the Fond du Lac Tribal Court, unless otherwise restricted by an ordinance of the Minnesota Chippewa Tribe or the Fond du Lac Band. Decisions issued by the Fond du Lac Court of Appeals shall be final.

Section 103 Composition of the Court of Appeals

The Court of Appeals shall consist of four (4) appellate judges to be appointed by the Reservation Business Committee.

Section 104 Selection and Appointment of Judges

- (a) Appellate Judges. The Reservation Business Committee shall select and appoint the four (4) appellate judges by majority vote to a three (3) year term of office. Vacancies in the office of Appellate Judge shall be filled by appointment by the Reservation Business Committee for the remainder of the unexpired term. Upon the expiration of a term of office, an appellate judge may be reappointed, otherwise the Office of the Appellate Judge shall become vacant. The Band's Tribal Employment Rights Ordinance, Fond du Lac Ordinance #12/94, shall apply to the appointment of judges.
- (b) Qualifications of Judges. Each judge appointed by the Reservation Business Committee shall be a graduate of an accredited law school, shall be licensed in the practice of law, and shall have demonstrated distinct knowledge and competence in Indian tribal sovereignty and Indian law. A judge of the Court of Appeals shall not hear any appeals involving a case over which that judge presided as a trial court judge or in which that judge was materially involved as a party or in a representative capacity as an attorney at law.

Section 105 Clerk of Court

The Clerk of Court of the Fond du Lac Band shall serve as the Clerk of the Fond du Lac Court of Appeals.

Section 106 Appellate Panels

Each case before the Court of Appeals shall be submitted to a panel of three (3) judges. Panels shall be selected based on availability of judges. In the event that all four appellate judges are available to hear a case, the panel shall be selected at random by the Clerk of Court.

Section 107 Who May Appeal

Any party aggrieved by a decision of the Fond du Lac Tribal Court, who has a direct and substantial interest therein, may initiate an appeal.

Section 108 What May be Appealed

Any final judgment or order of the Fond du Lac Tribal Court may be appealed to the Court of Appeals. A final judgment or order is one which disposes of all issues in litigation between at least two parties to a case.

All appeals shall be based on the trial court record. No new evidence will be heard during the appeal.

Section 109 When an Appeal May be Taken

- (a) A notice of appeal must be filed with the Fond du Lac Clerk of Court, and served on all other parties, no later than 30 days after the entry of the judgment or order from which the appeal is taken. If one party has timely and properly filed a notice of appeal, any other party may file a notice of appeal within 15 days of service of the initial party's notice of appeal.
- (b) A judgment or order is entered when it is filed with the Clerk of Court.
- (c) Failure to file a notice of appeal as provided in this section deprives the Court of Appeals of subject matter jurisdiction in the appeal.

Section 110 How an Appeal May be Taken

- (a) A notice of appeal shall be filed by any party seeking review of a final judgment or order of the Fond du Lac Tribal Court. The notice of appeal shall be filed and served, together with the request for transcript required by Section 110(c), within the time prescribed by Section 109 of this Ordinance. The notice of appeal shall bear the caption and case number of the case in the Fond du Lac Tribal Court and shall be labeled "Notice of Appeal." The notice of appeal shall identify by date, judge, and case number the judgment or order appealed, and shall state the substance of the judgment or order and whether the appellant appeals from the entirety of the judgment or order or from only part thereof, and if the latter, shall specify the part thereof. The notice of appeal shall also include a brief statement of the grounds for appeal and shall specify the precise relief sought. No appeal shall be dismissed for any formal defects in the notice of appeal as long as the matter appealed is clearly identified and filing and service are timely and properly made. If a notice of appeal does not contain every item required by this subsection, the Court of Appeals may make such orders as the interests of justice require.
- (b) Unless waived, the filing fee prescribed by Section 119 shall be paid to the Fond du Lac Clerk of Court at the same time the notice of appeal is filed. The Clerk of Court shall not accept for filing a notice of appeal that is not accompanied by the filing fee or an order waiving fees.
- (c) If Appellant would like a transcript in addition to the trial court audio recordings, request for transcript shall be filed with the Clerk of Court at the same time the notice of appeal is filed. The request for transcript shall specify those proceedings, or parts thereof, to which any reference will be made in the appeal proceedings and for which the official transcript will be required by the Court of Appeals for its review. Any other party may request transcription

of additional proceedings or parts thereof by filing a request no later than 15 days after service of the Appellant's notice of appeal and request for transcript.

- (d) The filing of an appeal does not constitute an automatic stay of the Fond du Lac Tribal Court's judgment or order. A motion seeking a stay may be addressed to the Fond du Lac Tribal Court before or after the filing of the notice of appeal.

Section 111 Clerical Functions Upon Filing an Appeal

- (a) Upon receipt of the notice of appeal, filing fee, and request for transcript, the Fond du Lac Clerk of Court shall prepare the record on appeal. The record on appeal shall consist of all papers filed by the parties or the Court, the trial court audio recordings, and the transcript requested by Appellant or any other party, unless limited by stipulation of the parties.
- (b) Upon receipt of the notice of appeal and the filing fee, the Clerk of Court shall docket the appeal and shall notify the judges of the Court of Appeals of the pending appeal.
- (c) The Clerk of Court shall file the completed record on appeal, and shall serve notice thereof, together with a copy of any transcript included in the record, on each of the parties.

Section 112 Briefing and Oral Argument

- (a) If the Appellant intends to submit a brief, he or she shall file and serve a brief within 45 days of the filing of the record on appeal.
- (b) If the Respondent intends to submit a brief, he or she shall file and serve a response brief within 30 days of service of Appellant's brief, or within 75 days of the filing of the record on appeal, whichever occurs first.
- (c) The Appellant may file and serve a reply brief within 15 days of service of Respondent's brief.
- (d) Briefs shall contain an argument and conclusion specifying the precise relief sought. The initial brief filed shall also include a statement of the case and statement of the issues presented on appeal and how the Fond du Lac Tribal Court decided them.
- (e) Briefs shall be typewritten, double-spaced, on white 8-1/2 by 11 inch paper, and shall not exceed 50 pages in length, except that reply briefs shall not exceed 15 pages in length, exclusive of any table of contents and three copies of each brief shall be filed with the Fond du Lac Clerk of Court.
- (f) Oral argument may be permitted after briefing. The length of argument shall be set by the appellate panel hearing the appeal. The appellate panel may by majority vote render final disposition of a case without oral argument under the following conditions: (1) where it is the considered opinion of the Court that the appeal is frivolous; (2) where the dispositive issue or issues of the case have been decided authoritatively by this or another court of competent jurisdiction; or (3) where the briefs and record adequately present the facts and legal arguments, and the Court has determined that oral argument will not significantly aid the decisionmaking process.

Section 113 Decisions

- (a) All decisions of the Court of Appeals shall be in writing, shall specify the relief granted, if any, and the Court's rationale therefore. The Fond du Lac Clerk of Court shall, within two days of their filing, furnish copies of the decision and any order of the Court of Appeals to the Fond du Lac Tribal Court and to the parties.
- (b) A decision shall be rendered in every case within ninety (90) days after oral argument or after final submission of briefs or memoranda by the parties, whichever is later. The appellate panel may, by majority vote, waive the ninety (90) day limitation for any proceeding before the Court for good cause shown.
- (c) All decisions and dissents shall be written by the most senior judge voting with the majority or dissent, unless assigned by that judge to another judge. Any judge dissenting or concurring shall file a written opinion, or join in a written opinion filed by another judge. The most senior judge is the judge having the longest term of continuous service as a judge on any court at the time.
- (d) A petition for reconsideration may be filed by any aggrieved party within 15 days of the filing of any decision or order of the Court of Appeals. The petition for reconsideration shall state the specific change in the decision sought, and all reasons, and the authority therefore, for the change. Any nonpetitioning party shall have 15 days from the date of service of the petition to respond. Oral argument on a petition for reconsideration is discretionary with the Court. The appellate panel shall render a decision on the petition for reconsideration within thirty (30) days of the deadline for the nonpetitioning party's response.
- (e) The Fond du Lac Tribal Court shall in all respects be bound by the decisions and orders of the Court of Appeals.

Section 114 Constitutional Interpretations

The Fond du Lac Court of Appeals shall not be empowered to interpret the Constitution of the Minnesota Chippewa Tribe. If the appellate panel determines that a decision requires an interpretation of the Minnesota Chippewa Tribe's Constitution, then the issue shall be certified forthwith to the Tribal Executive Committee of the Minnesota Chippewa Tribe for its consideration pursuant to Tribal Constitution Interpretation No. 1-80. Pending a final constitutional interpretation by the Tribal Executive Committee on an issue so certified, the appeal shall be stayed.

Section 115 Standard of Review

The Fond du Lac Court of Appeals shall apply the following standards of review:

- (a) A finding of fact by the Fond du Lac Tribal Court shall be sustained unless it is clearly erroneous.
- (b) A factual inference drawn by the Fond du Lac Tribal Court shall be reviewed as a finding of fact as long as more than one reasonable inference can be drawn from the facts.
- (c) A finding, explicit or implicit, of witness credibility shall be reviewed as a finding of fact.
- (d) Conclusions of law are reviewed de novo by the Court of Appeals.
- (e) A stipulated, uncontested, or documentary fact is reviewed as a conclusion of law.

- (f) The meaning of an unambiguous contract is reviewed as a conclusion of law.
- (g) A mixed issue of fact and law is reviewed according to the appropriate standard for each part.
- (h) Whether a finding of fact or a conclusion of law has been properly labeled as such by the Fond du Lac Tribal Court is reviewed as a conclusion of law.
- (i) A discretionary determination shall be sustained if the record reflects that the Fond du Lac Tribal Court exercised discretion and applied the appropriate legal standard to the admissible facts of record.
- (j) Sentencing and the imposition of fines, forfeitures and other penalties or remedial measures, not including the assessment of damages, shall be reviewed as a discretionary determination.
- (k) The Fond du Lac Court of Appeals shall not substitute its judgment for that of the Fond du Lac Tribal Court on a matter committed to the discretion of the Fond du Lac Tribal Court.

Section 116 Obligations of the Fond du Lac Tribal Court

- (a) All decisions rendered by the Fond du Lac Tribal Court shall contain separate findings of fact and conclusion of law. It is sufficient if the findings and conclusions are made orally on the record in open court, or if they are contained in a written opinion.
- (b) If the Fond du Lac Tribal Court fails to make findings of fact, the Court of Appeals may affirm the judgment if the records supports it, reserve if the record does not support it, or remand for findings and conclusions.

Section 117 Preservation of Issues for Appeal

- (a) Absent a compelling reason, issues not raised before the Fond du Lac Tribal Court will not be heard before the Court of Appeals.
- (b) An issue raised but not argued orally or by brief shall be deemed abandoned.
- (c) A moot issue will not be reviewed unless it is capable of repetition yet due to its nature is likely to evade appellate review.
- (d) No facts which are not in the trial record may be presented in any manner to the Fond du lac Court of Appeals.

Section 118 Time

- (a) In computing any period of time prescribed or allowed by these rules or by order of the Fond du Lac Court of Appeals, the day of the act, event, or default from which the period of time begins to run is not included. The last day of the period is computed unless it is a Saturday, Sunday, holiday recognized by the Fond du Lac Band of Lake Superior Chippewa, or day upon which the office of the Fond du lac Tribal Court is not open for business. When the period of time is less than 7 days, Saturdays, Sundays, holidays, or days upon which the office of the Fond du Lac Tribal Court is not open for business shall not be included in the period.
- (b) Whenever a party has a right or is required to do some act within a prescribed period of time following service of a notice or paper on the party, and when that notice or other paper is served by mail, 3 days shall be added to the prescribed period.

Section 119 Service

- (a) Any paper filed with the Fond du Lac Clerk of Court shall be served upon each other party. Filing constitutes the certification of the party or the party's attorney that service has been properly made.
- (b) Service shall be made upon a party's attorney, if any, or if the party is not represented by counsel upon the party.
- (c) Service shall be made personally or by first class mail. Service made by mail is complete upon mailing.

Section 120 Fees

- (a) For filing of the notice of appeal, \$20.00.
- (b) For the preparation of a transcript, \$1 per page.
- (c) The Fond du Lac Tribal Court may order the waiver of the fees provided for in this section, upon the filing of sufficient affidavit of indigency.

Section 121 Practice Before the Court of Appeals

Any individual authorized to practice before the Fond du Lac Tribal Court shall be authorized to practice before the Fond du Lac Court of Appeals.

Section 122 Motions Before the Court of Appeals

Any party to an appeal, and any non-party seeking to intervene as an appellant or respondent in an appeal, may file such motions as appear necessary, together with supporting briefs and affidavits, as appropriate. Such motions shall be filed with the Clerk of Court, except for motions filed by a non-party seeking to intervene as an appellant in a case where no notice of appeal has been filed by any other party, in which case the motion shall be filed with the Clerk of Court, together with the proposed notice of appeals, brief and affidavits and shall toll the time prescribed by Section 109 until the motion is disposed of. All motions before the Fond du Lac Court of Appeals shall be placed upon a briefing schedule by the chief judge, who may order oral arguments at his or her discretion.

Section 123 Applicability of the Federal Rules of Civil Appellate Procedure

The Fond du Lac Court of Appeals may, in its sound discretion, resolve interpretational or procedural issue arising under these rules by reference to the Federal Rules of Civil Procedure.

Section 124 Trial By Jury

There shall be no trial by jury in the Court of Appeals.

Section 125 Interlocutory Decisions

The Court of Appeals may issue such interlocutory orders, decrees, or injunctions as may be prescribed in the Fond du Lac Civil Code.

Section 126 Ancillary Jurisdiction

The Court of Appeals shall have jurisdiction to issue all writs and orders necessary in aid of its jurisdiction with respect to cases pending before it and for the enforcement of its orders or judgment.


Section 127 Accelerated Review

The Court of Appeals may grant an accelerated review of any appellate case pending upon the petition of any party upon a showing that the case is of such public importance as to justify the deviation from normal appellate process and to require immediate disposition by the Court.

Section 128 Amendments

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

We do hereby certify that the foregoing Ordinance #08/94 was duly amended by Ordinance #03/17, duly presented and adopted by Resolution #1248/17, by a vote of 4 for, 0 silent, 0 against, with a quorum of 5 being present at a Special Meeting of the Fond du Lac Reservation Business Committee held on July 11, 2017, on the Fond du Lac Reservation.



Kevin R. Dupuis, Sr.
Chairman



Ferdinand Martineau, Jr.
Secretary/Treasurer