

CHAPTER 3: OPERATION OF PEACEMAKER COURT

Section 1. GUIDING PRINCIPLES

(a) **Purposes of Peacemaking.** *Peacemaking encourages people to solve their own problems by communicating in a safe environment. Conflict resolution is based upon respect, responsibility and the importance of good, conscious, meaningful relationships. Peacemakers assist in the development of solutions to conflicts that are not patterned upon state or federal civil courts, but are more closely allied to the traditional conflict resolution processes generally followed by Native American peoples.* It is intended that the Peacemaker Court serve as a vehicle through which parties arrive at consensual solutions to conflicts within the tribal community. The Peacemaker Court need not determine who is at fault in any given situation to reach an agreeable solution.

Peacemaking uses consensual agreement of the parties as the primary tool. A party's participation in Peacemaking is wholly voluntary. The parties and participants are invited to attend and decisions resolving disputes are reached by talking things out and a solution is reached by consent. *This is the Mashpee Wampanoag Tribal way of resolving conflicts in the community. This process predates our court system and reaches back to the time of the People of the First Light, the ancestors of the Mashpee Wampanoag Peoples.*

Peacemakers shall strive to achieve a setting which will:

- (1) Allow active participation by all parties involved in the conflict; and
- (2) Provide an environment for a party to take responsibility for his or her behavior; and
- (3) Provide an *environment that is safe* for the parties to work out conflicts and begin the healing process; and
- (4) Assist in locating *traditional practices and teachings, and community-based services for individuals involved in the conflict.*

(b) **Guiding Principles.** The guiding principles for the Peacemaker Court are as follows:

- (1) **Harmony Principle:** A positive, conscious, meaningful relationship between parties is valuable. For Mashpee peoples, harmony is achieved through “Weech8humôkanee N8hswehtamuk” which means “a working together by people” by “observing the law.” Peacemaking encourages people to consciously solve their own problems by opening communications through respect, responsibility and good faith. It is conducted by the parties and accomplished by planning and group decisions for future action. By solving their own problems in

peacemaking, people replace coercive decisions. Rather than judge people or force them unwillingly to do something, peacemaking addresses the consequences of people's behavior and substitutes healing to remedy any harmful consequences. Peacemaking assists people to help themselves resolve conflict through self-healing measures. Peacemaking is based on healing the mind, body, and spirit to end conflict, rather than to continue conflict by the use of power, force and punishment. It allows individuals, groups of people and communities to take ownership of their problems and to solve them in ways which promote healthy relationships between and among the individuals and group. The objective is to achieve harmony and balance.

(2) ***Non-Coercion Principle***: The most constructive way to preserve a positive relationship and settle a dispute is through the voluntary participation of the parties, rather than the use of force from an outside source. For Mashpee peoples, this means the resolution of conflict through “Muhchee cheekunum N8hswehtamuk” which means “without a forceful hand” by “observing the law.” Mashpee Peacemaking is not to be confused with the adjudicatory processes or arbitration. Those processes employ the adversarial system of conflict resolution in a court setting, and assume decision making by a person in authority. In such matters, rules are employed which are designed to compel participation, limit participation to a select few, confine consideration of a conflict to narrow issues, and impose often disharmonious decisions. Mashpee Peacemaking stresses informality, allows open and unfettered discussions, full participation of interested persons, and encourages resolution reached by consensus of all in attendance. Because Peacemaking sessions are not judicial or quasi-judicial proceedings with adjudicatory powers, characteristics or functions, and participation by the participants is wholly voluntary, the characteristics of adversarial practice, including pleadings, counterclaims, cross-claims, discovery, etc., are not contemplated and not permitted. The parties are asked to voluntarily participate, knowingly and willingly, without an attorney to fulfill this Principle.

(3) ***Community Health Principle***: The health of the community at large depends on recognizing the connectedness of all things and people, and the responsibility that we all have to each other. For Mashpee peoples, a mentally, spiritually, emotionally and physically healthy community is achieved through “Wutahkeemôwuneayee N8hsweetamuk” which means “community” by “observing the law”.

(4) ***Sacred Restorative Justice Principle***: Sacred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged. For Mashpee peoples, such justice is achieved through “Wuneetupânutamwee Nôpahtawee Pâyôhsukeey8uk,” which means “sacredness” “restored,” through “equity and justice”.

Section 2. SCOPE AND JURISDICTION

(a) **Appointment.** The Chief Judge may appoint Peacemakers where the civil matter in dispute is within the jurisdiction of the District Court according to Chapter 1 of this Ordinance. Peacemaking shall not be allowed in criminal matters.

(b) **Power to Compel.** The Peacemaker Court does not have the power to compel persons within the jurisdiction of the Mashpee Wampanoag community to appear and participate in Peacemaker Court proceedings nor to compel the attendance of parties. Peacemaking is wholly voluntary.

(c) **Attorney Representation.** The Peacemakers shall ask the parties to voluntarily participate, knowingly and willingly, in Peacemaking without the representation of an attorney.

(d) **Provision of Services.** As to matters within the jurisdiction of the District Court, Peacemakers shall not mediate conflicts or provide peacemaking services to entities other than the Mashpee Wampanoag Tribal Courts.

(e) **Peacemaking Cases.** Any civil matter which involves personal, community or economic relationships, if not otherwise prohibited by law, may be made the subject of peacemaking. Whether a matter is made the subject of peacemaking depends upon the mutual agreement of the parties to the dispute. Such matters include, but are not limited to:

(1) Family and other relationships, including marital relationships, intimate relationships, parent-child relationships, etc.; and

(2) Community relations, including disputes between neighbors, nuisances, trespass, disorderly conduct, breaches of the peace, etc.; and

(3) Consumer relations, including personal debts, personal contracts, etc.; and

(4) Individual land disputes, including land use, nuisance etc.; and

(5) Any other matter, except criminal, which the parties may agree to make the subject of peacemaking.

(f) **Appeals.** Appointed Peacemakers shall not have authority to hear any appeal. An agreement reached by the parties shall be a final decision without appeal.

Section 3. PEACEMAKERS

(a) **Qualifications.** To be considered a Peacemaker, a person shall meet the following minimum qualifications:

(1) Be an individual who has the respect of the Mashpee Wampanoag Tribal community, the ability to work with Tribal members, the reputation for integrity, honesty, and morality, and the ability to solve problems; and

(2) Be at least 25 years of age; and

(3) Be free of any conviction of a felony or a crime of moral turpitude; and

(4) Not be a member of the Tribal Council or a Tribal Judge; and

(5) Have a high school diploma or its equivalent and be proficient in reading, writing and speaking the English language.

(b) Appointment.

(1) The Judiciary Committee shall select and certify the names of individuals as Peacemakers. The individuals certified by the Judiciary Committee must agree to serve under the direction and supervision of the Chief Judge. The Tribal Council will consider such certified individuals as recommended by the Judiciary Committee and will appoint such individuals in its discretion to the Roll of Peacemakers. The Court Clerk shall maintain such roll and Peacemakers shall be selected only from that roll to serve in any given case.

(2) If the Tribal Council fails to appoint Peacemakers, the Chief Judge may appoint a person to the Roll of Peacemaker from among persons known by him or her to be qualified.

(c) Compensation. *Peacemakers shall receive reasonable compensation for their services from the Tribe as fixed from time to time by the Tribal Council.* The compensation to be received by all Peacemakers shall be determined by the Tribal Council with input from the Judiciary Committee. Peacemakers shall not be entitled to participate in any Tribal employee bonus compensation plan merely by virtue of their Peacemaking position.

(d) Immunities, Powers and Duties.

(1) Peacemakers appearing on the Roll of Peacemakers shall have the same immunities as Tribal Court judges.

(2) Peacemakers shall have the power and duties to:

(A) Mediate conflicts among persons involved in the peacemaking process.

(B) Use Tribal religious and traditional forms of mediation and community conflict resolution.

(C) Instruct or counsel individuals on the traditions, tribal teachings or values relevant to their conflict or conduct.

(D) Encourage persons involved in a conflict, affected by it, or in any way connected with it, to meet to discuss the conflict being worked on and to participate in all necessary peacemaking efforts, provided that persons may not be coerced or intimidated into participating.

(E) Use any reasonable means, in accordance with the Peacemaker Guiding Principles as stated in this Ordinance, to obtain the peaceful, cooperative and voluntary resolution of a conflict subject to peacemaking. No force, violence or violation of individual rights will be permitted.

(F) Where the parties involved accept or practice a given religious belief, discipline or teaching, the accepted methods and teaching of that religious way may be used.

Section 4. PEACEMAKING PROCEDURE

(a) Request for Peacemaking.

(1) Prior to filing a civil matter, an individual, or if a minor, the minor's parent or guardian, may request to submit a matter to the Peacemaker Court by filing a written request with the Court Clerk. The request may be informal and hand-written so long as the request gives the Clerk the following information:

(a) The name and address of the person who requests the use of peacemaking; and

(b) The name of the other person(s) involved in the conflict, and pertinent mailing addresses and places of residence if known; and

(c) A short statement of the problem involved; and

(d) The names and addresses of each person who should be contacted by the Clerk to be involved in peacemaking.

(2) Provided the matter is eligible for peacemaking, the Court Clerk shall immediately contact by reasonable, verifiable means the other party or parties involved to notify them that a request for peacemaking without filing a lawsuit to resolve a conflict has been filed. The contacted party or parties shall have five (5) working days from the date of notification to provide an answer to the Court Clerk of their response to the request to participate in the peacemaking process. The response must be in writing and delivered to the Court Clerk's office.

(3) Any person involved in a conflict which forms the basis of a request for such peacemaking may decline to participate in the process. A non-response to the notification shall be deemed a declaration to participate in the process.

Thereafter, the Court Clerk shall notify the requesting party of the declination by the other party.

(4) If the contacted person agrees to participate, the Chief Judge shall immediately begin the process of peacemaking by appointing two peacemakers, one male and one female, to convene a Peacemaker court. The parties to any case may, by mutual agreement, have a specified individual or individuals from the Roll of Peacemakers serve as one, or both, of the two Peacemakers for the resolution of their conflict. If they only agree on one, then the Chief Judge shall appoint the other.

(b) District Court Transfer.

(1) Where a civil matter has commenced and a proceeding is pending, any of the parties, or, if the party is a minor, then the minor's parent or guardian, may request the District Court Judge to submit the matter to the Peacemaking, provided the civil matter is eligible for peacemaking.

(2) If the opposing party objects to or declines to participate in Peacemaking, the matter shall continue to be heard and prosecuted in the District Court.

(3) Only parties to the proceeding can request or prevent transfer of the case to a Peacemaker Court.

(4) If the case is transferred to the Peacemaker Court, the District Court Judge shall notify the Chief Judge who shall immediately begin the process of peacemaking by appointing two peacemakers, one male and one female, to convene a peacemaker court. The parties to any case may, by mutual agreement, have a specified individual or individuals from the Roll of Peacemakers serve as one, or both, of the two Peacemakers for the resolution of their conflict. If they only agree on one, then the Chief Judge shall appoint the other.

(c) Peacemaker Disqualification and Removal.

(1) A Peacemaker shall be subject to disqualification and removed from the Roll of Peacemakers for bias, for prejudice, or for two unexcused absences to a peacemaking session. Peacemakers cannot be absent without excuse for a Peacemaking session with the parties. If this happens, the Peacemaker who is absent, as well as his or her partner, must report such absence to the Chief Judge or to the District Court Judge if the case has been transferred from the District Court, who shall determine whether such absence is excusable.

(2) A Peacemaker shall be subject to disqualification and removed from the Roll of Peacemakers for breach of any confidentiality, refusal to submit to a drug test or failure of a drug test, conviction of a felony or crime of moral turpitude in state or federal court or conviction in Tribal Court for any offense which has resulted in the imposition of a jail sentence.

(3) A Peacemaker shall be subject to disqualification from a given matter for personal interest and conflict of interest, but shall not be removed from the Roll of Peacemakers.

(4) A party requesting disqualification of a Peacemaker shall first request the Peacemaker to recuse him or herself from the proceedings, and shall state the reason in writing for requesting recusal. If the matter is not resolved or the Peacemaker refuses to recuse, the party may petition the Chief Judge or District Court Judge, if the case has been transferred from the District Court, by filing a request for disqualification and removal where appropriate, stating the reason(s) why disqualification is requested.

(5) The Chief Judge or District Court Judge, if the case has been transferred from the District Court, shall determine whether to grant the request. If the request is granted, a substitute Peacemaker shall be appointed by the Judge. The Chief Judge shall instruct the Court Clerk to remove a peacemaker from the Roll of Peacemakers where appropriate.

(d) Requests during Peacemaking.

(1) Any party may file a request with the Chief Judge or District Court Judge, if the case has been transferred from the District Court, to immediately terminate peacemaking.

(2) Any participant may file a request with the Chief Judge or District Court Judge, if the case has been transferred from the District Court, to be excused from peacemaking.

(e) Notice to Begin Proceedings. Each Peacemaker Court convened shall be presided over by two Peacemakers, one male and one female. Notice of the appointment of a Peacemaker shall be provided by the Court Clerk, who shall send copies of the request and order to the Peacemaker by first class mail or email and notify the Peacemaker by telephone. The Peacemaker shall notify the Court Clerk by telephone or in writing of

(1) Any inability to serve in the matter; or

(2) Acceptance of the appointment.

If the Peacemaker does not accept the appointment within five (5) working days from receipt of such notice, another Peacemaker may be appointed. If notice of inability to

serve is given, then a new appointment will be made. Upon acceptance of the appointment, each Peacemaker will contact the other appointed Peacemaker. They will contact the parties to the conflict and any other persons involved and make other necessary arrangements to conduct peacemaking sessions.

(g) **Confidentiality and Privilege.** Communications made during Peacemaking shall be treated as confidential by all parties and participants. Such communications shall be privileged as settlement negotiations and may not be admitted to the District Court as evidence unless otherwise agreed to in writing by the parties, or as otherwise required or allowed by Tribal law, including this Ordinance. This privilege will not apply to communications originally made for purposes other than Peacemaking, or made before Peacemaking begins.

(h) **Peacemaking Session.** The Peacemakers should open with introductions of the parties and state the standards of decorum which will govern the sessions. The session should then follow the steps below as reasonably possible:

(1) The Peacemakers may allow an opening traditional prayer and ceremony such as burning cedar or smudging, or other similar practice. The parties will not be sworn in, but will agree to tell the truth to reach a mutual resolution of the conflict. Evidence law will not be applicable and the parties may submit any proof they have such as receipts, contracts, photos, and sworn statements of witnesses.

(2) The Peacemakers will explain the risk that given that peacemaking is a voluntary undertaking one of the parties may later request to terminate peacemaking, for whatever reason, or a participant may later request to be excused from proceeding, for whatever reason, and it is important that each party knowingly and voluntarily acknowledge such risks before proceeding.

(3) Each party should be permitted to make opening remarks which should include his or her statement of the facts that have given rise to the conflict, and what he or she wants as a remedy. The Peacemakers shall require each party to submit a written statement of facts prior to the initial hearing and may impose a time limit on opening remarks.

(4) The Peacemakers should make certain that the participants understand the exact nature of the controversy and attempt to get the parties to agree upon the facts, and the desired remedy. The Peacemakers accomplish this by asking questions to clarify points of discussion. To help resolve issues, the Peacemakers should ask questions to determine the nature and cause of the conflict. If they know what the conflict is and what the cause is, then, they can choose a plan of action, or choose possibilities to resolve the conflict.

(5) Once the Peacemakers are satisfied that the nature of the conflict and desired remedy have been adequately stated, they shall allow discussion of the subject

matter. At this point, the Peacemakers may allow other participants to join in the discussion while keeping in mind the standards of decorum.

(6) During the discussions, the Peacemakers shall ensure that the principal parties are permitted full opportunity to address comments presented by the other party or by other participants. The Peacemakers or the parties may suggest the involvement of other participants to assist the parties with peacemaking, their agreement, or carrying out the agreement. Any necessary resource or service provider may be called upon to voluntarily assist, including social service personnel, mental health professionals, traditional healers and leaders, public or private service agencies, or any other person or program with the resources, expertise and interest to assist. No person may be forced to accept intervention or services against his or her will.

(7) Discussions will continue until the parties have had a full opportunity to speak on the subject matter.

(8) Once the discussions are completed, the Peacemakers shall then direct the discussions toward a resolution and allow the discussion of a remedy in the same manner as described above.

(9) Once the discussions on the conflict and remedy have been completed, the Peacemaker shall then direct the discussion toward a specific resolution, allowing full opportunity for discussion and input.

(10) Should the parties reach an agreement, the Peacemakers shall provide a final summary of such agreement and immediately reduce it to writing. The written agreement should be acknowledged by each party signing the written agreement and each party shall receive a copy of the signed agreement.

Where it appears that the Peacemaking session may not be concluded in one setting or where it appears that follow up discussions are necessary, the Peacemakers may continue with the session until such time as the matter is concluded. The Peacemakers shall notify the Court Clerk of such continuances. At the conclusion of the peacemaking or at such time as the Peacemakers find there can be no resolution of the matter, the Peacemakers shall report the results of their efforts to the District Court if the matter was referred by the District Court, or to the Chief Judge. The reports may be informal but must be reduced to writing by the Peacemaker. This written record shall be maintained in the files of the Court Clerk.

