

MASHPEE WAMPANOAG TRIBAL COURT



Kât8ut Meenawôkanash (RULES) *Of* *Appellate Procedure*

* *Kât8ut Meenawôkanash, the Wampanoag translation for "The Way things are done in the Court of Law".*



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We would also like to thank the members of the Mashpee Wampanoag Tribal Court bar for their comments and helpful suggestions.

Signed this 31st day of July 2014

A handwritten signature in cursive script, appearing to read "Robert F. Mills", written over a horizontal line.

Robert F. Mills
Supreme Court Justice

A handwritten signature in cursive script, appearing to read "Vivian Bussiere", written over a horizontal line.

Vivian Bussiere, Chair
Elders Judiciary Committee

**RULES OF APPELLATE PROCEDURE
MASHPEE WAMPANOAG SUPREME COURT**

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Title I General Provisions

Rule 1. Purpose of the Rules

These Rules of Appellate Procedure describe the procedure for appeals from the Mashpee Wampanoag District Court to the Mashpee Wampanoag Supreme Court.

Rule 2. Mission of the Supreme Court

- a. The Mashpee Wampanoag Tribe's purpose through the Tribal Courts is to be fair and unbiased, maintain rights, and correct wrongs for all cases brought before the courts. Through Tribal laws, rules of court, case law, Tribal custom, common sense, and in the context of all relevant circumstances, the Tribe seeks to justly deal with all cases so as to protect all inherent rights of the parties.
- b. The purpose of the appeals process is to provide a party who believes that the judgment of the District Court is not supported by law or fact with an opportunity to have the judgment reviewed by the Mashpee Wampanoag Supreme Court, whose mission is to determine whether the judgment is consistent with applicable law.

Rule 3. Definitions

"Supreme Court" means the Supreme Court of the Mashpee Wampanoag Tribe.

"Supreme Court Judge" means a judge of the Supreme Court of the Mashpee Wampanoag Tribe.

"Court Clerk" means the clerk of the Tribal Judiciary of the Mashpee Wampanoag Tribe.

Rule 4. Construction

- a. These Rules of Appellate Procedure must be liberally construed in order for justice to be served and for appeals to be resolved efficiently and fairly.
- b. Nothing in these Rules is intended to limit the jurisdiction or waive the sovereign immunity of the Mashpee Wampanoag Tribe.
- c. The parties to an appeal and the Supreme Court may agree to depart from procedures established by these Rules in order to save time and expense while still achieving the purposes of these Rules. A party may only agree to waive a right or protection guaranteed by Tribal law, rules, or regulations, if the party clearly understands what right or protection the party is giving up and must sign a waiver to that effect.
- d. In a situation where these Rules do not provide for an applicable procedure, the parties to an appeal and the Supreme Court may agree on a procedure, or the Supreme Court may determine a procedure that will be followed.
- e. Application of these Rules must be consistent with the Mashpee Wampanoag Tribal Court Code of Judicial Conduct and applicable Tribal law.

Rule 5. Timing

Timing in these Rules of Appellate Procedure is calculated pursuant to Rule 5 of the Mashpee Wampanoag District Court Rules of Civil Procedure.

Rule 6. Composition of the Supreme Court

- a. The Supreme Court is composed of three (3) Supreme Court Judges.
- b. The Supreme Court may be composed of less than three (3) Supreme Court Judges if a Supreme Court Judge is disqualified from hearing an appeal pursuant to Mashpee Wampanoag Tribal Court Code of Judicial Conduct.

Rule 7. Courtroom Behavior

The Supreme Court is an expression of the sovereignty of the Mashpee Wampanoag Tribe and the business of the Court is to be conducted in a just and orderly fashion. Accordingly, all persons appearing in the Supreme Court must treat the Court and each other with respect and follow the Rules of Conduct and other applicable administrative orders that the Court may issue.

Rule 8. Improper or Frivolous Appeals

- a. An appeal is improper or frivolous if it is filed to achieve a purpose other than the purpose of the appeals process or without a reasonable expectation of reversal of the District Court decision; for example, in order to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- b. The Supreme Court may impose appropriate sanctions upon a party or his or her attorney who is found to have filed an appeal, motion or any other papers for an improper or frivolous purpose. Sanctions under this subsection may include a fine of up to \$500, court costs and attorneys' fees incurred by the opposing party, or requiring that the party file a contempt bond if a subsequent lawsuit is filed.

Title II Considerations Before Filing an Appeal**Rule 9. Right of Appeal**

- a. An appeal is not automatic. It requires that a party actively file and pursue an appeal. Failure to conform to time deadlines established in these Rules will lead to a dismissal of the appeal unless good cause is shown for the failure to conform to the time deadlines.
- b. Any aggrieved party or its legal successor may appeal as a matter of right the final judgment of the District Court. As defined in Rule 35 of the District Court Rules of Civil Procedure, a final judgment is the final written order of the District Court that determines the rights of the parties to the lawsuit and that grants a remedy, if any, to the prevailing party.

Rule 10. Appealing a Non-Final Judgment or Order

- a. A non-final judgment or an order of the District Court which does not conclude the District Court proceeding may be appealed with permission from a single Supreme Court Judge. If Mashpee Wampanoag Tribal law provides for such an appeal as a matter of right, then permission from a Supreme Court Judge is not required.
- b. A motion requesting permission to appeal a non-final judgment or order must be filed with the Supreme Court within ten (10) days after the non-final judgment or order is issued.
- c. The Supreme Court Judge may grant the request if the non-final judgment or order:
 - i. Substantially affects or conclusively determines the outcome of the case;
 - ii. Is based on an issue that is separate from the merits of the case; and
 - iii. Cannot effectively be appealed once the case proceeds to final judgment.
- d. The Supreme Court must rule on the motion within ten (10) days of filing.
- e. If the Supreme Court grants the motion, the party must file a Notice of Appeal under Rules 14, 15 and 16.
- f. Filing a Notice of Appeal from a non-final judgment or order automatically stays the District Court proceedings from which the appeal is made.

Rule 11. Expedited Appeals of Non-Final Judgments or Orders

- a. Non-final judgments or orders eligible for expedited appeals include, but are not limited to, judgments or orders addressing child dependency, termination or reinstatement of parental rights or duties, child adoption, child custody, paternity, custodianship, and restraining orders.
- b. A party may request an expedited appeal of a non-final judgment or order in its motion to the Supreme Court under Rule 10. The Court may grant the request for expedited appeal in order to

avoid injustice and immediate, grave, and irreparable harm to a party affected by a non-final judgment or order of the District Court.

- c. In an expedited appeal process, the Supreme Court may reduce the applicable time periods stated in these Rules as the interests of justice require.

Rule 12. Bonds

- a. Where a judgment is appealed that requires the transfer of money or asset, or service of value from one party to the other, the Supreme Court may require a bond to be posted by a party filing an appeal. The bond may not exceed the cash value of the money, the asset, or the service.
- b. The bond will be held in trust by the Court Clerk until the appeal is decided or otherwise disposed of, and can be used to satisfy a judgment, including the original District Court judgment.
- c. The Supreme Court may waive a bond requirement for an indigent party or if it is satisfied that the person requesting the waiver has any defense which is not frivolous.

Rule 13. Form and Service of Documents, Motions and Briefs

- a. All documents, motions, or briefs filed by a party with the Supreme Court must be in at least 12-point font and double-spaced.
- b. Pro se parties may file hand-written documents but the handwriting must be legible by the Court. A pro se party may re-file a hand-written document within ten (10) days after receiving notice from the Court that the documents filed were illegible. Failure to re-file legible documents may result in the dismissal of an appeal.
- c. The parties are encouraged to use the terms “appellant” and “appellee” when referring to the parties involved in the appeal. The appellant is the party bringing the appeal. The appellee is the party responding to the appeal.
- d. Except as provided in these rules, all documents, motions and briefs filed with the Court must be served upon the other parties by first class U.S. mail together with a Proof of Service. Service is complete upon mailing.
- e. The parties may, via a joint motion, agree to serve each other all documents, motions and briefs filed via e-mail with the permission of the presiding Judge of the Supreme Court panel assigned to the appeal. Service is complete upon transmission, but is not effective if the serving party learns that the document, motion or brief did not reach the person to be served.

Title III Starting the Appeals Process

Rule 14. Timing to File Notice of Appeal

- a. To appeal a final judgment of the District Court, a Notice of Appeal must be filed with the Court Clerk within thirty (30) days after the final judgment or amended final judgment is entered with the Clerk and upon payment of a filing fee as established by the Supreme Court.
- b. To appeal a non-final judgment by the District Court, a Notice of Appeal must be filed with the Court Clerk within ten (10) days after the grant of the motion to appeal.
- c. Although not favored, a Supreme Court Judge may grant a motion requesting an extension of time to file a Notice of Appeal. Such a request must be filed with the Court Clerk before the applicable time period for filing the Notice of Appeal expires.

Rule 15. Contents of Notice of Appeal

- a. The Notice of Appeal may be submitted on a form supplied by the Supreme Court or must contain the following:
 - i. A heading clearly labeling the submission as a “Notice of Appeal;”
 - ii. The name and docket number of the District Court case;
 - iii. The name and address of the party filing the appeal and the name and address(es) of all parties to the District Court case; and

- iv. A date and a signature of the appealing party or a legal representative of that party.
- b. If a Notice of Appeal is filed in good faith, but does not comply with subsection (a), the Court may:
 - i. Accept the Notice of Appeal in the interest of justice, if the issue on appeal is clear from the document(s) filed and the appeal is otherwise valid under these Rules; or
 - ii. Notify the appealing party of the non-compliant Notice of Appeal and request that the party file a revised Notice of Appeal within ten (10) days from the date of notification.
- c. If the revised Notice of Appeal is non-compliant, the Court may;
 - i. Accept the Notice of Appeal in the interest of justice, if the issue on appeal is clear from the document(s) filed; or
 - ii. Dismiss the appeal with or without prejudice.

Rule 16. Serving the Notice of Appeal

- a. The Court Clerk will serve a copy of the Notice of Appeal on all parties to the District Court case being appealed within ten (10) days after the Notice of Appeal has been filed.
- b. If two attempts to serve a Notice of Appeal on a party have been made and failed, the Supreme Court may approve a substitute method of service.

Title IV Record on Appeal and Motions

Rule 17. Record on Appeal

- a. The appealing party must designate the Record on Appeal by compiling a list that identifies the document(s), exhibit(s), argument(s), and decision(s) of the District Court case that are relevant to the appeal and adequately describe the issue on appeal. The appealing party may designate the entire District Court record to serve as the list, if consistent with the Rules.
- b. The appealing party must submit this list to the Court Clerk within twenty (20) days after the Notice of Appeal has been filed.
- c. The Court Clerk will then provide the designated record to any party or parties opposing the appeal, who may object to the designated record and move for exclusion of identified items from the Record and/or include additional items as of right into the record. Any such objections must be made within ten (10) days after receipt of the designated record by the opposing party or parties.
- d. The Chief Judge or presiding Supreme Court Judge will approve the Record on Appeal and will decide whether any contested items will or will not be included in the Record on Appeal.
- e. The Record on Appeal will typically include:
 - i. Copies of all documents and exhibits filed by any party in the District Court case;
 - ii. The transcript of proceedings, if any;
 - iii. A copy of the District Court docket entries for the case, if any; and
 - iv. A copy of the District Court decision(s) in the case.
- f. Irrelevant parts of the District Court case should be omitted from the Record on Appeal in order to save time and expense, and to avoid an unnecessarily large Record.
- g. The cost of compiling the Record on Appeal will be imposed on the appealing party once the contents of the Record have been established.
- h. Within ten (10) days of payment of the costs for compiling the Record, the Court Clerk will compile the Record on Appeal and file a copy or copies for the Supreme Court and send one copy each to each party. Where appropriate, the Court Clerk will provide electronic copies of the Record where possible.

Rule 18. Modification of Record on Appeal

- a. The Record on Appeal can be modified during the appeals process, if:
 - i. All parties agree to the modification;

- ii. The Chief Judge or presiding Supreme Court Judge orders the modification; or
- iii. The Supreme Court grants a party's motion to modify the record;
- b. All modifications to the Record on Appeal require the approval of the Chief Judge or presiding Supreme Court Judge. He or she will approve modifications of the record only, if:
 - i. The record does not correctly disclose what occurred in District Court; and
 - ii. The incorrect disclosure is to the disadvantage of one of the parties.
- c. A motion to modify must be filed within seven (7) days after receipt of the Record on Appeal by the moving party, and must include a statement of the reason why the record should be modified.
- d. A motion to modify may be filed after the seven (7)-day time period only if the reason to modify was not apparent earlier. One copy will be filed with each Supreme Court Judge assigned to the case.

Rule 19. Motions

- a. Questions regarding procedure or issues of law may be presented to the Supreme Court in the form of a motion. Motions must state the grounds for the motion, the relief sought, and the legal argument necessary to support it.
- b. Oral motions may be allowed by the Supreme Court during conference hearings or oral proceedings.
- c. A party must submit a copy of the motion to Court Clerk for each of Supreme Court Judge assigned to the case.
- d. The party filing a motion or a response to a motion is responsible for serving the motion or response on all parties.
- e. A motion or a response to a motion must not exceed twenty (20) pages.
- f. A party opposed to a motion may file a response within twenty (20) days of receipt.
- g. The Supreme Court may, if necessary, schedule a hearing on the motion which may be conducted in-person or remotely via phone conference call or videoconference.
- h. The Supreme Court must rule on a motion within thirty (30) days of filing.

Title V Written Arguments (Briefs) and Oral Argument

Rule 20. Purpose of Written Arguments (Briefs)

Each party will have the chance to present his or her arguments to the Supreme Court in the form of a written argument, called a brief. The briefs form the basis of the appeals proceedings.

Rule 21. Time Periods for Filing Briefs

- a. A party appealing a District Court decision must file a brief within thirty (30) days after the Court Clerk files the Record on Appeal pursuant to Rule 17(h). One copy of the brief must be submitted to the Court Clerk for each assigned Supreme Court Judge.
- b. A party opposing the appeal may file a reply brief within thirty (30) days after receiving the brief from the party appealing a District Court decision.
- c. A party appealing a District Court decision may file a reply brief within twenty (20) days after receiving the brief from the party opposing the appeal.
- d. A party may request from the Supreme Court an extension of up to ten (10) days to file a brief. Such a request is not favored and must be filed with the Court before the applicable time period expires.
- e. If a party appealing a District Court decision fails to timely file a brief, the appeal may be dismissed.
- f. If a party opposing an appeal does not file a brief, the party will not be heard at the oral argument hearing.
- g. Unless permitted by the Supreme Court, no further briefs may be filed.

Rule 22. Format and Contents of Briefs

- a. A party's initial brief may not exceed thirty (30) pages and must include:
 - i. A table of contents with page references;
 - ii. A table of all applicable laws referred to in the brief in alphabetical order with page references;
 - iii. A statement of the facts relevant to the issue(s) on appeal with appropriate references to the record;
 - iv. A statement of the issue(s) on appeal;
 - v. A concise argument regarding the issue(s) on appeal and of the applicable standard of review with citations to the relevant tribal laws, tribal customs, or tribal values relied on; and
 - vi. A statement on the remedy requested.
- b. A reply brief must not exceed fifteen (15) pages, and must include a table of contents with page references and a table of all applicable law referred to in the brief in alphabetical order with page references.
- c. A table of contents and a table of all applicable laws referred to are excluded from the page limits for the brief and the reply brief.

Rule 23. Oral Argument

- a. An oral argument will be held unless:
 - i. All parties collectively motion the Supreme Court to decide the appeal on the briefs alone, or
 - ii. The Supreme Court makes the decision to decide the appeal on the briefs alone.
- b. The Supreme Court must notify the parties in writing if an oral argument hearing will be held. The notification must state the date, location, and time of the hearing, as well as the length of time that each party is given to present its argument. The notification must be provided to all parties no less than thirty (30) days prior to the date of oral argument.
- c. In the case that a party declines to present an oral argument, the party's brief will serve as the basis for evaluating its argument on appeal.
- d. Each party to an appeal will have the same time, and not less than fifteen (15) minutes, to present its arguments at oral argument.
- e. The appellant will argue first at the hearing, and the appellee will argue second. The appellant may reserve the opportunity to make the final argument. In the case of a cross-appeal, the party or parties who first filed the Notice of Appeal will argue first.
- f. Supreme Court Judges or attorneys of record may participate in oral argument via videoconference, however all parties must be physically present in the courtroom.

Title VI Standard of Review

Rule 24. Standard of Review

- a. The standards of review for an appeal from a District Court decision are as follows:
 - i. For questions of fact, the Supreme Court will review the District Court's decision to determine whether it is clearly erroneous;
 - ii. For questions of law, the Supreme Court will review the District Court's decision *de novo*; and
 - iii. As otherwise provided by Tribal law.

Title VII Procedure for Cases Invoking Original Jurisdiction of the Supreme Court

Rule 25. Procedure for Cases Invoking the Original Jurisdiction of the Supreme Court

- a. Cases in which the Supreme Court has original jurisdiction under the Mashpee Wampanoag Tribe

Constitution, the Judiciary Ordinance or other Tribal Law must be filed directly with the Court Clerk.

- b. The Mashpee Wampanoag Rules of Civil Procedure and the Rules of Evidence prescribe the form of complaints, documents, motions, and other papers for cases filed under this rule. In other respects, those rules may be taken as guides.

Title VIII Judgment

Rule 26. Judgment

A judgment of the Supreme Court is final and is not appealable.

Title IX Effective Date

Rule 27. Effective Date

- a. These rules and any amendments take effect at the time specified by the Supreme Court of the Mashpee Wampanoag Tribe.
- b. The Rules of Appellate Procedure govern all proceedings after their effective date except to the extent that the Supreme Court Judge(s) determine(s) that their application to a pending matter would not be feasible or would work as an injustice, in which event the former procedure applies.

Glossary of Legal Terms

Disclaimer: This Glossary of Legal Terms is not part of the Rules of Appellate Procedure of the Mashpee Wampanoag Supreme Court and therefore cannot be used to interpret these Rules. Its sole purpose is to assist individuals using the Rules of Appellate Procedure.

An **“Appeal”** is a request to a higher court by a party that has lost on one or more issues to review the lower court’s decision to determine if it was correct.

A **“Brief”** is a written argument to a court giving a factual and legal basis (and the precedents that support the legal argument) that supports the position of the filing party.

“De Novo” means starting anew. The Court will act as though this is the first time it has considered the case; for example starting a case de novo would mean starting the case from the beginning.

A **“Hearing”** is a judicial session held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.

A **“Judgment”** is the official decision of a court. It outlines who wins in a lawsuit and why. It resolves the dispute between the parties to the lawsuit.

A **“Lawsuit”** is legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty, which resulted in harm to the plaintiff.

A **“Motion”** is a written or oral request that the court make a specified ruling or order.

A **“Non-final judgment”** refers to an order or judgment by the Court that is not final in the determination of a lawsuit or appeal. Appealing a non-final judgment or order is typically referred to as an interlocutory appeal.

An **“Oral Argument”** is a party’s or their lawyer’s spoken presentation before a court supporting or opposing the legal issues at issue in an appeal.

An **“Order”** is a written direction or command delivered by a court or judge.

“Pro Se” means representing oneself.

“Proof of Service” is a statement attached to a document or paper certifying that the document or paper was served to each party on a particular date.

A **“Record on Appeal”** is the written account of the trial-court proceedings as presented to the Supreme Court for review.

A **“Sanction”** is a fine, penalty, or other type of enforcement used to bring about compliance with the law or with rules and regulations.

“Service” means when any document filed with the court is delivered to the appropriate party.

“Standard of Review” is the amount of deference given by one court (usually an appellate tribunal) in reviewing a decision of a lower court or tribunal.

A **“Stay”** is the postponement, halting, or suspension of a proceeding; such as a trial or of a judgment.