



**MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE**

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ADMINISTRATIVE ORDER #23

**AMENDMENTS TO RULES
OF CIVIL PROCEDURE**

The Rules of Civil Procedure are hereby amended in accordance with the attached effective upon execution of this Order. The amendments will apply to all existing cases as well as cases filed after the effective date of this Order.

The amendments to Rules of Civil Procedure were developed in conjunction with student Jenna M. Borkoski and Nicole Friederichs, Practitioner in Residence, of the Suffolk Law School Indian Law and Indigenous Peoples Clinic. The Court and the Elders Judiciary Committee express their gratitude for their invaluable assistance.

IT IS SO ORDERED this 3rd day of June, 2016.

BY THE COURT:

Robert F. Mills, Acting Chief Judge
Mashpee Wampanoag Supreme Court

**RULES OF CIVIL PROCEDURE
MASHPEE WAMPANOAG DISTRICT COURT**

As amended May 20, 2016

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Glossary of Legal Terms *(The Glossary of Legal Terms is not part of the Rules of Civil Procedure of the Mashpee Wampanoag District Court.)*

Title I General Provisions

Rule 1. Purpose of the Rules

These Rules set forth the procedure for civil actions in the Mashpee Wampanoag District Court and must be applied to achieve the following purposes: resolving disputes efficiently, revealing the truth, and treating all parties fairly and without prejudice.

Rule 2. Mission of the Court

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.

Rule 3. Definitions

“District Court” means the District Court of the Mashpee Wampanoag Tribe.

“Legal Holiday” means those official holidays observed by the Tribe as confirmed by Administrative Order of the Chief Judge.

“District Court Judge” means a judge of the District Court of the Mashpee Wampanoag Tribe.

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

“Mashpee Wampanoag Tribal Government Office” means the offices located at Tribal Community Building at 483 Great Neck Rd S, Mashpee, MA 02649.

“Entity” means any institution, company, corporation, partnership, or any other organization distinguishable from individuals.

“Peacemaker Court” means the Mashpee Wampanoag Peacemaker Court.

“Peacemakers” means those persons who have been trained to facilitate an agreement between two opposing parties through the traditional process of healing differences. Peacemakers are appointed to the Peacemaker Court pursuant to the Mashpee Wampanoag Tribal Judiciary Ordinance, 2008-ORD-002, ch. 3, § 3.

“Elders Judiciary Committee” or “EJC” means the part of and Office within the Mashpee Wampanoag Tribal Judiciary as established and fully described in Chapter 4 of the Judiciary Ordinance, 2008-ORD-022, and as amended by the Amendment to the Judiciary Ordinance, 2013-ORD-003. Of emphasis, the Elders Judiciary Committee is recognized as a long-standing institution of the Tribe, now forever memorialized in time, and charged with fostering and achieving the Tribe’s vision, mission and goals for the Mashpee Tribal Courts, and forever sanctioned by the guardianship of the Elders Judiciary Committee of the Tribe. Specifically, the EJC provides oversight of the Tribal Judiciary on behalf of the Tribal Council and to report thereon from time to time to the Tribal Council.

“Foreign Court” means any state, federal, or tribal court other than a court of the Mashpee Wampanoag Tribal Judiciary.

NOTE: (As amended Dec. 17, 2014)

Rule 4. Citation to Rules of Civil Procedure

Citations to these Rules should look as follows:

- MWT RCP 7
- MWT RCP 8(a)
- MWT RCP 9(b)(2)

NOTE: (As amended May 20, 2016)

Rule 5. Construction

- a. These rules of civil procedure must be liberally construed in order for justice to be served and to allow for cases to be resolved efficiently.
- b. Nothing in these rules is intended to limit the jurisdiction or waive the sovereign immunity of the Mashpee Wampanoag Tribe.

- c. The parties and the District Court Judge 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, however, to waive a right or protection guaranteed by Tribal law if he or she clearly understands what rights he or she is giving up and must sign a waiver to that effect.
- d. In a situation where these Rules do not contain a procedure, the parties and the District Court Judge may agree on a procedure or the Judge may determine the procedure that will be followed.
- e. Whether to depart from the Rules or adopt another procedure will be considered by the parties and the Judge during the Conference Hearing, and if necessary, at the Pre-Trial Conference.
- f. Application of these Rules must be consistent with the Mashpee Wampanoag Tribal Court Code of Judicial Conduct and applicable Tribal law.

NOTE: (As amended Dec. 17, 2014)

Rule 6. Timing

- a. Whenever a rule or an order of the District Court requires that an action be taken within a certain number of days:
 - 1. Exclude the day of the event that triggers the period;
 - 2. Count every calendar day, including Saturdays, Sundays, and legal holidays; and
 - 3. Include the last day of the period, but if the last day is a Saturday, Sunday, or observed legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or closing of the Tribal Court offices.
- b. Upon the request of a party, the District Court Judge may allow an extension of any time limit described in these rules upon good cause.

Rule 7. Courtroom Behavior

The District Court is an expression of the sovereignty of the Mashpee Wampanoag Tribe and the business of the District Court is to be conducted in a just and orderly fashion. Accordingly, all persons appearing in the District 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. Sanctions

- a. The District Court Judge may impose appropriate sanctions upon an unrepresented party or his or her attorney who is found to have filed a lawsuit, motion or any other papers for an improper or frivolous purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
- b. Sanctions may include a fine of up to \$500, court costs and attorneys' fees incurred by the opposing party that were required to resolve the issue, or requiring that the party file a contempt bond if a subsequent lawsuit is filed.

Title II Beginning a Lawsuit:

The Complaint; Serving the Complaint and Summons; Answering the Complaint; Defenses to the Complaint; Counter-Claims; Form and Service of Documents and Papers; Notice of Appearance

Rule 9. The Complaint

- a. A Plaintiff or Plaintiffs start a civil lawsuit in the District Court by filing a Complaint with the Court Clerk. A Plaintiff may draft his or her own Complaint, but is encouraged to use the District Court's Complaint form.
- b. If the Complaint form is not used, the Complaint must contain the following:
 1. The name of the Court, and the name, tribal enrollment number, if applicable and available, and address of the Plaintiff or Plaintiffs, and the name and address of the Defendant or Defendants in the lawsuit;
 2. A statement of the facts describing how the Defendant injured or otherwise harmed the Plaintiff;
 3. A statement describing the rights or laws that the Plaintiff believes were violated;
 4. A description of the relief that the Plaintiff seeks, such as the approximate amount of money that is being sought from the Defendant (if monetary damages are requested), the rights to be enforced, the imposition of temporary or permanent injunction, or a description of any other remedy that the Plaintiff seeks;
 5. A statement that the Plaintiff will provide a copy of the Complaint to each and every Defendant pursuant to Rule 10 before the action can proceed;
 6. A statement that the Plaintiff certifies that based on his or her knowledge, information, and belief the statements contained in the Complaint are supported by evidence or are reasonably likely to be supported by evidence after the Plaintiff has had an opportunity to engage in discovery; and
 7. The signature of the Plaintiff.
- c. Any Complaint appealing a decision of a Tribal administrative tribunal, agency, committee, commission, or other subordinate tribal government organization under the District Court's appellate jurisdiction must include a copy of the written decision.
- d. If the Plaintiff is not represented by an attorney, then he or she must also provide a telephone number and email address, if applicable.

Rule 10. Serving the Complaint and Summons

- a. The Plaintiff must file the Complaint with the District Court by giving the signed original to the Court Clerk. After the Complaint is filed and reviewed, the Court Clerk will issue a Summons. The Summons will be on an approved District Court form.

- b. It is the Plaintiff's responsibility to make sure that the Defendant(s), or a representative of the Defendant-organization, receives a copy of both the Summons and Complaint within sixty (60) days after the Summons is issued.
- c. The Plaintiff must serve a copy of the Summons and Complaint by one of the following ways:
 1. Delivering a copy to the Defendant by using a sworn; or a constable authorized by the Court; or
 2. Mailing a copy by first-class, certified mail with return receipt requested to the Defendant(s) at his or her last known address. The Plaintiff must keep the signed receipt that shows when the mail was delivered and attach it to the Affidavit of Service required in Rule 10(e). If the receipt shows that delivery was attempted, but unsuccessful, the Plaintiff must attempt to serve the Defendant(s) in person as provided in Rule 10(c)(1).
- d. If a Plaintiff has attempted both personal delivery and mail delivery, and has been unable to serve the Summons and Complaint on the Defendant, the Plaintiff may ask the District Court Judge to approve a substitute method of delivery. Substitute service will include copies of the Summons and Complaint posted in the Tribal Government Office for two (2) weeks before the first hearing of the lawsuit, and any additional forms of notice the Judge may require.
- e. Upon serving the Summons and the Complaint, the person performing the service must complete and file the Affidavit of Service form with the District Court. This document must be completed and filed before the lawsuit may continue. An Affidavit of Service need not be on the District Court's approved form as long as the same information that appears on the form also appears on the Affidavit of Service that is used.
- f. If service has not been made after sixty (60) days from the date the Summons was issued, the Court will send a warning to the Plaintiff that service must be made within the next thirty (30) days or the case will be closed by the District Court. The Court's closure of the case means that the Complaint can be brought again but a new Complaint will have to be filed and any fees paid previously will not be applicable to the filing of the new case. No fee waiver will be granted on the new Complaint. Any new and subsequent Complaint must meet all time limitations.

NOTE: (As amended Dec. 17, 2014)

Rule 11. Amending the Complaint

A Plaintiff may amend or change the Complaint without the District Court's permission at any time before the Defendant answers it, as long as a copy of the changed Complaint is served to all parties according to Rule 10. After the Defendant has answered the Complaint, the District Court Judge may still allow a Plaintiff to change the Complaint as long as allowing the change would not be unfair to the Defendant or cause undue delay.

Rule 12. Answering the Complaint

- a. A Defendant must file an Answer with the Court Clerk and must serve a copy of the Answer on the Plaintiff as provided for in Rule 15 within twenty (20) days after the Defendant receives a copy of the Summons and Complaint. An extension of time to file an Answer may be granted by the District Court upon a showing of good cause, but such extensions are not favored.
- b. In the Answer, the Defendant must:
 1. Either admit or deny all allegation or factual statement made in the Complaint, and
 2. Provide a mailing address to which future papers and documents should be served.
- c. An allegation not specifically denied by the Defendant will be treated as admitted by the Defendant. If the Defendant does not have any knowledge about the Plaintiff's allegation(s), then the Defendant must state that he or she does not have sufficient information to admit or deny the allegation.
- d. In the Answer, the Defendant must not attach copies of documents already attached to the Complaint. Instead, the Defendant may refer to documents previously filed in the Complaint.
- e. The Defendant must sign the Answer certifying that based on his or her knowledge, information, and belief the statements contained in the Answer are supported by evidence or are reasonably likely to be supported by evidence after the Defendant has had an opportunity to engage in discovery.
- f. If the Defendant is not represented by an attorney, then he or she must also provide a telephone number and email address, if applicable.
- g. If the Defendant is a Tribal administrative tribunal, agency, commission, or other subordinate tribal government organization, then it must also file as an exhibit with its Answer a copy of the written administrative record that supports its decision.
- h. The Defendant may be subject to a default judgment under Rule 38 if he or she does not file an Answer.

Rule 13. Defenses to the Complaint

- a. If applicable, the Defendant must raise the following defenses to the Plaintiff's Complaint in a motion before filing an Answer:
 1. Lack of subject-matter jurisdiction;
 2. Lack of personal jurisdiction;
 3. Insufficient or incomplete summons and/or complaint; or
 4. Insufficient service of summons and/or complaint.
- b. Except for lack of subject matter jurisdiction, any of the above defenses not raised in a motion before filing an Answer will be considered waived. The Defendant may raise other defenses in the Answer.

- c. If the Defendant raises one of the above defenses in a motion before filing an Answer, the time-limit to file an Answer will be suspended until the District Court has ruled on the motion.
- d. In its motion, the Defendant must summarize why a particular defense applies to the lawsuit.

Rule 14. Counter-Claims

- a. A Defendant may file a counter-claim against the Plaintiff following the same rules that apply to Complaints.
- b. A Defendant's counter-claim must come out of the same factual allegations raised by the Plaintiff in his or her Complaint.
- c. The Defendant's counter-claim will be waived if not filed as a counter-claim to the Plaintiff's original Complaint.
- d. The Defendant's counter-claim must be filed with the Answer to the Plaintiff's original Complaint.

NOTE: (As amended Dec. 17, 2014)

Rule 15. Form and Service of Documents and Papers

- a. All documents or other papers filed by a party with the District Court must be in at least 12-point font and double-spaced. Parties who represent themselves, however, may file hand written documents and other papers but the handwriting must be readable by the Court.
- b. All documents and papers filed after the service of the Complaint, such as the Answer, motions and briefs, may be served upon the other parties by first class U.S. mail together with a Proof of Service. Service is complete upon mailing.
- c. The Parties may agree to serve each other all documents and papers filed after the service of the Complaint via e-mail with the permission of the District Court Judge, who will decide this issue during the Conference Hearing. Service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served.

Rule 16. Attorney Notice of Appearance

As recognized in Mashpee Wampanoag Tribal Judiciary Ordinance, 2008-ORD-002, ch. 2, § 6, a party to an action has the right to be represented by an attorney at all hearings before the District Court at his or her own expense. Each party's attorney must be a member of the Tribal Court bar and must file a Notice of Appearance with the District Court prior to making an entry of appearance or filing. Attorneys who are not members of the Tribal Court bar must ask for and receive permission of the presiding judge to file an appearance. The attorney may use the court approved Notice of Appearance form but is not required to use the form.

Title III Before a Trial:

Motions Generally; Motions to Dismiss; Discovery; Exhibit Book; Summary Judgment; Conference Hearing; Pre-Trial Conference; Settlements; Pre-Trial Injunctions and Temporary Restraining Orders

Rule 17. Motions Generally

- a. Questions regarding procedure or issues of law regarding the rights of the parties which are raised during a lawsuit and which are not settled by agreement of the parties may be presented to the court in a motion.
- b. Motions may either be written or oral. Written motions are preferred but oral motions may be made during a conference hearing or at trial. The District Court Judge may order that the oral motion be made in writing or may order relief immediately after giving the opposition an opportunity to be heard.
- c. When a motion is supported by a memorandum or affidavit, the supporting materials must be served on the other party along with the motion as required by Rule 15.
- d. Except as provided in Rule 18, the District Court Judge has discretion to schedule a hearing to address a motion.
- e. Except as provided in Rule 18, the District Court Judge has discretion to determine when a reply brief and a closing brief will be filed.

Rule 18. Motions to Dismiss

- a. Apart from defenses raised under Rule 13(a), motions to dismiss a claim or counterclaim must be filed with the District Court within twenty (20) days after the service of the Answer. The legal basis for dismissal must be stated in a brief accompanying the motion to dismiss.
- b. A motion to dismiss may be filed before the Answer.
- c. The party receiving the motion has twenty (20) days after receipt of the motion to dismiss to file a reply brief. The party making the original motion to dismiss has ten (10) days to file its own reply brief.
- d. The District Court must schedule a hearing on a motion to dismiss within twenty (20) days after the last brief is filed or at the parties and court's earliest convenience.

NOTE: (As amended Dec. 17, 2014)

Rule 19. Conference Hearing

- a. A Conference Hearing will be scheduled on the District Court's own initiative. The purpose of the Conference Hearing is to simplify the resolution of the case by discussing transferring the case to the Peacemaker Court, determining the extent and type of discovery, discouraging wasteful pretrial activities, discussing settlement prospects, identifying Mashpee Wampanoag customs or traditions that may be raised, and addressing other related matters.

- b. To encourage honest discussion, nothing said at the Conference Hearing may be admitted into evidence. Conference Hearings may, in the exercise of the District Court's discretion or on the request of a party, be held off the record.
- c. A specific discovery schedule and plan will be discussed and determined during the Conference Hearing. The plan should:
 - 1. Include a Court order directing parties to automatically disclose information pursuant to Rule 21;
 - 2. Determine whether limited discovery or formal discovery is appropriate for the case in order to avoid unnecessary or unduly burdensome or expensive discovery; and
 - 3. Include time limits set for the completion of discovery.
- d. If the parties are unable to agree upon a discovery plan, the District Court Judge will establish a plan after considering the parties' needs and concerns.
- e. In exceptional cases, where a party reasonably fears the destruction or disappearance of information, the party may file a motion with the District Court for a discovery order before or at the Conference Hearing without first having tried to obtain it by other means.

Rule 20. Purpose of Discovery

The purpose of discovery is to ensure that the parties have access to and share all information and evidence related to a case in an effort to further the goals of these rules: resolving disputes efficiently and revealing the truth. Each party has an obligation to share all information and evidence related to a case.

Rule 21. Automatic Disclosure

- a. Each party must disclose the following to all opposing parties within twenty (20) days of the District Court's order issued at the Conference Hearing:
 - 1. A witness list which includes the name, address, and phone number, if known, of anyone likely to have information that is subject to discovery and the subject matter of that information that the disclosing party may use to support its claims and/or defenses; and
 - 2. A copy or description of all documents, electronically stored information, and material things that the disclosing party has in its possession, custody, or control that the disclosing party may use to support its claims and/or defenses.

Rule 22. Limited Discovery

- a. The objective of limited discovery is to permit an economical and fast resolution of claims made while, at the same time, ensuring that any subsequent hearing is fair to both sides and leads to a just outcome. Limited discovery is ordered as an alternative to formal discovery as provided in Rule 23.

- b. If the plan agreed upon during the Conference Hearing is to conduct limited discovery, a party may request, in writing, that the other party:
 - 1. Answer questions presented in writing;
 - 2. Turn over copies of documents or photographs, or
 - 3. Admit or deny statements made in writing pursuant to the discovery plan.
- c. Each party may submit ten written questions to any witness on the witness list within twenty (20) days of receipt of the witness list.
- d. Questions, requests for documents, and requests for admission or denial, made under subsections (b) or (c), must be made by filing the original questions with the Court Clerk and by mailing a copy to the other party.
- e. The party receiving such a request has twenty (20) days from the time of receipt to reply.
- f. Extensions of the time restrictions may be granted for a good cause shown.

Rule 23. Formal Discovery

- a. If the plan agreed upon during the Conference Hearing is to conduct formal discovery, parties may obtain discovery by one or more of the following methods:
 - 1. Depositions upon oral examination or written questions;
 - 2. Written interrogatories;
 - 3. Production of documents or items and/or permission to enter upon land/property for inspection and other purposes;
 - 4. Physical and mental examinations, when permitted by Court order; and
 - 5. Requests for admission.
- b. A party may use these methods of discovery in any sequence. The party making a request must be as clear and as specific as possible and must form questions in a way that would lead to the discovery of relevant information.
- c. A party that receives a discovery request must respond within twenty (20) days with the information, communicate where/when that information will be available, or file objections to the request. Responding parties are obliged to reveal all relevant information that is reasonably related to the questions.
- d. Extensions of the time restrictions may be granted for a good cause shown.

Rule 24. Exhibit Book

- a. At the Conference Hearing, the District Court may require the parties to participate in the compilation of an Exhibit Book. The purpose of the Exhibit Book is to reduce or eliminate the duplication of voluminous exhibits. The Exhibit Book will be made available to all parties electronically and a hard-copy will be available at the District Court.

- b. The District Court will compile the Complaint or Answer and all documents submitted by the parties under Rules 21, 22 and 23 in an Exhibit Book. Documents may be added to Exhibit Book at the request of a party.
- c. Documents found in the Exhibit Book should not be reproduced in any subsequent filings by the parties. All references to documents and items found in the Exhibit Books must be cited to a specific page and/or line in the Exhibit Book.

Rule 25. Scope and Limitations of Discovery

- a. A party may refuse to make available the information requested:
 - 1. If it would cause undue hardship;
 - 2. If it is overly burdensome;
 - 3. If it is not in their care and custody;
 - 4. Violates any applicable privilege, or
 - 5. If its release would violate Mashpee Tribal law.
- b. When parties disagree about the information they are required to release, the District Court Judge will decide the dispute based on a motion filed by a party. The Judge may place conditions on the release of information to protect confidential material, prevent unreasonable burden or expense to one party, or otherwise ensure fairness to all parties.

NOTE: (As amended Dec. 17, 2014)

Rule 26. Failure to Cooperate in Discovery

- a. Either party may request a hearing within twenty (20) days after the due date of the discovery request to resolve issues that cannot be resolved by mutual agreements of the parties.
- b. If a party fails to respond to an authorized discovery request, the opposing party may file a motion for an order to compel the defaulting party to perform or file a motion to preserve the sought information within twenty (20) days of the authorized request. The motion must clearly state the information sought or preserved, the reasons why it is relevant to the case, and the efforts that have been made to obtain the information.
- c. If the non-moving party fails to reveal a witness during discovery that supports its position, then the District Court may not permit the witness to testify.
- d. Any documents that support the position of the non-moving a party that are undisclosed during discovery may also be excluded as evidence at trial.
- e. If a party fails to automatically disclose relevant information or fails to abide by a discovery order issued by the District Court, he or she may be sanctioned, which may include costs for the requesting party's time related to the request and the District Court Judge's time.

Rule 27. Summary Judgment

- a. A motion for summary judgment as to any or all of the issues presented in the case may be filed at any time until twenty (20) days after the close of discovery. The motion must include a short statement of material facts and specific references to the record showing the absence of a factual dispute.
- b. A reply brief must be filed within twenty (20) days of receiving the motion for summary judgment.
- c. A motion for summary judgment will be granted if it appears that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law.
- d. The District Court Judge may hold a hearing on a motion for summary judgment or rule on the motion without holding a hearing. The District Court must state on the record the reason for granting or denying the motion.

Rule 28. Pre-Trial Conference

- a. A pre-trial conference will be scheduled on the District Court's own initiative. The purpose of the pre-trial conference is to improve the quality and efficiency of the trial by discussing such things as facts and issues not in dispute, evidence to be presented, appropriate witnesses, settlements and address any outstanding issues.
- e. To accomplish the above purposes, all parties must fully disclose at the pre-trial conference:
 1. The names and addresses of all witnesses they expect to present at trial, and the material to which they expect the witness to testify;
 2. All documents that they expect to introduce as evidence, and the material that they intend to prove with those documents, and
 3. All items that they intend to introduce as evidence and the material that they intend to prove with those items.
- f. No party will be permitted to use the testimony of any witness or introduce as evidence any document or items unless he or she discloses the witness, document, or item at the pre-trial conference as provided in subsection (b) above, unless the party proves that at the time of the pre-trial conference he or she was unaware of the existence or nature of the witness, document or item and could not, with reasonable effort, have discovered it in time to disclose it. Such evidence must, in any case, be disclosed to the District Court Judge and opposing party as soon as possible before it may be offered in the trial.

Rule 29. Settlements

- a. No written offer of settlement that a party makes during the Conference Hearing or at any other time prior to trial may be used as evidence against that party if a settlement is not then achieved.

- b. Settlement agreements reached as a result of a Conference Hearing must be put in writing and signed by all parties. Such settlement agreement may be made part of the final judgment or the parties may agree to a dismissal of the case.
- c. If a party does not accept a settlement offer and ultimately obtains a judgment for less than the settlement offer, that party will not be entitled to interest and may be responsible for paying the opposing party's attorneys' fees from the date of the offer.

Rule 30. Pre-Trial Injunctions and Temporary Restraining Orders

- a. A party to a lawsuit may file a motion with the District Court for a pre-trial order or injunction prohibiting or requiring a particular action by another party that is directly at issue in the lawsuit.
 - 1. The motion will be granted if the requesting party demonstrates a substantial chance that he or she will win the lawsuit and further demonstrates that he or she will suffer immediate and permanent loss or injury that cannot be compensated by money alone if the order is not issued.
 - 2. Unless otherwise ordered by the District Court, a pre-trial injunction will remain in effect until final judgment in the case.
 - 3. Except as provided in subsection (b) of this rule, a pre-trial injunction will only be issued if the party affected first has notice and an opportunity to be heard in court.
- b. A District Court Judge may issue a temporary restraining order prohibiting or requiring particular action by a party without prior notice to the affected party when the party who requests such an order shows by affidavit or oral testimony that he or she will suffer permanent loss or injury that cannot be compensated by money alone if the order is not issued before the opposing party can be notified and heard.
 - 1. A temporary restraining order will be effective only for the time period specified in the order but in no event for longer than ten (10) days. A temporary restraining order may be renewed one time for good cause.
- c. The District Court Judge may require a party who requests a temporary restraining order or pre-trial injunction to provide security for any loss or injury that may be suffered by a party who is wrongfully enjoined or restrained, but the Judge will not require such security from the Mashpee Wampanoag Tribe or any arm of the Mashpee Wampanoag Tribe.

Title IV Mashpee Wampanoag Tribal Customary Law

Rule 31. Referral on Questions of Mashpee Wampanoag Tribal Customary Law/Oral Traditions

- a. During the Conference Hearing, a party must give notice to the District Court that he or she intends to apply Mashpee Wampanoag tribal customary law/oral traditions. If the parties agree upon the substance of the customary law, then they must provide the

District Court with a statement that they agree on the customary law. Where the parties cannot agree, the District Court may refer the matter to the Elders Judiciary Committee (EJC) which may seek the advice of the Mashpee Wampanoag Tribal Chief and/or Medicine Man/Woman for interpretation.

- b. Before the District Court Judge refers a matter to the EJC, each party will have the opportunity to present arguments on the substance of the Mashpee Wampanoag tribal customary law. At this point, the District Court will certify the question of customary law to the EJC within ten (10) days after arguments have been made. The Judge must frame the question in a neutral manner, and the EJC may suggest counter-questions so as to adequately respond to the inquiry.
- c. The EJC must submit its answer, to be determined via a consensus of the EJC's members, to the District Court within fourteen (14) days of receipt. The EJC will provide a written report as to its findings. All decisions on Mashpee Wampanoag tribal customary law made by the EJC are final.
- d. In the event that the EJC does not reach a consensus within fourteen (14) days, the District Court will grant an additional thirty (30) days for the EJC to reach a resolution on the question. If a consensus cannot be reached within the extended time frame, the issue will return to the Court for resolution by the District Court Judge.
- e. If a party is dissatisfied with how the District Court framed the question for referral to the EJC or with the Court's determination on Mashpee Wampanoag tribal customary law in the event that the EJC cannot agree, they may reserve the issue for appeal. Parties may not request an appeal on this issue until the case is closed.

NOTE: (As amended May 20, 2016)

Title V During a Trial:

Trial Procedure; Compelling Witnesses to Appear; Subpoena; Standard of Proof

Rule 32. Trial Procedure

Civil cases will be tried by the District Court without a jury. Procedure at trial will be as follows unless otherwise agreed by the parties and the District Court:

- a. The Plaintiff may make an opening statement summarizing what he or she intends to prove, after which the Defendant may make an opening statement summarizing his or her defense;
- b. The Plaintiff may call witnesses or present other evidence in support of his or her case to the District Court. The witness must testify under oath that he or she will testify truthfully and will be subject to cross-examination by the Defendant. Following cross-examination of witnesses, the Plaintiff will have a second opportunity to question the witness about matters raised in cross examination. When the Plaintiff has presented all of his or her witnesses and evidence, the Plaintiff must inform the District Court;

- c. After the Plaintiff's evidence has been presented, the Defendant may move the District Court to dismiss the case. The Judge must grant the motion to dismiss if the Plaintiff failed to meet the standard of proof under Rule 34;
- d. If the action is not dismissed, the Defendant may call witnesses or present evidence. A witness must testify under oath that he or she will testify truthfully as to matters of which they have direct knowledge and may be subject to cross-examination by the Plaintiff, after which the Defendant will have a second opportunity to question the witness about matters brought up during cross-examination;
- e. The District Court, in its discretion, may allow the Plaintiff to present additional witnesses or evidence to rebut any new matters presented in the Defendant's case, but no evidence or testimony that is merely cumulative or repetitive of the Plaintiff's case will be allowed;
- f. The parties will have the opportunity to present final remarks to the District Court. Because the Plaintiff has the burden of proving his or her case, he or she will have an additional opportunity to rebut the Defendant's remarks;
- g. The District Court will consider all the evidence and announce a judgment or issue a written decision under Rule 36.

Rule 33. Compelling Witnesses to Appear; Subpoena

- a. The District Court may issue a subpoena to compel the attendance at trial of a witness to give testimony or to command the person to whom it is directed to produce evidence.
- b. The District Court may quash or modify a subpoena, at any time before the time specified on its face for compliance, for good cause shown and the Court may condition the issuance of a subpoena upon payment of a reasonable fee to offset the affected party's costs of producing the evidence sought.
- c. Service of subpoena must be made by Tribal Constable, Tribal law enforcement, or other person appointed by the Court for such purposes. As soon as practicable, proof of service of subpoena must be filed with the Clerk of Court indicating the date, time, and place of service.
- d. In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be subject to a bench warrant.

NOTE: (As amended May 20, 2016)

Rule 34. Standard of Proof

- a. Unless otherwise provided in the applicable ordinance, the burden of proving a claim must be on the party who makes the claim.
- b. Unless otherwise provided in an applicable ordinance, a party will be considered to have met the burden of proof if the evidence presented establishes that it is more likely than not that the claim is true.

Title VI Cases Transferred from District Court to Peacemakers

Rule 35. Cases Transferred from District Court to Peacemakers

- a. This rule applies only to those cases transferred from District Court to Peacemakers under the Mashpee Wampanoag Tribal Judiciary Ordinance, 2008-ORD-002, ch. 3, § 4(b).
- b. Once parties agree to transfer a case from District Court to Peacemakers, the case will be placed on the District Court's inactive case docket until such time as the Peacemakers notify the Court that the case has been settled or that the case was not settled. If sixty (60) days have passed since the case was placed on the Court's inactive case docket and the Peacemakers have not yet notified the District Court, the Court Clerk will request an update from the Peacemakers on the status of the case.
- c. If peacemaking results in a settlement, the Peacemakers will provide a written copy of the settlement to the District Court by filing it with the Court Clerk. The Peacemakers will also notify the District Court when the settlement has been fulfilled. Once the settlement has been fulfilled, the District Court will dismiss the case with prejudice.
- d. If Peacemaking does not result in a settlement or if a party fails to abide by the settlement agreed to during Peacemaking, the case will return to the District Court and be removed from the Court's inactive case docket. The case will proceed as any other District Court case. Nothing said or done at peacemaking is admissible in District Court.

Title VII After The Trial:

Judgments; Remedies; Execution of Judgments and Accrued Interest; Notice of Appeal

Rule 36. Final Judgment

- a. A judgment is the final written order of the District Court that determines the rights of the parties to the lawsuit and that states any relief granted to the prevailing party. The Judge must file a written final judgment no later than thirty (30) days after the end of trial.
- b. In matters involving complex or novel issues, the Judge may file and serve a notice indicating that up to an additional fifteen (15) days may be required to render the decision.
- c. A judgment becomes final when the Judge signs it.
- d. The District Court may amend or modify a final judgment upon a motion by a party. A motion to amend or modify the final judgment must be served no later than twenty (20) days after entry of the final judgment. If a motion to amend or modify is filed, a Notice of Appeal may be filed up to thirty (30) days after the Court has ruled on the motion.

NOTE: (As amended Dec. 17, 2014)

Rule 37. Remedies

- a. Every final judgment must grant a remedy or remedies to the successful party, even if such a remedy is not demanded in the pleadings.
- b. Remedies may include the sale of property to fulfill a judgment, unless it will cause immediate and substantial hardship on the immediate family of the judgment debtor or if the property is of religious or cultural significance. Properties that are of a religious, spiritual or cultural significance are assets of the Tribe and cannot be encumbered or sold to fulfill a judgment.

Rule 38. Default Judgment

- a. If a Defendant fails to answer within twenty (20) days after a Complaint is served then such failure may result in a default and may provide grounds for a judgment against the Defendant requested for in the Complaint.
- b. No default judgment will be entered unless the Plaintiff files a written motion for a default judgment and serves a copy of the motion on the Defendant in the same manner as the Complaint was served.
- c. The hearing on the motion for default judgment must be scheduled for no later than ten (10) days after service of the motion. If the Defendant answers the Complaint at or before the time that the motion is heard by the District Court, no default judgment will be granted.
- d. The District Court Judge may grant the relief or damages requested if they are easily determinable. If the relief requested or damages are not easily determinable, then the District Court will hold a hearing to assess the damages.
- e. The District Court Judge may refuse to grant relief requested by Plaintiff if granting the relief would be contrary to Tribal law or would be unjust. The Judge may not grant the Plaintiff greater relief on default than was requested in the Complaint.

Rule 39. Foreign Judgment

The execution of a judgment from a foreign court is governed by the Mashpee Wampanoag Full Faith and Credit Ordinance, 2013-ORD-00, as from time-to-time-amended.

NOTE: (As amended May 20, 2016)

Rule 40. Execution of Judgments, Procedure and Accrued Interest

- a. If a party is ordered to do something or make a payment, that party must file proof that the ordered action has been done or that the money has been paid with the District Court within ten (10) days of completion of the act or payment. If a party is ordered to pay a fine, payment must be made to the Court Clerk.

- b. Failure to comply with an order or judgment of the Court may be considered Contempt of Court and may result in an additional fine or other penalty.
- c. Judgments founded on written contracts which provide for the payment of interest until paid at a specified rate will bear interest at the rate specified in the contracts, provided that the interest rate is set forth in the judgment and does not exceed a maximum rate of 12% per annum.
- d. Except as provided under subsection (c) of this section, judgments will bear interest from the date of entry. Interest will be calculated by using the prime rate plus 1 percentage point, but not more than a maximum rate of 12% per annum. In the case where a judgment is affirmed on appeal, interest on the judgment or on that portion of the judgment affirmed on appeal will date back to and will accrue from the date of the judgment was first issued.
- e. A judgment, including any interest, will be enforceable until satisfied in full.

Rule 41. Notice of Appeal

- a. Any party who does not believe that the judgment of the District Court is supported by law or fact may file a Notice of Appeal with the Court Clerk within thirty (30) days after the judgment is entered with the Clerk.
- b. A party may also appeal a Non-Final Judgment or Order.
- c. Appeals are governed by the Mashpee Wampanoag Supreme Court Rules of Appellate Procedure.
- d. The District Court will have no further jurisdiction over the case upon the filing of a notice of appeal.

NOTE: (As amended May 20, 2016)

Title VIII Effective Date

Rule 42. 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 Civil Procedure govern all proceedings after their effective date except to the extent that the District Court Judge determines 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 Civil Procedure of the Mashpee Wampanoag District Court and therefore cannot be used to interpret the Rules. Its sole purpose is to assist individuals using the Rules of Civil Procedure.

A “**Plaintiff**” is a person, organization, government or corporation that starts a lawsuit.

A “**Defendant**” is a person or organization against whom the plaintiff’s lawsuit is brought.

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 “**Complaint**” is a written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant and demands relief for that harm.

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.

An “**Allegation**” is a claim that is stated in the Complaint that the Plaintiff believes to be true and can be proven at trial.

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.

A “**Summons**” is a written court order that starts the plaintiff’s lawsuit and requires the defendant to appear and answer.

A “**Defense**” is a claim or argument based on fact or law that would prevent the plaintiff from winning the case.

A “**Subpoena**” is a command, issued under a court’s authority, to a witness to appear and give testimony or to require a person to produce documents or objects.

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

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

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

“**Default Judgment**” means if a defendant does not appear in court or respond to the plaintiff’s complaint the court can issue a “default judgment”, which gives the plaintiff what they asked for in their complaint.

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

“**Discovery**” is how parties get evidence relevant to the issues of the case before trial.

“Settlement” is when parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims.

A **“Pre-Trial Conference”** is an informal meeting between the parties and the judge to plan the trial; discuss which matters should be presented to the jury; review proposed evidence and witnesses, and to set a trial schedule.

An **“Injunction”** is a court order commanding or preventing an action.

“Standard of Proof” is the degree or level of proof demanded in a specific case.

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.

“Remedies” are the means of enforcing rights and redressing wrongs such as awarding damages and issuing an injunction.

“Damages” are monies that a court orders a defendant to pay a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).