



**MASHPEE WAMPANOAG
TRIBAL COURT
CODE OF JUDICIAL
CONDUCT**

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**MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE**

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ADMINISTRATIVE ORDER #2
CODE OF JUDICIAL CONDUCT

Pursuant to Article V of the Constitution of the Mashpee Wampanoag Tribe, the tribal judiciary has been established as a separate and equal branch of the Tribal Government. The judicial branch of the tribal government was fully formed upon the swearing in on August 24, 2009, of three Supreme Court judges. The tribal Constitution further provides in Article X, Section 6 that the Court shall by order establish written rules of procedure and ethics for all Tribal Courts. Based upon the authority conferred by the Tribal Constitution, the following Code of Conduct is hereby adopted and shall be effective from the date of the order.

IT IS SO ORDERED this 8th day of February, 2010

BY THE COURT:

Henry J. Sockbeson, Chief Judge
Mashpee Wampanoag Supreme Court

Purpose

The basic and essential purpose of the Tribal Court system is to exercise the inherent sovereignty of the Mashpee Wampanoag Tribe to the maximum extent permitted by law. The Court must do so in a manner that appears to be and is in fact, fair and impartial to those who appear before it. Judges must conduct themselves while on the bench and in their outside activities in a manner that will inspire confidence and respect for the court from the tribal membership and others. It is particularly important that the judges of the court conduct themselves in a manner that is neutral and independent from the Tribal Council.

This Code is intended to provide guidance to the judges of the court regarding the type of conduct that is expected and to indicate when a judge should disqualify themselves from a particular case. It is also intended to provide guidance to members of the Tribal Court bar regarding the type of conflict that will properly serve as a basis for a motion that would lead judges to disqualify themselves.

The Code is divided into two parts. The first states the Cannon which is printed in bold. This is a general statement of the type of conduct that is either the goal of the judiciary or which constitutes prohibited conduct. The Cannon is mandatory. These Canons are necessarily general statements since it is impossible to state all circumstances which constitute proper or prohibited conduct. Since the Canons are so general, an effort has been made to amplify what is intended by the language of the Cannons. The comments that follow the Cannon are intended to provide guidance but cannot be used as a black letter definition of what is meant by the Cannon. Each situation must be carefully evaluated by the judge and all relevant facts and circumstances examined. Only then can the judge determine whether the Cannon has been or may be breached.

It is not contemplated that every transgression by a judge will result in the imposition of discipline or should result in recusal. Whether a violation has occurred will be determined through a reasonable and reasoned application of the Canon and will depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system.

This Code applies to all judges of the Mashpee Wampanoag Tribal Court. This includes full, part-time or special appointment judges.

Any party may file a motion to disqualify a judge for a violation of this Code. A judge may also disqualify themselves if they think that a Cannon may be breached in any proceeding. Any disqualification should be limited to a significant breach since unwarranted disqualification may bring public disfavor on the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge use disqualification only in circumstances that constitute a significant and not merely technical or de minimis breach of the Canon. Under no circumstances should a judge use the Canons to disqualify themselves to avoid cases that present difficult, controversial, or unpopular issues.

If a judge is aware, or is made aware through the filing of a motion to disqualify, that a Canon is or may be breached, then the judge can disqualify themselves through the entry of an order on the record. In the alternative, if the judge determines that the breach of the Canon is not serious then the judge can disclose on the record, and in the presence of all parties or their attorneys, the nature and extent of the possible breach of the Canon. Independently, and not in the presence of the judge, the parties or their attorneys can agree that the judge ought to continue presiding over the case. If agreement is reached, then a signed document should be prepared and signed by the parties or their attorneys which (a) fully describes the nature and circumstances of any conflict with the Canon and (b) attests that all parties agree that the conflict should not preclude the judge from presiding in the matter. That document shall be reviewed and approved by the judge and entered on the record. If no agreement can be reached, then, without disclosing which party or attorney refused to agree, the judge is informed on the record that no agreement could be reached and the judge should immediately recuse him or herself. If the judge refuses to recuse him or herself then an appeal may be taken by any party within five days of the proceeding. The Chief Judge shall consider the appeal and shall, within ten days of the filing of the appeal and based solely upon the record of the proceedings, issue a ruling on the disqualification.

The Code may not be used as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

CANONS

CANON 1

A judge shall uphold and promote the fairness and impartiality of the Judiciary, and shall avoid impropriety within the courtroom.

Comment 1:

A judge should strive to treat all parties equally and must avoid conduct that may reasonably be perceived as prejudiced or biased. Through words and conduct a judge should, to the extent possible, maintain neutrality and impartiality. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; threatening, intimidating or hostile acts; and irrelevant references to personal characteristics or race.

Comment 2:

Rulings and Orders must be based upon the judge's fair reading of the law and must not be driven by a pre-determined outcome. A judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

Comment 3:

A judge who attempts to broker a settlement between litigants should not thereafter continue to sit as the presiding judge in the event the settlement effort fails.

Comment 4:

A judge can make good faith errors in findings of fact or interpretations of laws. Errors of this kind do not violate this Canon.

Comment 5:

During all court proceedings a judge should be patient, dignified and courteous to all litigants, jurors, witnesses and attorneys with whom he or she deals and should require similar conduct of those same persons in all court proceedings.

Comment 6:

A judge should maintain order in the court. He or she should not interfere in the proceedings except where necessary to protect the rights of the parties or the dignity of the court. A judge shall give to every person who is legally interested in a proceeding, or his or her legal counsel, a full right to be heard according to tribal law. A judge shall not act or appear to act as an advocate. A judge shall rely only on those procedures which are prescribed by, or are consistent with, the laws, rules, traditions or customs of the Mashpee Wampanoag Tribe.

CANON 2

A judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Comment 1:

Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

Comment 2:

A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

Comment 3:

A judge must obey all laws, including tribal, state and federal. Minor infractions such as speeding are not disabling but a DUI conviction or a conviction of a crime involving dishonesty or moral turpitude should generate a sanction, resignation or disciplinary action pursuant to the Tribal Constitution.

Comment 4:

A judge should not make any statements of opinion either to individuals or the general public regarding the merits or weakness of a pending matter. A judge does have the obligation to educate the tribe and the general public about the business of the court and it is appropriate and proper for a judge to discuss the general workings of the court.

Comment 5:

A judge should not disclose to any individual or the general public any confidential information gained as a part of any proceeding either pending or concluded.

Comment 6:

A judge should not make any statements to any individual or the general public regarding the character, fitness or credibility of any party, attorney, juror, or witness in any proceeding before the court- either pending or concluded.

Comment 7:

A judge should not be engaged in any activity that brings scandal or disrepute upon the Tribal Court.

Comment 8:

Neither a judge nor a member of the judge's family¹ should hold membership in any organization

¹ The term "family" means any person related in the third degree or closer. This includes great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

that practices invidious discrimination on the basis of race, sex, religion or tribal or national origins.

Comment 9:

Neither a judge, nor any member of the judge's family, may accept a personal gift worth any amount from the tribal government, a member of the Tribal Court bar, a party or witness or juror in any pending or concluded Tribal Court matter, vendors to the tribe or any individual member of the tribe. Gifts include participation, at no cost, in any activity for which a charge is normally imposed for members of the public or the tribal membership. Gifts do not include awards or participation in a tribal celebration or court sponsored social activity where food or refreshments are supplied.

Comment 10:

A judge should, at all time, act in a manner that promotes public and tribal confidence in the honesty and impartiality of the Mashpee Tribal judiciary.

Comment 11:

A judge shall not convey the impression that anyone has special influence over his or her decisions as a judge.

Comment 12:

Judges have an obligation to avoid not only actual impropriety but also should avoid an appearance of impropriety. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.

Comment 13:

A judge shall not act as an attorney or an advocate in any proceeding in any court or in the Peacemakers.

CANON 3

A judge should not continue to participate in a case if family members will be involved or affected by the outcome of a case.

Comment 1:

A judge should disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that a family member will testify or otherwise participate or benefit from the outcome of a case.

Comment 2:

It is impossible to list all the situations in which a judge should disqualify themselves on their own motion when family members may become involved or benefit from an outcome in a proceeding. However, what follows is guidance concerning possible improper influence or the appearance of

improper influence that is generated by a family connection in a case. A judge should not continue to sit on a case if the judge or a member of his or her family:

- (i) is a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) is acting as an attorney or advocate in the proceeding;
- (iii) is known by the judge to have a financial or other interest that could be affected by the outcome of the proceeding; or
- (iv) is, to the judge's reasonable knowledge, likely to be a material witness in the proceeding.

CANON 4

A judge should extend proper deference to the history and culture of the Tribe.

Comment 1:

The Mashpee Wampanoag Tribe has a long oral history and has established certain recognized traditional practices. Some of these are based solely upon oral tradition. The judge should permit testimony regarding the existence of these traditional practices and to the extent that credible evidence is shown, recognize and apply these traditional practices.

Comment 2:

The judge should balance the traditional practices of the tribe against the requirements of the tribe's Constitution and the rights guaranteed therein.

CANON 5

A judge should not be swayed or otherwise influenced by the clamor of the tribal membership or pressure from the Tribal Council.

Comment 1:

The Mashpee Wampanoag Tribal Court is a separate and equal branch of the tribal government. Pursuant to the tribal constitution, judges may be removed from office only for their inability or failure to carry out the duties of the office or for the lack of a requisite qualification. This protection is afforded so that judges are free to rule solely upon the law and facts of a case.

Comment 2:

Judges must not be swayed by the political or financial implications, on the Tribe, of their decisions. Judges must rule against the Tribe where the law and facts of a case support such a finding. If the Tribal Council engages in unconstitutional or unlawful conduct, and that issue is

duly raised in a Tribal Court action, then the judge must rule accordingly. Judges must not hesitate to rule in favor of the Tribe or Tribal Council even if the tribal membership clamors for a different outcome. Judges must rule on the facts and law presented and they must support their decisions solely by those considerations.

Comment 3:

Judges must not base their decisions on whether particular laws or litigants are popular or unpopular with the tribal membership or the Tribal Council.

Comment 4:

Tribal membership and Tribal Council confidence in the judiciary is eroded if judicial decision making is or is perceived to be subject to inappropriate influences.

Comment 5:

A judge must resist influences on the court by members of the Tribal Council, other tribal officials or any others attempting to improperly influence the judge. The judge should discourage members of the Tribal Council from attending court sessions as a spectator.

CANON 6

A judge shall maintain a separation between the judicial branch and other branches of tribal government and shall avoid any contact or duty that violates such a separation.

Comment 1:

A judge should not run for elective office or serve as an elected government official of the Mashpee Tribe.

Comment 2:

A judge should not comment to tribal members on the competence of members of the Tribal Council or other officials or investors in the tribe.

Comment 3:

A judge should not be employed in any other capacity by the Mashpee Tribe.

Comment 4:

A judge should not meet in private sessions with the Mashpee Tribal Council. All judicial meetings with the Tribal Council should be in open session where any tribal member may be present. An exception is meetings with the Tribal Council where personnel issues are discussed. Any meeting with the Mashpee Tribal Council should be limited to judicial matters including but not limited to tribal law, the tribal legal system or the administrative aspects of tribal justice. The judge should not explain or otherwise justify the proceedings or outcome of any particular case or controversy.

Comment 5:

A judge should minimize private discussions with tribal officials and any such discussions should be limited to matters involving tribal law, the tribal legal system or the administrative aspects of

tribal justice. Individual cases, pending or concluded, are never discussed.

Comment 6:

A judge should not contribute time or money to any tribal member running for any tribal office nor should a judge endorse, campaign or otherwise speak in favor or against the election of any member of the tribe to a tribal office.

Comment 7:

A judge should not contribute to the political campaign of any person at the request of a tribal official.

Comment 8:

A judge should not write letters in their official capacity that recommends any individual for tribal employment.

Comment 9:

Judges should initiate measures to improve the law, the tribal justice system and the administration of justice. Suggestions for tribal laws or clarifications to the tribal law should be made in writing via the Elders Judicial Committee or directly to the attorney for the tribe if approved by the Chair of the Elders Judicial Committee.

Comment 10:

A judge should not use court tribal stationary for any purpose other than the business of the Tribal Court.

CANON 7

A judge shall perform the duties of the office diligently.

Comment 1:

Judges should not permit other employment to interfere with the timely and professional quality of opinions and rulings. Hearings should be conducted promptly so as to provide meaningful access to justice.

Comment 2:

Judges should, in the absence of extraordinary circumstances, issue rulings on routine motions within fifteen days and not longer than thirty days from the date of the filing of the final papers relating to the motion. Rulings on Summary Judgment or other complex motions should be issued within forty-five days and in no event longer than sixty days from the submission of the final papers. Judges shall arrange their work load so as to permit time to file a well reasoned and supported ruling. The Chief Judge may authorize the withholding of payment on invoices from a judge in violation of this Canon until such time as the required decision is issued. The judicial duties of a judge shall take precedence over all other activities.

Comment 3:

A judge shall not allow family, social, business or other personal relationships to influence his or

her judicial conduct. He or she shall not attempt to use the prestige of his or her judicial office to advance the private interests of themselves or others.

CANON 8

A judge shall discourage ex parte communication to assure the appearance of propriety.

Comment 1:

Ex parte communication occurs when only one party to a pending action or their lawyer communicates with a judge.

Comment 2:

A judge should not permit or consider ex parte communications initiated by a party or their lawyer.

Comment 3:

A judge should require any party or their lawyer to give sufficient notice to the opposing party and their lawyer to permit them (or at a minimum the attorney) to be present or otherwise participate any time one party or their lawyer wishes to communicate with the presiding judge concerning a pending matter.

Comment 4:

A judge may initiate ex parte communication when circumstances require it provided the subject matter does not concern substantive matters. Scheduling and administrative matters can be the subject of ex parte communications initiated by the judge provided there is not sufficient time to notify the adverse party and provided the judge reasonably believes that no party will gain a procedural, substantive or tactical advantage as a result of the ex parte communication and provided further that the judge promptly notifies all other parties of the substance of the ex parte communication and the other parties are provided a reasonable opportunity to respond.

Comment 5:

If a judge inadvertently receives an unauthorized ex parte communication from one party bearing upon the substance of a matter, the judge should promptly notify the opposing parties of the substance of the communication and provide the opposing parties with an opportunity to respond.

Comment 6:

A judge should never be a party to an ex parte communication with the Tribal Council regarding any pending or impending matter.

Comment 7:

The Chief Judge must instruct the Court Clerk and other court officials about the dangers of ex parte communication and should encourage them to limit their discussions with parties or their lawyers to scheduling and administrative matters.

CANON 9

Judges should assist pro se litigants in procedural or administrative matters but must not go so far as to provide them with a substantive advantage.

Comment 1:

A “pro se” litigant is one who represents him or herself in a Tribal Court action.

Comment 2:

Dealing with pro se litigants puts Tribal Court judges in a delicate position. On the one hand they should be fair to the pro se litigant while at the same time they must not penalize the opposing side which is represented.

Comment 3:

Judges should assist pro se litigants to ensure that they are fairly treated and that their complaint is fairly and impartially heard. Such assistance should be limited to procedural or administrative matters. Judges should never act as the attorney for a pro se litigant. A judge must always preserve their role as a passive adjudicator.

Comment 4:

Complaints that are vaguely worded should be viewed in a non-technical manner. The rules of evidence should be interpreted in a manner that is consistent with the understanding of the common man. Ultimately however, each litigant has the same burden of proof and must support their claim by the law and facts of the case.

Comment 5:

Pro se parties must not be permitted to abuse the Tribal Court system. Judges should not permit obdurate behavior such as refusal to allow appraisals, to inspect premises, to produce records or otherwise permit discovery.

Comment 6:

Judges should require that pro se litigants certify to the court that they have read and agree to abide by the normative behavior as set forth in the Rules of Professional Conduct for attorneys (upon adoption thereof) in order to assure proper decorum in the court.

Comment 7:

It is appropriate for the judge to explain the court process and to encourage pro se litigants to consult other legal resources and community services. It is also acceptable to draw the attention of pro se litigants to the requirements of the rules of evidence and procedure and to ask questions so as to clarify the nature of the cause of action. It is not appropriate for a judge to substantially relax the rules of evidence or to sua sponte raise a defense such as the statute of limitations or other absolute defenses.

CANON 10

The Chief Judge of the Supreme Court has a special obligation to be fair and impartial in the assignment and oversight of judges.

Comment 1:

The Chief Judge of the Mashpee Supreme Court shall discharge the Chief Judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial administration. All judges shall cooperate with the Chief Judge and all other judges and court officials in the administration of court business.

Comment 2:

The Chief Judge shall assign cases on an unbiased and fair basis.

Comment 3:

The Chief Judge shall diligently discharge the Chief Judge's administrative responsibilities in an efficient and expeditious manner.

Comment 4:

The Chief Judge shall require his or her staff and court officials to observe high standards of honesty and diligence. A judge having knowledge that another judge has committed a violation of this Code shall inform the Chief Judge. Misconduct by the Chief Judge shall be reported to the Elders Judiciary Committee.

REMEDY

Discipline and Removal of Judges

The discipline and removal of judges for violations of this Code are set forth in 2008-ORD-002, Section 4(i).