

RULES OF CRIMINAL PROCEDURE

MASHPEE WAMPANOAG DISTRICT COURT

As adopted August 31, 2016

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TITLE I GENERAL PROVISIONS

Rule 1. Purpose of Rules

These Rules set forth the procedure in all criminal proceedings in the Mashpee Wampanoag District Court.

Rule 2. Scope

These Rules govern every criminal proceeding in the District Court in which a person is charged with a breach of the Mashpee Wampanoag Tribe's criminal laws.

Rule 3. Mission of the Court

The Mashpee Wampanoag Tribe's purpose through the District Court 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 circumstance, the Tribe seeks to justly deal with all cases so as to protect all inherent rights of the parties.

Rule 4. Definitions

"Bail" means the security given, in the form of cash, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.

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

"Defendant" means a person charged with an offense.

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

"District Court Judge" means a judge of the Mashpee Wampanoag District Court.

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

"Offense" means a breach of the Mashpee Wampanoag Tribe's criminal laws.

"Person" means a human being, as distinguished from a corporation which is often treated at law as a fictitious person.

"Preliminary Proceedings" means those actions that take place up to, but before, the bench or jury trial begins.

"Rules" means the Rules of Criminal Procedure of the Mashpee Wampanoag District Court.

Rule 5. Citation to Rules of Criminal Procedure

Citations to these Rules should look as follows:

MWT RCrimP 5
MWT RCrimP 12(a)
MWT RCrimP 14(c)(1)

Rule 6. Construction

These Rules are intended to provide for the just and speedy determination of every criminal proceeding. They must be construed to secure simplicity in procedure, fairness in administration, the elimination of unreasonable expense and delay, and to protect the fundamental rights of the individual while preserving the public welfare.

Rule 7. Timing

- (a) Whenever a Rule, Tribal law, or 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; and
 - (3) Include the last day of the period, but if the last day is Saturday, Sunday, or a Tribal 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) When a time limit is counted from or to the time that notice is delivered to a person and the notice is delivered by mail rather than given directly to the person, it must be presumed that delivery takes place three days after the notice is postmarked in a United States Postal Service mailbox.

Rule 8. Courtroom Behavior

The District Court is an expression of the sovereignty of the Mashpee Wampanoag Tribe and the proceedings of the District Court are 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 including *Courtroom Behavior*, *Administrative Order #12*, and other applicable administrative orders that the Court may issue.

TITLE II PRELIMINARY PROCEEDINGS

Rule 9. Presence of the Defendant

A defendant must be present at all stages of the proceedings. Appearance by counsel is insufficient to avoid issuance of a bench warrant. The District Court in its discretion may allow the defendant to appear through counsel, telephone, or videoconference.

Rule 10. Proper Parties

All criminal proceedings must be prosecuted in the name of the Mashpee Wampanoag Tribe against the person charged with an offense who must be referred to as the defendant.

Rule 11. Complaints

- (a) All criminal prosecutions for violation of the Tribe's criminal laws must be commenced in the District Court by filing a complaint with the Court Clerk. The complaint is a written statement of the essential facts that arise to probable cause and constitute the offense charged.
- (b) Complaints may be signed by any person, including, but not limited to, Tribal law enforcement and Tribal Prosecutor. It is encouraged that all criminal complaints be filed on the District Court's Criminal Complaint form.
- (c) The Court Clerk may assist private parties in writing up and filing criminal complaints as appropriate, but may not provide legal advice to parties.
- (d) Originals of complaints must be filed with the District Court, designated by number and retained by the Court Clerk. The Court Clerk must keep a record of the issuance and disposition of each complaint. Whenever practicable, a copy of the complaint must be served upon the defendant at the time of execution of an arrest or warrant.
- (e) A minor omission or error in the form of a criminal complaint will not be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.
- (f) If an accused has been arrested without a warrant, a complaint must be filed with the District Court prior to arraignment.

Rule 12. Summons

- (a) Upon receipt of the complaint, a District Court Judge must immediately examine the complaint. A Judge may issue summonses if, based upon the complaint or such other information that may support the complaint, they are satisfied that there is probable cause to believe that an offense has occurred and that the accused person committed the offense.
- (b) Tribal law enforcement has the authority to directly issue summonses.
 - (1) The District Court and Tribal law enforcement must prescribe written summons forms for minor offenses. The summons must be submitted to the Court.
 - (2) Service of this type of summons may be executed by personal delivery or by certified mail.

Rule 13. Joinder and Severance of Offenses.

- (a) Two or more offenses may be charged in the same complaint in separate counts. Allegations made in one count may be incorporated by reference in another count.
- (b) The District Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated.
- (c) Each offense of which the defendant is convicted must be stated in the verdict or the finding of the District Court.

Rule 14. Prosecution for Multiple Offenses.

- (a) When the conduct of a defendant establishes the commission of more than one offense, the defendant may be prosecuted separately for each offense.
- (b) The defendant, however, may not be convicted of more than one offense if:
 - (1) one offense is included in the other;

- (2) one offense consists only of conspiracy or some other form of preparation for committing the offense;
- (3) inconsistent findings of fact are required to establish the commission of the offenses;
- (4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, or
- (5) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

Rule 15. Lesser Included Offenses.

A defendant may be convicted of a lesser offense without having been specifically charged of that lesser offense in the following circumstances:

- (a) it is established by proof of the same or less than all the facts required to establish the commission of the greater offense charged;
- (b) it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included, or
- (c) it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

Rule 16. Probable Cause Judicial Determination

A person who is arrested without a warrant must have a judicial determination of probable cause within forty-eight (48) hours following the arrest. If probable cause is not found, the person must be released immediately without conditions.

Rule 17. Initial Appearance

A person arrested must be taken before a District Court Judge for an initial appearance following the arrest as soon as practicable. A person not arrested must appear for an initial appearance at the time and place designated in the citation or summons.

Rule 18. Scheduling Arraignment

Unless the arraignment occurs at the initial appearance, arraignment must be scheduled within five days of the initial appearance, unless waived by the defendant. If the defendant is not arraigned within this time limit, and the right to a speedy trial has not been extended, the defendant must be released without conditions.

Rule 19. Arraignment

- (a) A defendant must be arraigned in open District Court whenever a complaint has been filed. Arraignment consists of reading the charge, unless the defendant waives the reading, supplying a copy of it to the defendant, and calling on the defendant to plead to the charge.
- (b) If the defendant waives his or her right to counsel in writing, the Court may arraign the defendant at the initial appearance.

- (c) Prior to accepting any plea at the time of arraignment, the Judge must determine whether the defendant has an understanding of the charges, the penalties, and the effects of a plea. If the Judge determines that the defendant fails to understand, the arraignment may be continued until the defendant is able to proceed or the Judge may enter a “Not Guilty” plea for the defendant.
- (d) Defendants who are jointly charged may be arraigned separately or together in the discretion of the District Court.

TITLE III. PLEAS AND PLEAS TAKING

Rule 20. Entry of Plea

A defendant must enter a plea of guilty, not guilty, or if the Judge agrees, no contest, to each charge contained in the complaint. All pleas must be entered in open court. In exceptional circumstances and at its discretion, the District Court may accept a defendant’s change of plea through a recorded telephonic proceeding.

Rule 21. Pleas

- (a) Not Guilty. A plea of not guilty puts in issue every element of the charged offense, and the case must proceed according to the case management schedule. A defendant pleading not guilty must inform the Judge at the time of arraignment if a jury trial is requested.
- (b) Guilty. In the Judge’s discretion, a plea of guilty may be accepted by a Judge only after due consideration of the views of the parties and interest of the Tribe in the effective administration of justice. The Court may not accept a plea of guilty without first determining the following:
 - (1) That the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement;
 - (2) That the defendant understands the following: (A) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the Court may require the defendant to make restitution to the victim, and (B) the defendant will be giving up his or her right to a trial and right to remain silent;
 - (3) That if the defendant pleads guilty in fulfillment of a plea agreement, the Court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted, and
 - (4) That, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea,
- (c) If a defendant voluntarily enters a plea of guilty, the Judge may impose a sentence at that time or, on the Court’s own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.
- (d) No Contest. The defendant may enter a plea of “no contest.” If the accused pleads “no contest” to an offense, it will be done only with the consent of the Judge and the Prosecutor. If the defendant chooses to plead “no contest,” the Judge will follow the same procedure required for a guilty plea; except, the Judge

will not question the accused as to the underlying facts, but may, by some other means, obtain support for a finding that the accused has committed the offense to which he is pleading. The Judge will state why a plea of no contest is appropriate.

- (e)
- (f) Plea Bargain. The Tribal Prosecutor and counsel for the defendant, or defendant when acting pro se, may engage in plea bargaining. Upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the Tribal Prosecutor will do one of the following:
 - (1) Move for dismissal of other charges;
 - (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the Court, or
 - (3) Reduce the charges.
- (g) Plea Bargain Agreement. A plea bargain agreement may be entered into any time prior to a verdict or finding of guilt. If a plea agreement has been reached by the parties, the Court must, on the record, require a disclosure of the agreement in open Court at the time the plea is offered.

Rule 22. Alternatives to Pleas

- (a) Deferred Prosecution Agreement. At any time after arraignment but before empanelment of the jury or calling of first witness by prosecution, the District Court and a defendant with counsel or without counsel if he/she has voluntarily waived counsel, may agree to the deferral of a prosecution for a specified period of time.
- (b) Conditions of Deferred Prosecution Agreement. A deferred prosecution agreement must be based on one or more of the following:
 - (1) That the defendant may not commit any additional offenses;
 - (2) That the defendant may not engage in specified activities, conduct, or associations bearing a relationship to the conduct upon which the charge against the defendant is based;
 - (3) That the defendant must participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education; and/or
 - (4) That the defendant must make restitution in a specified manner for harm or loss caused by the offense, or any other reasonable conditions.
- (c) Contents of Agreement. A deferred prosecution agreement is subject to approval by the District Court. The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial. The agreement may include stipulations concerning the admissibility of the police report, specified testimony, or dispositions if the deferred prosecution is revoked. The agreement must be filed with the Court.
- (d) Violations of Agreement. The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms. Sanctions can be imposed for violation of the agreement, without revoking the agreement in its entirety.
- (e) Domestic Violence and Deferred Prosecutions. Deferred prosecutions may not be agreed to in cases of domestic violence or violent crimes.

- (f) Stipulated Order of Continuance. In certain circumstances, a stipulated order of continuance may be available subject to the Court's approval.

Rule 23. Bail

A defendant charged may be bailable before conviction and may be released from custody by the District Court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community.

TITLE IV. TRIALS

Rule 24. Jury.

- (a) Eligibility, List, Record of Service. Any Tribal member 18 years of age or over is eligible to be a juror, as is any employee of the Tribe or any employee of an affiliated Tribal entity working on the Mashpee Wampanoag Tribal Reservation of the age of 18 years of age or over. A list of eligible jurors must be kept by the Clerk of the Court with a record of each juror's service.
- (b) Selection of Jury Panel. In January of each year, the Judge must randomly select at least 50 names from the list of eligible jurors and each must be notified of his or her selection. This selected list will be the jury pool for the ensuing year from which jury panels must be selected from time to time. A jury panel must consist of not less than 18 names randomly selected by the Judge.
- (c) Time and Manner of Notification. Those persons who are selected to serve on a jury panel must be notified at a reasonable time prior to the trial date and the notice must state the date, time, place and title of the proceeding for which they must serve.
- (d) Exemption from Jury Service. For good cause shown, the Judge may exempt any person from jury service. The Judge must order the exemption be either permanent or for a specified period of time. If the exemption is temporary, the name of the prospective juror must be returned to the annually selected jury list for possible selection for another panel at the expiration of the exemption. In the Court's discretion, the name of a person with a temporary exemption may be removed for that year from the selected list of jurors. If the exemption is permanent, the name of the person must be removed from the list of eligible jurors.
- (e) Examination. The Judge will examine all persons called as jurors in each case, and will ask: (1) whether any juror or any member of his or her family is related to any party or attorney therein; (2) whether any has any interest therein; (3) whether any has expressed any opinion on the case; (4) whether any has formed any opinion thereon; (5) whether any is sensible of any bias or prejudice therein; and (6) whether any knows of any reason why the juror cannot or does not stand indifferent in the case. The jurors must respond to each question separately before the next is asked. The Judge may submit, on the Judge's own motion or on that of any party, such additional questions as deemed proper. The Judge may also, on motion of any party, permit the parties or their attorneys to make such further inquiry of the jurors on oath as the Judge deems proper.

- (f) Challenges. When the prosecution and defense have completed examination of the prospective jurors, they will then confer privately with the Judge and state all challenges they have to make against any prospective juror.
 - (1) Preemptory Challenges. Both parties will have four preemptory challenges with which they may disqualify any prospective juror and need not state any reason for doing so.
 - (2) Challenges for Cause. When it is established that any prospective juror is prejudiced, biased or otherwise unable to sit as a fair and impartial juror, he or she may be disqualified by a challenge for cause by either side. The allowance or disallowance of a challenge for cause will be decided by the Court. The number of challenges for cause by either party is unlimited.
- (g) Oath to Trial Jury. After the six members and one alternate of the jury have been selected and seated, the Court will administer an oath by which the jury swears that it will act fairly and impartially in the trial it will hear.

Rule 25. Discovery and Attorney Work Product

Attorney work product of the Tribal Prosecutor's Office and defense counsel is not subject to disclosure and production.

Rule 26. Discovery and Required Disclosure by Prosecution

- (a) At the time of the initial appearance and upon request, the Tribal Prosecutor must furnish to the defendant the name of the person, if any, against whom the offense was committed if it is not disclosed in the complaint.
- (b) At the arraignment or as soon thereafter as practicable, the defendant must be furnished with all evidence the Tribal Prosecutor intends to use in the case in chief at trial. Any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:
 - (1) Any relevant written or recorded statement made by the defendant while in the custody of the Tribe and of any person who will be tried with the defendant;
 - (2) The names, addresses, and statements of all persons whom the Prosecutor may call as witnesses in the case in chief;
 - (3) The record of defendant's convictions that is in the possession of the Tribal Prosecutor;
 - (4) Any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the Tribal Prosecutor at trial;
 - (5) Any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons;
 - (6) All material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence;

- (7) Whether there has been any electronic surveillance of any conversation to which the defendant was a party, and
- (8) Whether an investigative subpoena has been executed in connection with the case.
- (9) Any and all reports made by law enforcement agents.
- (c) The Tribal Prosecutor must provide written notice of any evidence of any prior wrongs, acts, or crimes it may introduce in the case in chief at least two weeks prior to the trial readiness hearing. The notice must describe the prior wrong or act, the closest approximation possible as to when and where it occurred and who witnessed it, unless the prior crime is confirmed as a conviction, in which case the Court and date of conviction must be disclosed. The Tribal Prosecutor must also disclose the purpose for which this evidence would be offered.

Rule 27. Disclosure by Defendant

- (a) Required Disclosures. The defendant or defendant's counsel must make available to the Tribal Prosecutor for testing, examination, or reproduction:
 - (1) The names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense's case in chief;
 - (2) The names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case, and
 - (3) All papers, documents, photographs, and other tangible objects that the defendant may use at trial.
- (b) Evidence of Character. By the end of discovery, the defendant or defendant's counsel must provide written notice to the Tribal Prosecutor of the defendant's intention to introduce evidence at trial of good character.
- (c) Notice of Alibi. If a defendant intends to rely upon a defense of alibi, the defendant will so notify the Tribal Prosecutor, in writing, by the pretrial hearing. The defendant's notice of alibi defense must state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

Rule 28. Discovery and Notice of Affirmative Defenses

- (a) At the close of discovery and before trial, as set forth in the case scheduling management order, or at such other time as set forth in that order, the defendant must provide the Judge and Prosecution with a written notice of the defendant's intention to introduce any affirmative defenses.
- (b) The notice must contain the following:
 - (1) Specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them,

- (2) All reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons.
- (c) The defendant need not include a privileged report or statement, or the witness who made it.

Rule 29. Continuing Duty to Disclose.

The obligations imposed by the above rules regarding discovery are continuing until the conclusion of trial.

Rule 30. Depositions

A deposition must be taken in the manner provided in Rule 30 of the Rules of Evidence.

Rule 31. Protective and Modifying Orders

At any time, the District Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.

Rule 32. Failure to Cooperate in Discovery

The following actions may be taken in the event that a party fails 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 agreement 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, in its discretion, prohibit the witness from testifying.
- (d) Any documents that support the position of the non-moving 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 33. Compelling Witnesses to Appear/Material Witnesses; Subpoena

- (a) Issuance. A subpoena may be issued 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) Quash or Modify Subpoena. 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. The Court may also 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. Service of subpoena must be made by a 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) Failure to Obey. 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.
- (e) Material Witnesses.
 - (1) Warrant. On motion of the prosecuting authority or the defendant, the District Court may issue a warrant, subject to reasonable bail, for the arrest of a material witness. The warrant must issue only on a showing, by affidavit or on the record in open Court, that the testimony of the witness is material and that: (A) The witness has refused to submit to a deposition ordered by the Court; or (B) The witness has refused to obey a lawfully issued subpoena; or (C) It may become impracticable to secure the presence of the witness by subpoena. Unless otherwise ordered by the Court, the warrant must be executed and returned in the same manner as an arrest warrant.
 - (2) Hearing. After the arrest of the witness, the Court must hold a hearing on the warrant no later than the next Court day. The witness has the right to be represented by legal counsel at his or her own expense.
 - (3) Release/Detention. Upon a determination that the testimony of the witness is material and that one of the conditions set forth in this section exists, the Court must set conditions for release of the witness. Release of a material witness may be delayed for a reasonable period of time until the testimony or deposition of the witness can be taken.

Rule 34. Pretrial Conference

- (a) At any time after arraignment, the Judge must order the parties to appear before the Court to clarify the pleadings and to consider such other matters as may aid in the disposition of the case.
- (b) A case management schedule may be ordered, which may include the following: discovery deadline, trial readiness hearing, trial date, and speedy trial deadline.
- (c) The prosecution and defense must hold a pretrial conference prior to the Pretrial Hearing.

Rule 35. Pretrial Hearing

- (a) The District Court must hold a pretrial hearing to consider such matters as will promote a fair and expedient trial. At the hearing:
 - (1) The defendant must certify to the Court that he or she has received the Tribe Prosecutor's discovery;
 - (2) All parties must submit motions in writing and must request an order setting a briefing and hearing schedule for such motions, and
 - (3) The parties may raise other issues of importance that should be addressed by the Court.

- (b) Failure of a party to raise defenses or objections or to make a request that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense, which must be considered by the Court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The Court, for good cause shown, may grant relief from any waiver provided in this Rule.

Rule 36. Form and Service of Motions and other Documents

- (a) An application to the Court for an order must be by written motion. Motions and all documents or other papers filed by a party with the District Court must be typed in at least 12-point font and double-spaced unless a form is otherwise provided by the Court. 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 must be served upon the other parties by first class U.S. mail together with a Proof of Service. Service is complete upon mailing.
- (c) In addition to Service by mail, 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 Pretrial 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 37. Trial Priority

Defendants held in custody have priority on the trial calendar over defendants released on bail, unless otherwise directed by the District Court. Generally, criminal actions and child dependency actions take precedence over civil actions when determining a hearing or trial date, unless otherwise directed by the District Court.

Rule 38. Questions of Law and Fact

- (a) Issues of law must be decided by the Judge.
- (b) Issues of fact must be decided by the jury, unless the matter is tried without a jury, in which case issues of fact must also be submitted to the District Court Judge.
- (c) Parties may stipulate to factual issues and submit them for acceptance by the District Court.

Rule 39. Testimony

In all trials, the testimony of witnesses must be taken orally in Court, unless otherwise provided by Tribal law or District Court rules.

Rule 40. Refusal to Testify

If a witness other than the defendant refuses to attend or testify at the trial after proper service of a subpoena, that person may be subject to contempt of District Court.

Rule 41. Counsel as Witness

No person may appear before the District Court as both counsel and witness in the same case.

Rule 42. Order of Trial

- (a) Preliminary Instructions. In a jury trial, after selecting and empanelling the jurors, the District Court must state the nature of the charges and generally instruct the jurors as to their duties.
- (b) Opening Statements. Parties will be afforded an opportunity to make an opening statement prior to the presentation of any evidence or testimony, unless waived. The defendant may reserve his or her opening statement until after the prosecution has presented its case in chief.
- (c) Prosecution. The Tribal Prosecutor must offer evidence supporting the allegations contained in the complaint. The defense must be given an opportunity to cross-examine any witness called by the prosecution.
- (d) Defense. After the Tribal Prosecutor has rested its case, the defendant may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The Tribal Prosecutor must be given an opportunity to cross-examine any witness called by the defendant.
- (e) Rebuttal. Rebuttal evidence may be presented by the Tribal Prosecutor after the conclusion of the defendant's case when appropriate, and if necessary, surrebuttal evidence may be offered by the defense.
- (f) Evidence. No new evidence may be presented after the Tribal Prosecutor and the defendant have rested their cases, unless allowed by the Judge in the interest of justice.
- (g) Jury Instructions. In a trial by jury, after the close of evidence and before the closing arguments are given, the District Court must give final instructions. All instructions must be in writing and filed as part of the record.
- (h) Closing Arguments. After the Judge reads the instructions to the jury, the prosecution and then the defense may make closing arguments. The prosecution may also make a rebuttal closing argument.
- (i) Verdict or Judgment. Upon the conclusion of the case, the jury must deliberate. If the case is tried by a jury, a verdict must be rendered by unanimous decision; if tried by a Judge, a judgment must be rendered.

Rule 43. Burden of Proof

A plea of not guilty requires that the Tribal Prosecutor prove beyond a reasonable doubt that the defendant committed every element of the crime alleged.

Rule 44. Insufficient Evidence.

If the District Court determines at the close of the Tribal Prosecutor's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the District Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. If the judgment of acquittal is vacated or reversed on appeal, the Supreme Court of the Mashpee Wampanoag Tribe may grant a new trial in the District Court.

Rule 45. Conviction of Lesser Included Offense

A lesser included offense instruction must be given when there is a proper request by one of the parties based on the evidence admitted, and the jury could be warranted in finding the defendant guilty of a lesser included offense. The verdict form may include the offense charged and/or a lesser included offense that may be submitted to the jury.

Rule 46. Motions Related to Trial

- (a) Motion for Mistrial. A motion for a mistrial can be made at any time during the trial and can be granted in the District Court's discretion. A party may make a motion for a mistrial when any action by any person other than the moving party, has the effect of prejudicing the outcome of the trial to the point that such prejudice could only be overcome by holding a new trial.
- (b) Motion for a Directed Verdict. At the close of the prosecution's case, the defendant may move that the Court direct a verdict of not guilty. The defendant's motion must be granted only if the prosecution has failed to present a prima facie case. Either party may make a motion for a directed verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.
- (c) Motion for a New Trial. Within twenty (20) days of a guilty verdict or judgment, the defendant may file with the District Court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial. After hearing the motion for a new trial, the District Court may, in the interest of justice, deny the motion, grant a new trial, or provide for such other relief that may be deemed appropriate. The granting of a new trial starts the speedy trial clock at zero.

Rule 47. Judgment

The verdict of the jury or the judgment must be rendered in open Court.

Rule 48. Sentencing

- (a) Sentences must be pronounced within a reasonable time and must be imposed on all offenses pursuant to Tribal law.
- (b) To the extent that any foreign provisions incorporated into Tribal law provide a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control.
- (c) Unless the District Court otherwise orders, all sentences stemming from offenses occurring in the same transaction or course of conduct are presumed to run concurrently and not consecutively.
- (d) Where the District Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in the 2015-ORD-008, Tribal Criminal Offenses Ordinance.

Rule 49. Correction or Reduction of Sentence

- (a) The District Court may correct an illegal sentence at any time after its entry upon motion of either the prosecution or defense.
- (b) The Court may by motion reduce a sentence after its entry upon motion of either the prosecution or defense.

TITLE V. RIGHTS OF DEFENDANTS

Rule 50. Right to Counsel.

During the initial appearance before the District Court, every defendant must be informed of the right to have counsel at his or her own expense.

Rule 51. Right to a Jury Trial.

A defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. A defendant may waive the right to a jury trial if he or she clearly understands what rights he or she is giving up and must sign a written voluntary statement to the District Court.

Rule 52. Right to a Speedy and Public Trial

- (a) A defendant must be brought to an open trial not later than 180 days after the date of arraignment.
- (b) The following extensions of time limits apply, notwithstanding the preceding time limit:
 - (1) Failure to Appear. When a defendant fails to appear for any court appearance a bench warrant will issue. Such failure to appear constitutes a waiver of the right to a speedy trial. When the defendant next appears before the Judge, the speedy trial clock begins at zero.
 - (2) Trial Preparation Time. The defendant is entitled to reasonable time to prepare for trial after entering a plea of not guilty.
 - (3) Extensions. When a trial is not begun on the date set because of unavoidable or unforeseen circumstances beyond the control of the Court or the parties, the District Court, even if the time for trial has expired, may extend the time within which trial must be held unless the defendant will be substantially prejudiced in his or her defense. The Court must state on the record or in writing the reasons for the extension.
 - (4) Disqualification of Judge. In the event that the trial Judge is disqualified the speedy trial date must be extended beyond its current expiration by 30 days.
 - (5) Continuances. The Court may continue a trial beyond the speedy trial period as follows:
 - (A) Upon written agreement of the parties which must be signed by the defendant or all defendants. The agreement must be effective when approved by the Court on the record or in writing.
 - (B) On motion, the Court may continue the case when required in the administration of justice and the defendant will not be substantially prejudiced in the presentation of the defense. The motion must be

filed on or before the date set for trial or the last day of any continuance or extension granted pursuant to this rule. The motion must state the reasons for the continuance. The bringing of such motion by or on behalf of the defendant waives that defendant's objection to a speedy trial.

- (c) Computation of Time. All proceedings relating to the competency of a defendant to stand trial must be excluded in computing the time for arraignment and the time for trial.
- (d) Waiver. A defendant may waive the right to a speedy trial. Such waiver must be in writing and must be signed by the defendant. The waiver must state the date that it will expire.
- (e) Notification of Appeal. Following imposition of judgment and sentencing, a defendant will be informed of the right to appeal pursuant to the Rules of Appellate procedure provided there was a finding of guilt either by the Judge or jury.

TITLE VI. EFFECTIVE DATE

Rule 53. Effective Date

- (a) These rules and any amendments take effect at the time specified by Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe.
- (b) The Rules of Criminal Procedure govern all District Court criminal proceedings after their effective date.

APPENDIX 1

TRIBAL COURT CRIMINAL CASE TIMELINE*



* This Timeline is not part of the Rules of Criminal 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 Criminal Procedure. Furthermore, while most cases will follow a similar track, every defendant has a different situation that may change, shorten and/or resume the timeline as provided herein.