



**MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE**

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ADMINISTRATIVE ORDER #28

ADOPTION OF A JURY PLAN

The attached Jury Plan for the selection of a jury pool from which jurors will be selected for jury trials is hereby adopted and effective as of the date of this Order.

The Court expresses its gratitude to Brandy Toelupe, Esq. for her assistance in the creation of the Jury Plan.

IT IS SO ORDERED this 12th day of April, 2018.

BY THE COURT:

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

**MASHPEE WAMPANOAG TRIBE
DISTRICT COURT**



Jury Plan

MASHPEE WAMPANOAG TRIBE
DISTRICT COURT
FOR RANDOM SELECTION OF JURORS

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MASHPEE WAMPANOAG TRIBE
DISTRICT COURT
FOR RANDOM SELECTION OF JURORS

I. PRIOR PLAN

This Jury Plan is hereby adopted at the time specified by the Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe.

II. AUTHORITY UNDER TRIBAL LAW

Pursuant to Section 3 of the 2008-ORD-002, Mashpee Wampanoag Tribal Judiciary, the Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe adopts the following “Mashpee Wampanoag Tribe District Court for Random Selection of Jurors” (the “Plan”) to provide judicial machinery for the random selection of juries.

III. POLICY

It is the policy of this Court that, in accordance with the Constitution of the Mashpee Wampanoag Tribe, Article XI, Section 1(j), all litigants entitled to trial by jury will have the right to juries selected at random from a fair cross-section of the community in the Mashpee Wampanoag Tribe District Court. It is further the policy of this Court that 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 and will have an obligation to serve as jurors when summoned for that purpose.

IV. DISCRIMINATION PROHIBITED

Consistent with the policy above, no person will be excluded from service as a juror in the District Court because of race, color, religion, sex, age, sexual orientation, or economic

status.

V. PLACE FOR SELECTING JURY

The District Court will select jurors where court is held at the Mashpee Wampanoag Tribal Court, 483 Great Neck Road South, Mashpee, MA 02649.

VI. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

In accordance with Rules of Criminal Procedure Mashpee Wampanoag District Court, the District Court Judge will manage the jury selection process. The District Court Judge may delegate responsibility for the day-to-day operations of the jury selection process to the Court Clerk. The District Court Judge and Clerk may be assisted by Tribal Court staff where needed.

VII. RANDOM SELECTION FROM MASHPEE WAMPANOAG TRIBAL MEMBERSHIP LISTS AND THE MASHPEE WAMPANOAG TRIBAL EMPLOYEE LISTS

The Court finds that the lists of Mashpee Wampanoag Tribal Membership and Mashpee Wampanoag Tribal Employees represent a fair cross-section of the populace on the Mashpee Wampanoag Tribal Reservation. Therefore, the names and addresses for the jury selection system established by this Plan will be selected from the following:

- (1) The latest list of Mashpee Wampanoag Tribal Members provided by the Mashpee Wampanoag Tribal Enrollment Department that is available of January each year; and
- (2) The latest list of Mashpee Wampanoag Tribal Employees provided by the Mashpee Wampanoag Tribal Administrator that is available of January each year.

The District Court Judge or Clerk will request in-person or by telephone or email that the Enrollment Department and the Tribal Administrator make available the respective lists

described above to the District Court. The requests will instruct the Enrollment Department and the Tribal Administrator to confirm in writing that the lists produced are the current and complete lists of Mashpee Wampanoag Tribal Members and Mashpee Wampanoag Tribal Employees respectively. The Clerk will retain confirmations.

The random selection procedure will be accomplished by selecting approximately fifty (50) of the names appearing on the Mashpee Wampanoag Tribal Members and Mashpee Wampanoag Tribal Employees lists. The Clerk will number both lists in numerical order. A starting number from 1 to 10 will be drawn by lot and that name will be selected from each along with each 15th name thereafter until 50 names are chosen. Thus, if the starting number drawn is 8, the 8th, 23rd, 38th, etc., names will be picked until 50 names are chosen.

Prospective jurors will be drawn from two sources, so there is a possibility that double entries will occur when the name of the same individual is selected from both the list of Mashpee Wampanoag Tribal Members and Mashpee Wampanoag Tribal Employees. In those instances, a double entry name will not be added to the Jury Pool for a second time and the court will continue to the next 15th name.

VIII. THE JURY POOL

The Clerk will create a Jury Pool for the District Court into which the numbers representing the names of all persons selected at random in accordance with Article VII will be placed.

After the Clerk has drawn at random the names of fifty (50) persons, the Clerk will mail a juror qualification form to every person whose name is so drawn, with instructions to complete, sign and return such form by mail or through the internet, within 10 days. If it appears that there is an omission, ambiguity or error in a form, the Clerk will return the form

with instructions to make such additions or corrections as may be necessary and return the revised form within ten (10) days.

Any person who fails to return a completed juror qualification form may be summoned by the District Court to appear and complete such a form, unless the envelope bearing the form has been returned by the Post Office as undeliverable. Any person who fails to appear as directed, or who willfully misrepresents a material fact on a juror qualification form to evade service as a juror, may be ordered by the District Court to appear and show cause why he/she should not be sanctioned.

The physical form of the Jury Pool and of the Qualified Jury Pool may include both hard copy and electronic format.

IX. JUROR QUALIFICATION

A juror qualification form will be used to elicit the information necessary to determine whether a person is qualified for, unqualified for, exempt from, or excused from jury service. After completed juror qualification forms are returned by prospective jurors, the forms will be reviewed by the Clerk under the supervision of the District Court. The determination as to whether a person is unqualified for, exempt from, or to be excused from jury service will be made solely based on information furnished on the juror qualification form and other competent evidence. Upon review, a determination will be entered on the juror qualification questionnaire or on the appropriate database listing.

X. QUALIFICATION FOR JURY SERVICE

Any person will be qualified to serve as a juror unless he/she:

- (1) is not at least 18 years old;
- (2) is unable to read, write, and understand the English language with a degree

of proficiency sufficient to fill out satisfactorily the juror qualification form;

- (3) is unable to speak English; or
- (4) is incapable, because of mental or physical infirmity, to render satisfactory jury service.

XI. AUTOMATIC EXEMPTION FROM JURY SERVICE

The following occupational classes are exempt from jury service:

- (1) members in active service in the Armed Forces of the United States;
- (2) members of the fire or police departments of any Tribe, State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession; and
- (3) public officers in the executive, legislative, or judicial branches of any Tribe, Government of the United States, or of any State, the District of Columbia, any territory or possession of the United States, or any subdivision of a State, the District of Columbia, or such territory or possession, who are actively engaged in the performance of official duties.

XII. EXCUSES FROM JURY SERVICE ON INDIVIDUAL REQUEST

The Court hereby finds that jury service by members of the following occupational classes or groups of persons would entail undue hardship or extreme inconvenience to the members. Therefore, requests to be excused will be granted by the Court upon individual request for:

- (1) persons over 65 years of age;
- (2) physicians and dentists actively so engaged;
- (3) any person who has served as a juror for the Tribe at least two days during the

past two years;

- (4) full-time school teachers in public, parochial or private schools actively teaching;
- (5) persons having active care and custody of a child or children under 13 years of age whose health and/or safety would be jeopardized by the individual's absence for jury service, or a person who is essential to the care of an aged or infirm relative;
- (6) any person whose services are so essential to the operation of a business, commercial, or agricultural enterprise that said enterprise must close if such person were required to perform jury duty;
- (7) volunteer safety personnel (firefighters, rescue squad or ambulance crew) for a public agency; and
- (8) other demonstration of undue hardship.

XIII. QUALIFIED JURY POOL AND JURY PANEL ASSIGNMENT

The Clerk will maintain a Qualified Jury Pool who are qualified as jurors and not exempt or excused pursuant to this Plan. Sufficient names will be drawn to maintain a revolving pool of potential jurors who are available for service as jurors. The Clerk will draw at random from the Qualified Jury Pool at least thirty (30) names for assignment to jury panels. The names so drawn will not be disclosed before the date of appearance. The jury staff will prepare a separate list of names of persons assigned to jury panels. The jury staff will issue and send by first class mail summons to the persons whose names are so drawn. Any person summoned for jury duty who fails to appear as directed may be ordered by the District Court to appear immediately to show cause why he/she should not be sanctioned for his/her failure to comply with the summons.

XIV. TEMPORARY EXCUSES AND EXCLUSIONS

Any person summoned for jury service may be:

- (1) deferred by the District Court upon a showing of undue hardship or extreme inconvenience, for such period as deemed necessary, after which such person will be summoned again for jury service in accordance with this Plan;
- (2) excluded by the District Court because such person may be unable to render impartial jury service or that his/her service as a juror would be likely to disrupt the proceedings;
- (3) excluded upon peremptory challenge as provided by the law;
- (4) excluded upon challenge by any party for good cause shown; or
- (5) excluded upon determination by the District Court Judge that his/her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations.

Any person excluded from a jury under Clause (2), (3), or (4) above will be eligible to sit on another jury if the basis for his/her initial exclusion would not be relevant to his/her ability to serve on such other jury. No person will be excluded under Clause (5) above unless the District Court Judge, in open court, determines that such an exclusion is warranted.

XV. TERM OF SERVICE

In any one-year period, a prospective juror will be on call to appear for service as a juror for a total of one-year. If a juror appears at least once during the one-year period, he/she may be permanently excused at the discretion of the District Court.

XVI. DISCLOSURE AND NON-DISCLOSURE OF RECORDS OR PAPERS

The contents of records or papers used by the District Court about the jury selection process will not be disclosed except pursuant to this Plan, or as may be necessary for the preparation or presentation of a motion challenging compliance with jury selection procedures. In the event of such a motion, the parties will be permitted to examine, copy and reproduce such records or papers at reasonable times, by appointment, during the preparation and pendency of the motion. Otherwise, disclosure will not occur until after the Jury Pool has been emptied and refilled, and after all persons selected to serve as jurors before the Jury Pool was emptied have completed their service.

Except as herein provided, biographical information of persons whose names are drawn from the Qualified Jury Pool may be disclosed to parties when the jurors appear in open court for jury duty. Such biographic information will be limited to name, gender, age, race/ethnicity, occupation, education, employer name, marital status, number of children, and spouse's occupation. The District Court Judge in any case may keep these names confidential in the interests of justice.

All records and papers compiled and maintained by the District Court during the term of a Jury Pool will be preserved in the custody of the Clerk for four years following the emptying of the Jury Pool, and after all persons selected to serve as jurors before the Jury Pool was emptied have completed their service, or for such longer period as may be ordered by the Court, and will be available for inspection to determine the validity of the selection of any jury.

The names of jurors and potential jurors will not be disclosed in the public docket or in transcripts, absent an order of the court.

XVII. AMENDMENTS

Amendments to this Plan may be made from time to time by the Chief Judge of the Supreme Court of the Mashpee Wampanoag Tribe.