



MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE

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ADMINISTRATIVE ORDER #33

AMENDMENTS TO RULES
OF CIVIL PROCEDURE -

Rule #33 – Compelling Witnesses to
Appear; Subpoena

Rule #33 of the Mashpee Wampanoag Tribe Rules of Civil Procedure is hereby amended in accordance with the attached amendment effective upon execution of this order. The amendment will apply to all existing cases as well as cases filed after the effective date of this Order.

IT IS SO ORDERED this 3rd day of June, 2020.

BY THE COURT:

Hon. Robert F. Mills, Chief Justice
Mashpee Wampanoag Supreme Court

- 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 compel the attendance at trial of a witness subpoenaed to give testimony or to command the person to whom a subpoena was served on to appear and/or produce documentary evidence and/or testify.
- 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 a Constable duly authorized under Tribal or State law, Tribal Law Enforcement Officer or other person appointed by the Court for such purposes. As soon as practicable, proof of service of the subpoena must be filed with Clerk of Courts indicating the date, time and place of service. The party requesting service of the subpoena should be responsible for the cost of having the subpoena served.

- 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 June 15, 2022)

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 and *Nunc Pro Tunc*

- 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.