



MASHPEE WAMPANOAG TRIBAL COURT
MASHPEE WAMPANOAG TRIBE

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ADMINISTRATIVE ORDER #38
ESTABLISHING THE PROCEDURE
UNDER THE MASHPEE WAMPANOAG
TRIBAL CONSTITUTION ARTICLE VIII,
SECTION 2(b) EXPLUSION AND
SUSPENSION OF MEMBER OF TRIBAL
COUNCIL

In order to facilitate and clarify the orderly processing and hearing of Petitions for Judicial Review under the Mashpee Wampanoag Tribal Constitution, Article VIII, Section 2(b) Expulsion and Suspension of a Member of Tribal Council, the following process is approved and hereby adopted forthwith. This order shall remain in effect until otherwise ordered.

IT IS SO ORDERED this 17th day of January 2023

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Mills".

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

In order to facilitate and clarify the orderly processing and hearing of Petitions for Judicial Review under Article VIII, Section 2(b), the following process will apply:

1. (a) A petition shall be filed in the Tribal District Court seeking judicial review of Tribal Council action(s) whether joined with a claim for Declaratory Judgment or otherwise and shall be heard in accordance with the following procedure.

(b) The petition must be filed no later than fourteen (14) days after the date of the action taken by the Tribal Council.

(c) Service of process shall follow MWTRCP Rule 15.

(d) Timing for all events under this rule shall follow MWTRCP Rule 6.

1A. The petition shall be limited to allege only one or more of the following errors related to the action(s) of the Tribal Council at issue:

(a) Questions of law where it is alleged that all of the procedures required by the Constitution or Ordinance were not properly followed by the Tribal Council prior to taking the action;

(b) Questions of fact where it is alleged that the action by the Tribal Council was not supported by substantial evidence, was arbitrary or capricious, or constituted an abuse of discretion.

2. The Tribal Council whose action(s) are to be judicially reviewed shall by way of answer file the original or certified copy of the record of the proceeding under review (the “record”) within 60 days after service upon it of the Petition. Such record shall consist of (a) the entire proceedings, including but not limited to any audio recording of the proceeding where the action was taken, the official minutes maintained by the Secretary and a copy of the ZOOM recording, if any; or (b) such portions thereof as the Council and the parties may stipulate to; or (c) a statement of the case agreed to by the Council and the Parties.

Upon service of a Petition, the Council shall notify all parties of procedures for acquiring a transcript of the hearing testimony. The Council shall also inform the parties of their obligation to provide a transcript, or portions thereof, to the court if alleging that the Council’s decision is not supported by substantial evidence or is arbitrary or capricious or is an abuse of discretion. A request for a copy of the transcript must be made by a party within thirty (30) days after service of the Petition, and such transcript or portion thereof shall be made part of the record. The Council’s

certified record shall include any transcript that has been prepared but need not include a transcript of any un-transcribed proceeding or portion thereof in the absence of a timely transcript request.

Upon request by any party, the court may assess the expense of preparing the record as part of the costs in the case. Additionally, the court may, regardless of the outcome of the case, assess any party unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal. The court may require or permit subsequent corrections or additions to the record by any party when deemed desirable. The court may alter the time for filing the record, for good cause shown on an appropriate motion. The presiding judge shall have discretion to alter the process in the interest of fairness to the parties.

2A. The Council should:

(a) Make reasonable efforts to segregate, redact and file publicly all portions of the record that can practicably be redacted (to protect confidential information) within the filing deadline, including in all cases a redacted copy of the decision under review; and

(b) separately file all other portions in one or more volumes, each having a first page that bears the legend: “FILED UNDER PROVISIONAL MOTION TO IMPOUND,” together with such a motion. Documents bearing that legend shall not be impounded without a hearing but shall be segregated from the rest of the file. The court clerk shall note the existence of the segregated volume(s) on the docket sheet. The Provisional Motion to Impound will be forwarded to the assigned judge for hearing and findings ONLY if a non-party seeks to review the documents.

Notwithstanding the above, the Council need not redact from the record any material that is in a public record.

3. The following motions raising preliminary matters must be served in accordance with Mashpee Wampanoag Tribe Rules of Civil Procedure (“MWTRCP”) not later than twenty (20) days after service of the record by the Council.

(a) Motions authorized by MWTRCP; OR

(b) Motion for leave to present testimony of alleged irregularities in procedure before the Council, not shown in the record.

Any party failing to serve such a motion within the prescribed time limit, or within any court-ordered extension, shall be deemed to have waived any such motion (unless relating to jurisdiction) and the case shall proceed solely on the basis of the record. Any

such motion shall be promptly resolved in accordance with MWTRCP Rule 17 or as otherwise prescribed by the presiding judge.

4. A claim for judicial review shall be resolved through a motion for judgment on the pleadings unless the Court's decision on any motion specified above has made such a resolution inappropriate in which case said case shall be rescheduled through a motion for summary judgment. A petitioner motion (motion for judgment on the pleadings or summary judgment) and supporting memorandum shall be served within thirty (30) days of the service of the record or of the Court's decision on any motion specified above, whichever is the later. A Respondent response shall be deemed to include a cross-motion for judgment on the pleadings or summary judgment (which should be noted in the caption of the response) and shall be served within thirty (30) days after service of the petitioner motion and memorandum. The Court may alter the time to serve or file for good cause shown. Memoranda shall include specific page citations to matters in the record.

5. The court clerk or her/his designee, in consultation with the assigned judge, will schedule a hearing date after receiving the motion materials. No pre-trial conference will be held, and no pre-trial memorandum filed, unless specifically ordered by the court. No testimony or other evidence shall be presented at the hearing, and the review shall be confined to the record. A party may waive oral argument and submit on the brief by filing a written notice. Such waiver by a party shall not affect the right of any other party to appear and present oral argument.

6. There will be no *de novo* review of the action(s) by the Tribal Council being reviewed. The District Court's review will be based solely on the record properly submitted.

7. Standard of Review

(a) Substantial Evidence. The District Court, upon review of the record, must determine whether the action taken by the Tribal Council is backed by enough evidence to reasonably support the conclusions of the Tribal Council. That means that such relevant evidence was found by the Tribal Council as a reasonable mind might accept as adequate to support the conclusion.

(b) Arbitrary or Capricious. The District Court, upon review of the record, must determine whether there is a rational connection between the factual conclusions reached by the Tribal Council and the action(s) taken.

(c) Abuse of Discretion. The District Court, upon review, must determine whether the Tribal Council committed a clear error of judgment in the conclusion reached upon a weighing of relevant factors such that the action taken was clearly against the logic and effect of the facts, or that the Tribal Council considered factors that were not included in or supported by the record.

8. The District Court's ruling shall be the final disposition of the case and no further review or appeal shall be permitted. This Order shall remain in effect until legislation / ordinance is adopted by the Tribal Council.