

WUNAHTYÂHE8ÂÔK(AN)

PEACEMAKING

## Participant's Guide to Peacemaking



483 Great Neck Road South

Mashpee, MA 02649

[www.mwtribejudicial.com](http://www.mwtribejudicial.com)

508-477-0208 x109



## A WELCOME FROM THE ELDERS JUDICIARY COMMITTEE

- ◆ This guidebook, which was developed by the Elders Judiciary Committee (EJC) and the Suffolk University Law School's Indigenous Peoples Rights Clinic, provides information on the Peacemaking process — the traditional way for Native people to handle disputes.

We hope the guidebook will be helpful for all tribal members who voluntarily come to the Peacemaking to resolve their conflicts in a more traditional environment.

We would like to thank all the students from Suffolk's Clinic who worked on this project, particularly Robert Lam and Rubby Wuabu who took the time to attend a Peacemaking Training to gain a better understanding of what Peacemaking is about, as well as the Clinic's supervisor, Nicole Friederichs.



## Using this Guidebook

If you have picked up this Guidebook, you have either thought about utilizing Peacemaking, or about to embark on Peacemaking and want to know how to proceed. Take a few minutes to read through the Guidebook. It contains information explaining what Peacemaking is and how it differs from the Tribal Court. The Guidebook also describes the process, for example, how to request Peacemaking, what to expect during the Peacemaking sessions and the options available. The Guidebook is intended to provide you with the necessary information to help you decide if Peacemaking is the right for you and explain what to expect.

## Disclaimer

This Guidebook is not intended to advise individuals in the unlicensed practice of law nor should it be used to provide legal advice to other people.

Guidebook  
Design by



WAKEBY FIRE & ASSOCIATES



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## WHAT IS PEACEMAKING?

**P**eacemaking is an alternative method of resolving a dispute between tribal members, or between tribal members and non-members. It encourages people to solve their own problems by communicating with each other in a safe environment and it is based upon mutual respect, personal responsibility and the importance of relationships. The Tribe's Peacemaking process was established by the Mashpee Wampanoag Judiciary Ordinance.

Participation in Peacemaking is entirely **voluntary**. Problems brought to Peacemaking are solved by calm discussion. The goal of Peacemaking is not to place the blame but instead to find a solution that participants can agree upon. It is a way of healing the community.

The Vision of Peacemaking is to encourage a peaceful, courteous, and harmonious environment among tribal members. Through this philosophy and the Guiding Principles discussed on Page 6, the actions of each individual, clan, and tribe will ensure the successful survival of the entire Wampanoag Nation.



## WHAT IS PEACEMAKING, CONT.

### Features of Peacemaking

- **Anyone (Tribal members and non-members)** may participate in Peacemaking.
- Peacemaking is **voluntary**. A Peacemaker may not force anyone to participate.
- **No lawyers.** The Peacemaker asks for the parties to participate knowingly and willingly without the representation of an attorney.
- **No appeals.** If the parties reach an agreement it is considered a final decision without appeal.

### Confidentiality

Anything said during a Peacemaking session is considered **confidential** by everyone involved in the Peacemaking case. Peacemaking is considered a **settlement negotiation**, which means anything said during the process cannot be admitted as evidence unless everyone agrees in writing or if it is required or allowed by Tribal Law. All parties will be asked to sign a **confidentiality form** before the Peacemaking begins.

## IS PEACEMAKING RIGHT FOR YOU?

**P**eacemaking is an ideal process for those who agree to amicably come together and have their **civil matter** resolved.

There are many types of cases for which Peacemaking is an excellent alternative to going through the standard court system. These include:

- Family-related disputes particularly those between spouses, parents and children, or extended families.
- Community-related disputes particularly those involving creating a nuisance, trespassing, disorderly conduct, or disturbing the peace.
- Financially-related disputes such as personal debts or breaches of contract.
- Individual land disputes, such as those concerning land use and access.





# PEACEMAKING VS. TRIBAL DISTRICT COURT

Below are the major differences between participating in Peacemaking and taking a case to Tribal Court.

## Peacemaking

**No Lawyers**

**Voluntary Participation**

**A resolution is agreed upon by both parties**

**Final decision:  
No option for appeal**

**Focus on healing all parties**

## Tribal District Court

**Lawyers**

**Forced Participation**

**A judge decides**

**Option to appeal the decision**

**Focus on obtaining justice**

## WHO ARE THE PEACEMAKERS?

**P**eacemakers are facilitators recommended by the Elders Judiciary Board, and appointed by the Tribal Council or the Chief Judge of the Tribe's Supreme Court. They are individuals who have the respect of their community.

Two Peacekeepers will be assigned to your case, one male and one female. Each Peacemaker has a reputation for integrity, honesty, and morality. They have gone through Peacemaking training to help them navigate the Peacemaking process.

It is the duty of a Peacemaker to help the parties come to an agreement and discuss their conflict. Relying on the Guiding Principles, their goal is to guide the parties towards a peaceful, cooperative, and voluntary resolution.

Peacemakers are not there to make a final decision. Instead they listen to both sides of the issue and may act as an instructor or counselor in tribal teachings, values, or religious beliefs.



# GUIDING PRINCIPLES OF PEACEMAKING

The following principles as outlined in the Judicial Ordinance as a guide to Peacemaking.

## **Harmony: Weech8humôkane N8hswehtamuk**

*translation: a “working together by people” by “observing the law.”*

- ◆ A positive, conscious, meaningful relationship between parties is valuable. For Mashpee people, harmony is achieved through Peacemaking and encourages people to consciously solve their own problems by open communication through respect, responsibility, and good faith.

## **Non-Coercion: Muhchee Cheekunum N8hswehtamuk**

*translation: “without a forceful hand” by “observing the law.”*

- ◆ The most constructive way to preserve a positive relationship and settle a dispute is through the voluntary participation of the parties, rather than the use of force, or the ruling of a judge upon whose decision neither party may agree.
- ◆ Mashpee Peacemaking is informal and allows for open and unfettered discussions and full participation of the interested parties. The end goal is a resolution that is reached by consensus by all in attendance.

## **Community Health: Wutahkeemôwuneayee N8hsweetamuk**

*translation: “community” by “observing the law.”*

- ◆ The health of the community at large depends on recognizing the connectedness of all things and people and the responsibility that we all have to each other.
- ◆ For Mashpee peoples, a mentally, spiritually, emotionally and physically healthy community is achieved.

## **Sacred Restorative Justice: Wuneetupânutamwee Nôpahtawee Pâyôhsukeey8uk**

*translation: “sacredness restored” through “equity and justice.”*

- ◆ Sacred justice is found when the importance of restoring understanding and balance to relationships has been acknowledged.

# STARTING THE PEACEMAKING PROCESS

Initiating party requests Peacemaking with Court Clerk

Court Clerk notifies other party

Other party responds either accepting or rejecting request

Parties agree to Peacemaking and proposed Peacemakers appointed if approved by both parties

Peacemaking takes place

Dispute is resolved in one of three ways:

Parties reach an agreement and acknowledge it in writing

Parties require additional peacemaking sessions

Parties do not reach an agreement



## PEACEMAKING SESSION

**W**hat follows is the process that a typical Peacemaking session takes. Although certain steps may be taken in a different order, the core process is as follows:

1. **Introduction of the Parties:** Once everyone is present at the Peacemaking session, the Peacemakers will introduce themselves and each party will introduce themselves.
2. **Explanation of Peacemaking:** The Peacemakers will explain what Peacemaking is, review the Guiding Principles, Peacemaking Participant Agreement, and Confidentiality. They will answer any questions that anyone might have about the Peacemaking process. The Peacemakers will ensure that participants sign the Confidentiality and Participant Agreements.
3. **Prayer and smudging**
4. **Talking Feather:** A Peacemaker will introduce the Talking Feather — a tool created by indigenous leaders, Sachems, and Medicine men and women —which indicates that it is someone’s turn to speak. Passing the Talking Feather will give everyone the opportunity to state their name, and the reason why they have come to Peacemaking. This process will create the **Talking Circle** for a well-intentioned meeting.



*“The Talking Circle is a listening Circle. The Talking Circle allows one person to speak at a time for as long as they need to. So much can be gained by listening. What we share with one another, heals one another.”*

*—John Peters, Slow Turtle Supreme Medicine Man*

## PEACEMAKING SESSION, CONT.

- Opening remarks by each of the parties:** Each side will give their opening remarks. Using the Talking Feather, each of the parties gets a chance to tell their side of the story and explain what they want out of a remedy. The Peacemakers may ask some questions to better understand the conflict.
- Discussion of the issue:** Everyone will discuss the issue together. The Peacemakers will make sure that everyone is given the time to respond to what the other side has said. The Peacemakers may guide the conversation to make sure it stays on the issue. They may also give advice on how to talk with each other.
- Discussion of a remedy:** Once the issue has been discussed and everyone has had a chance to say everything that they want, the Peacemakers will turn the discussion towards possible remedies. The Peacemakers will make sure that everyone has a chance to speak and respond to the other side.
- Written agreement:** If everyone can agree on one specific remedy, the Peacemakers will put it into writing. Each party will sign the written agreement. The Peacemakers will make sure that the Court and each party gets a copy of the agreement.
- Follow-up:** A couple weeks after a Peacemaking session where both sides have reached an agreement, the Peacemakers will follow-up to make sure that each party is doing what they have agreed to.



## HOW TO REQUEST PEACEMAKING

**T**here are two ways to request Peacemaking.

You can submit a **written request** directly to the Court Clerk, or submit a Peacemaking **Intake Form** which may be obtained from the Court Clerk or on the Court's website.



On the request, include the names of the other people involved in the conflict, what the conflict is about, and what dates and times you are available for a peacemaking session. There is **No FEE** for filing this form.

Once the request is received, **the Court Clerk will notify the other individual involved in the dispute.** That individual will be asked to participate in Peacemaking and given the opportunity to decline. If the individual agrees, then a time and date that works for both participants will be chosen and a Peacemaking session will be held.

**Responding to a Request for Peacemaking.** If you receive a request from the Court Clerk to participate in Peacemaking, complete the form indicating whether you agree or do not agree to Peacemaking and return the form to the Court Clerk within **five business days** from the date of notification.

## TRANSFERRING FROM DISTRICT COURT

Sometimes the District (Tribal) Court is used to resolve a dispute. If you are a party to a dispute in District Court, you may want to consider transferring it to Peacemaking. During the conference hearing in District Court, transferring the case to Peacemaking is discussed among the parties and the judge.

If you feel that Peacemaking is better suited for your case than the courtroom, you may transfer it from the District Court to the Peacemaking. Here are the steps:

1. Request that the District Court Judge transfer the case to the Peacemaking Court. It doesn't matter what your role in the suit is. You can request a transfer if you are the party who brought the suit or the opposing party so long as you are a **party in the proceedings**.
2. The opposing party is given a chance to object.
3. If both parties accept the transfer, the case is transferred to Peacemaking.





## PEACEMAKER DOCUMENTS

Participants are expected to abide by the rules of Peacemaking. Below are the text of the **Peacemaking Participant** and **Confidentiality Agreements**. Both must be signed before the Peacemaking session can begin. In signing these agreements, participants acknowledge an understanding of the rules and agree to abide by them.

### **PEACEMAKING PARTICIPATION AGREEMENT**

The peacemaking process and the tribal members involved should be treated with respect to maintain a safe place to work out differences. The talking feather facilitates the talking and the listening. Whoever holds the feather is empowered to speak as others listen. So much can be gained by listening. Shouting, name calling, and mumbling are discouraged. Everyone will get time to tell their story. Peacemaking is confidential and is not discussed outside the Peacemaking room. You will be asked to turn off your phones to prevent any interruptions during the process. Remember Peacemaking is not about who is right or who is wrong, it is about healing the relationships between members and restoring peace. If a participant is having difficulty following this agreement, the Peacemaker can discontinue the session.

### **CONFIDENTIALITY AGREEMENT**

Communications relating to the subject matter of the Peacemaking made in the course of the Peacemaking process by a participant, Peacemaker or witness shall be held in the strictest confidence. Such communications cannot be used in any civil, criminal or administrative proceeding against any of the parties. Communications to persons whether Peacemaker or participant who are mandated by Tribal Ordinance or other law to report communications affecting the health, safety and welfare of an individual are not protected and may be disclosed to the appropriate party or parties. We, the undersigned, have read and understand the confidentiality provisions regarding the Peacemaking sessions.

## PEACEMAKER DOCUMENTS, CONT.

Below is a list of other relevant forms to Peacemaking.

**Adult Intake Form.** Contains information about the disputing parties, the origin of the case, the nature of the grievance, and the relief sort.

**Confidentiality Agreement.** All parties to the dispute and the Peacemakers must sign the confidentiality agreement.

**Peacemaking Participation Agreement.** Participants to Peacemaking are expected to abide by the rules of the Peacemaking process. In signing the agreement, participants acknowledge an understanding of the rules, and agree to abide by them.

**Peacemaking Contract.** Upon reaching an agreement, both parties to the dispute will write down the agreement terms, and sign it, thus making the agreement binding. The Peacemakers and two witnesses will also sign the agreement.

**Community Service Log.** If community service is part of the Peacemaking Contract signed by both parties, the Community Service Log should be completed, and submitted to the Tribal Court.

## PEACEMAKER DOCUMENTS, CONT.

**Peacemaking Follow Up Questionnaire.** Participants to the Peacemaking process are encouraged to offer feedback by filling out this form and returning it to the Peacemakers or the Court Clerk.

**Peacemaker Stipend Request.** Peacemakers may submit a stipend request after Peacemaking sessions, subject to the approval of the Tribal Court.



# Mashpee Wampanoag Clans



**Bear - *mashq***



**Beaver - *tumôhq(âw)***



**Deer - *ahuhq***



**Eagle - *wôpusuhkuhq(âw)***



**Eel - *qunamâq***



**Hawk - *awâhsh(âw)***



**Otter - *nukéeq***



**Owl - *8h8muwun***



**Turtle - *t8nupâhs***

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