

A Guide to Self-Representation in Civil Cases

Mashpee Wampanoag District Court



Updated January 2017



A Welcome from the Elders Judiciary Committee

With members of the Mashpee Wampanoag Tribe in mind, the Elders Judiciary Committee (EJC) and Suffolk University Law School's Indigenous Peoples Rights Clinic created this guidebook to help members not represented by an attorney walk the path from filing a complaint, defending a lawsuit, navigating a trial to final judgment in Mashpee Wampanoag District Court.

The motivation behind this Guidebook is to provide Tribal Members with more information on how the Court operates. In discussions with Tribal Members, the EJC discovered that most people would prefer to represent themselves before the Court, rather than hire an attorney which few can afford. Court procedures may be confusing and intimidating for all parties involved. It is the EJC's sincere hope that this Guidebook will help all those in the District Court.

We owe a great deal of gratitude to all the students from Suffolk's Clinic who worked on this project: Alice Keh, Sulma Khalid, Sheena James, Uyi Agho, Seth Urbanoski, Eric Tatman and Clinic Supervising Attorney, Nicole Friederichs. We would especially like to thank the Administration for Native Americans for providing the funding that made the Guidebook possible.

Using this Guidebook

If you have picked up this Guidebook, you have either thought about beginning a civil lawsuit, or have been brought into a lawsuit and want to know how to proceed. This Guidebook hopefully will assist you in navigating the Court in a way that is manageable.

The Guidebook follows the progression of a lawsuit as outlined in the Mashpee Wampanoag Rules of Civil Procedure. Most sections begin with a diagram that summarizes the information that follows. Legal terms and important notes may also be defined in boxes near the text or within the text itself.

The Guidebook is intended to be used with, not replace, the Mashpee Wampanoag Rules of Civil Procedure. Each section refers to specific rules and it is important to read the rule in addition to the explanation in this Guidebook. Finally, make sure your using the most up to date set of Rules since amendments are periodically made to the Rule.

DISCLAIMER

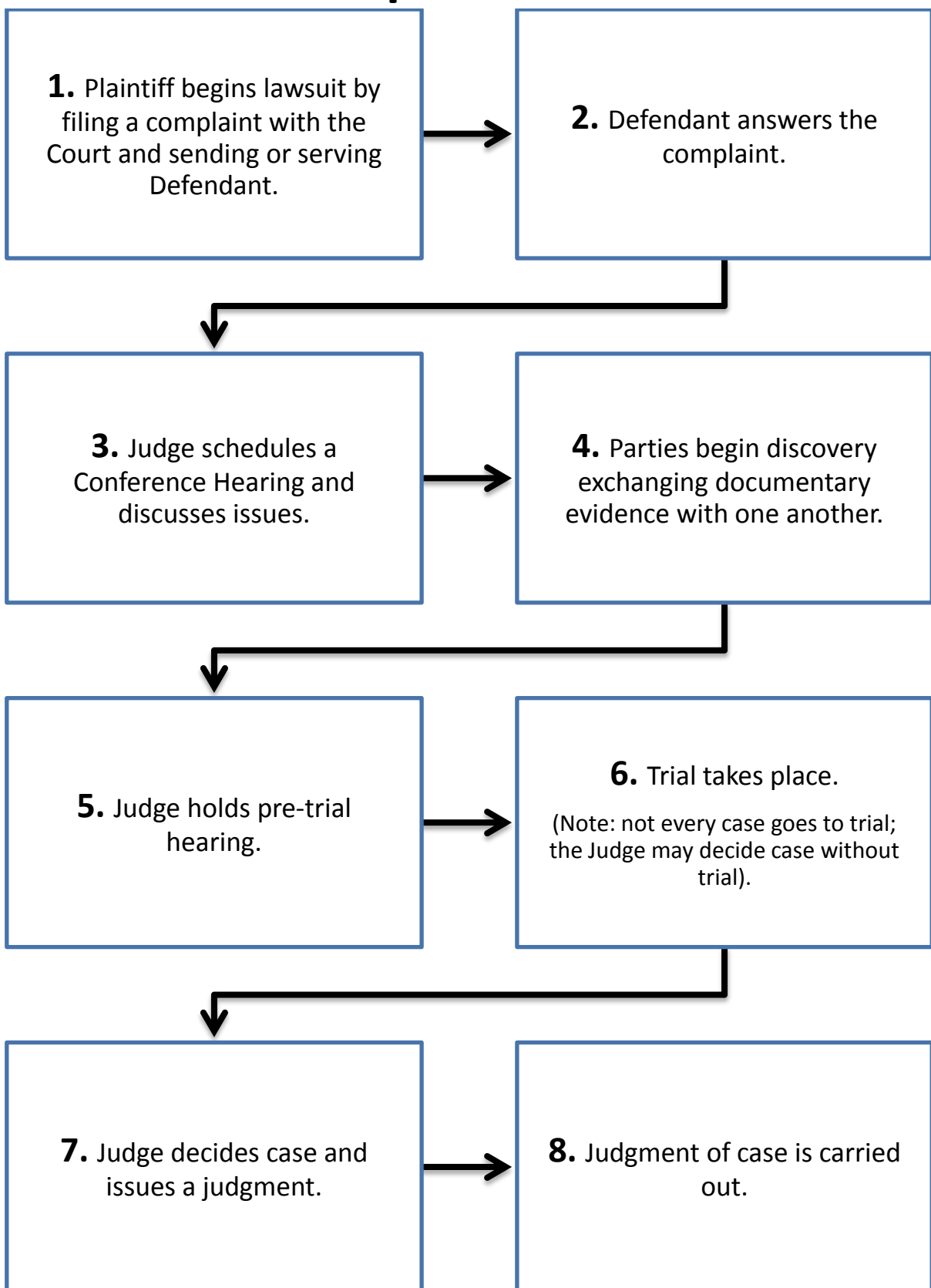
- This Guide is not a substitute for reading and understanding the Mashpee Wampanoag Rules of Civil Procedure and other rules and laws that apply to cases.
- It is intended for use in civil matters only, not criminal.
- It is a basic guide to assist someone unable or unwilling to hire an attorney. It does not answer all questions or guarantee success.
- It is not intended to advise individuals in the unlicensed practice of law, nor should it be used to provide legal advice to other people.
- It should not be cited to as authority. The examples used do not necessarily cite tribal law.

What You Will Find in the Guidebook

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Basic Steps to a Lawsuit





Timing



Counting Days: Rule 6

In any lawsuit, a critical component is timing. Timing is key because **failure to meet deadlines may result in the dismissal of your claim**, or you may lose your right to sue altogether.

When counting days to establish deadlines, follow these rules:

1. Do not count the day the event that triggers the counting period.
2. Count every calendar day, including Saturdays, Sundays, and “legal holidays” as defined in **Rule 3 (Definitions)**.
3. Include the last day of the counting period, but if the last day falls on a Saturday, Sunday, or legal 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.

Example of How to Calculate Timing

1. You file a Complaint with the Court Clerk on **September 6, 2016**. The Court Clerk certifies your Complaint and **issues a Summons** for you.
2. The **counting period has now been triggered**.
3. You now have **60 days** to complete service on the Defendant.
4. **Begin counting** the day after the Complaint was filed (Sept. 7), regardless what day of the week or holiday it may be.
5. The 60th day is Saturday November 5, 2016; because the last day is a Saturday the counting period is extended until **Monday November 7, 2016**. Service must be completed by the end of the day November 7.

Examples of when Timing is Important:

- | | | | |
|-------------------------------------|-----------------------|--------------------------|--------------------|
| - Complaint Delivery | - Alternative Service | - Motion to Dismiss | - Counter-Claim |
| - Automatic Disclosure | - Limited Discovery | - Formal Discovery | - Summary Judgment |
| - Questions of Customary Tribal Law | - Default Judgment | - Execution of Judgments | - Appeals |

How to File a Complaint (Rules 9-10)

STEP ONE:
Fill out a **Complaint** form.

OR

Write your own Complaint.
(You may draft your own complaint, but are encouraged to use the form.)

STEP TWO:
Submit the **Complaint** to the Court Clerk, who will give you a **Summons to be served (or delivered) on the Defendant or a representative of the Defendant-organization.**

STEP THREE:
Serve Complaint & Summons In Person:
Use a sworn officer, such as a law enforcement officer or court officer; or constable authorized by the Court, to serve a **copy of the Summons and Complaint** to the Defendant **within 60 days.**

OR

STEP THREE:
Serve Complaint & Summons By Mail:
1. Mail first class, certified with return receipt requested at Defendant's last known address.
2. If unsuccessful, ask court for assistance.

NEXT STEPS (after the Defendant serves his or her Answer)
The District Court schedules a **Conference Hearing (Rule 19)**, where the parties will:

- Discuss transferring the case to a **Peacemaker Court.**
- Discuss how you and the Defendant will exchange evidence to support your claims.
- Discuss **settlement** options.
- Identify **relevant Mashpee Wampanoag customs and traditions.**

TIP:** If the Defendant does not answer **within 60 days**, you may ask the Court to decide the case for you. This is a **Default Judgment. (Rule 37)

Starting the Case: Filing a Complaint (Rule 9)



You start a case by filing a Complaint with the District Court. The Complaint is your way of telling the Court and the Defendant(s) what your case is about. To do this you must make a **claim**. You may use the Court's Complaint form or write your own Complaint. There is cost to filing a case, but these fees may be waived.

Claim- An argument you make to show the court you have a right to some relief.

Step 1: Writing the Complaint

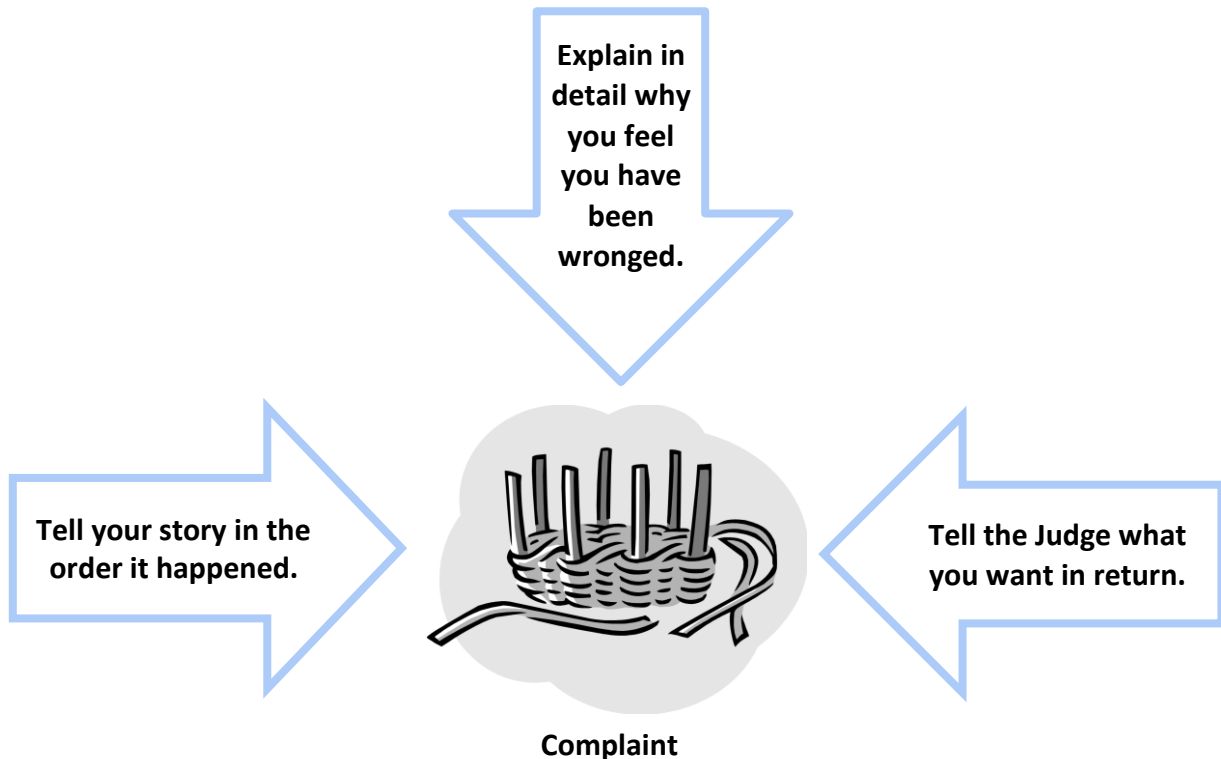


Using the Court's Complaint Form

The Court's complaint form comes with instructions to assist you in filling out the form. You may pick up the form at the Court or find it at the Court's website.

Writing Your Own Complaint

Although the Court encourages you to use its Complaint form, you may also write your own Complaint. In your written complaint, you must give the parties names and addresses and explain in detail what has happened to you so that the judge and Defendant understand how you were injured and why you think you deserve a remedy. **To see a more detailed explanation of what information must be in a Complaint, see Rule 9(b).**



Step 2: Submit (File) the Complaint with the Court Clerk

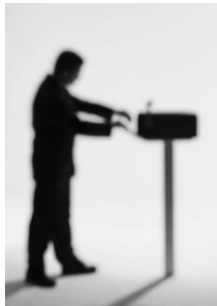
The Court Clerk will provide you with a Summons to deliver to the Defendant.



Timing is everything!

See Rule 6 and 10


Step 3: Delivering the Complaint (Service)




Once the Court Clerk has processed your Complaint, you need to give a copy of your Complaint along with the **Summons** to the Defendant. It is your responsibility to make sure that the Defendant, or a representative of the Defendant-organization, gets a copy of the Complaint and Summons **within sixty (60) days**.

There are two ways to deliver a complaint:

1. Delivery by using a sworn officer, such as a law enforcement officer or court officer; or constable authorized by the Court, or
2. Mailing a copy by first-class, certified mail with return receipt. The Plaintiff must keep the signed receipt showing when the mail was delivered and attach it to the **Affidavit of Service pursuant to Rule 10(e)**.



Service- Process the Plaintiff uses to make the Defendant aware that a claim is being brought against him or her.



Summons- A court order to appear before a Judge.

Note: If you have tried both in-person and mail delivery and are still unable to serve the Defendant, you may ask the District Court to approve an alternate method of service. This may include posting the copies in the Tribal Government Office for 2 weeks before the first court hearing.

Amending (or Changing) the Complaint: Rule 11

From time-to-time you may need to change your Complaint to properly describe your legal problem. A Plaintiff may amend or change the Complaint without District Court's permission at **any time before the Defendant answers it**, as long as service is provided to all parties **pursuant to Rule 10**. If the Defendant has answered the Complaint, the Judge may still allow for an amendment as long as allowing the change would not be **unfair** to the Defendant or cause **severe delay**.

Responding to a Complaint and Summons (Rules 12-13)

STEP ONE:

Before filing an Answer, you **must** tell the Court if one of the following defenses applies:

- Does the Court have the authority to hear the case brought by the Plaintiff?
- **Are there errors** or missing information in the Summons and/or Complaint?
- Have you received the Summons and Complaint incorrectly?

If you do not raise these defenses at this stage, you will **waive** or **give up** the right to raise them later. **(Rule 13)**

STEP TWO:

Submit the Answer to the Court Clerk, in which you **admit** or **deny** the Plaintiff's Complaint. **(Rule 12)**

*TIP: If you don't file an **Answer** within 20 days of service, the Plaintiff may ask the court to decide the case without your input. This is a Default Judgment.*

TIP: When you raise a Rule 13 defense, the Court suspends the time limit to file your answer until the defense is ruled upon.

STEP THREE:

Mail Plaintiff with Answer with proof of service. **(Rule 12)**

NEXT STEPS

The District Court schedules a Conference Hearing **(Rule 19)**, where the parties will:

- Discuss transferring the case to **Peacemaker Court**.
- Discuss how you and the Plaintiff will prepare and give each other any **evidence** to support your claims.
- Discuss **settlement** options.
- **Identify** relevant **Mashpee Wampanoag customs and traditions**.



Defendant: Answering the Complaint

Rules 12, 13 and 14

Once you are served a Summons and Complaint, your first step is to respond to the Plaintiff. Responding to the Plaintiff lets him or her know that you are aware of the Complaint against you; regardless of whether or not you feel you are to blame.

As a Defendant there are several options in how to respond to the Plaintiff. You may (1) file an **Answer** alone, (2) raise a **Defense** in a motion and then file an Answer depending on how the Judge rules on the defense you raise, or (3) make a **Counter-claim**.

1. **File an Answer Only.** Choose this option if you don't want to raise any of defenses listed in **Rule 13** or other defenses and don't want to file your own related claim against the Plaintiff.
2. **Raise a defense in a Motion to Dismiss.** Choose this option if there is a problem with the way the complaint or supporting documents were served to you or if the court does not have the authority to hear the case for another reason. Motions to Dismiss may be filed before or after the answer. **You may still have to file an answer if the Judge does not accept your defense.**
3. **Raise a counter-claim.** Choose this option if you have a new claim that arises from the same facts as those in the original Complaint. You must also file an Answer to the Plaintiff's original Complaint at the same time.



Answer- A formal, written response to what the Plaintiff wrote in the Complaint.

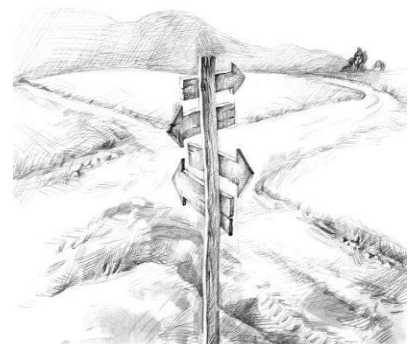


Timing is everything!

See Rule 12

Step 1: Determine How You Will Respond

- Select one of the **above three options** for responding to the Plaintiff.
- If you decide to raise a defense, review **“How to Raise a Defense in Court”** on page 13.
- If you decide to raise a counter-claim, review **“Filing a Counter-Claim”** on page 14.
- **You only have 20 days** after receiving the Summons and Complaint to send your Answer to the Plaintiff.



Step 2: Prepare Your Answer

In your Answer you must:

- Admit; or
- Deny all allegations in the Complaint.



The Answer must also include a **phone number, email address** (if you have one) **and mailing address** for future contact.

The Answer must be signed certifying (confirming) that the statements in the Answer are supported by evidence **OR** reasonably likely to be supported by evidence after you have completed the **discovery process**.

Step 3: Send Your Answer

- Serve a copy of the Answer on the Plaintiff by mailing it by first-class mail. **You only have 20 days** after receiving the Complaint to send your Answer to the Plaintiff. For help on how to count the time period, check **Rule 6** and page 4 of this Guidebook.

Discovery- When both parties gather evidence in support of their own argument to give to the other party.



- **What If I need more time to prepare my answer?**


The District Court generally works to prevent any delays in a case. However, emergencies and scheduling conflicts do arise and you may request an extension from the Court, but such an extension is not guaranteed to be granted. Such a request must be made prior to the expiration of the 20 day period.

Note: If you do not file your Answer within the allotted time, you may be subject to a Default Judgment. A Default Judgment occurs when the Plaintiff asks the Judge to decide the case without input from the Defendant. See Rule 38.

Certain Defenses to the Complaint: Rule 13

Instead of filing an Answer, you may respond to a Complaint by **raising certain defenses in a Motion to Dismiss**. A defense is the Defendant's reason why the Plaintiff has no valid case against them. After you file the motion, the Judge will make a decision on whether to grant the motion.

If the Judge grants the motion, the case will be dismissed. If the Judge **denies** the motion, the **case will continue** and you must file an Answer to the original Complaint as described on the previous pages.



Motion- A written or oral request a party makes to a Judge.


The defenses you may raise first instead of filing an Answer are:

Lack of Subject-Matter Jurisdiction

- The Court may only hear cases involving particular issues. If you raise a “lack of subject-matter jurisdiction” defense, you’re arguing that the Plaintiff filed a Complaint that the Court lacks authority to hear.
- **Example:** The issue in the Complaint involves only state law, not tribal law; therefore the case may not be heard in tribal court.
- **You may raise this defense at any time.**

Lack of Personal Jurisdiction

- The Court only has power to hear cases involving certain people, businesses or organizations. If you raise a “lack of personal jurisdiction” defense, you are stating that the Court does not have power to hear a case involving you because you have insufficient contact with the jurisdiction of the Tribe.
- **Example:** A tribal member goes to Florida, slips in a hotel owned by Florida corporation, and sues the hotel in Mashpee Wampanoag District Court. The Court may not have jurisdiction over the hotel.
- **You must raise this defense before filing your Answer.** Otherwise you will waive your right to raise it again.



Jurisdiction- The official power to make legal decisions and judgments.



The defenses you may raise first instead of filing an Answer are:

Insufficient Service of Process

- If you raise a defense of “insufficient service of process,” you are stating that the content of the Summons and Complaint is fine, but there was an error in how the summons and Complaint were delivered.
- **Example:** The Plaintiff delivered the Summons and Complaint to me personally, not through a sworn officer, or constable authorized by the Court.
- **You must raise this defense before filing your Answer.** Otherwise you will waive your right to raise it again.

Insufficient Process

- If you claim there was “insufficient process,” you are stating that there are errors in or a lack of information in the Summons and Complaint.
- **Example:** My name is not listed as a party to the lawsuit in the Summons.
- **You must raise this defense before filing your Answer.** Otherwise you will waive your right to raise it again.

How to Raise These Defenses: Draft a Motion to Dismiss: Rule 13(d)

You must raise one of the above defenses in a **written motion**:

1. **Clearly state the purpose of the motion.**
 - Example: “I would like to make a motion to dismiss on grounds of insufficient process.”
2. **Clearly state the reasons why your motion should be granted.**
 - Example: “The Plaintiff failed to indicate in her Complaint where the alleged incident took place.”
3. **Provide facts to help support your reasons.**
 - Example: “Without any location information I cannot determine if the claim is true, and therefore cannot answer in the negative or the affirmative.”
4. **Sign the motion.**



Other Types of Defenses

- A Defendant may raise other defenses to a Complaint not discussed above. Defenses, which argue that even if the allegations against the Defendant are true, the defendant is still not to blame.
- For example, if Tribal law provides that a type of claim must be brought within a certain period of time and the Plaintiff waited too long to file a Complaint, then the Defendant may raise a “statute of limitations” defense by filing a motion to dismiss or raise it in the Answer.
- A Defendant may also raise these types of defenses before sending the Answer to the Plaintiff.
- For more on how to raise these types of defenses or information on statute of limitations, see page 16.

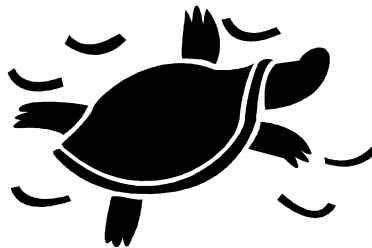
Filing a Counter-Claim Rule 14

The basis for a Counter-Claim must come from the same event (same facts) used by the Plaintiff to file his or her Complaint on the Defendant.

To file a counter-claim, you must follow the same steps that a Plaintiff follows when filing a Complaint. It **must be filed as a counter-claim** to the Plaintiff’s Complaint or it will not be accepted by the Court. See pages 6-8 of this Guidebook.

In addition to filing a counter-claim, you must also respond to the Plaintiff’s original Complaint by filing an Answer under Rule 12, admitting or denying the Plaintiff’s claims.

Counter-Claim-
When a defendant makes a claim against the Plaintiff out of the same facts the Plaintiff used to allege his claim against the Defendant.



Motions in General: Rule 17

A motion is a written or oral presentation to the Judge that brings a legal or procedural issue to the Judge's attention. Motions may be filed at any time during a case or trial and can be used for many purposes. You may present your motion orally or in writing, but the Court prefers it to be in writing.

Examples of Motions


1. Request dismissal of a case
2. Question the Court's jurisdiction over the case
3. Ask for an extension to file documents
4. Request the Court to order the opposing party to perform in some way

Step 1: Writing and Supporting your Motion

You may choose to or be required by the Judge to support your motion by giving the court an **affidavit** or a **legal memorandum**.

The legal memorandum must contain:


- Citations to case law, statutes or tribal customs that support your position; and
- The undisputed facts of the case



Memorandum- A written document explaining a specific point of law or issue.

Step 2: Serving your Motion

Motions must be served on the opposing party according to Rule 15 (b) or (c).



Affidavit- A sworn statement of facts voluntarily made based on firsthand knowledge or what an individual believes they can speak to as.

Step 3: The Judge Decides the Motion

After you file and serve the motion, the Judge may do one of two things. He or she may decide the motion immediately just based on its content or nature; or alternatively, the Judge may schedule a hearing. At the hearing, each party will have an opportunity to present his or her case orally. This is useful because the Judge can ask specific questions and make a decision after hearing both sides.



NOTE: If you are dissatisfied with the Judge's decision, one possible option is to seek a review of that decision by Tribe's Supreme Court. For more information on this appeal process, see page 30.

Motions to Dismiss: Rule 18

When you file a motion to dismiss, you are asking the Court to determine that a claim does not have a legal remedy. The Judge must assume the truth of the factual allegations, but may determine that you have no legal basis for bringing the issue before the court.

Note: Rule 18 deals with motions to dismiss which raise defenses not listed in Rule 13. See pages 11-12 for Rule 13 defenses.

Example: A claim is raised against you for failing to remove snow from the entrance of an apartment building where the Plaintiff slipped, fell and suffered injury. However, you are neither the building owner nor maintenance provider and were mistakenly named in the suit.




Timing is everything!

You should file motions to dismiss with the District Court **within twenty (20) days after the service of the Answer**. If you receive a motion to dismiss, you have **twenty (20) days after you receive the motion** to reply. The party who made the original motion then has **ten (10) days** to file his or her own reply.

If you make a motion to dismiss under **Rule 13**, these same timing requirements apply.

Statute of Limitations

- What if a Plaintiff brings a claim after the “**Statute of Limitations**” has expired?
- After the expiration of this time period, the injured person loses the right to file a lawsuit seeking money damages or other relief.
- The Mashpee Wampanoag Tribe, at this time, does not have one ordinance governing time limits for each type of civil claim, but rather **individual ordinances** may include such time limits. Be sure to check an ordinance for any time limitations.



Statute of Limitations- Law that places a time limit on getting relief after an injury has occurred.


As an Example, the Enrollment Committee has denied an application for enrollment into the Mashpee Wampanoag Tribe. Under the Enrollment Ordinance, an applicant has 60 days to file an appeal with the District Court. The applicant/plaintiff files their appeal/complaint after 60 days. The defendant, in this case the Tribal government, may file a motion to dismiss arguing it was filed after the time period allowed by the Enrollment Ordinance.

Motions for Summary Judgment: Rule 27


A party may also file a motion for summary judgment if a party thinks that a Judge can decide the case based solely on the facts of the case and without a trial.

- A Court will grant a summary judgment motion when the **material facts** of the case are undisputed and all that is to be determined are **questions of law**.
- A motion for summary judgment is usually only made when sufficient time for discovering all evidence has expired.
- For summary judgment to be granted, a two-part requirement must be met:
 - (1) No genuine issue of material fact can be in dispute between the parties, and
 - (2) The party is entitled to judgment as a matter of law.

Whether you receive or file a motion for summary judgment, remember to keep track of all documents you receive through discovery. (See page 20 for definition of discovery.)



Material fact-
Facts of the case that the judge relies on to come down on one side or the other.



Questions of law- Questions that are decided solely by a Judge based on the law and not by a jury.



Timing is everything!

See Rule 27

- A motion for summary judgment may be filed at any time **until twenty (20) days after the close of all discovery**.
- A reply brief must be filed **within twenty (20) days of the receiving of the motion** for summary judgment.
- All evidence generated through discovery, including affidavits, may be used to support a motion for summary judgment.
- The Judge may hold a hearing on a motion for summary judgment, or the Judge may rule on the motion without holding a hearing.

Navigating the Conference Hearing: Rule 19

A Judge schedules a Conference Hearing to resolve the case effectively and efficiently, by addressing the following matters (not exhaustive):



- If your case would be better served by transferring to the **Peacemaker Court**.
- Determining the extent and type of **discovery**.
- Discouraging wasteful pretrial activities and **settlement** prospects.
- Identifying Mashpee Wampanoag **customs or traditions** that may be invoked.

Settlement-
Where the parties agree to settle their issue rather than use the Judge.



Conference Hearing Practice Tips

- Conference hearings may be held off the record at the request of a party (by motion) or at the Court's discretion.
- Offers of settlement during a conference hearing may not be used as evidence later in the trial following a failure to settle.

Note: If you know of tribal customary law that may apply to your case, you must provide the Court with a statement that you and the opposing party agree on the customary law. If the parties cannot agree on the customary law, the District Court may refer the matter to the Elder's Judiciary Committee (EJC) under Rule 31.

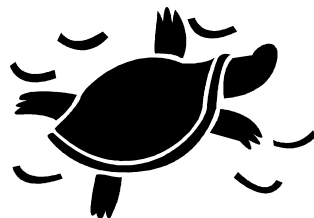
Creating a Discovery Plan and Schedule: Rule 19(c)

One of the main goals of the conference hearing is to develop a discovery plan of how and what information the parties will share. **Discovery** is a process the parties go through where they give each other the evidence they need to build their cases. Discovery will be discussed in more detail in the next section. Generally, the discovery plan should include the following:

- Include a Court order directing parties to automatically disclose information according to **Rule 21**;
- Decide if **limited discovery** or **formal discovery** is appropriate for the case (see page 20 for further explanation);
- Include time limits set for the completion of discovery, and

If the parties agree on a discovery plan, the Court will accept the plan. If the parties cannot agree on a discovery plan, the Judge will create a plan after considering the parties' needs and concerns.

Note: If you fear that evidence which you intend to request may be destroyed or deliberately made unavailable following the Conference Hearing, you may make a motion to request the District Court for a discovery order prior to the conference.





Beginning Discovery: Rules 20 and 21

What is Discovery?

Discovery is the process of turning over evidence to the other party so that both parties can build the best possible case, and not be unfairly disadvantaged by the other party. Discovery refers to the right of either party to obtain evidence from the other party.

Discovery can involve anything that is “**reasonably calculated to lead to admissible evidence.**” This means that **any party can seek evidence that might be relevant**, rather than evidence that is truly relevant to their case.

Step 1: Discovery– Schedule and Plan at Conference Hearing

At the conference hearing the parties and the Judge will discuss the extent and timing of discovery. In Mashpee Wampanoag District Court, there is automatic disclosure with the option of limited or formal discovery.

Step 2: Automatic Disclosure: Rule 21

Automatic disclosure means that regardless of the specifics of a given case, each party must provide the following information to the opposing party. Each party must release the following to all parties **within 20 (twenty) days of the Judge’s discovery order** which is issued at the conference hearing:



- A witness list of **anyone likely to have information** about something that is part of discovery and the subject matter of that information that the disclosing party may use to support its **claims and/or defense**. You must include the following:
 1. Name;
 2. Address, and
 3. Phone number (if known) of those on the witness list.
- A copy or description of all documents and material items the disclosing party has in his or her possession that may be used to support a party’s claims or defenses.

Step 3: Limited v. Formal Discovery: Rules 22-23

After automatic disclosure, the parties then may ask each other for more information either through limited or formal discovery. The type of discovery will have been determined at the conference hearing.

LIMITED DISCOVERY

Limited Discovery permits a speedy resolution of claims made. If the agreed upon plan during the conference hearing is to conduct limited discovery, **you may request, in writing, that the other party:**

- Answer questions presented in writing;
- Turn over copies of documents and photographs, and
- Admit or deny statements made in writing.

FORMAL: DISCOVERY

Formal Discovery is a more comprehensive discovery plan. If agreed upon in the conference hearing, **the parties may request the types of documents above, as well as:**

- Production documents and/or permission to enter upon land/property for inspection and other purposes, and
- Physical/mental examinations (**only by Court order**).

How do I request evidence and how is it requested of me?

The following are methods to request information from other parties. These methods may be used in any order. Once receiving a discovery request, **you must respond within twenty (20) days** with the information or explain in writing where and when that information will be available. **Time extensions may be granted for good cause.**



- Request answers to **interrogatories**: a formal set of written questions asked to a party.
- Request for **admissions**: a set of statements sent for the purpose of having the other party admit or deny the statements or allegations in the case.
- Request for **depositions**: out-of-court oral testimony of a witness that is reduced to writing for later use in court or discovery purposes. Be sure to check **Rules of Evidence Rule 30** for more detailed information on how depositions are conducted.
- Request a **subpoena** on a party not directly involved in the case.

Asking the Court to deny a Discovery Request: Rule 25

With the approval of the Judge, which you can get by filing a motion with the Court, any party can refuse to provide the information requested if the release of the information:

1. Would cause responding party undue hardship (**example: too costly or difficult to acquire; overly burdensome**).
2. The responding party is not supposed to provide the information (**example, you don't possess the item requested or it is privileged information**).
3. It would violate Mashpee Law.

What is protected from Discovery?

A party cannot ask another party for information which is:

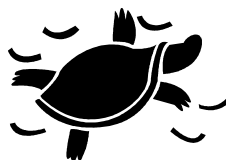
- Privileged.
- Certain information of the opposing party, such as mental impressions, conclusions, or relevant legal theories.
- Other types of evidence non-discoverable for reasons of privacy, difficulty, and/or expense in complying.

What happens when a party does not cooperate in Discovery? Rule 26

If a party refuses to participate in discovery, the harmed party may file a **motion to compel** with the court. The motion must clearly say what information they need, why it is relevant to the case, and the difficulties they have experienced in trying to obtain it.



If the Court agrees with the motion, the opposing party will then have **20 days** to release the requested information. If the information is not released, the opposing party may be sanctioned.



What is a Pre-Trial Conference? Rule 28

After discovery has been completed, the Judge sets up another meeting called the pre-trial conference. At the pre-trial conference, the Plaintiff, Defendant and Judge discuss how to make the trial progress efficiently and effectively.

Preparing for the Pre-Trial Conference

When you come to the pre-trial conference you should bring any documents relevant to your case. **This includes the Complaint, Answer, and other documents such as motions.** You may also want to think about how settlement could be reached.

During the Pre-Trial Conference the following topics must be addressed:

The parties will discuss:

1. Facts and/or issues that the parties agree on.
2. Evidence the parties want to submit during the trial.
3. Witnesses that each party will present in Court.
4. Any issues that have not been discussed before the conference.
5. A settlement to prevent going to trial.

The parties will fully disclose:

1. Witness Information: names, addresses, phone numbers, and scope of information that witness will use to testify.
2. All documents expected to be introduced at trial, and what those documents intend to prove.
3. All items intended to be introduced as evidence and what those items intend to prove.

At the conference, the Judge may also make rulings on motions, eliminate repetitive evidence, and schedule the trial date.

How Do I know what kinds of Evidence is Admissible in Court?

Some types of communications, documents, or other items may not be admissible in a case, meaning the Court will not allow for the Plaintiff or Defendant to present or use them to support a case.

The **Mashpee Wampanoag Rules of Evidence** outline what kinds of evidence are admissible or not admissible in a case. Please refer to those rules which are available with the Court Clerk or on the Court's website.



Mashpee Wampanoag Customary Law/Oral Traditions Rule 31

Parties may rely on Mashpee Wampanoag Customary Law or Oral Traditions to argue or support his or her case. In addition to the Tribe's written codes and laws, tribal customary law, which is law handed down from generation to generation as a way of recording the Tribe's history, culture, and beliefs is also part of the Tribe's laws. Here are the relevant steps:

1. During the Conference Hearing, a party must give notice to the District Court that he or she intends to apply Mashpee Wampanoag tribal customary law.
2. If the parties agree upon the substance of the customary law, then they must provide the District Court with a statement that they agree on the customary law.
3. Where the parties cannot agree, the Court may refer the matter to the Elders Judiciary Committee (EJC) which may seek the advice of the Mashpee Wampanoag Tribal Chief and/or Medicine Man/Woman for interpretation.

When considering relying upon customary laws be sure to review the following **Evidence Rules**:

- **Rule 23 on Hearsay:** The Court determines the truthfulness of oral traditions by examining its validity, reliability, consistency, age, and degree of formality used in conveying the evidence.

Expert testimony is made by a qualified person about a scientific, technical, or professional issue truth of the matter stated.

- **Rule 27 on Expert Testimony:** An expert testifying on oral traditions must be a member of the Mashpee Wampanoag Tribe and neutral, impartial, and knowledgeable of such traditions.

Hearsay is evidence of a statement that was made other than by a witness while testifying at the hearing in question and that is offered to prove the truth of the matter stated.

Pre-Trial Injunctions and Temporary Restraining Orders: Rule 30

A party has certain options when they want to keep a party from doing something that would either harm their case or their person. Pre-trial injunctions and temporary restraining orders are helpful because they prevent parties from doing harm to one another and their cases.

Note: The Judge may require the party seeking a temporary restraining order or pre-trial injunction to provide security for any loss or injury suffered by the other party if wrongfully restrained.

A pre-trial Injunction is a judicial court order that restrains a person from beginning or continuing an action, infringes the legal right of another, or compels a person to carry out a certain act. A motion must be filed with the court seeking such an injunction.

For the court to issue a pre-trial injunction, you must show in your motion:

1. There is a **substantial chance** that you will **win** the case **AND**;
2. You will suffer **immediate and permanent loss** or injury that cannot be compensated by money alone if the motion is not granted.

How long does an injunction last if granted?

- The injunction is usually effective until the Judge decides the case, by entering a final judgment. Ultimately, the Judge has discretion to decide how long.

A temporary restraining order is an order from the Judge that prohibits or restrains the opposing party from a specific action generally of a physical nature (for example, being within 500 feet of the individual seeking the order). A restraining order is sought as a form of personal protection and **does not require notice to the opposing party**.

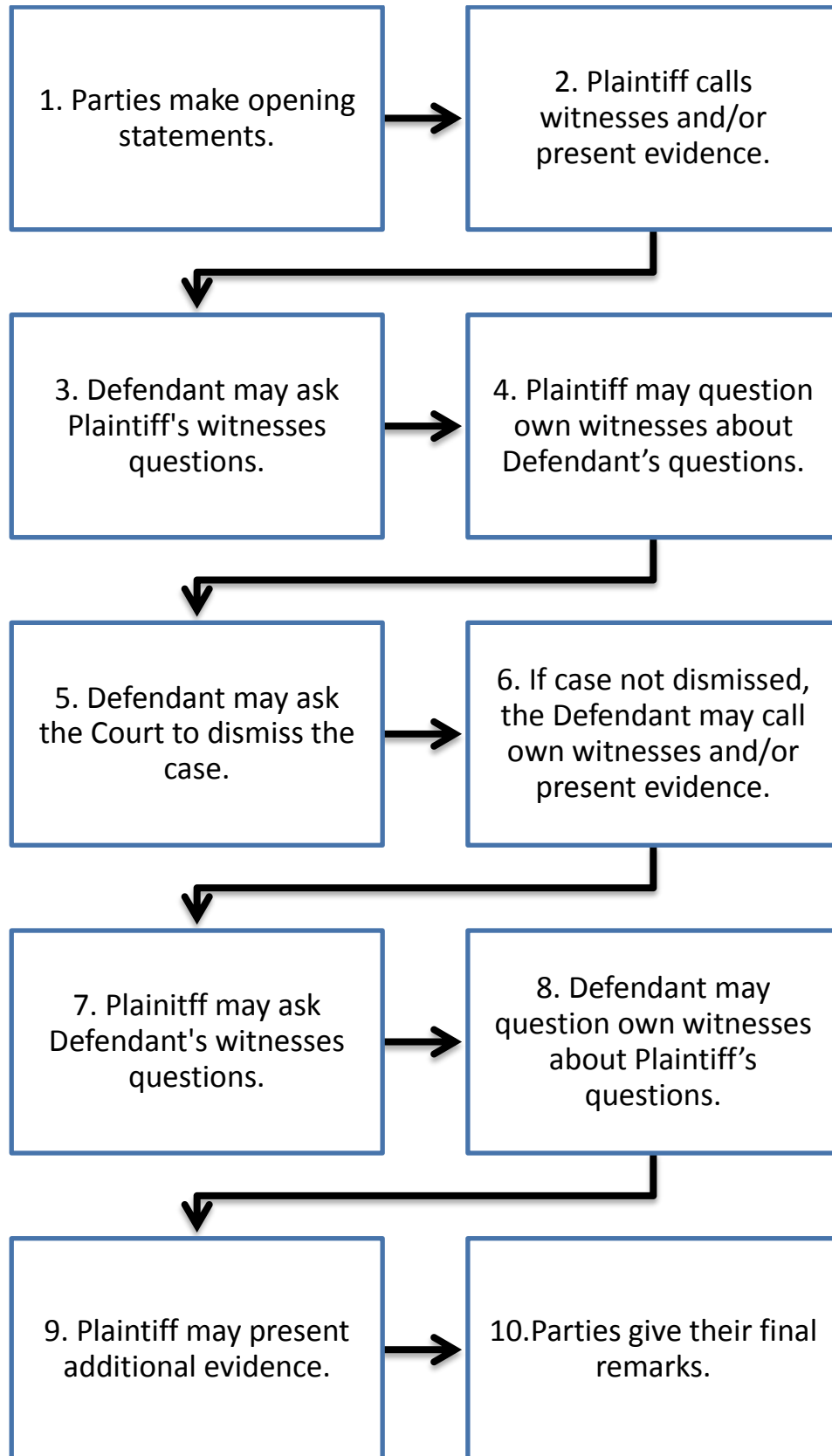
- **Note:** A party can get a temporary restraining order by making an affidavit or oral testimony to the Judge demonstrating sufficient threat of harm within their discretion.

How long is the temporary restraining order effective?

- A temporary restraining order is only effective for the period of time specified in the order which cannot exceed ten **(10) days (May be renewed once)**.

What Happens at a Trial?

Rule 32



The Trial: Rules 32, 33, and 34

The trial is where the parties present their case to the Court. The trial is held without a jury, and the Judge is the only person who will decide the case.

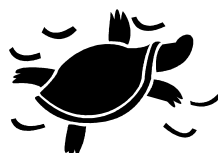
The Structure of the Trial

- The trial begins where the Plaintiff has the opportunity to make a statement about what he intends to prove. The defendant may then summarize his defense. **This is commonly referred to as “opening statements.”**
- There will then be time for the plaintiff to call witnesses and for the Defendant to cross-examine the Plaintiff’s witnesses. **A witness may be compelled to appear (Subpoena).**

A **subpoena** is a written document that legally requires a trial witness testify in court or produce evidence. The Court can cancel or change the subpoena at any time, as long as the response period has not ended for the individual it has been served on.



- The Defendant may ask the Court to dismiss the case. If the Plaintiff cannot meet the **standard of proof in Rule 34, than** the Judge must dismiss the case. The **standard of proof** in the Mashpee Wampanoag District Court requires the plaintiff to present evidence that his or her claim is more likely than not true.
- A Defendant may also give evidence against the Plaintiff, if the District Court does not dismiss the case. **The Defendant may not introduce evidence that the Plaintiff already introduced.**
- The Plaintiff again will get an opportunity to defend his or her case, since the burden of proof is on the Plaintiff.
- The Court will then make a judgment and issue a written decision after taking the evidence of both parties into account.



Peacemaking and Transferring to Peacemaking from District Court: Rule 35

Another arm of the Tribe's Judiciary is Peacemaking. Before filing a case in District Court, you may want to consider using peacemaking instead. As explained in more detail in Chapter 3 of the Judiciary Ordinance, peacemaking encourages people to solve their own problems by communicating in a safe environment and uses consensus among the parties as a primary tool.

If you decide to go to District Court, you may still transfer the case to peacemaking if all parties agree. If all District Court parties do not agree transfer to peacemaking, then the case remains in District Court. **Rule 35** outlines the process of transferring a case.

Judgments: Rules 36, 38 and 39

A judgment is a decision the Judge makes after hearing arguments and evidence presented by the parties either at trial or in a motion. Depending on the progression of the trial, this judgment may come at different stages in the process after the trial, before the trial starts, or even without a trial.

There are three types of judgments: **Final, Default and Foreign Judgments.**

Final Judgment (Rule 36)

A final judgment is the final written order of the District Court that determines the parties' rights and remedies. The Judge must sign and file a written final judgment no later than **thirty (30) days after the end of the trial.**

Default Judgment (Rule 38)

A Judge may issue a default judgment for the plaintiff when the **Defendant fails to answer 20 days after the Complaint has been delivered.** The Plaintiff has to go before the Court and ask the Judge to decide in his or her favor.



To ask for a default judgment the following steps must be followed:

1. The **Plaintiff files a written motion for a default judgment** with the Court
2. Serve a copy of the motion on the defendant
3. The court will then **schedule a hearing on the motion** for default judgment to be **held within ten (10) days after service of the motion.**

If the Defendant fails to answer the Complaint before the Court hears the Plaintiff's motion for default judgment then a default judgment will be entered likely granting the relief requested by the Plaintiff.

Foreign (State or Federal Court) Judgment: Rule 39

If you have received a judgment from another court, such as a Massachusetts state court, you can ask the Tribal Court Judge to give state court your judgment effect within the Tribe's jurisdiction. The process for this is governed by the Tribe's Full Faith and Credit Ordinance:

1. **Written Petition:** File a written petition with a copy of the state court judgment or order and ask the Tribe's District Court to give it effect. The petition must contain the following:
 - A statement of the claim and what action the court took on it;
 - The jurisdictional basis, both personal and subject matter, for the Tribe and
 - Show that the defendant received notice and had opportunity to be heard.
2. **Written Response:** Within 20 days of receipt, the defendant may file a response containing information:
 - Correction of significant facts;
 - Admission or denial of specific facts;
 - Explanation of facts denied; or
 - Any other matters which show why the judgement or order should not be enforced.
3. **Hearing on the Petition:** At the hearing, the parties will have an opportunity to argue their positions and the Court will consider those positions as well as ensure that it has jurisdiction.

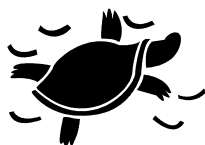
Remedies: Rule 37

Every final judgment must grant a remedy or remedies to the successful party, even if a specific remedy is not demanded in the pleadings filed with the court.

Common remedies include:

- Monetary
- Required action on the part of the unsuccessful party
- Restriction on a particular activity engaged in by the unsuccessful party

Note: An unsuccessful party may be required to sell property to fulfill a judgment. However, such a remedy will not be imposed if it will cause immediate and substantial hardship to the debtor's family or if the property is of religious or cultural significance. **Properties that are of religious, spiritual or cultural significance are assets of the Mashpee Wampanoag Tribe and cannot be encumbered or sold to fulfill judgments.**



Responsibilities Following a Judgment: Rule 40

If the Judge has ordered you to act in some way or to make a payment, you must file proof with the Court that the ordered action has been done or that the money has been paid. You must file proof with the District Court **within ten (10) days after performing the ordered act or making the payment.**

If the Court ordered a fine, payment of this fine must be made to **the Court Clerk.** If you fail to perform the ordered action or payment, then the Court may step in and consider you to be in **Contempt of Court.** As a result, the Judge may force you to pay an additional fine or impose another penalty.

Contempt of Court- Purposeful failure to obey an order of the Court subject to penalty by the Court.



Appealing a Final Judgment of the District Court: Rule 41

A party may appeal a District Court's final judgment to the Mashpee Wampanoag Supreme Court. A party may also appeal a non-final judgment or order of the District Court with the permission of Supreme Court. Both types of appeals are governed by the **Rules of Appellate Procedure.**

An **Appeal** is a proceeding to reverse a decision by bringing it to a higher court.



A party who wants to appeal a final judgment must file a **Notice of Appeal within 30 days** after the judgment is final.



Appealing a Non-final Judgment or Order

Rule 11 of Rules of Appellate Procedure

When a court makes a ruling during a case or trial, but before making the final judgment, a party may appeal the ruling, decision or order. This is also known as an interlocutory appeal and it is governed by the **Rules of Appellate Procedure, not the Rules of Civil Procedure.**

Some examples are of this type of appeal are:

1. Dismissing a case for one party, but continuing with other parties.
2. Require one spouse to pay a weekly sum for support, pending an alimony decision.
3. Prevent property from being sold until a court decision is final.
4. Deciding that the Court does not have jurisdiction over the case.

The Rules of Appellate Procedure also allow for this type of appeal in certain types of cases to be sped through the appeals process much faster than a normal appeal. The cases typically deal with the health and safety of a party or child of a party. See Rules 12 and 13.

This process could save you time and money by not having to wait until the case concludes to bring your appeal.

A party may appeal a non-final judgment or order only with permission from a single Supreme Court Judge. Here are the steps, but be sure to check the Rules of Appellate Procedure:

Step 1: First File Motion with Supreme Court

A party who wants to appeal a non-final judgment or order must first file a **motion requesting permission to appeal within 10 days** of the non-final judgment or order. The motion must be filed with the Supreme Court and the Supreme Court will decide whether to allow the appeal to go forward.



Step 2: If Motion Granted, then File Notice of Appeal

If the Supreme Court grants the motion, the party must file a Notice of Appeal under Rules 14, 15, and 16 of the Rules of Appellate Procedure. Filing a Notice of Appeal **does not automatically stop (or stay)** the District Court proceedings.

Stay – a ruling by the court that halts further process in a trial or proceeding.

Step 3: Serving the Notice of Appeal

The Court Clerk will serve a copy of the Notice of Appeal on all parties to the case being appealed within 10 days after it has been filed.