MASHANTUCKET PEQUOT RULES OF COURT

RULES OF CIVIL PROCEDURE

M.P.R.C.P. 1

Rule 1. Scope of Rules

a. Rules. These Rules govern the procedure in the courts of the Mashantucket Pequot Tribe in all suits of a civil nature. They shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.

b. Procedure. Any procedure, issue, question or other matter not covered by these Rules or by tribal law shall be governed by the Federal Rules of Civil Procedure.

M.P.R.C.P. 2

Rule 2. One Form of Action

There shall be one form of action to be known as "civil action".

M.P.R.C.P. 3

Rule 3. Commencement of Action

a. Gaming Enterprise Sole Defendant.

(1) Tort Claims. An action is commenced against the Mashantucket Pequot Gaming Enterprise pursuant to the 4 M.P.T.L., Tort Claims, by filing a claim with the tribal court together with the appropriate filing fee per Rule 90. The clerk shall provide service upon the defendant.

(2) Employment Appeal. An action is commenced against the Mashantucket Pequot Gaming Enterprise pursuant to 8 M.P.T.L., Employment, by filing a Notice of Administrative Appeal with the tribal court. The clerk shall provide service upon the defendant.

b. Additional Defendants. In all actions wherein the Mashantucket Pequot Gaming Enterprise is one of two or more named defendants, an action against the Mashantucket Pequot Gaming Enterprise is commenced as provided in paragraph (a) of this Rule. An action is commenced against a defendant, other than the Mashantucket Pequot Gaming Enterprise, by filing a complaint with the tribal court. The plaintiff shall provide service upon the additional defendant(s) as required by Rule 4.

c. Other Defendants. In actions where the Mashantucket Pequot Gaming Enterprise is not a named defendant, the action is commenced by filing a complaint with the tribal court together with appropriate filing fees per Rule 90. The return of service of the complaint and summons shall be filed within 45 days after the filing of the complaint. If the return of service is not timely filed, the action may be dismissed on motion and notice, and in such case the court may, in its discretion, if it shall be of the opinion that the action was vexatiously commenced, tax a reasonable attorney's fee as costs in favor of the defendant, to be recovered of the plaintiff or the plaintiff's attorney.

M.P.R.C.P. 4

Rule 4. Process

a. Summons: Form. The summons shall bear the signature or facsimile signature of the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, and the time within which these Rules require the defendant to appear and defend, and shall notify the defendant that in case of failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint.

b. Same: Issuance. The summons may be procured in blank from the clerk and shall be filled out by the plaintiff's attorney as provided in subdivision (a) of this Rule. The plaintiff's attorney shall deliver to the person who is to make service the original summons upon which to make return of service and a copy of the summons and of the complaint for service upon the defendant.

c. Service. Service of the summons and complaint may be made as follows:

(1) By a tribal police officer within the Mashantucket Pequot Reservation.

(2) By a marshal or a deputy within the marshal's county, or other person authorized by law, or by some person specially appointed by the court for that purpose. Special appointments to serve process shall be made freely when substantial savings in travel fees will result.

(3) By any other method permitted or required by this Rule or by tribal law.

d. Summons: Personal Service. The summons and complaint shall be served together. Personal service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive

service, such further notice as the statute requires shall be given. The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complaint at the defendant's dwelling house or usual place of abode; or to be made by mail pursuant to subdivision (f) of this Rule or by publication pursuant to subdivision (g) of this Rule.

(2) Upon an infant, by delivering a copy of the summons and of the complaint personally:

(a) to the infant; and

(b) also to the infant's guardian, if known to the plaintiff, and if not, then to the infant's father or mother or other person having the infant's care or control, or with whom the infant resides, or if service cannot be made upon any of them, then as provided by order of the court.

(3) Upon an incompetent person, by delivering a copy of the summons and of the complaint personally:

(a) to the guardian of the incompetent person or competent adult member of the incompetent person's family with whom the incompetent person resides, or if the incompetent person is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon any of them, unless as provided by order of the court; and

(b) unless the court otherwise orders, also to the incompetent person.

(4) Upon an Indian nation or tribe, by delivering a copy of the summons and of the complaint to the tribal chairperson, chief, governor or other tribal official designated by tribal law to accept service.

(5) Upon a town, by delivering a copy of the summons and of the complaint to the town clerk or one of the selectmen or assessors.

(6) Upon a city, by delivering a copy of the summons and of the complaint to the city clerk, treasurer, manager or other city official authorized by law.

(7) Upon the United States, by delivering a copy of the summons and of the complaint to the United States attorney for the district of Connecticut or to an assistant United States attorney or clerical employee designated by the United States in a writing filed with the clerk of the United States District Court for the district of Connecticut and by sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action challenging the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to such officer or agency provided that any further notice required by statute or regulation shall also be given. Upon an office or agency of the United States, by serving the United States and by delivering a copy of the summons and of the complaint to such officer or agency, provided that any further notice required by statute or regulation

shall also be given. If the agency is a corporation the copy shall be delivered as provided in paragraph (8) or (9) of this subdivision of this Rule. Upon any other public corporation of the United States, by delivering a copy of the summons and of the complaint to any officer, director, or manager thereof and upon any public body, agency or authority by delivering a copy of the summons and the complaint to any member thereof.

(8) Upon a corporation established under the laws of any other state or country:

(a) by delivering a copy of the summons and of the complaint to any officer, director or agent, or by leaving such copies at an office or place of business of the corporation within the state; or

(b) by delivering a copy of the summons and of the complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, provided that any further notice required by the statute shall also be given.

(9) Upon a partnership subject to suit in the partnership's name in any action, and upon all partners in any action on a claim arising out of partnership business:

(a) by delivering a copy of the summons and of the complaint to any general partner or any managing or general agent of the partnership, or by leaving such copies at an office or place of business of the partnership, or by leaving such copies at an office or place of business of the partnership; or

(b) by delivering a copy of the summons and of the complaint to any agent, attorney in fact, or other person authorized by appointment or by statute of any state to receive or accept service on behalf of the partnership, provided that any further notice required by the statute shall also be given.

(10) Unless otherwise provided by tribal law or by these Rules, upon the Mashantucket Pequot Tribe by delivering a copy of the summons and of the complaint to the chairperson of the Mashantucket Pequot Tribal Council, either (a) personally or (b) by registered or certified mail, return receipt requested; and in any action challenging the validity of an order of an office, department or agency of the Mashantucket Pequot Tribe, by also sending a copy of the summons and of the complaint by ordinary mail to such office or agency.

(11) Upon an office, department or agency by also sending a copy of the summons to the person in charge of the department, office or agency of the Mashantucket Pequot Tribe.

(12) Upon a state of the United States by the method prescribed by the law of that state for service of process upon it.

e. Personal Service Outside Tribal Territory. A person who is subject to the jurisdiction of the courts of the Mashantucket Pequot Tribe may be served with the summons and complaint outside the territorial jurisdiction of the Tribe, in the same manner as if such service were made within the territorial

jurisdiction of the Tribe, by any person authorized to serve civil process by the laws of the place of service or by a person specially appointed to serve it. An affidavit of the person making service shall be filed with the court stating the time, manner, and place of service. Such service has the same force and effect as personal service within the territorial jurisdiction of the Tribe.

f. Service Outside Tribal Territory by Mail in Certain Actions. Where service cannot, with due diligence, be made personally within the territorial jurisdiction of the Tribe, service of the summons and complaint may be made upon a person who is subject to the jurisdiction of the courts of the Tribe by delivery to that person outside tribal territory by registered or certified mail, return receipt requested, postage pre-paid, to the person's last known address in the following cases:

(1) Where the pleading demands a judgment for a debt owed to the Mashantucket Pequot Gaming Enterprise evidenced by a credit instrument.

(2) Where the pleading demands a judgment for dissolution of marriage or annulment.

(3) Where the action concerns a petition for protective care or guardianship of a minor child.

(4) Where otherwise permitted by tribal law.

Service by registered or certified mail shall be complete when the registered or certified mail is delivered and the return receipt signed. The plaintiff shall file with the court the return receipt and an affidavit by the person effecting service attesting that service was made, the person on whom and the manner in which service was made, including the date and time of service, and the fees of such service, if any.

g. Service by Publication.

(1) When Service May Be Made. The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service by publication.

(2) Contents of Order. An order for service by publication shall include:

(a) a brief statement of the object of the action;

(b) that the action may affect any rights and responsibilities of the person to be served;

(c) the time of the hearing, the date of the hearing and the address of the location of the hearing;

(d) that the person to be served has the right to be represented by counsel at the person's own expense, to introduce evidence, and to examine witnesses; and

(e) the possible consequences of the proceeding.

The order shall also direct its publication no less than three separate times, the last date of which is to be at least 10 days before the date of the hearing in such action in a newspaper of general circulation in the place of the last-known address of the person to be notified, or if no such address is known, in a newspaper of general circulation in the region where the court is located.

(3) Time of Publication; When Service Complete. Service by publication is complete on the 10th day after the final publication date. The plaintiff shall file with the court an affidavit that publication has been made.

h. Return of Service. The person serving the process shall make proof of service thereof on the original process or a paper attached thereto for that purpose, and shall forthwith return it to the plaintiff's attorney. The plaintiff's attorney shall, within the time during which the person served must respond to the process, file the proof of service with the court. If service is made under paragraph (c)(1) of this Rule, return shall be made by the plaintiff's attorney filing with the court the acknowledgment received pursuant to that paragraph. The attorney filing such proof of service with the court shall constitute a representation by the attorney, subject to the obligations of Rule 11, that the copy of the complaint mailed to the person served or delivered to the officer for service was a true copy. If service is made by a person other than a tribal police officer, a marshal or the marshal's deputy or another person authorized by law, that person shall make proof thereof by affidavit. The officer or other person serving the process shall endorse the date of service upon the copy left with the defendant or other person. Failure to endorse the date of service shall not affect the validity of service.

i. Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

M.P.R.C.P. 5

Rule 5. Service and Filing of Pleadings and Other Papers

a. Service: When Required. Except as otherwise provided in these Rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, notice of change of attorneys, pretrial memorandum, demand, offer of judgment, designation of record and statement of points on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the

manner provided for service of summons in Rule 4.

b. Same: How Made. Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney, the service should be made upon the attorney unless service upon the party personally is ordered by the court. Service upon an attorney or upon a party shall be made by delivering a copy to the attorney or to the party or by mailing it to the last known address, or if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the attorney or of the party with the person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein, or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

c. Same: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

d. Filing: No Proof of Service Required. Subject to the provisions of Rule 26(f), all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter. Such filing by a party's attorney shall constitute a representation by the attorney, subject to the obligations of Rule 11, that a copy of the paper has been or will be served upon each of the other parties as required by subdivision (a) of this Rule. No further proof of service is required unless an adverse party raises a question of notice.

e. Filing With the Court Defined. The filing of pleadings and other papers with the court as required by these Rules shall be made by causing them with the applicable fee to be placed physically in the possession of the clerk of the court, except that a judge or magistrate may permit the papers to be placed with that judge or magistrate, in which event the judge or magistrate shall note thereon the filing date and forthwith transmit them to the office of the clerk.

f. Form of Papers. All original papers shall be 8 1/2″ x 11″ in size. In any case where an endorsement for costs is required, the name of an attorney who is admitted to practice before the Tribe's courts appearing on the complaint filed with the court shall constitute such an endorsement in absence of any words used in connection therewith showing a different purpose.

g. Appearances.

(1) When a summons and complaint has been signed by an attorney at law admitted

to practice in the courts of the Mashantucket Pequot Tribe, such summons and complaint shall contain the attorney's name, and the attorney's mailing address, all of which shall be typed or printed on the summons and complaint, and the attorney's appearance shall be entered for the plaintiff, unless such attorney by endorsement on the summons and complaint shall otherwise direct. The signature on the complaint of any person proceeding without the assistance of counsel shall be deemed to constitute the appearance pro se of such party.

(2) After the summons and complaint has been filed the attorney for any party to any action, or any party himself, may enter his appearance in writing with the clerk of the court. Each such appearance shall (a) be typed or printed on size 8 1/2" x 11" paper, (b) be headed with the name and number of the case, the name of the court and the date, be legibly signed by the individual preparing the appearance with his own name and state the party or parties for whom the appearance is being entered and the name of the individual whose appearance is being entered.

(3) Whenever an appearance, except one entered in accordance with subsection (1) of this section, is filed in any action, only an original need be filed and the clerk with whom it is filed shall cause notice thereof to be given to all other counsel and pro se parties of record in the action.

h. Appearance for Represented Party. Whenever an attorney files an appearance for a party, or the party files an appearance for himself, and there is already an appearance of an attorney or party on file for that party, the attorney or party filing the new appearance shall state thereon whether such appearance is in place of or in addition to the appearance or appearances already on file. If the new appearance is stated to be in place of any appearance or appearances on file, the party or attorney filing that new appearance shall serve, in accordance with Rule 5, a copy of that new appearance on any attorney or party whose appearance is to be replaced by the new appearance. Unless a written objection is filed within 10 days after the filing of an in-lieu-of appearance, the appearance or appearances to be replaced by the new appearance shall be deemed to have been withdrawn and the clerk shall make appropriate entries for such purpose on the file and docket.

i. Time to File Appearances. Except as hereinafter provided and except where otherwise prescribed by law, when an answer has been signed by an attorney at law admitted to practice before the courts of the Mashantucket Pequot Tribe the attorney's appearance shall be entered for the defendant, unless such attorney by endorsement on the answer shall otherwise direct. The signature on the answer of any person proceeding without the assistance of counsel shall be deemed to constitute the appearance pro se of such party. An appearance for a party after the entry against such party of a nonsuit or judgment after default for failure to appear shall not affect the entry of the nonsuit or any judgment after default.

j. Withdrawal of Appearance.

(1) An attorney or party whose appearance has been filed shall be deemed to have withdrawn such appearance upon failure to file a written objection within 10 days after written notice has been given or mailed to such attorney or party

that a new appearance has been filed in place of the appearance of such attorney or party.

(2) An attorney may withdraw his or her appearance for a party or parties in any action after the appearance of other counsel representing the same party or parties has been entered. An application for withdrawal in accordance with this subsection shall state that such an appearance has been entered and that such party or parties are being represented by such other counsel at the time of the application. Such an application may be granted by the clerk as of right, if such an appearance by other counsel has been entered.

(3) All appearances of counsel shall be deemed to have been withdrawn 180 days after the entry of judgment in any action seeking a dissolution of marriage, annulment, or legal separation, provided no appeal shall have been taken. In the event of an appeal or the filing of a motion to open a judgment within such 180 days, all appearances of counsel shall be deemed to have been withdrawn after final judgment on such appeal or motion or within 180 days after the entry of the original judgment, whichever is later. Nothing herein shall preclude or prevent any attorney from filing a motion to withdraw with leave of the court during that period subsequent to the entry of judgment. In the absence of a specific withdrawal, counsel will continue of record for all post judgment purposes until 180 days have elapsed from the entry of judgment or, in the event an appeal or a motion to open a judgment is filed within such 180 day period, until final judgment on that appeal or determination of that motion, whichever is later.

(4) Except as provided in subsections (h) and (i), no attorney shall withdraw his or her appearance after it has been entered upon the record of the court without the leave of the court. No motion for such withdrawal shall be granted until the court is satisfied that reasonable notice has been given to the party or parties represented by the attorney and to other attorneys of record. A motion to withdraw shall include the last known address of any party as to whom the attorney seeks to withdraw his appearance and shall have attached to it a notice to such party advising of the following:

(a) the attorney is filing a motion which seeks the court's permission to no longer represent the party in the case;

(b) if the party wishes to be heard, he or she should contact the clerk's office to find out the date and time of the hearing;

(c) the party may appear in court on that date and address the court concerning the motion; and

(d) if the motion to withdraw is granted, the party should either obtain another attorney or will be deemed to be appearing on his or her own behalf with the court. The attorney's appearance for the party shall be deemed to have been withdrawn upon the granting of the motion without the necessity of filing a withdrawal of appearance.

M.P.R.C.P. 6

Rule 6. Time

a. Computation. In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable law, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a Mashantucket Pequot tribal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. For the purpose of this subdivision tribal holidays shall include only those holidays designated by the Mashantucket Pequot Tribal Council.

b. Enlargement. When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown may at any time in its discretion

(1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or

(2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect, but it may not extend the time for taking any action under Rules 52(b), 59(b), (d), and (e), and 60(b) except to the extent and under the conditions stated in them.

c. Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three days shall be added to the prescribed period.

M.P.R.C.P. 7

Rule 7. Pleadings Allowed: Forms of Motions

a. Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

b. Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with

particularity the grounds therefor and the rule or tribal law invoked if the motion is brought pursuant to a rule or tribal law, and shall set forth the relief or order sought. Any motion, except a motion that may be heard ex parte, shall include the following notice:

NOTICE: THE RELIEF REQUESTED BY THIS MOTION MAY BE GRANTED ON THE PAPERS UNLESS A "REQUEST FOR ARGUMENT" FORM IS COMPLETED AND FILED WITH TRIBAL COURT NOT LATER THAN 14 DAYS AFTER THE FILING OF THIS MOTION. FAILURE TO REQUEST ARGUMENT OR FILE A MEMORANDUM IN OPPOSITION THERETO WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION.

(2) Motions shall be served upon the opposing party together with a blank "Request for Argument" form.

(3) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these Rules.

(4) Any party filing a motion shall file with the motion or incorporate within said motion

(a) a draft order which grants the motion and specifically states the relief to be granted by the motion, and

(b) unless the motion may be heard ex parte, a notice of hearing if argument is requested and a hearing date, if available. When a motion is supported by affidavit, the affidavit shall be served with the motion. At any time the court may order the parties to file with the motion a memorandum of law including citations of supporting authorities. Argument on the motion may be ordered by the court even if no request for argument is filed.

(5) Any party filing a motion for enlargement of time to act under these Rules or for continuance of trial or hearing shall file with the motion a statement that the motion is opposed or can be presented without objection. The fact that a motion is not opposed does not assure that the requested relief will be granted.

(6) If a motion is pursued or opposed in circumstances where the moving or opposing party does not have a reasonable basis for that party's position, the court, upon motion or its own initiative, may impose the sanctions provided by Rule 11 upon the party, the party's attorney, or both.

c. Opposition to Motions. Any party opposing a motion may file a memorandum and any supporting affidavits or other documents in opposition to the motion not later than 14 days after the filing of the motion, unless another time is set by the court. A party failing to request oral argument or to file a memorandum in opposition shall be deemed to have waived all objections to the motion.

d. Motions for Summary Judgment.

(1) In addition to the material required to be filed by subdivision (b) of this Rule, upon any motion for summary judgment there shall be annexed to the motion

a separate, short and concise statement of the material facts, supported by appropriate record references, as to which the moving party contends there is no genuine issue to be tried.

(2) The party opposing a motion for summary judgment shall file with the material required to be filed by subdivision (c) of this Rule a separate, short and concise statement of the material facts, supported by appropriate record references, as to which it is contended that there exists a genuine issue to be tried. All material facts set forth in the statement required to be served by the moving party, if supported by appropriate record references, will be deemed to be admitted unless properly controverted by the statement required to be served by the opposing party.

e. Reply Memorandum. Within seven days of filing of any memorandum in opposition to a motion, or, if a hearing has been scheduled, not less than two days prior to the hearing, the moving party may file a reply memorandum, which shall be strictly confined to replying to new matters raised in the opposing memorandum.

M.P.R.C.P. 8

Rule 8. General Rules of Pleading

a. Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain

(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it,

(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and

(3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

b. Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall fairly meet the substance of the averments denied. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its

averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

c. Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively, if not otherwise prohibited by tribal law, accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

d. Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

e. Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

f. Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

M.P.R.C.P. 9

Rule 9. Pleading Special Matters

a. Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific denial, which shall include such

supporting particulars as are peculiarly within the pleader's knowledge.

b. Fraud, Mistake, Condition of the Mind. In all allegations of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be alleged generally.

c. Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, but when so made the party pleading the performance or occurrence has the burden of establishing it.

d. Official Document or Act. In pleading an official document or official act it is sufficient to allege that the document was issued or the act done in compliance with law.

e. Judgment. In pleading a judgment or decision of a domestic or foreign court, Judicial or quasi-Judicial tribunal, or of a board or officer, it is sufficient to allege the judgment or decision without setting forth matter showing jurisdiction to render it.

f. Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

g. Special Damage. When items of special damage are claimed they shall be specifically stated.

M.P.R.C.P. 10

Rule 10. Form of Pleadings

a. Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action and the docket number. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties. The complaint shall be dated and signed.

b. Paragraphs; Separate Statements. All allegations of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

c. Adoption by Reference; Exhibits. Statements in a pleading may be adopted by

reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

M.P.R.C.P. 11

Rule 11. Signing of Pleadings and Motions

Every pleading and motion of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading or motion and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading or motion; that to the best of the signer's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

If a pleading or motion is signed with intent to defeat the purpose of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, upon a represented party, or upon both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading or motion including a reasonable attorney's fee.

M.P.R.C.P. 12

Rule 12. Defenses and Objections—When and How Presented—By Pleading or Motion—Motion for Judgment on the Pleadings

a. When Presented. A defendant shall serve that defendant's answer within 30 days after the service of the summons and complaint upon that defendant, unless the court directs otherwise. A party who is served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this Rule alters these periods of time as follows, unless a different time is fixed by order of the court:

(1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action;

(2) if the court grants a motion for a more definite statement the responsive

pleading shall be served within 10 days after the service of the more definite statement.

b. How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion, unless otherwise prescribed by tribal law:

(1) lack of jurisdiction over the subject matter,

(2) lack of jurisdiction based upon sovereign immunity from suit,

(3) lack of jurisdiction over the person,

(4) improper venue,

(5) insufficiency of process,

(6) insufficiency of service of process,

(7) failure to state a claim upon which relief can be granted,

(8) failure to join a party under Rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (7) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

c. Motion for Judgment on the Pleadings. After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

d. Preliminary Hearings. The defenses specifically enumerated (1)-(8) in subdivision (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

e. Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

f. Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

g. Consolidation of Defenses in Motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to the party which this Rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

h. Waiver or Preservation of Certain Defenses.

(1) Unless otherwise provided by tribal law, a defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived

(a) if omitted from a motion in the circumstances described in subsection (g); or

(b) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by a motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or lacks jurisdiction based upon sovereign immunity from suit, the court shall dismiss the action.

M.P.R.C.P. 13

Rule 13. Counterclaim and Cross-Claim

a. Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:

(1) at the time the action was commenced the claim was the subject of another pending action; or

(2) the opposing party brought suit upon the claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

b. Permissive Counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

c. Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

d. Counterclaim Against the Mashantucket Pequot Tribe. These Rules shall not be construed to enlarge beyond the limits now fixed by tribal law the right to assert counterclaims or to claim credits against the Mashantucket Pequot Tribe or its departments, divisions, agencies or enterprises.

e. Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving a pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

f. Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

g. Cross-Claim Against Co-Party. A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

h. Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

i. Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42(b), judgment on a counterclaim or cross-claim may be rendered in accordance with the terms of Rule 54(b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

M.P.R.C.P. 14

Rule 14. Third-Party Practice

a. When Defendant May Bring in Third Party. At any time after commencement of the action a defendant as a third-party plaintiff may cause to be served a summons and complaint upon a person not a party to the action who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The person so served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim within the subject matter jurisdiction of the court against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim within the subject matter jurisdiction of the court against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. Failure to do so shall have the effect of the failure to state a claim in a pleading under Rule 13(a). The third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13. Any party may move for severance, separate trial, or dismissal of the third-party claim; the court may direct a final judgment upon either the original claim or the third-party claim above in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

b. When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

c. Orders for Protection of Parties and Prevention of Delay. The court may make such orders as will prevent a party from being embarrassed or put to undue expense, or will prevent delay of the trial or other proceedings, by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal under this Rule is without prejudice.

Rule 15. Amended and Supplemental Pleadings

a. Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

b. Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

c. Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when:

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action,

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the condition of paragraph (2) of this subdivision is satisfied and, within the period provided by Rule 3 for service of the summons and complaint, the party to be brought in by amendment:

(a) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits; and

(b) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

d. Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

M.P.R.C.P. 16

Rule 16. Pretrial and Trial

a. Assignment for Pretrial.

(1) Cases on any trial list shall be assigned by the clerk in consultation with the presiding judge for pretrial. Ordinarily, cases shall be assigned for pretrial in the order in which they appear on the trial list.

(2) If there are reasons why a case scheduled for pretrial cannot be pre-tried effectively, for example in cases in which the extent of the injuries are unknown or discovery has not been completed, then the court shall continue the case to a date certain for pretrial and may limit the time for the completion of discovery.

b. When Case Not Disposed of at Pretrial. If the pretrial does not result in the disposition of the case by settlement, judgment by stipulation, or withdrawal, then the case shall be marked pre-tried and the court shall order the case assigned for trial on a date certain in the future which date shall, if possible, be agreeable to the parties.

c. Pretrial Procedure. The chief judge may designate one or more available judges or magistrates to hold pretrial sessions. Parties and their attorneys shall attend the pretrial. Each party claiming damages, or his attorney, shall obtain from the clerk a pretrial memo form, shall complete the form before the pretrial session and shall, at the commencement of the pretrial session, distribute copies of the completed form to the judge and to each other party. The following matters shall be considered:

(1) a discussion of the possibility of settlement;

(2) simplification of the issues;

(3) amendments to pleadings;

(4) admissions of fact, including stipulations of the parties concerning any material matter and admissibility of evidence, particularly photographs, maps, drawings and documents, in order to minimize the time required for trial;

(5) the limitation of number of expert witnesses;

(6) inspection of hospital records and x-ray films;

(7) exchange of all medical reports, bills and evidences of special damage which have come into possession of the parties or of counsel since compliance with previous motions for disclosure and production for inspection; or

(8) such other procedures as may aid in the disposition of the case, including the entirely disclosed exchange of medical reports, and the like, which come into possession of counsel after the pretrial session.

d. [RESERVED]

e. Pretrial Memorandum. A pretrial memorandum of each case shall be made by the authority conducting the pretrial. All information shall be complete and specific.

f. Orders at Pretrial. The court may make any appropriate order, including a trial argument order, at pretrial and such orders shall control the subsequent conduct of the case unless modified at the trial to prevent manifest injustice. Failure to abide by any such order may subject the offending party to a nonsuit or default.

g. Sanctions. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduled or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party's attorney fails to participate in good faith, the judge, upon motion or the judge's own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(b), (c), (d). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing the party or both to pay the reasonable expenses incurred because of any noncompliance with this Rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

M.P.R.C.P. 17

Rule 17. Parties Plaintiff and Defendant; Capacity

a. Real Party In Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by law may sue in that person's name without joining the party for whose benefit the action is brought; and when a law of the Mashantucket Pequot Tribe so provides, an action for the use or benefit of another shall be brought in the name of the Tribe. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder

or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

b. Capacity to Sue or be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by tribal law. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized.

c. Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

M.P.R.C.P. 18

Rule 18. Joinder of Claims and Remedies

a. Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join either as independent or as alternate claims as many claims either legal or equitable or both, and individually and in the aggregate within the subject matter jurisdiction of the court, as the party has against an opposing party.

b. Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights for the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

M.P.R.C.P. 19

Rule 19. Joinder of Persons Needed for Just Adjudication

a. Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if

(1) in the person's absence complete relief cannot be accorded among those already parties; or

(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:

(a) as a practical matter impair or impede the person's ability to protect that interest; or

(b) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.

b. Determination by Court Whenever Joinder not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

c. Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

M.P.R.C.P. 20

Rule 20. Permissive Joinder of Parties

a. Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief within the subject matter jurisdiction of the court jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief within the subject matter jurisdiction of the court in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to

relief, and against one or more defendants according to their respective liabilities.

b. Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

M.P.R.C.P. 21

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

M.P.R.C.P. 22

Rule 22. Interpleader

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not grounds for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability in an action may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

M.P.R.C.P. 23

Rule 23. [Reserved]

M.P.R.C.P. 24

Rule 24. Intervention

a. Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action:

(1) when the law confers an unconditional right to intervene; or

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

b. Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any tribal law or resolution administered by a tribal governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the tribal law or resolution, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

c. Procedure. A person to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefore and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

d. Intervention by the Tribe. When compliance with the provisions of the Mashantucket Pequot Civil Rights Code, 20 M.P.T.L., or an act of the Mashantucket Pequot Tribal Council affecting the Mashantucket Pequot Tribe's interest is drawn into question in any action to which the Tribe or an officer, agency, or employee thereof is not a party, the court shall notify the General Counsel, and shall permit the Tribe to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of compliance.

M.P.R.C.P. 25

Rule 25. Substitution of Parties

a. Death

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

b. Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this Rule may allow the action to be continued by or against the party's representative.

c. Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motions shall be made as provided in subdivision (a) of this Rule.

d. Public Officers; Death or Separation From Office.

(1) When a tribal official is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) A tribal official who sues or is sued in an official capacity may be described as a party by his or her official title rather than by name; but the court may require the official's name to be added.

M.P.R.C.P. 26

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

a. Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. Unless the court issues a protective order under subdivision (c) of this Rule, the frequency of use of these methods is not limited except for the limitation on interrogatories pursuant to Rule 33(a).

b. Scope of Discovery. Unless otherwise limited by order of the court in accordance with these Rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought

appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Continuing Duty to Disclose. If, subsequent to compliance with any request or order for discovery and prior to or during trial, a party discovers additional or new material or information previously requested and ordered subject to discovery or inspection or discovers that the prior compliance was totally or partially incorrect or, though correct when made, is no longer true and the circumstances are such that a failure to amend the compliance is in substance a knowing concealment, the party shall promptly notify the other party, or the other party's attorney and file and serve supplemental or corrected compliance.

(3) Trial preparation: Materials. Subject to the provisions of subdivision (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is

(a) a written statement signed or otherwise adopted or approved by the person making it; or

(b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this Rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(a)(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter of which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the ground for each opinion.

(ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions pursuant to subdivision (b)(4)(c) of this Rule, concerning fees and expenses as the court may deem appropriate.

(b) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(c) Unless manifest injustice would result,

(i) the court shall require that the party seeking discovery pay the expert a reasonable fee for the time spent in responding to discovery under subdivisions (b)(4)(a)(ii) and (b)(4)(b) of this Rule; and

(ii) with respect to discovery obtained under subdivision (b)(4)(a)(ii) of this Rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(b) of this Rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

c. Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any judge or magistrate of the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including without limitation one or more of the following:

(1) that the discovery not be had;

(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(9) that the party taking the deposition pay the traveling expenses of the opposite party and of his attorney for attending the taking of the deposition; and

(10) that a witness under the control of the party taking the deposition be required to be brought within the state for his deposition. The power of the court under this Rule shall be exercised with liberality toward accomplishment of its purpose to protect parties and witnesses. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

d. Sequence and Timing of Discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

e. Filing of Discovery.

(1) Unless otherwise ordered by the court, or necessary for use in the proceeding, notices, written questions and transcripts of depositions, interrogatories, requests pursuant to Rules 34 (documents) and 36 (admission), and answers, objections and responses thereto shall be served upon other parties but shall not be filed with the court except by order of the court. Notification of the date on which discovery papers were served on the parties shall be filed with the clerk on the form prescribed for such use by the court, and the clerk shall enter the date and type of discovery on the docket. The party that has served the notice of a deposition or has otherwise initiated discovery shall be responsible for preserving and ensuring the integrity of original transcripts and discovery papers for a period of two years after final judgment for use by the court or other parties.

(2) If depositions, interrogatories, requests for answers or responses thereto are to be used at trial, other than for purposes of impeachment or rebuttal, or are necessary to a ruling on a motion, the complete original of the transcript of the discovery material to be used shall be filed with the clerk seven days prior to trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties. A party relying on discovery transcripts or materials in support of or in opposition to a motion shall file with the memorandum permitted by Rule 7(b) a list of specific citations to the parts on which the party relies. Discovery transcripts and materials thus filed with the court shall be returned to appropriate counsel after final disposition of the case.

f. Discovery Motions: Conference Required. Before filing a motion for a physical examination pursuant to Rule 35, a motion to determine sufficiency of

answers or objections to requests for admission pursuant to Rule 36(a), a motion to compel discovery pursuant to Rule 37(a)(2), or a motion for a protective order pursuant to Rule 26(c), counsel for the moving party shall confer with counsel for the opposing party in a good faith effort to resolve by agreement the issues in dispute. Any such motion when filed shall be accompanied by the certificate of the moving party, subject to the provisions of Rule 11, that such a conference has taken place, or that specified reasonable efforts have been made to hold such a conference, and that counsel have been unable to resolve the dispute.

M.P.R.C.P. 27

Rule 27. Depositions Before Action

a. Before Action.

(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of the Mashantucket Pequot Tribe may file a verified petition in the court. The petition shall be entitled in the name of the petitioner and shall show:

(a) that the petitioner expects to be a party to an action cognizable in a court of the Mashantucket Pequot Tribe, but is presently unable to bring it or cause it to be brought;

(b) the subject matter of the expected action and the petitioner's interest therein;

(c) the facts which the petitioner desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(d) the names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and

(e) the names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least 20 days before the date of hearing the notice shall be served in the manner provided in Rule 4(d) for service of summons; but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service, and shall appoint, for persons not served in the manner provided in Rule 4(d), an attorney who shall represent them, and, in case they are not otherwise

represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of Rule 17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written questions. The depositions may then be taken in accordance with these Rules; and the court may make orders of the character provided for by Rules 34 and 35. For the purpose of applying these Rules to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under these Rules or if, although not so taken, it would be admissible in evidence in the court of the state in which it is taken, it may be used in any action involving the same subject matter subsequently brought in the courts of the Mashantucket Pequot Tribe, in accordance with the provisions of Rule 32(a).

b. Pending Appeal. If an appeal has been taken from a judgment of the tribal court or before the taking of an appeal if the time therefor has not expired, the tribal court may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the tribal court. In such case the party who desires to perpetuate the testimony may make a motion in the tribal court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the tribal court. The motion shall show:

(1) the names and addresses of persons to be examined and the substance of the testimony which the party expects to elicit from each;

(2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for depositions.

c. Perpetuation by Action. This Rule does not limit the power of a court to entertain an action to perpetuate testimony.

M.P.R.C.P. 28

Rule 28. Persons Before Whom Depositions May Be Taken

a. Within Tribal Territory. Within the territory of the Mashantucket Pequot Tribe depositions shall be taken before a notary public licensed by the State of Connecticut or a person appointed by the court. A person so appointed has the power to administer oaths and take testimony.

b. Outside Tribal Territory. Outside the territory of the Mashantucket Pequot Tribe, depositions shall be taken before a notary public of any state or country, any magistrate having power to administer oaths in such state or country, or a person commissioned by the court. Any person so commissioned shall have the power by virtue of his commission to administer any necessary oaths and to take testimony. Additionally, if a deposition is to be taken out of the United States, it may be taken before any foreign minister, secretary of a legation, consul or vice-consul appointed by the United States or any person by him appointed for the purpose and having authority under the laws of the country where the deposition is to be taken; and the official character of any such person may be proved by a certificate from the secretary of state of the United States.

c. Disqualification for Interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel.

M.P.R.C.P. 29

Rule 29. Stipulations Regarding Discovery Procedure

Unless the court orders otherwise, the parties may by written stipulation

a. provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

b. modify the procedures provided by these Rules for other methods of discovery.

M.P.R.C.P. 30

Rule 30. Depositions upon Oral Examination

a. When Depositions May Be Taken. After commencement of the action, any party may take the testimony of any person by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required:

(1) if a defendant has served a notice of taking deposition or otherwise sought discovery, or

(2) if special notice is given as provided in subdivision (b)(2) of this Rule.

The attendance of witnesses may be compelled by subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave

of court on such terms as the court prescribes.

b. Notice of Examination: General Requirements; Special Notice; Non-stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring to take the deposition of any person upon oral examination shall give notice in writing to every other party to the action at least 10 days before the time of the taking of the deposition, but the court on an ex parte application and for good cause shown may prescribe a shorter notice. The notice shall state:

(a) the time and place for taking the deposition;

(b) the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular category of persons to which the person to be deposed belongs;

(c) the person before whom the deposition will be taken; and,

(d) The method by which the deposition will be recorded, which method shall be one of the methods designated in subdivision (b)(4) of this Rule.

If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by plaintiff if the notice:

(a) states that the person to be examined is about to go out of the state and will be unavailable for examination unless the person's deposition is taken before expiration of the 30-day period; and

(b) sets forth facts to support the statement.

The plaintiff's attorney shall sign the notice, and the attorney's signature constitutes a certification by the attorney that to the best of the attorney's knowledge, information, and belief the statement and supporting facts are true. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when a party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, the deposition may not be used against the party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) A deposition may be recorded by:

(a) shorthand writing,

(b) stenotype machine,

(c) tape recording with multi-track tape,

(d) video camera recording, or

(e) Any other method agreed to by the parties or approved by the court.

Any method for recording a deposition shall:

(a) comply with the requirements of Rule 28;

(b) assure an accurate and trustworthy recording;

(c) provide clear identification of the separate speakers;

(d) permit editing for use at trial in a manner that will allow expeditious removal of objectionable and extraneous material without significant disruption in presentation of the edited testimony to the court;

(e) allow prompt preparation of a written transcript of the proceedings if such is ordered by any party or the court; and

(f) allow prompt copying of any audio or video tape of the proceedings where an audio or videotape is used if such is ordered by any party or the court.

Any party may object to the taking of a deposition on the grounds that the recording method is not one of those approved above, or that the recording method will not comply with one or more of the criteria (a) through (f) above. Such an objection shall be served in writing and received by the other parties and the court at least three days prior to the scheduled date for the deposition. Where such an objection is served, the deposition shall be deferred until such time as the objection is heard by the court.

In a video deposition, the camera shall focus only on the deponent and any exhibits utilized by the deponent unless the parties agree otherwise.

Any other party may record a deposition by any means, provided that the recording does not disrupt or impede the deposition process. The method of recording specified in the notice by the party noticing the deposition shall constitute the only official record of the deposition.

(5) The notice to a party deponent may be accompanied by a request that at the taking of the deposition the party deponent produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters with the scope of Rule 26(b). The party deponent may, within five days after service of the notice, serve upon the party taking the deposition written objection to the inspection or copying of any or all of the designated materials. If objection is made, the party taking the deposition shall not be entitled to inspect the materials except pursuant to an order of any judge or magistrate of the court in which the action is pending.

The party taking the deposition may move at any time before or during the taking of the deposition for an order under Rule 37(a) with respect to any objection to the request or any part thereof, or any failure to produce or permit inspection as requested.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf and may set forth, for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these Rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone.

c. Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at trial. The officer before whom the deposition is to be taken shall put the deponent on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the deponent. The testimony shall be recorded by the means specified in the notice of taking as provided in subdivision (b)(4) of this Rule. If requested by one of the parties, the testimony shall be transcribed. The court may order the cost of transcription paid by one or some of, or apportioned among, the parties.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the deponent and record the answers verbatim.

d. Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party, any judge or magistrate of the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

e. Submission to Deponent; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the deponent by the officer for examination and shall be read to or by the deponent, unless such examination and reading are waived by the deponent and by the parties. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making them. The deposition shall then be signed by the deponent, unless the parties by stipulation waive the signing or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within 30 days of its submission to the deponent, the officer shall sign it and state on the record the fact that of the waiver or of the illness or absence of the deponent or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

f. Certification by Officer; Exhibits; Copies.

(1) The officer shall certify on the deposition that the deponent was duly sworn by the officer and that the deposition is a true record of the testimony given by the deponent. The officer shall then promptly deliver or mail it to the party that has served the original notice of a deposition.

Documents and things produced for inspection during the examination of the deponent, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except:

(a) the person producing the materials may substitute copies to be marked for identification, if the person producing the materials affords to all parties fair opportunity to verify the copies by comparison with the originals; and

(b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) Where the deposition is recorded electronically and a transcript is not prepared, the certification and materials required in paragraph (1) of this subdivision shall be filed with the tape cassette or other electronically preserved record of the deposition.

g. Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to

attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by that party and that party's attorney in attending, including reasonable attorney's fees.

M.P.R.C.P. 31

Rule 31. Depositions upon Written Questions

a. Serving Questions; Notice. After commencement of the action, any party may take the testimony of any person, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating:

(1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and

(2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

b. Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and mail the deposition to the party taking it, attaching thereto a copy of the notice and the questions received by the officer.

c. Copies. When the deposition is received by the party taking it the party shall promptly mail copies thereof to all other parties.

M.P.R.C.P. 32

Rule 32. Use of Depositions in Court Proceedings

a. Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of any physician, psychologist, chiropractor, naturopathic physician, osteopathic physician or dentist licensed under the laws of any state or country may be received in evidence in lieu of the appearance of such witness at the trial or hearing whether or not the person is available to testify in person at the trial or hearing.

(3) The deposition of a party or of anyone who at the time of the taking of the deposition was an officer, director, or managing agent or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(4) The deposition of a witness, other than a person falling within the scope of Rule 32(a)(2) hereof, whether or not a party, may be used by any party for any purpose if the court finds:

(a) that the witness is dead; or

(b) that the witness is at a greater distance than 100 miles from Mashantucket, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(c) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment, or conflicting commitment that could not be broken or scheduled at another time without subjecting the witness or others to legally enforceable sanctions or significant risk of physical detriment; or

(d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to

allow the deposition to be used.

(5) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States, any State or Indian tribe or nation has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

b. Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

c. Effect of Errors and Irregularities in Depositions.

(1) As to Notice. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) As to Disqualification of Officer. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) As to Taking of Depositions.

(a) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(b) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within five days after service of the last questions authorized.

(4) As to Completion and Return of Depositions. Errors and irregularities in

the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, endorsed, transmitted, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

M.P.R.C.P. 33

Rule 33. Interrogatories to Parties

a. Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. A party may not serve more than one set of interrogatories upon any other party unless the court otherwise orders for good cause shown.

The party serving interrogatories shall leave sufficient space following each interrogatory in which the party to whom the interrogatories are directed can insert his answer. In the event that an answer requires more space than that provided, it shall be continued on a separate sheet of paper which shall be attached to the completed answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers and any objection(s) are to be signed by the party to whom the interrogatories are directed. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories. The court may allow a shorter or longer time or, in the absence of such an order, the parties may agree to a shorter or longer time per Rule 29. The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection to or other failure to answer an interrogatory. A party in responding to interrogatories shall set forth each interrogatory in full immediately preceding the party's answer or objection thereto.

b. Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

c. Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom

the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

M.P.R.C.P. 34

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

a. Scope. Any party may serve on any other party a request:

(1) to produce and permit the party making the request, or someone acting on the requestor's behalf, to inspect and copy, any designated document (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b).

b. Procedures. Requests for production may be served upon any party without leave of court at any time after 30 days from the filing of the complaint.

The request shall clearly designate the items to be inspected either individually or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. Unless the court orders otherwise, the frequency of use of requests for production in all actions is not limited.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to produce or to permit inspection

as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

c. Persons Not Parties. A person not a party to the action may be compelled to produce documents and things or to submit to an inspection as provided in Rule 45.

M.P.R.C.P. 35

Rule 35. Physical and Mental Examinations of Persons

a. Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a licensed physician or a mental examination by a licensed psychologist, or to produce for examination the person in the party's custody or legal control.

In the case of an action to recover damages for personal injuries, any party adverse to the plaintiff may file and serve a request that the plaintiff submit to a physical or mental examination at the expense of the requesting party. That request shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made. Any such request shall be complied with by the plaintiff unless, within 10 days from the filing of the request, the plaintiff files in writing an objection thereto specifying to which portions of said request objection is made and the reasons for said objection. The objection shall be placed on the short calendar list upon the filing thereof. The court may make such order as is just in connection with the request. No plaintiff shall be compelled to undergo physical examination by any physician to whom he objects in writing.

In any other case, such order may be made only on motion for good cause shown to be heard at short calendar. The motion shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made.

b. Report of Examining Physician or Psychologist.

(1) If requested by the party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the requestor a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a

party, the person against whom the order is made shows that it is unobtainable. The court on motion may make an order requiring delivery by a party of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(3) This subdivision does not preclude discovery of a report of an examiner or the taking of the deposition of the examiner in accordance with the provision of any other rule.

M.P.R.C.P. 36

Rule 36. Requests for Admission

a. Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of the court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each matter of which an admission is requested shall be separately set forth and shall leave sufficient space following each request in which the party to whom the request(s) is directed can insert an answer or objection. Subject to the provisions of subdivision (b) of this Rule, the matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested

presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of Rule 37(c), deny the matter or set forth reasons why the party cannot admit or deny it. A party in responding to requests for admission shall set forth each request in full, immediately preceding the party's answer or objection thereto.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

b. Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

The admission of any matter under this Rule shall not be deemed to waive any objections to its competency or relevancy. An admission of the existence and due execution of a document, unless otherwise expressed, shall be deemed to include an admission of its delivery, and that it has not since been altered.

M.P.R.C.P. 37

Rule 37. Failure to Make Discovery; Sanctions

a. Motion for Order Compelling Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) Procedure. An application for an order to a party or a deponent may be made to any judge or magistrate of the court.

(2) Motion. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for production or inspection submitted under Rule 30(b)(5) or 34, fails to respond that inspection will be permitted as requested or fails to produce or to permit inspection as requested, the discovering party may move for an order

compelling an answer, or a designation, or an order compelling production or inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c).

(3) Evasive or Incomplete Answer. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) Award of Expenses of Motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court may enter any protective order authorized under Rule 26(c) and shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part the court may enter any protective order authorized under Rule 26(c) and may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

b. Failure to Comply With Order.

(1) Sanctions by the Court. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the place in which the deposition is being taken, the failure may be considered a contempt of court.

(2) Sanctions by Court in Which Action Is Pending. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this Rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(a) an order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(c) an order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(d) in lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(e) where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (a), (b), and (c) of this subdivision, unless the party failing to comply shows that party is unable to produce such person for examination;

(f) the entry of a nonsuit or default against the party failing to comply;

(g) if the party failing to comply is the plaintiff, the entry of a judgment of dismissal.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

c. Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expense incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that:

(1) the request was held objectionable pursuant to Rule 36(a);

(2) the admission sought was of no substantial importance;

(3) the party failing to admit had reasonable grounds to believe that the party might prevail on the matter; or

(4) there was other good reason for the failure to admit.

d. Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails:

(1) to appear before the officer who is to take the deposition, after being served with a proper notice, or to comply with a properly served request for production under Rule 30(b)(5), without having made an objection thereto;

(2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories; or

(3) to serve a written response to a request for production or inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (a), (b), and (c) of subdivision (b)(2) of this Rule. Any motion specifying a failure under clause (2) or (3) of this subdivision shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

M.P.R.C.P. 38

Rule 38. [Reserved]

M.P.R.C.P. 39

Rule 39. [Reserved]

M.P.R.C.P. 40

Rule 40. Trial by the Court; Assignment

a. Assignment for Trial. The judges of the courts of the Mashantucket Pequot Tribe may by order provide for the setting of cases for trial upon the calendar, the order in which they shall be heard and the resetting thereof. All actions, except as otherwise provided by tribal law, shall be in order for trial at a time set by the court on such notice as it deems reasonable, but not less than 10 days after service of the last required pleading.

b. Continuances. A motion for continuance of an action shall be made not less than four days before the date set for commencement of trial in the action; but if the cause or ground of the motion is not then known, the motion may be made

as soon as practicable after the cause or ground becomes known. Telephonic or other oral notice of the motion shall be promptly given to all other parties. The motion shall state whether the non-moving party agrees to the continuance of the action.

c. Affidavit in Support of Motion. The court need not entertain any motion for a continuance based on the absence of a material witness unless supported by an affidavit which shall state the name of the witness, and, if known, that witness' residence, a statement of that witness' expected testimony and the basis of such expectation, and the efforts which have been made to procure that witness' attendance or deposition. The party objecting to the continuance shall not be allowed to contradict the statement of what the absent witness is expected to testify but may disprove any other statement in such affidavit. Such motion may, in the discretion of the court, be denied if the adverse party will admit that the absent witness would, if present, testify as stated in the affidavit, and will agree in writing, signed by that party or that party's attorney, that the same shall be received and considered as evidence at the trial as though the witness were present and so testified. The same rule shall apply, with necessary changes, when the motion is grounded on the want of any material documents, thing or other evidence. In all cases, the grant or denial of a continuance shall be discretionary whether the foregoing provisions have been complied with or not.

M.P.R.C.P. 41

Rule 41. Dismissal of Actions

a. Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; By Stipulation. Subject to the provisions of Rule 23(e), an action may be dismissed by the plaintiff without order of court:

(a) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or

(b) by filing a stipulation of dismissal signed by all parties who have appeared in the action. A dismissal under this paragraph may be as to one or more, but fewer than all claims. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in the courts of the Mashantucket Pequot Tribe.

(2) By Order of Court. Except as provided in paragraph (1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the counterclaim shall remain pending for independent adjudication by the court despite the dismissal

of the plaintiff's claim. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

b. Involuntary Dismissal: Effect Thereof.

(1) On Court's Own Motion. The court, on its own motion, after notice to the parties, and in the absence of a showing of good cause to the contrary, shall dismiss an action for want of prosecution at any time more than one year after the last docket entry showing any action taken therein by the plaintiff other than a motion for continuance.

(2) On Motion of Defendant. For failure of the plaintiff to prosecute for one year or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant.

(3) Effect. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision (b) and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

c. Dismissal of Counterclaim, Cross-Claim, or Third-Party Claim. The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

d. Costs of Previously-Dismissed Action. If a plaintiff who has once dismissed an action in the courts of the Mashantucket Pequot Tribe commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

M.P.R.C.P. 42

Rule 42. Consolidation; Separate Trials

a. Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

b. Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, or issues.

c. Convenience and Justice. In making any order under this Rule, the court shall give due regard to the convenience of parties and witnesses and the interest of justice.

M.P.R.C.P. 43

Rule 43. Taking of Testimony

a. Form. In all trials the testimony of witnesses shall be taken orally under oath in open court, unless otherwise provided by these Rules or under the Rules of Evidence applied in this court.

b. Affirmation in Lieu of Oath. Whenever under these Rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

c. Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

d. Examination of Witnesses. The examination and cross-examination of each witness shall be conducted by one counsel only on each side, except by special leave of court, and counsel shall stand while so examining or cross-examining unless the court otherwise permits. Any re-examination of a witness shall be limited to matters brought out in the last examination by the adverse party except by special leave of court.

e. Order of Evidence. A party who has rested cannot thereafter introduce further evidence except in rebuttal unless by leave of court.

f. Interpreters. The court may appoint a disinterested interpreter of its own selection, including an interpreter for the deaf, and may fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Interpreters shall be appropriately sworn.

M.P.R.C.P. 44

Rule 44. Proof of Official Record

a. Authentication.

(1) Tribal. An official record kept within the Mashantucket Pequot Tribe or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by a person purporting to be the officer having the legal custody of the record, or the officer's deputy. The certificate may be made by any tribal officer having official duties in the Tribe or the department or agency in which the record is kept.

(2) Domestic. An official record kept within an Indian tribe, within the United States, or any state, district, or commonwealth or within a territory

subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by the officer having the legal custody of the record, or the officer's deputy and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(3) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(a) of the attesting person, or

(b) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown:

(i) admit an attested copy without final certification or

(ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

b. Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this Rule in the case of a Mashantucket Pequot tribal record or (a)(2) of this Rule in the case of a domestic record, or complying with the requirements of subdivision (a)(3) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

c. Other Proof. This Rule does not prevent the proof of official records or entry or lack of entry therein by any other method authorized by law.

M.P.R.C.P. 45

Rule 45. Subpoena

a. Form; Issuance.

(1) Every subpoena shall:

(a) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(b) command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(c) set forth the text of subdivisions (c) and (d) of this Rule.

A command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at deposition, or may be issued separately.

(2) A subpoena commanding attendance at a trial or hearing shall issue from the clerk, the presiding judge or from an attorney admitted to practice before the courts of the Mashantucket Pequot Tribe. A subpoena for attendance at a deposition shall issue from the clerk, the presiding judge or from an attorney admitted to practice before the courts of the Mashantucket Pequot Tribe. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the clerk, the presiding judge or from an attorney admitted to practice before the courts of the Mashantucket Pequot Tribe.

(3) Any clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney admitted to the Mashantucket Pequot Bar may also issue and sign a subpoena as officer of the court.

b. Service.

(1) A subpoena shall be served by the tribal police within the Mashantucket Pequot tribal lands. Subpoenas may be served outside tribal lands by any person authorized to serve process within the jurisdiction of the person to be subpoenaed. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).

(2) Proof of service when necessary shall be made by filing with the clerk of the court a true and attested copy of the subpoena endorsed with a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

c. Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for requesting the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(a) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(b) Subject to paragraph (d)(2) of this Rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(a) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(b)(iii) of this Rule, such a person may in order to attend trial be commanded to travel from any such place to the Mashantucket Pequot Tribal Courthouse;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(b) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information;

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

d. Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

e. Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(a).

M.P.R.C.P. 46

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

M.P.R.C.P. 47

Rule 47. Argument of Counsel

Counsel for each party shall be allowed such time for argument as the court shall order. Counsel for the moving party shall argue first. Opposing counsel shall then argue. Counsel for the moving party shall be allowed time for rebuttal. When multiple claims or multiple parties are involved in an action,

the order and division of the arguments shall be subject to the direction of the court.

M.P.R.C.P. 48

Rule 48. [Reserved]

M.P.R.C.P. 49

Rule 49. [Reserved]

M.P.R.C.P. 50

Rule 50. [Reserved]

M.P.R.C.P. 51

Rule 51. [Reserved]

M.P.R.C.P. 52

Rule 52. Findings By The Court; Judgment on Partial Findings

a. Effect. In all actions tried upon the facts, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this Rule.

b. Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59.

c. Judgment on Partial Findings. If a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or

defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this Rule.

M.P.R.C.P. 53

Rule 53. [Reserved]

M.P.R.C.P. 54

Rule 54. Judgments; Costs

a. Definition; Form. "Judgment" as used in these Rules includes a decree and any order from which an appeal lies.

b. Judgment Upon Multiple Claims or Involving Multiple Parties; Attorney Fees.

(1) Except as otherwise provided in paragraph (2) of this subdivision and in Rule 80(d), when more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, except those enumerated in paragraph (2) of this subdivision, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(2) When a judgment has been entered sustaining an appeal under 8 M.P.T.L., the Employee Review Code, as it may be amended from time to time, the court shall hold a hearing on the nature and extent of the relief to be awarded within 30 days after the entry of the judgment. The supplemental judgment shall ordinarily be entered by the judge who rendered the judgment on the merits.

(3) Except as otherwise provided in paragraph (2) of this subdivision, in any other action in which there is a claim for attorney fees, a judgment entered on all other claims shall be final as to those claims and the court may order upon the request of any party or upon its own motion that a hearing be held for an award of attorney's fees.

c. Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.

d. Allowance of Costs. Costs shall be allowed as of course to the prevailing

party, as provided by law and by these Rules, unless the court otherwise specifically directs.

e. Taxation of Costs. Costs shall be taxed by the clerk upon a bill to be made out by the party entitled to them or, if no such bill is presented, upon inspection of the proceedings and files. If the adverse party has notified the clerk in writing of a desire to be present at the taxation of costs, no costs shall be taxed without notice to such adverse party.

f. Schedule of Fees. The following schedule of fees shall be taxable as costs:

Entry of any action, except as provided by tribal law, $75;

Notice of Appeal to the Court of Appeals, $100;

Registration of foreign judgment, $50;

Service of any document within the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, $5;

Service of any document without the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, $5 in addition to $.35 per mile;

For each deposition taken, $50;

Maps, plans, mechanical drawings and photographs, necessary or convenient in the trial of any action, a reasonable sum;

For copies of records used in evidence, court and clerk's fees;

The actual expense of publishing orders of notice under direction of the court;

For each interpreter necessarily employed in the trial of any civil action, a reasonable sum;

For an expert witness whose testimony was necessary or convenient in the trial of any action, a reasonable sum;

The following sums may be allowed to the prevailing party in causes on appeal, in the discretion of the court:

Request for transcription of court proceedings, $15 per recording tape in addition to the actual costs of transcription;

For expenses actually incurred in printing or copying briefs in an amount not to exceed $200;

Notice of Appeal to the Court of Appeals, $100.

M.P.R.C.P. 55

Rule 55. Default

a. Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules and that fact appears by affidavit or otherwise, the clerk shall enter the party's default.

b. Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant.

(a) It shall be the responsibility of counsel filing a motion for default for failure to appear to serve upon the defaulting party a copy of the motion by mailing a copy of the motion and all related papers to the defendant's address as listed in the summons or, if no address is listed, to the defendant's last known address.

(i) If there is a default of appearance, and the action is based upon an express or implied promise to pay a definite sum and claiming only liquidated damages, which may include interest, a reasonable attorney's fee and other charges, the plaintiff may file a motion for default for failure to appear and defend. Such motion shall have annexed thereto an affidavit of debt, a military affidavit pursuant to the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C. §§ 520, 521 and, if costs are claimed, a bill of costs.

If the instrument on which the contract is based is a negotiable instrument, the affidavit shall state that the instrument is now owned by the plaintiff. A copy of the executed instrument or contract shall be attached to the affidavit. If the affidavit of debt includes interest, the interest shall be separately stated and shall specify the date to which the interest is computed, which shall not be later than the date of the entry of judgment.

If the moving party claims any lawful charges other than interest, including a reasonable attorney's fee, the party shall in the affidavit of debt set forth the terms of the contract providing for such charge and the amount claimed. If a claim for a reasonable attorney's fee is made, the moving party shall include in the affidavit of debt the reasons for the specific amount requested in order that the court may determine the relationship between the fee requested and the actual and reasonable costs which are incurred by counsel.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on

such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

c. Judgment for Definite Sum. If an action is based upon an express or implied promise to pay a definite sum, there shall be annexed to any motion for judgment on default, in place of the usual order, a proposed form of notice and judgment, substantially as follows:

NOTICE TO ALL PARTIES

The following judgment may be enforced 21 days after the clerk receives a certification that a copy thereof was served on each judgment debtor.

JUDGMENT

After examination of the affidavits on file, the court finds that no defendant is in the military or naval service and that there is due to the plaintiff

Amount due on claims%#40$_____

Interest $

Attorney's fees%#40$_____

Other lawful charges%#40$_____

Total%#40$_____

Whereupon it is adjudged that the plaintiff recover of the defendant $_____ damages and costs taxed at $_____.

Dated on this day ___ of _____, 20___.

BY THE COURT

_____ Judge/Clerk

d. Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

e. Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

f. Judgment Against the Mashantucket Pequot Tribe. No judgment by default shall be entered against the Mashantucket Pequot Tribe or an officer or agency

thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

g. Military Service. No judgment by default for failure to appear shall be entered in any action wherein any defendant against whom judgment is sought is in the military or naval service of the United States when judgment is rendered.

M.P.R.C.P. 56

Rule 56. Summary Judgment

a. For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time prior to the date the case is assigned for trial, or after service of a motion for summary judgment by the adverse party, but within such time as not to delay the trial, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof, or thereafter in the discretion of the court.

b. For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, but within such time as not to delay the trial, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

c. Proceedings on Motion. Any party opposing a motion may serve opposing affidavits as provided in Rule 7(c). Judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, referred to in the statements required by Rule 7(d) show that there is no genuine issue as to any material fact set forth in those statements and that any party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Summary judgment, when appropriate, may be rendered against the moving party.

d. Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specific shall be deemed established, and the trial shall be conducted accordingly.

e. Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the

affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of that party's pleading, but must respond by affidavits or as otherwise provided in this Rule, setting forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

f. When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

g. Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

M.P.R.C.P. 57

Rule 57. [Reserved]

M.P.R.C.P. 58

Rule 58. Entry of Judgment

Subject to the provisions of Rule 54(b):

a. upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign, and enter the judgment without awaiting any direction by the court;

b. upon a decision by the court granting other relief, the court shall promptly approve the form of judgment, and the clerk shall thereupon enter it. Every judgment shall be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). Entry of the judgment shall not be delayed, nor the time for appeal extended, in order to tax costs or award fees. The prevailing party shall submit a proposed judgment form within 30 days after the date of court's decision unless

otherwise directed by the court.

M.P.R.C.P. 59

Rule 59. New Trials; Amendment of Judgments

a. Grounds. Except as otherwise governed by tribal law, the judge before whom an action has been tried may on motion grant a new trial to all or any of the parties and on all or part of the issues. Upon motion for a new trial, the judge before whom the action has been tried may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

b. Time for Motion. A motion for a new trial shall be served not later than 20 days after the entry of the judgment.

c. Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 20 days after such service within which to serve opposing affidavits, which period may be extended for an additional period whether by the judge before whom the action has been tried for good cause shown or by the parties by written stipulation. Such judge may permit reply affidavits.

d. On Initiative of Court. Not later than 20 days after entry of judgment the judge before whom the action has been tried without motion of a party may order a new trial for any reason for which the judge might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case the court shall specify in the order the grounds therefor.

e. Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 20 days after entry of the judgment.

M.P.R.C.P. 60

Rule 60. Relief from Judgment or Order

a. Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the Court of Appeals, and thereafter while the appeal is pending may be so corrected with leave of the Court of Appeals.

b. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party

or a party's legal representative from a final judgment, order or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(6) any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in these Rules or by tribal law, or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action.

M.P.R.C.P. 61

Rule 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

M.P.R.C.P. 62

Rule 62. Stay of Proceedings to Enforce a Judgment

a. Automatic Stay, Exceptions. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until

the expiration of 30 days after its entry or until the time for appeal from the judgment as it may have been extended has expired. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or an order relating to the care, custody and support of minor children or to the separate support or personal liberty of a person shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (d) of this Rule govern the suspending, modifying, restoring or granting of an injunction during the pendency of an appeal.

b. Stay Upon Appeal. Except as otherwise provided by tribal law, the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal, and no bond or other security shall be required as a condition of such party.

c. Power of Reviewing Court Not Limited. The provisions in this Rule do not limit any power of the Court of Appeals during the pendency of an appeal to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

d. Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

M.P.R.C.P. 63

Rule 63. [Reserved]

M.P.R.C.P. 64

Rule 64. [Reserved]

M.P.R.C.P. 65

Rule 65. [Reserved]

M.P.R.C.P. 66

Rule 66. [Reserved]

M.P.R.C.P. 67

Rule 67. [Reserved]

M.P.R.C.P. 68

Rule 68. Offer of Judgment

a. Making an Offer; Accepted Offer. At least 20 days before the date set for trial, either party may serve upon the other party an offer to allow judgment to be taken for or against the offering party for the money or property or to the effect specified in the offer, with costs then accrued. —If within 10 days after the service of the offer the other party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof. The party that made the offer shall file a withdrawal of the action with the clerk and the clerk shall record the withdrawal of the action accordingly.

b. Unaccepted Offer. An unaccepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs.

c. Paying Costs After An Unaccepted Offer. If the judgment finally obtained by the plaintiff is equal to or greater than plaintiff's offer of judgment the court shall add to the amount so recovered 5% annual interest on said amount computed from the date of filing of the offer of judgment and may award reasonable attorney's fees not to exceed $500 and shall render judgment accordingly.

If the judgment finally obtained by the plaintiff is less than the amount of the offer, the plaintiff shall pay the defendant's cost accrued after the offer was made. Such cost may include reasonable attorney's fees in an amount not to exceed $500.

M.P.R.C.P. 69

Rule 69. Execution

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise.

M.P.R.C.P. 70

Rule 70. Judgment for Specific Act

If a judgment directs a party to execute a conveyance of any interest in land or property or to deliver documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party, except that the appointee of the court shall have no authority to execute a conveyance of any interest in land or property located outside the Mashantucket Pequot Reservation. The court may also in proper cases adjudge

the party in contempt.

M.P.R.C.P. 71

Rule 71. [Reserved]

M.P.R.C.P. 72

Rule 72. [Reserved]

M.P.R.C.P. 73

Rule 73. [Reserved]

M.P.R.C.P. 74

Rule 74. [Reserved]

M.P.R.C.P. 75

Rule 75. [Reserved]

M.P.R.C.P. 76

Rule 76. [Reserved]

M.P.R.C.P. 77

Rule 77. Tribal Court and Clerks

a. Courts Always Open. The courts of the Mashantucket Pequot Tribe shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all motions, orders, and Rules.

b. Trials and Hearings; Orders in Chambers. Except as otherwise provided by tribal law, all trials upon the merits shall be conducted in open court and so far as convenient in the regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the Mashantucket Pequot Reservation.

c. Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a

deputy clerk in attendance shall be open on all days except Saturdays, Sundays and tribal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings that do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

d. Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry in a manner provided for in Rule 5 upon every party who is not in default for failure to appear, and shall make a note in the docket accordingly. In lieu of serving a notice of the docket entry, the clerk may serve a copy of the order or judgment in a manner provided for in Rule 5. Any such service is sufficient notice for all purposes for which notice of the entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed.

e. Facsimile Signature of the Clerk. A facsimile of the signature of the clerk imprinted at the clerk's direction upon any summons, writ, subpoena, judgment, order or notice, except executions and criminal process, shall have the same validity as the clerk's signature.

f. Authority and Duties of Deputy Clerks. Deputy clerks are vested with the same authority as the clerk and shall perform the same duties as may be required of the clerk by these Rules.

M.P.R.C.P. 78

Rule 78. Motion Day

The chief judge of the Mashantucket Tribal Court may establish regular times, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the court at any time or place and on such notice, if any, as it considers reasonable may make orders for the advancement, conduct, and hearing of actions.

M.P.R.C.P. 79

Rule 79. Books and Records Kept by the Clerk

a. Civil Docket. The clerk shall keep the civil docket, and shall enter therein each civil action to which these Rules are applicable. Actions shall be assigned docket numbers. Upon the filing of a complaint with the court, the name of each party and the name and address of the plaintiff's attorney shall be entered upon the docket. Thereafter the name and address of the attorney appearing or answering for any defendant shall similarly be entered. All

papers filed with the clerk, all appearances, orders, verdicts and judgments shall be noted chronologically upon the docket and shall be marked with the docket number. These notations shall briefly show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. In the alternative the notation of an order or judgment may consist of an incorporation by reference of a designated order, judgment, opinion or other document filed with clerk by the court, provided that the notation shows that it is made at the specific direction of the court. The notation of an order or judgment shall show the date the notation is made.

b. Custody of Papers by Clerk. The clerk shall be answerable for all records and papers filed with the court and they shall not be taken from the clerk's custody without special order of the court; but the parties may at all times have copies.

c. Other Books and Records. The clerk shall keep such other books and records as may be required from time to time by the Chief Judge of the Mashantucket Tribal Court.

M.P.R.C.P. 80

Rule 80. Family Relations

a. Applicability of Rules. These Rules shall apply to actions for dissolution or annulment of marriage, support, custody of a minor child(ren), appointment and removal of guardians, all rights and remedies establishing paternity, termination of parental rights, and all other matters within the jurisdiction of the Mashantucket Pequot Tribal Court concerning child(ren) or family relations.

b. Complaint: Counterclaim. The complaint in an action under this Rule shall be signed by the plaintiff. When the residence of the defendant can be ascertained, it shall be stated in the complaint. When the residence of the defendant is not known by the plaintiff and cannot be ascertained by reasonable diligence the complaint shall so allow. No counterclaim shall be permitted in any action under this Rule except for dissolution or annulment of marriage, support and custody of a minor child(ren). Failure of the defendant to file a counterclaim permitted by this section shall not bar a subsequent action therefor. Each party shall file under oath a statement as to any proceedings pending before any court related to a child(ren) involved in the matter as well as providing current addresses for such child(ren).

c. Filing of Financial Affidavits and Work Sheets.

(1) In any proceeding under this Rule in which child support is an issue, the parties shall exchange and file affidavits of income and assets and child support work sheets on forms that the tribal court shall prescribe. In any other proceeding under this Rule in which a division of property or an award of spousal support is sought, the party seeking such relief shall file a financial

statement showing the assets, liabilities, and current income and expenses of both parties and indicating separately all marital and non-marital property. Such statement shall be filed within 30 days of seeking such relief. The opposing party may join in the statement or, within 30 days after the initial statement is filed, may file a supplemental statement setting forth any additional or disputed matters. The statements shall be filed on forms that the tribal court may from time to time prescribe.

(2) Uncompleted discovery or failure of the opposing party to file the required statement shall not be a basis for failing to file a financial statement or supplemental statements, but the party may indicate upon the statement that it is filed upon information and belief and that discovery is not yet completed or that the opposing party's statement has not been filed. All financial statements shall be signed by the party under oath. The judge may require during the pendency of any action involving a financial order, that a new financial statement or statements containing current information be filed by the parties.

(3) Any financial statement or supplemental financial statement filed shall be kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the court, the attorneys whose appearances are entered in the case, the parties to the case, their expert witnesses, and public or tribal agencies charged with responsibility for the collection of support, as necessary.

(4) If a party fails to file any affidavit, worksheet, or statement required by this Rule, the court may make such orders in regard to such failure as are just and as appropriate.

d. Orders Prior to Judgment.

(1) At any time prior to judgment any proceeding under this Rule in which the court has personal jurisdiction over the parties, the court, on motion after notice served not later than 7 days before the hearing unless a shorter time is ordered by the court, may order either party to pay the other party or to that party's attorney sufficient money for the defense or prosecution thereof, and to make reasonable provision for that party's separate support; may make such orders as it deems proper for the allocation of parental rights and responsibilities for any minor child(ren), including support; may prohibit either party from imposing any restraint on the personal liberty of the other, and may make such orders as it deems proper regarding the real and personal property of the parties. In any action under this Rule in which the court lacks personal jurisdiction for the defendant the court may at any time prior to judgment, on motion after notice served not later than 7 days before the hearing unless a shorter time is ordered by the court, enter any of the foregoing orders that it deems proper that does not involve the payment of, or the allocation of responsibility for the payment of, money.

(2) A motion for an order under this section shall be accompanied by a draft order that grants the motion and specifically states the relief to be granted. If child support is in issue, the motion shall be accompanied by a child-support affidavit and worksheet.

(3) Costs may be taxed and counsel fees may be ordered on any motion under this subdivision and the court may in all cases enforce obedience as in other actions. Execution for counsel fees shall not issue until after entry of final judgment.

e. Guardian Ad Litem/Counsel for Minor Child(ren). A minor party to any proceeding under this Rule need not be represented by next friend, guardian ad litem, or counsel, unless the court so orders. Whenever it shall appear to the court to be in the best interest of a minor child(ren) of the parties to a proceeding under this Rule, the court may on its own motion or on motion of a party appoint counsel for the child or a guardian ad litem. The court may make such provision for payment of counsel or a guardian ad litem by the parties as it deems necessary and proper.

f. Investigations. In any pending family relations matter, the judge may cause an investigation to be made with respect to any circumstances of the matter which may be helpful or material or relevant to the proper disposition of the case. Such investigation shall be conducted in accordance 6 M.P.T.L. ch. 1, §§ 3, 4. Said report shall be admissible in evidence, provided the author of the report is available for cross-examination.

g. No Judgment Without Hearing: Appearance by Defendant; Judgments to be Final. No judgment, other than a dismissal for want of prosecution, shall be entered in an action under this Rule except after hearing, which may be ex parte if the defendant does not appear. Even though the defendant does not file an answer, the defendant may, upon entering a written appearance before commencement of hearing on issues of parental rights and responsibilities for child(ren), alimony, support, counsel fees, and division of marital or non-marital property, be heard on those issues. Unless otherwise ordered by the court on its own motion or on request of a party, any order granting a dissolution of marriage, annulment, disposition of property, or other disposition, award, or division of property incident upon a dissolution of marriage or annulment, other than a temporary order under Section (d) of this Rule, shall be a final judgment, notwithstanding the pendency of any other claim or counterclaim in the action.

h. Discovery. In any proceeding under this Rule, discovery on issues of alimony, support, counsel fees, and disposition of property, may be had as in other actions, but on other issues only by order of the court.

i. Pretrial Conference. Pretrial Conferences shall be held on all family actions at least one week prior to any contested hearing.

j. Post-Judgment Relief.

(1) Any proceedings for modification or enforcement of the judgment in an action under this Rule shall be on motion for post-judgment relief. The motion shall be served on the opposing party personally in accordance with Rule 4, except that when a motion is made in response to a motion filed by a party represented by an attorney, the responsive motion may be served upon the attorney. The opposing party shall file a memorandum in opposition to the

motion, including all objections, denials, and affirmative defenses. The failure to file a memorandum in opposition may permit entry of the modified judgment by default. The motion and any opposing memorandum shall be accompanied, as appropriate, by the affidavits, worksheets, or financial statements required by subdivision (c) of this Rule.

(2) No final order modifying a judgment shall be entered on a motion for post-judgment relief except after hearing in accordance with subdivision (f) of this Rule, unless the parties under oath certify to the court that there is a stipulated judgment or amendment and no hearing is necessary.

M.P.R.C.P. 81

Rule 81. Terminology in Tribal Laws

In applying these Rules to any proceeding to which they are applicable, the terminology of any tribal ordinance or law which is also applicable, where inconsistent with that in these Rules or inappropriate under these Rules, shall be taken to mean the device or procedure proper under these Rules.

M.P.R.C.P. 82

Rule 82. Jurisdiction Unaffected

These Rules shall not be construed to extend or limit the jurisdiction of the courts of the Mashantucket Pequot Tribe.

M.P.R.C.P. 83

Rule 83. Definitions

Unless specified to the contrary, the following words whenever used in these Rules shall have the following meanings:

a. The word "court" shall include any judge or magistrate of the Mashantucket Pequot Tribal Court or any judge of the Mashantucket Pequot Court of Appeals when the Court of Appeals is sitting as a court of original jurisdiction.

b. The word "clerk" shall mean any clerk or deputy clerk of the Tribal Court.

c. The term "plaintiff's attorney" or "defendant's attorney" or any like term shall include a lay advocate admitted to practice before the courts of the Mashantucket Pequot Tribe and any party appearing without counsel.

d. The term "tribal court" shall mean the Mashantucket Pequot Tribal Court.

M.P.R.C.P. 84

Rule 84. Repeal of Prior Rules

All Rules previously adopted to govern the procedure in the courts of the Mashantucket Pequot Tribe in suits of a civil nature are hereby repealed.

M.P.R.C.P. 85

Rule 85. Title and Citation

These Rules may be known and cited as the MASHANTUCKET PEQUOT RULES OF CIVIL PROCEDURE. The official abbreviated citation form to these Rules is M.P.R.C.P.

M.P.R.C.P. 86

Rule 86. Amendments

M.P.R.C.P. 87

Rule 87. Repeal of Inconsistent Laws

Any provisions in the general laws of the Mashantucket Pequot Tribe which are inconsistent with the provisions of these Rules are hereby repealed; provided, however, that nothing contained in these Rules shall be deemed to repeal provisions in the general laws which provide for the confidentiality of records.

M.P.R.C.P. 88

Rule 88. Effective Date

These Rules shall apply to all trials, hearings and depositions occurring on or after the effective date adopted by the Mashantucket Pequot Tribal Council.

M.P.R.C.P. 89

Rule 89. Visiting Attorney

Any member in good standing of the bar of any state of the United States or the District of Columbia may at the discretion of the court, on motion by a member of the Mashantucket Pequot Tribal Bar who is actively associated with the non-Tribal Bar member attorney in a particular action, be permitted to practice in that action. The court may at any time for good cause revoke such permission without hearing. An attorney so permitted to practice in a particular action shall at all times be associated in such action with a member of the Mashantucket Pequot Tribal Bar.

Rule 90. Schedule of Tribal Court Fees

The fees of the Tribal Court shall be as follows:

Entry of any action, except as provided by tribal law, $125.00;

Entry of a Title 8 (Employee Review Code) administrative appeal, $50.00;

Application or Motion to Open or Modify Final Judgment, $75.00;

Notice of Appeal to the Court of Appeals, $125.00;

Pro hac vice admission, $50.00;

Copies, $1.00 for first page or part thereof and $.50 for each additional page or part thereof;

Registration of foreign judgment, $50;

Writ of execution, $10;

Request for transcription of court proceedings, $15.00 per audio copy (tape or CD) plus "actual costs of transcription" - $2.50 per page; $3.25 per page for expedited services;

Attesting copies, $2.00;

Certification of any document, $15.00 in addition to cost of copying;

Exemplifying copies, $25.00;

Service of any document within the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, $5.00;

Service of any document without the Mashantucket Pequot Reservation, except as otherwise provided by tribal law, $5.00 in addition to $.35 per mile.

Probate Court. There shall be no entry fee for any proceedings in the Probate Court. Fees for recordings, notices, service of process and certified copies (other than accountings) shall be $5.00 per page. There shall be a $125.00 fee for each accounting filed.

Exemptions. Notwithstanding all of the above provisions, neither the Tribal Court, the Court of Appeals, the Office of the Tribal Prosecutor, the Office of Legal Counsel nor counsel appointed by the Tribal Court shall be required to pay any fee.

Rule 91. Proceedings in Forma Pauperis

a. Application. Any person who intends to bring a civil action under these Rules, or to file any motion requiring service under Rule 4, may, without fee file an application in the court in which such action is to be brought asking for leave to proceed in forma pauperis. Such application shall be accompanied by an affidavit of the plaintiff or moving party setting forth:

(1) the person's monthly income and necessary monthly expenses;

(2) that the person possesses no other source from which filing or service fees may reasonably be paid; and

(3) that the action is brought, or the motion filed, in good faith.

b. Waiver of Filing Fee. An application for waiver of the filing fee shall be filed with the complaint. The action shall thereupon be entered upon the docket. If the court finds that the plaintiff has brought the action in good faith and is without sufficient funds to pay the filing fee, it shall order that the fee be waived. If the court denies the application, the action shall be dismissed without prejudice, unless within seven days after the denial the plaintiff pays the fee to the clerk.

c. Payment of Service Costs. An application for payment of service costs shall be filed with the complaint or motion. If the court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs to be paid as an administrative expense of the Mashantucket Pequot Tribal Court as the case may be.

d. Costs; Reimbursement. If the plaintiff or moving party prevails, any fee or costs paid under subdivision (b) or (c) of this Rule may be taxed as costs against the opposing party in favor of the Mashantucket Pequot Tribal Court, if the court finds that party is able to pay such fee or costs. Before accepting a complaint for filing with the fee waived or disbursing funds for service costs, the clerk shall cause the plaintiff or moving party to sign an agreement to reimburse any fee or costs so waived or paid, if at any time during the pendency of the action the party becomes or is discovered to be financially able to make such reimbursement. The Mashantucket Pequot Tribal Court is authorized to proceed by execution or action to recover for the appropriate court account all fees or costs which any party becomes liable to pay or reimburse under this subdivision, if such payment or reimbursement is not made voluntarily upon demand.

Rule 92. Civil Procedure for Traffic Infractions

Rule 1. Scope, Purpose and Construction

Section 1. Scope and Applicability

These rules govern the procedure for Traffic and Civil Infraction proceedings in the Mashantucket Pequot Tribal Court. When used in these rules, the term "court" shall mean the Mashantucket Pequot Tribal Court. The terms "plaintiff" and "petitioner" shall be synonymous and shall refer to the Mashantucket Pequot Tribal Nation. The terms "defendant" and "respondent" shall be synonymous and shall refer to the individual, motorist, or vehicle owner who is served with a summons as described below.

Section 2. Purpose and Construction

These rules are intended to provide for the just determination of every civil traffic violation proceeding to which they apply. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay; they shall also be construed consistent with the fact that they constitute the rules for the adjudication of civil, not criminal, violations of the traffic code.

Rule 2. Preliminary Proceedings in Civil Traffic Violation Cases/Clerk Action

Section 1. The Summons Generally

Consistent with 7 M.P.T.N. ch. 4, § 2, the summons consists of a listing of the civil violations alleged, the fines alleged, the identity of the parties and/or vehicle, and a requirement that the respondent appear in court or answer (respond to) the summons in writing. If the summons is intended to denote a mandatory appearance, it should specify the date, time, and place for the respondent to appear. If a court appearance is not mandated, the summons must inform the respondent to answer the summons in writing on a date certain, using the citation return form that is provided with the summons. The summons may have additional factual allegations subjoined. For the purposes of these rules, the terms "ticket," "citation," and "summons" are synonymous and may be used interchangeably. The summons shall be on a form prescribed by the Public Safety Committee or if the committee prescribes no form, on a form prescribed by the Chief Judge of the court.

a. Signatures Required—Meaning. The summons shall be signed by the officer and served upon the motorist. Parking tickets may be placed on the offending vehicle. If facts are included on the summons or on a supporting document, the truth and validity of the facts supporting the charge(s) shall be declared and supported by a signature of the declarer "subject to the penalty of perjury" and if a statement is signed in this fashion it shall be deemed sworn for

purposes of this section. The summons shall be signed by the motorist to acknowledge receipt or, if the motorist refuses to sign the summons, the citing officer shall indicate that the motorist refused to sign.

b. Sufficiency of Notice. A summons which provides the respondent and the court with adequate notice of the offense being charged shall be sufficient if the offense is charged by using the name given to the offense by statute. The summons shall state for each count the official or customary citation of any statute, rule, regulation or other provision of law which the respondent is alleged therein to have violated. An error or an omission in the summons shall not be grounds for dismissal of the complaint or for reversal of a conviction if the error or omission did not mislead the respondent to his or her prejudice.

c. Amendment. The court may permit a summons to be amended at any time before judgment or finding if no additional or different offense is charged and if substantial rights of the respondent are not prejudiced. With the consent of the respondent, a summons may be amended at any time before judgment or finding if a different offense is charged if the court finds such amendment to be in the interests of justice.

d. Prosecutor, Presenting Officer and Special Advocate. The tribe may assign a prosecutor, presenting officer or special advocate to appear and prosecute any civil infraction. The titles shall be synonymous for the purposes of this section and shall be referenced below as prosecutor or tribe.

Section 2. Clerk Action

a. Public Record and Docketing. The clerk shall record the citation in the public record of the court and open a case file to manage the adjudication and disposition of the alleged infraction. The method of filing shall be defined by the clerk and approved by the Chief Judge. Data may be imported into the court record management system by any means approved by the Chief Judge.

b. Payment. If a respondent timely submits an administrative payment and the citation allows for administrative payment, the clerk shall record and deposit the payment into the appropriate account prior to disposing of the case.

c. Mitigation Request. If the respondent submits a letter of mitigation, the clerk shall deliver the letter along with a completed civil judgment order to a judge of the court and record and deliver to the respondent any judgment returned by the judge. The judge may request that the clerk forward the mitigation request to the prosecutor, if the prosecutor has appeared, with a request that the prosecutor submit a recommend disposition.

d. Mitigation Hearing. If the respondent requests a mitigation hearing, the clerk shall schedule a hearing on the regular traffic docket and notify the respondent and the Prosecutor's Office of the Mashantucket Pequot Tribal Nation of the hearing. The clerk shall prepare a civil judgment order for the hearing and present it to the presiding judge as the case is called. The court shall

call the matter on the docket and enter a disposition after hearing from the parties.

e. Arraignment. If the respondent requests an arraignment, the clerk shall note an arraignment on the regular traffic docket and the rules of arraignment shall apply. At arraignment, the court shall advise the respondent of his or her ability to request a pre-trial meeting with the prosecutor prior to being arraigned.

f. Contested Hearing/Trial. If the respondent enters a plea of not guilty at arraignment or on a citation return form (printed on the back of the citation), the clerk shall note a contested hearing on the trial calendar and the Mashantucket Rules of Evidence and Civil Procedure shall govern the matter. Prior to hearing a trial, the court shall ensure that the prosecutor and the respondent have met and, if the judge deems it appropriate, the matter shall be set for pre-trial hearing.

g. Hours of Operation. Subject to law, the court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or deputy or an assistant in attendance shall be open during business hours on all days except Saturdays, Sundays, and tribal holidays. Cases may be assigned for trial on any day, Monday through Friday of each week of the year except that no cases shall be assigned to a tribal holiday or such other days as the Chief Judge shall set.

h. Calendars. The calendar of cases to be heard will be posted at each hearing site on the day of hearing.

i. Time of Calendars. The judge or his/her clerk, shall call each day's calendar at 10:00 A.M., or at such other times as the Chief Judge may set, once every other week or at the frequency the Chief Judge may set.

j. Cancellation of Calendars. If a day's calendar is cancelled due to inclement weather or other unforeseen circumstance, all cases on said calendar shall be reassigned to the next day when the court shall be open for business to hear the infraction calendar. The cases shall be called at the time appearing on the original notice of hearing, as originally established.

Section 3. Administrative Payment Generally

Any summons which may be paid administratively pursuant to law, may be paid administratively by mail or in person at the court within the time established by law as set forth on the summons:

a. Full Payment Required (no mitigation). Administrative payment must be made in full.

b. Date of Payment. If a payment is made by mail, it shall be deemed to have been sent on the date of postmark.

c. Payment Shall not Equate to a Guilty Plea. Payment of the summons shall not be deemed an admission of guilt to the civil offense charged; a plea of nolo contendere (no contest) shall be entered in the record.

d. Mitigation in Non-contested Matters. Provided that the respondent does not contest the infraction, the respondent may request a mitigation hearing or submit a letter explaining mitigating circumstances with an administrative payment. If the judge finds upon review of the written submissions that mitigating circumstances should warrant a reduction in the fine, the judge, without additional notice to any party, may dismiss the matter or enter a civil judgment for an amount less than that prescribed on the ticket. At any time, the judge may refer mitigation requests to the prosecutor.

Section 4. Arraignment Generally

If a respondent wishes to contest an infraction that allows for administrative resolution, the respondent may plead not guilty on the summons and return the summons to the clerk of the court who will note a hearing to resolve the contest. In this instance, no further arraignment will be required. All other arraignments shall require a personal appearance or appearance through counsel. The terms "guilty" and "not guilty" shall have no criminal connotation.

a. Procedure. Except in cases wherein payment may be or has been made administratively, all respondents shall appear before a judge for arraignment on the date and time indicated and at the place indicated on the summons. The tribe shall be represented by a prosecutor. If a respondent appears without counsel, the court shall advise the respondent of his or her right to appear and be represented by counsel at his or her expense. If the traffic infraction corresponds directly to a criminal citation, the judge should advise the respondent of his or her rights to counsel pursuant to 2 M.P.T.L. ch. 1 § 23. Arraignment shall be conducted in open court and shall consist of reading the summons to the respondent or stating to the respondent the substance of the infraction and calling on the respondent to plead thereto. The judge conducting the arraignment shall notify respondents that they may seek dismissal based on a good driving record but that the respondent must demonstrate proof of his or her driving record by delivering a driving abstract to the judge to confirm their driving history. In lieu of an arraignment, the judge may direct the respondent to meet with the prosecutor for a pre-trial conference so that the prosecutor might recommend an alternative disposition to avoid an arraignment. If the respondent declines the option for a mediation hearing, the judge shall set a contested hearing. Parties may request witness subpoenas at that time.

b. Default and/or Dismissal. If the respondent or the prosecution shall fail to appear, judgment may enter accordingly by default.

Section 5. Pleas Generally

a. A respondent may plead "guilty", "not guilty" or "nolo contendere" (no contest). In all matters wherein an administrative disposition may be entered, the respondent shall submit a plea on the citation and return it to court as described above.

b. Guilty and Nolo Contendere (no contest). If the respondent enters a plea of guilty or nolo contendere, the court shall manage the plea in accordance with the administrative provisions above, except that the court may refuse to accept a plea of guilty, and shall not accept such plea without first addressing the respondent personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the sentence to be imposed. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

c. Not Guilty. If the respondent enters a plea of not guilty and declines a mediation hearing, the court shall set the matter for trial and the Mashantucket Pequot Rules of Evidence and Rules of Civil Procedure shall apply.

d. Refusal to Enter Plea. If a respondent refuses to enter a plea or if the court refuses to accept a plea of guilty the court shall enter a plea of not guilty.

e. Withdrawal of Plea. A motion to withdraw a plea of guilty may be made only before judgment is entered.

f. Good Driving Record. The respondent may seek a dismissal based on a good driving record. If the respondent demonstrates a good driving record, the court may dismiss the matter upon payment of costs. All motorists wishing to demonstrate a good driving record must submit a copy of the driving record or abstract obtained from their state's registry of motor vehicles, or other licensing authority.

Section 6. Trial and Disposition in Civil Traffic Violation Cases

Trials. Trials shall proceed in the following manner:

a. Opening Statements. Opening statements shall be permitted; a time limit of not less than five minutes shall be set within the discretion of the trial judge. The tribe shall proceed first.

b. Evidence, Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by statute or by these rules. All evidence shall be admitted which is admissible under the Mashantucket Pequot Tribal Court Rules of Evidence. The competency of a witness to testify shall be determined in like manner. The tribe may call witnesses first and shall bear the burden of proof. The respondent may cross examine witnesses and the tribe may redirect examination. Parties may proceed in this manner until the judge is satisfied with the testimony. After the tribe rests, the respondent may call witnesses. The parties may proceed with examination as stated above.

c. Closing Arguments. Closing arguments shall be permitted; a time limit of not less than five (5) minutes may be set within the discretion of the trial judge. The petitioner shall proceed first and may reserve time for rebuttal argument.

d. Motion to Dismiss. The court on motion of a respondent or of its own motion shall, at the close of the evidence offered by the prosecution, order the dismissal of one or more offenses charged in the summons if the evidence is insufficient to sustain a conviction of such offense or offenses to a standard of the preponderance of the evidence. If a respondent's motion to dismiss is not granted, the respondent may offer evidence without having reserved the right.

e. Judgment. Burden of Proof: The burden of proof shall be on the prosecution to a standard of the preponderance of the evidence. Judgment on the general issue shall be guilty or not guilty and a judgment summary shall enter if appropriate.

f. Default. If a respondent motorist (or vehicle owner) shall fail to respond to a citation or appear at a trial and/or arraignment despite notice having been given, the case may be defaulted against the motorist. If the truth and validity of the allegations on the summons have been sworn to by the officer issuing same, or if testimony is given providing proof of facts supporting the validity of the summons, and the service of the notice has been established, a default judgment of guilty may enter against the respondent. The respondent's driving license and/or privileges may, at the discretion of the judge, be ordered suspended pending compliance with the judgment entered. All civil remedies shall remain available as defined below.

g. Dismissal. If the prosecution fails to appear for trial and/or arraignment, the matter may be dismissed.

h. Penalty. Upon plea or judgment of guilty, a penalty shall be imposed without unreasonable delay. Before imposing the penalty the court shall afford counsel an opportunity to speak on behalf of the respondent and shall address the respondent personally and ask the respondent if he or she wishes to make a statement in his or her own behalf and to present any information in mitigation of punishment.

i. Notification of Right to Appeal. After imposing the civil penalty the court shall advise the respondent of his or her right to appeal to the Mashantucket Court of Appeals.

Section 3. Judgment Civil Traffic Violation Cases

All judgments shall be in writing and shall set forth the findings or plea, the penalty and judgment summary. If the respondent is found not guilty or the charge is dismissed, judgment shall be entered accordingly. The judgment shall be signed by the presiding judge.

a. Notice of Penalty for Failure to Satisfy Judgment. The judge shall include in every judgment a warning to the respondent that if the described penalty is not paid within the allotted time the following shall occur:

(i) Contempt Fine. The respondent shall become obligated to pay a further contempt penalty

(ii) Suspension of Driving Privileges. The respondent's privilege to operate a motor vehicle on the reservation shall be suspended or revoked until the fine is paid;

(iii) Vehicle Impound and Costs. The respondent's automobile shall become subject to impound without further hearing and the costs associated with the impound will be charged to the respondent;

(iv) Costs and Attorney Fees for Collection. The respondent shall be responsible for all costs and attorney fees incurred in furtherance of collection efforts that might be undertaken to secure payment of the penalty.

b. Notice and Clerk Action for Enforcement. The court shall publish the above notice plainly upon the judgment and shall include a direction for the clerk to forward the judgment to the tribal prosecutor and police upon the expiration of the term allowed for payment.

c. Clerical mistakes and Relief from Judgment. Clerical mistakes in judgments and relief from judgments shall be governed by M.P.R.C.P. Rule 60.

Section 4. Appeals from Decisions in Civil Traffic Violation Cases

Appeals. A respondent aggrieved by a judgment of the trial court in a civil traffic violation may appeal therefrom to the Mashantucket Court of Appeals. All appeals shall be governed by the Mashantucket Pequot Rules of Appellate Procedure.

Section 5. In Forma Pauperis

In appropriate cases, upon showing of indigence, a respondent shall be permitted to proceed in forma pauperis (in the manner of a pauper) and pay a reduced filing fee.

Section 6. Post-Judgment Proceedings

a. Default. A respondent shall be in default upon his or her failure to pay a judgment penalty in accordance with the terms of the judgment.

b. Collection of Judgments. Collection of judgments shall generally follow the course of civil practice as enumerated in court rules of civil procedure

including execution, supplementary proceedings, issuance of decree for installment payments, trustee process, and contempt proceedings to the extent applicable. The clerk shall forward all unpaid judgments to the Office of Legal Counsel for processing within three months of default.

c. Alternative Enforcement, Contempt. The court upon entry of a judgment may provide notice to the party against whom the judgment is entered that an additional fine will be imposed for failure to comply with and pay the sums identified in the judgment. Additional fines must be contingent on the respondent's unwillingness to comply with the judgment terms and the contempt provision must outline a means by which the respondent can purge his or her contempt and avoid the additional fine. Contempt provisions may include additional fines, suspension of driving privileges, referral to licensing agencies and/or collection agencies, and imposition of attorney fees in supplementary proceedings.

Section 7. General Provisions

a. Corporate Respondents. A corporation may pay the fine prescribed on any ticket or summons in accordance with the administrative process for payment of fines. A corporate respondent shall appear by counsel for all other purposes.

b. Time. In computing any period of time prescribed or allowed by these procedures, by order of court or by any applicable statute, the court shall apply M.P.R.C.P. Rule 6.

c. Notice. Whenever, pursuant to these procedures, notice of a future court date is provided to a respondent, it shall be provided in hand whenever practical. Whenever service in hand is not practical, it shall be provided by regular mail to any address given to the court by the respondent during the case. In the absence of such a previously provided address, notice shall be sent to the address submitted by the respondent to the applicable state registry pursuant to the duty imposed by state laws for licensed drivers to maintain a current address on record with the state that issues their license.

d. In Hand Service. At any time, the court may direct in hand service or service to the respondent's residence, delivered in hand to a person of suitable age and discretion then resident therein.

e. Effective Date. These procedures shall take effect when approved by the Mashantucket Pequot Tribal Council. They govern all civil traffic violation proceedings thereafter commenced and so far as just and practicable all proceedings then pending.

MASHANTUCKET PEQUOT RULES OF EVIDENCE

M.P.R.E. 101

Rule 101. Scope

These Rules govern proceedings in the courts of the Mashantucket Pequot Tribe and before Mashantucket Pequot magistrates, to the extent and with the exceptions stated in Rule 1101.

M.P.R.E. 102

Rule 102. Purpose and Construction

These Rules shall be construed to secure fairness in administration, elimination of unjustifiable delay and expense, and promotion of growth and development of the tribal law of evidence to the end that the truth may be ascertained and proceedings justly determined. Decisional law from other jurisdictions interpreting similar Rules may guide the Mashantucket Pequot courts but shall not be binding.

M.P.R.E. 103

Rule 103. Rulings on Evidence

a. Effect of Erroneous Ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) Offers of Proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which the questions were asked.

b. Record of Offer and Ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form. The court shall mark as an exhibit for identification anything offered by a party.

c. Hearing of Jury. In jury cases (criminal), proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

d. Plain Error. Nothing in this Rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

M.P.R.E. 104

Rule 104. Preliminary Questions

a. Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determinations it is not bound by the Rules of evidence except those with respect to privileges.

b. Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

c. Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

d. Juvenile Confession. Any confession by a juvenile must be made in the presence of a parent or guardian after advising both of the rights of the child.

e. Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

f. Weight and Credibility. This Rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

M.P.R.E. 105

Rule 105. Limited Admissibility

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

M.P.R.E. 106

Rule 106. Remainder or Related Writings or Recorded Statements

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

M.P.R.E. 201

Rule 201. Judicial Notice of Adjudicative Facts

a. Scope of Rule. This Rule governs only judicial notice of adjudicative facts.

b. Kinds of Facts May Include. A judicially noticed fact must be one not subject to reasonable dispute in that it is either:

(1) generally known; or

(2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

c. When Discretionary. A court may take judicial notice, whether requested or not.

d. When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

e. Opportunity to Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

f. Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

g. Instructing Jury. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

M.P.R.E. 301

Rule 301. Presumption in General in Civil Actions and Proceedings

a. Effect. In all civil actions and proceedings, except as otherwise provided by tribal law or by these Rules, a presumption imposes on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

b. Prima Facia Evidence. A tribal law providing that a fact or group of facts is prima facia evidence of another fact establishes a presumption within the meaning of this Rule.

c. Inconsistent Presumptions. If two presumptions arise which are conflicting with each other, the court shall apply the presumption which is founded on the weightier considerations of policy and logic. If there is no such

preponderance, both presumptions shall be disregarded.

M.P.R.E. 302

Rule 302. Presumption of Paternity

A rebuttable presumption of paternity exists in an action as provided by tribal law.

M.P.R.E. 303

Rule 303. Presumptions in Criminal Cases

a. Scope. Except as otherwise provided by tribal law, in criminal cases presumptions against an accused, created by ordinance, including statutory provisions that certain facts are prima facia evidence of other facts or of guilt, are governed by this Rule.

b. Submission to Jury. The court is not authorized to direct the jury to find a presumed fact against the accused. The court may submit the question of guilt or of the existence of the presumed fact to the jury, if, but only if, a reasonable juror on the evidence on the whole, including the evidence of the basic facts, could find guilt or the presumed fact beyond a reasonable doubt.

c. Instructing the Jury. Whenever the existence of a presumed fact against the accused is submitted to the jury, the court in instructing the jury should avoid charging in terms of a presumption. The charge shall include an instruction to the effect that the jurors have a right to draw a reasonable inference from the facts proved beyond a reasonable doubt and may convict the accused in reliance upon an inference of fact if they conclude that such inference is valid and if the inference convinces them of guilt beyond a reasonable doubt and not otherwise.

M.P.R.E. 401

Rule 401. Definition of "Relevant Evidence"

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

M.P.R.E. 402

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as otherwise provided by tribal law

or by these Rules or by other rules applicable in the Mashantucket Pequot courts or as limited by requirements of the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303. Evidence which is not relevant is not admissible.

M.P.R.E. 403

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by consideration of undue delay, waste of time, or needless presentation of cumulative evidence.

M.P.R.E. 404

Rule 404. Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes

a. Character Evidence Generally. Evidence of a person's character or trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) Character of Victim. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same; or

(3) Character of Witness. Evidence of the character of a witness, as provided in Rules 607, 608 and 609.

b. Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

M.P.R.E. 405

Rule 405. Methods of Proving Character

a. Reputation or Opinion. In all cases in which evidence of character or a

trait of character of a person is admissible, proof may be made by testimony as to reputation of the individual in the individual's community or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

b. Specific Instances of Conduct. In cases in which character or a trait of character of a person is directly in issue, proof may be made of specific instances of that person's conduct in a similar situation.

M.P.R.E. 406

Rule 406. Habit; Routine Practice

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

M.P.R.E. 407

Rule 407. Subsequent Remedial Measures

When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event. This Rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment.

M.P.R.E. 408

Rule 408. Compromise and Offers to Compromise

Evidence of (a) furnishing or offering or promising to furnish, or (b) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations, except when information communicated during compromise negotiations is asserted as a fact, is likewise not admissible. This Rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This Rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

M.P.R.E. 409

Rule 409. Payment of Medical and Similar Expenses

Evidence of furnishing or offering or promising to pay medical, hospital or similar expenses occasioned by an injury is not admissible to prove liability for the injury.

M.P.R.E. 410

Rule 410. Withdrawn Pleas and Offers

Except as otherwise provided, evidence of a plea later withdrawn, or guilty or no contest, of an offer so to plead to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers, is not admissible in any civil or criminal action, case, or proceeding against the person who made the plea or offer.

However, such a statement is admissible (a) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (b) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.

M.P.R.E. 411

Rule 411. Liability Insurance

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This Rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

M.P.R.E. 412

Rule 412. Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition

a. Evidence Generally Inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predispositions.

b. Exceptions.

(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these Rules:

(a) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;

(b) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution;

(c) evidence the exclusion of which would violate the rights of the defendant under Mashantucket Pequot Tribal Law or the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303;

(d) evidence tending to establish affirmative defenses which take into account the alleged victim's physical or mental incapacity and the accused's lack of knowledge thereof; and the past conduct of the victim and the accused regarding consensual cohabitation; and

(e) evidence of the adjudication of the defendant as a delinquent for the offense of sexual assault, assault and/or child abuse, when the defendant is being prosecuted as an adult in a child abuse case.

(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these Rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

c. Procedure to Determine Admissibility.

(1) A party intending to offer evidence under subdivision (b) must:

(a) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(b) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this Rule the court shall conduct a hearing in camera and afford the victim and the parties a right to attend and be heard. If a victim is below the age of 12 years, the testimony may be taped without the defendant being heard or seen by the victim. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise. This Rule does not prohibit the use of the testimony

of a defendant given at the hearing on the motion of sexual conduct of the victim to impeach the credibility of such defendant, if the defendant elects to testify at the trial in chief.

(3) If the court determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

M.P.R.E. 413

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases

a. In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.

b. In a case in which the Mashantucket Pequot Tribe intends to offer evidence under this Rule, the tribal prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the court may allow for good cause.

c. This Rule shall not be construed to limit the admission or consideration of evidence under any other Rule.

d. For purposes of this Rule and Rule 415, "offense of sexual assault" means a crime under tribal law, federal law or the law of a state that involved:

(1) any conduct proscribed by Chapter 109A of Title 18, United States Code;

(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;

(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;

(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or

(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(4).

M.P.R.E. 414

Rule 414. Evidence of Similar Crimes in Child Molestation Cases

a. In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.

b. In a case in which the Mashantucket Pequot Tribe intends to offer evidence under this Rule, the tribal prosecutor shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the court may allow for good cause.

c. This Rule shall not be construed to limit the admission or consideration of evidence under any other rule.

d. For purposes of this Rule and Rule 415, "child" means a person below the age of 14, and "offense of child molestation" means a crime under tribal law, federal law or the law of a state (as defined in section 513 of Title 18, United States Code) that involved:

(1) any conduct proscribed by Chapter 109A of Title 18, United States Code, that was committed in relation to a child;

(2) any conduct proscribed by Chapter 110 of Title 18, United States Code;

(3) contact between any part of the defendant's body or an object and the genitals or anus of a child;

(4) contact between the genitals or anus of the defendant and any part of the body of a child;

(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on the body of a child; or

(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)-(5).

M.P.R.E. 415

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation

a. In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these Rules.

b. A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least 15 days before the scheduled date of trial or at such later time as the court may allow for good cause.

c. This Rule shall not be construed to limit the admission or consideration of evidence under any other Rule.

M.P.R.E. 501

Rule 501. Privileges Recognized Only as Provided

Except as otherwise provided by Mashantucket Pequot tribal law, the Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303, or other Rules applicable to the courts of the Mashantucket Pequot Tribe, no person has a privilege to:

a. refuse to be a witness;

b. refuse to disclose any matter;

c. refuse to produce any object or writing; or

d. prevent another from being a witness or disclosing any matter or producing any object or writing.

M.P.R.E. 502

Rule 502. Attorney-Client Privilege

a. Definitions. As used in this Rule:

(1) a "client" is a person, public officer, or organization, either public or private, who is rendered professional legal services by an attorney, or who consults an attorney with a view to obtaining professional legal services from that attorney.

(2) a "representative of the client" is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client.

(3) an "attorney" is a person authorized, or reasonably believed by the client to be authorized, to practice law in the courts of any state or nation or Indian tribe.

(4) a "representative of the attorney" is one employed by the attorney to assist the attorney in the rendition of professional legal services.

(5) a communication is "confidential" if not intended to be disclosed to third

persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

b. General Rule of Privilege. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(1) between the client or the client's representative and the client's attorney or the client's attorney's representative;

(2) between the client's attorney and the attorney's representative;

(3) by the client or the client's representative or the client's attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

(4) between representatives of the client or between the client and a representative of the client; or

(5) among attorneys and their representatives representing the same client.

c. Who May Claim the Privilege. The privilege may be claimed by the client, his guardian or conservator, the personal representative of the deceased client, or the successor, trustee, or similar representative of a corporation, association or other organization, whether or not in existence. The person who was the attorney or the attorney's representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

d. Exceptions. There is no privilege under this Rule:

(1) Furtherance of Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

(2) Claimants Through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(3) Breach of Duty by an Attorney or Client. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney;

(4) Document Attested by Attorney. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness; or

(5) Joint Clients. As to a communication relevant to a matter of common

interest between two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between any of the clients.

M.P.R.E. 503

Rule 503. Physician and Psychotherapist—Patient Privilege

a. Definitions. As used in this Rule:

(1) a "patient" is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) a "physician" is a person authorized to practice medicine in any state or nation, or is recognized by the Mashantucket Pequot Tribe, or another Indian nation or tribe, as a traditional healer, or reasonably believed by the patient to be such.

(3) a "psychotherapist" is

(a) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or

(b) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation, while similarly engaged.

(4) A communication is "confidential" if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

b. General Rule of Privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, including alcohol or drug addiction, among the patient, the physician or psychotherapist, and persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

c. Privilege of Accused. When an examination of the mental condition of an accused in a criminal proceeding is ordered by the court for the purpose of determining the accused's criminal responsibility, the accused has a privilege to refuse to disclose and to prevent any other person from disclosing any communication concerning the offense with which he is charged, made in the course of the examination.

d. Who May Claim the Privilege. The privilege may be claimed by the patient, by his guardian or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the patient.

e. Exceptions.

(1) Proceedings for Hospitalization. There is no privilege under this Rule for communications relevant to an issue in proceedings to hospitalize the patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has determined that the patient is need of hospitalization.

(2) Examination by Order of Court. Except as otherwise provided in subdivision (c), if the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or witness, communications made in the course thereof are not privileged under this Rule with respect to the particular purpose for which the examination is ordered unless the court orders otherwise.

(3) Condition an Element of Claim or Defense. There is no privilege under this Rule as to communications relevant to an issue of the physical, mental or emotional condition of a patient in any proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of any party claiming, through or under the patient or because of the patient's condition, or claiming as a beneficiary of the patient, through a contract to which the patient is or was a party, or after the patient's death, in any proceeding in which any party puts the condition in issue.

(4) Neglect or Abuse Proceedings. There is no privilege under this Rule as to communications or records relevant to any investigation into or proceedings involving allegations of abuse or neglect of children, the elderly, the disabled or the incompetent.

M.P.R.E. 504

Rule 504. Husband-Wife Privilege

a. Definition. A communication is confidential if it is made privately by any person to his or her spouse and is not intended for disclosure to any other person.

b. Who May Claim Privilege. The privilege may be claimed by the person who made the communication or by the spouse in his or her behalf. The authority of the spouse to do so is presumed.

c. Exceptions. There is no privilege under this Rule in a proceeding in which one spouse is charged with a crime against the person or property of:

(1) the other,

(2) a child of either,

(3) any person residing in the household of either, or

(4) a third person committed in the course of committing a crime against any of them; in a civil proceeding in which the spouses are adverse parties; or in child custody proceedings in which the minor child of either spouse is alleged to be the victim of abuse or neglect.

M.P.R.E. 505

Rule 505. Religious Privilege

a. Definitions. As used in this Rule:

(1) A "clergy person" is:

(a) a minister, priest, rabbi, or practitioner of any religious denomination accredited by the religious body to which he or she belongs, or an individual reasonably believed so to be by the person consulting him or her, or;

(b) a traditional spiritual adviser recognized by the tribe or nation to which the adviser belongs, or an individual reasonably believed so to be by the person consulting the adviser.

(2) A communication is "confidential" if made privately and not intended for further disclosure except to other persons present in furtherance of the communication.

b. General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to the clergyperson in his or her professional character as spiritual adviser.

c. Who May Claim the Privilege. The privilege may be claimed by the person, by the person's guardian or conservator or the person's personal representative if he or she is deceased. The person who was the clergyperson at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

M.P.R.E. 506

Rule 506. [Reserved]

M.P.R.E. 507

Rule 507. Trade Secrets

A person has a privilege, which may be claimed by the person, the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the furtherance of justice may require.

M.P.R.E. 508

Rule 508. Tribal Governmental Privilege; Executive Privilege

a. If the Mashantucket Pequot Tribal Council resolves that a matter is private, the courts of the Mashantucket Pequot Tribe must recognize the matter as privileged. Communications made during an announced executive session of the Mashantucket Pequot Tribal Council are privileged.

b. Executive privilege in any matter relating to official Mashantucket Pequot tribal business shall be extended to:

(1) present and former members of the Mashantucket Pequot Tribal Council;

(2) staff members of the Mashantucket Pequot Tribal Council;

(3) Mashantucket Pequot Council Committee members;

(4) any employee reporting to the Mashantucket Pequot Tribal Council;

(5) attorneys employed by the Mashantucket Pequot Office of Legal Counsel;

(6) Mashantucket Pequot Peacemakers and their direct report staff; and

(7) Mashantucket Pequot Elders Council and their direct report staff.

Persons covered by executive privilege cannot, without authorization by the Mashantucket Pequot Tribal Council, testify in a Tribal Court proceeding, including, but not limited to: court testimony, interrogatories, depositions or other discovery proceedings. Only the Mashantucket Pequot Tribal Council shall be authorized to waive executive privilege. Determinations by the Mashantucket Pequot Tribal Council as to whether executive privilege shall apply shall be conclusive and not subject to judicial review.

M.P.R.E. 509

Rule 509. Identity of Informer

a. Rule of Privilege. An Indian tribe or nation, the United States, a state or

subdivision thereof, or any foreign country has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation of a possible violation of a law to a law enforcement officer or member of a legislative committee or its staff conducting an investigation.

b. Who May Claim. The privilege may be claimed by an appropriate representative of the public entity to which the information was furnished.

c. Exceptions.

(1) Voluntary Disclosure; Informer a Witness. No privilege exists under this Rule if the identity of the informer or his or her interest in the subject matter of his or her communication has been disclosed to those who would have cause to resent the communication by a holder of the privilege or by the informer's own action, or if the informer appears as a witness for the Mashantucket Pequot Tribe.

(2) Testimony on Relevant Issue. If it appears in the case that an informer may be able to give testimony relevant to any issue in a civil or criminal case to which a public entity is a party and the informed public entity invokes the privilege, the court may give the public entity an opportunity to show in camera and on the record facts relevant to determining whether the informer can, in fact, supply that testimony.

The showing may be in the form of affidavits, but the court may direct that testimony be taken if it finds that the matter cannot be resolved satisfactorily upon affidavit. If the court finds there is a reasonable probability that the informer can give relevant testimony, the court on motion of a party or on its own motion may enter a conditional order for appropriate relief, to be granted if the public entity elects not to disclose within the time specified the identity of such informer.

In a criminal case such relief may include one or more of the following: granting the defendant additional time or a continuance, relieving the defendant from making disclosures otherwise required of him or her, prohibiting the prosecuting attorney from introducing specified evidence, and dismissing the charges.

In a civil case the court may provide any relief that the interests of justice require. Evidence submitted to the court shall be sealed and preserved to be made available to the appellate court in the event of an appeal, and a docket entry shall be made specifying the form of such evidence but not its content or the identity of any declarant. The contents shall not otherwise be revealed without consent of the informed public entity. All counsel and parties are permitted to be present at every stage of proceedings under this subdivision except at a showing in camera at which only counsel for the public entity shall be permitted to be present.

M.P.R.E. 510

Rule 510. Waiver of Privilege by Voluntary Disclosure

A person upon whom these Rules confer a privilege against disclosure waives the privilege if he or she or his or her predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the privileged matter. This Rule does not apply if the disclosure itself is privileged.

M.P.R.E. 511

Rule 511. Privileged Matter Disclosed under Compulsion without Opportunity to Claim Privilege

A claim of privilege is not defeated by a disclosure which was:

a. compelled erroneously, or

b. made without opportunity to claim the privilege.

M.P.R.E. 512

Rule 512. Comment upon or Inference from Claim of Privilege in Criminal Cases; Instruction

a. Comment or Inference Not Permitted. The claim of privilege, whether in the present proceeding or upon a prior occasion, is not a proper subject of comment by judge or counsel in a criminal case. No inference may be drawn therefrom.

b. Claiming Privilege Without Knowledge of Jury. In criminal case tried to a jury, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.

c. Jury Instruction. Upon request, any accused in a criminal case against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn therefrom.

M.P.R.E. 513

Rule 513. Claim of Privilege in Civil Cases

a. Comment or Inference Permitted. The claim of privilege by a party in a civil action or proceeding, whether in the present proceeding or upon a prior occasion, is a proper subject of comment by judge or counsel. An appropriate inference may be drawn therefrom.

b. Claim of Privilege by Nonparty Witness. The claim of a privilege by a nonparty witness in a civil action or proceeding shall be governed by the provisions of Rule 512.

M.P.R.E. 601

Rule 601. Competency in General: Disqualification

a. General Rule of Competency. Every person is competent to be a witness except as otherwise provided in these Rules.

b. Disqualification of Witness. A person is not qualified to be a witness if the court finds that:

(1) the proposed witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him;

(2) the proposed witness is incapable of understanding the duty of a witness to tell the truth;

(3) the proposed witness lacked any reasonable ability to perceive the matter; or

(4) the proposed witness lacks any reasonable ability to remember the matter. An interpreter is subject to all the provisions of these Rules relating to witnesses.

M.P.R.E. 602

Rule 602. Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This Rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

M.P.R.E. 603

Rule 603. Oath or Affirmation

Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmations administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so.

M.P.R.E. 604

Rule 604. Interpreters

An interpreter is subject to the provisions of these Rules relating to qualification as an expert and the administration of an oath or affirmation to make a true translation.

M.P.R.E. 605

Rule 605. Competency of Judge and Council Member as Witness

a. Presiding Judge. The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve the point.

b. Legislative Intent. No Mashantucket Pequot Tribal Council member may testify in a proceeding with respect to legislative intent or history of any Mashantucket Pequot Tribal Law.

M.P.R.E. 606

Rule 606. Competency of Juror as Witness

a. At the Trial. A member of the jury may not testify as a witness before that jury in the trial of the case in which the juror is sitting. If the juror is called so to testify, the opposing party shall be afforded an opportunity to object out of the presence of the jury.

b. Inquiry Into Validity of Verdict or Indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any other outside influence was improperly brought to bear upon any juror. Nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes.

M.P.R.E. 607

Rule 607. Who may Impeach

The credibility of a witness may be attacked by any party, including the party calling the witness.

M.P.R.E. 608

Rule 608. Evidence of Character and Conduct of Witness

a. Opinion and Reputation Evidence of Character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations:

(1) the evidence may refer only to character for truthfulness or untruthfulness; and

(2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

b. Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into cross-examination of the witness:

(1) concerning the witness' character for truthfulness or untruthfulness; or

(2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of the accused's or the witness' privilege against self-incrimination when examined with respect to matters which relate only to credibility.

M.P.R.E. 609

Rule 609. Impeachment by Evidence of Conviction of Crime

a. General Rule. For the purpose of attacking the credibility of a witness:

(1) evidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by imprisonment in excess of six months under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and

(2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.

b. Time Limit. Evidence of a conviction under this Rule is not admissible if a period of more than 10 years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of

justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect. However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

c. Effect of Pardon, Annulment, or Certificate of Rehabilitation. Evidence of a conviction is not admissible under this Rule if:

(1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, and that person has not been convicted of a subsequent crime which was punishable by death or imprisonment in excess of one year; or

(2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

d. Juvenile Adjudications. Evidence of juvenile adjudications is generally not admissible under this Rule. The court may, however, in a criminal case allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence.

e. Pendency of Appeal. The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

M.P.R.E. 610

Rule 610. Religious Beliefs or Opinions

Evidence of the belief or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

M.P.R.E. 611

Rule 611. Mode and Order of Interrogation and Presentation

a. Control by Court. The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) make the interrogation and presentation effective for the ascertainment of the truth;

(2) avoid needless consumption of time; and

(3) protect witnesses from harassment or undue embarrassment.

b. Scope of Cross-Examination. Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examinations.

c. Leading Questions. Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness' testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

M.P.R.E. 612

Rule 612. Writing or Object used to Refresh Memory

a. While Testifying. If, while testifying, a witness uses a writing or object to refresh his or her memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

b. Before Testifying. If, before testifying, a witness uses a writing or object to refresh his memory for the purpose of testifying and the court in its discretion determines that the interests of justice so require, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

c. Terms and Conditions of Production and Use. A party entitled to have a writing or object produced under this Rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce in evidence those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing contains matters not related to the subject matter of the testimony the court shall examine the writing in camera, excise any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal. If a writing or object is not produced or delivered pursuant to order under this Rule, the court shall make any order justice requires, except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial.

M.P.R.E. 613

Rule 613. Prior Statements of Witnesses

a. Examining Witness Concerning Prior Statement. In examining a witness concerning a prior statement made by him or her, whether written or not, the statement need not be shown nor its contents disclosed to him or her at that time, but on request the same shall be shown or disclosed to opposing counsel.

b. Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

M.P.R.E. 614

Rule 614. Calling and Interrogation of Witnesses by Court

a. Calling by Court. The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

b. Interrogation by Court. The court may interrogate witnesses, whether called by itself or by a party.

c. Objections. Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

M.P.R.E. 615

Rule 615. Exclusion of Witnesses

At the request of a party or upon its own motion, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This Rule does not authorize exclusion of:

a. a party who is a natural person; or

b. an officer or employee of a party which is not a natural person designated as its representative by its attorney; or

c. a person whose presence is shown by a party to be essential to the presentation of the party's cause.

M.P.R.E. 701

Rule 701. Opinion Testimony by Lay Witnesses

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inference is limited to those opinions or inferences which are:

a. rationally based on the perception of the witness; and

b. helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

M.P.R.E. 702

Rule 702. Testimony by Experts

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

M.P.R.E. 703

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

M.P.R.E. 704

Rule 704. Opinion on Ultimate Issue

a. Except as provided in subdivision (b), testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

b. No expert witness testifying with respect to the mental state or condition of a defendant in a criminal case may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto. Such ultimate issues are matters for the trier of fact alone.

M.P.R.E. 705

Rule 705. Disclosure of Fact or Data underlying Expert Opinion

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

M.P.R.E. 706

Rule 706. Court Appointed Experts

a. Compensation. Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. Except as otherwise provided by law, the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

b. Disclosure of Appointment. In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

c. Parties' Experts of Own Selection. Nothing in this Rule limits the parties in calling witnesses of their own selection.

M.P.R.E. 801

Rule 801. Definition

The following definitions apply under these Rules:

a. Statement. A "statement" is:

(1) an oral or written assertion; or

(2) nonverbal conduct of a person, if it is intended by the person as an assertion.

b. Declarant. A "declarant" is a person who makes a statement.

c. Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

d. Statements Which Are Not Hearsay. A statement is not hearsay if:

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition;

(b) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; or

(c) one of identification of a person made after perceiving the person.

(2) Admission by Party-Opponent. The statement is offered against a party and is:

(a) the party's own statement in either an individual or a representative capacity;

(b) a statement of which the party has manifested an adoption or belief in its truth;

(c) a statement by a person authorized by the party to make a statement concerning the subject;

(d) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship; or

(e) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

M.P.R.E. 802

Rule 802. Hearsay Rule; Child's Statements

a. Hearsay is not admissible except as provided by law or by these Rules. The words "as provided by law" include applicable federal statutes, Mashantucket Pequot Tribal Law, the Mashantucket Pequot Rules of Criminal Procedure and the Mashantucket Pequot Rules of Civil Procedure.

b. In any proceeding before the court wherein it is alleged that a child is the victim of child abuse or neglect, the court may admit and consider oral or written evidence of out-of-court statements made by the child and rely on that evidence to the extent of its probative value.

M.P.R.E. 803

Rule 803. Hearsay Exceptions: Availability of Declarant Immaterial

The following are not excluded by the hearsay Rule, even though the declarant is available as a witness:

a. Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

b. Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

c. Then Existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

d. Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

e. Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and to reflect that knowledge correctly. If admitted, the memorandum or record may be received as an exhibit. If a witness, when testifying uses a document to refresh his or her recollection, that document thereby shall be made available for examination by the opposing party.

f. Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

g. Absence of Entry in Records Kept in Accordance With the Provisions of paragraph (f). Evidence that a matter is not included in the memoranda reports, records, or data compilations, in any form, kept in accordance with the provisions of paragraph (f), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

h. Public Records and Reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(1) the activities of the office or agency;

(2) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel; or

(3) in civil actions and proceedings and against the Tribe in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

i. Records of Vital Statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

j. Absence of Public Record or Entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.

k. Records of Religious Organizations. Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

l. Marriage, Baptismal, and Similar Certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the Rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

m. Family Records. Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

n. Records of Documents Affecting an Interest in Property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

o. Statements in Documents Affecting an Interest in Property. A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been

inconsistent with the truth of the statement or the purport of the document.

p. Statements in Ancient Documents. Statements in a document in existence 20 years or more the authenticity of which is established.

q. Market Reports, Commercial Publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

r. Learned Treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence and received as exhibits.

s. Reputation Concerning Personal or Family History. Reputation among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

t. Reputation Concerning Boundaries or General History. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or tribe or state or nation in which located. Before such reputation evidence is admitted the court must find:

(1) the declarant is dead;

(2) the declarant would have been qualified as a witness to testify if present, and that he or she had peculiar means of knowing the boundary;

(3) the statement was made before the controversy in question arose; or

(4) the declarant had no interest in misrepresenting the declaration.

u. Reputation as to Character. Reputation of a person's character among associates or in the community.

v. Judgment of Previous Conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime to prove any fact essential to sustain the judgment, but not including, when offered by the Tribe in a criminal prosecution for purposes other than impeachment, judgments against persons other than the accused; provided, however, unless the Mashantucket Pequot Tribal Court, after finding good cause, previously ordered that the guilty plea be inadmissible in any subsequent civil proceeding. The pendency of an appeal may be shown but does not affect admissibility.

w. Judgment as to Personal, Family, or General History, or Boundaries.

Judgments as proof of matters of personal, family or general history, or boundaries, essential to the judgment, if the same would be provable by evidence of reputation.

x. Medical and Hospital Records.

(1) In all actions, whether, civil, criminal or juvenile, for the recovery of damages for personal injuries or death, any party offering in evidence a signed report and bill for treatment of any treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist may have the report and bill admitted into evidence as a business record. It shall be presumed that the signature on the report is that of the treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist and that the report and bill were made in the ordinary course of business. The use of such report or bill in lieu of the testimony of such physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist shall not give rise to any adverse inference concerning the testimony or lack of testimony of such treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist.

This exception shall not be construed as prohibiting either party or the court from calling the treating physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist as a witness.

Any and all parts of any hospital record or bill for treatment or copy thereof made by a hospital in connection with the treatment of a patient, if not otherwise inadmissible, shall be admissible in evidence without any preliminary testimony if there is attached thereto the certification in affidavit form of the person in charge of the record room of a hospital or his or her authorized assistant indicating that such record, bill or copy is the original record or bill, or a copy thereof, made in the regular course of the business of the hospital and that it was in the regular course of such business to make such record or bill at the time of the transaction, occurrence or event recorded therein or within a reasonable time thereafter.

(2) In all actions whether civil, criminal or juvenile, for the recovery of damages for personal injuries or death:

(a) if a physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist has died prior to the trial of the action; or

(b) if a physician, dentist, chiropractor, osteopath, naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist is physically or mentally disabled at the time of the trial of the action to such an extent that he is no longer actively engaged in the practice of his or her profession, the party desiring to offer into evidence the written records and reports of the physician, dentist, chiropractor, osteopath,

naturopath, physical therapist, podiatrist, psychologist, emergency medical technician or optometrist concerning the patient who suffered the injuries or death shall apply to the court in which the action is pending for permission to introduce the evidence. Notice of the application shall be served on the adverse party in the same manner as any other pleading. The court shall consider the application and determine whether the person is disabled to the extent he or she cannot testify in person in the action. Upon the court finding that the person is so disabled, the matters shall be admissible in evidence as a business record when offered by any party to the action.

y. Other Exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(1) the statement is offered as evidence of a material fact;

(2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and

(3) the general purposes of these Rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

M.P.R.E. 804

Rule 804. Hearsay Exceptions: Declarant Unavailable

a. Definition of Unavailability. "Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subdivision (b)(2), (3), or (4), the declarant's attendance or testimony)

by process or other reasonable means.

A declarant is not unavailable as a witness if exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of a statement for the purpose of presenting the witness from attending or testifying.

b. Hearsay Exceptions. The following are not excluded by the hearsay Rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be impending death.

(3) Statement Against Interest. A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Person or Family History:

(a) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history, even though declarant had no means of acquiring personal knowledge of the matter stated; or

(b) A statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) Other Exceptions. A statement not specifically covered by any of the foregoing exceptions by having equivalent circumstantial guarantees of trustworthiness, if the court determines that:

(a) the statement is offered as evidence of a material fact;

(b) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;

and

(c) the general purposes of these Rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

M.P.R.E. 805

Rule 805. Hearsay within Hearsay

Hearsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided in these Rules.

M.P.R.E. 806

Rule 806. Attacking and Supporting Credibility of Declarant

When a hearsay statement, or a statement defined in Rule 801(d)(2), (c), (d), or (e), has been admitted in evidence, the credibility of the declarant may be attacked, and if attacked may be supported, by any evidence which would be admissible for those purposes if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with the declarant's hearsay statement, is not subject to any requirement that the declarant may have been afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant as a witness, the party is entitled to examine the declarant on the statement as if under cross-examination.

M.P.R.E. 901

Rule 901. Requirement of Authentication or Identification

a. General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

b. Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this Rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(2) Non-expert Opinion on Handwriting. Non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of the litigation.

(3) Comparison by Trier or Expert Witness. Comparison by the trier of fact or by expert witnesses with specimens which have been authenticated.

(4) Distinctive Characteristics and the Like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.

(5) Voice Identification. Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

(6) Telephone Conversations. Telephone conversations, by evidence that a call was made to the number assigned at the time by the telephone company to a particular person or business, if:

(a) in the case of a person, circumstances, including self-identification, show the person answering to be the one called; or

(b) in the case of a business, the call was made to a place of business and the conversation related to business reasonably transacted over the telephone.

(7) Public Records or Reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient Documents or Data Compilations. Evidence that a document or data compilation, in any form:

(a) is in such condition as to create no suspicion concerning its authenticity;

(b) was in a place where it, if authentic, would likely be; and

(c) has been in existence 20 years or more at the time it is offered.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods Provided by Resolution or Rule. Any method of authentication or identification provided by Resolution of the Mashantucket Pequot Tribal Council or by other rules prescribed by this Court.

M.P.R.E. 902

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

a. Domestic Public Documents Under Seal. A document bearing a seal purporting to be that of the United States, or of any state, Indian tribe or nation, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

b. Domestic Public Documents Not Under Seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in paragraph (a) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

c. Foreign Public Documents. A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

(1) of the executing or attesting person; or

(2) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

d. Certified Copies of Public Records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded of filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (a), (b), or (c) of this Rule or complying with any Resolution of the Mashantucket Pequot Tribal Council, law of the United States or law of the state of Connecticut.

e. Official Publications. Books, pamphlets, or other publications purporting to be issued by public authority.

f. Newspapers and Periodicals. Printed materials purporting to be newspapers or periodicals.

g. Trade Inscriptions and the Like. Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

h. Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in a manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

i. Commercial Paper and Related Documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

j. Presumptions Created by Law. Any signature, document, or other matter declared by any law of the Mashantucket Pequot Tribe, of the United States or of the state of Connecticut to be presumptively or prima facia genuine or authentic.

M.P.R.E. 903

Rule 903. Subscribing Witness' Testimony Unnecessary

Except as provided by statute, testimony of a subscribing witness is not necessary to authenticate a writing.

M.P.R.E. 1001

Rule 1001. Definitions

For purposes of this Rule the following definitions are applicable:

a. Writings and Recordings. "Writings" and "recordings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photocopying, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.

b. Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

c. Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original".

d. Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by

chemical reproduction, or by other equivalent techniques which accurately reproduces the original.

M.P.R.E. 1002

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these Rules or by Mashantucket Pequot Tribal Law.

M.P.R.E. 1003

Rule 1003. Admissibility of Duplicates

A duplicate, executed at the same time as the original, is admissible to the same extent as an original unless:

a. a genuine question is raised as to the authenticity of the original; or

b. in the circumstances it would be unfair to admit the duplicate in lieu of the original.

M.P.R.E. 1004

Rule 1004. Admissibility of other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

a. Originals Lost or Destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; or

b. Original Not Obtainable. No original can be obtained by any available judicial process or procedure; or

c. Original in Possession of Opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be subject of proof at the hearing, and that party does not produce the original at the hearing; or

d. Collateral Matters. The writing, recording, or photograph is not closely related to a controlling issue.

M.P.R.E. 1005

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilation in any form, if otherwise admissible, may be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy which complies with the foregoing cannot be obtained by the exercise of reasonable diligence, then other evidence of the contents may be given.

M.P.R.E. 1006

Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at reasonable time and place. The court may order that they be produced in court.

M.P.R.E. 1007

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by that party's written admission, without accounting for the nonproduction of the original.

M.P.R.E. 1008

Rule 1008. Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs under these Rules depends upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is ordinarily for the court to determine in accordance with the provisions of Rule 104. However, when an issue is raised:

a. whether the asserted writing ever existed;

b. whether another writing, recording, or photograph produced at the trial is the original; or

c. whether other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine as in the case of other issues of fact.

M.P.R.E. 1101

Rule 1101. Applicability of Rules

a. Rules Applicable. Except as otherwise provided in subdivision (b), these Rules apply to all actions and proceedings in the Mashantucket Pequot Court of Appeals, the Mashantucket Pequot Tribal Court and before the magistrates of the Mashantucket Pequot Tribe.

b. Rules Inapplicable. The Rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence except as otherwise provided in Rule 104.

(2) Miscellaneous Proceedings. Proceedings for sentencing; issuance of warrants; proceedings with respect to release on bail or otherwise; proceedings for granting of probation or parole; proceedings on probation or parole violations; proceedings for determination of probable cause; proceedings for juvenile detention; and extradition matters.

(3) Contempt Proceedings. Those contempt proceedings in which the court may act summarily.

M.P.R.E. 1102

Rule 1102. Title and Citation

These Rules may be known and cited as the MASHANTUCKET PEQUOT RULES OF EVIDENCE. The official abbreviated citation form to these Rules is: M.P.R.E.

M.P.R.E. 1103

Rule 1103. Amendments

Amendments to the MASHANTUCKET PEQUOT RULES OF EVIDENCE may be made as provided in tribal law and these Rules.

M.P.R.E. 1104

Rule 1104. Repeal of Inconsistent Laws

Any provisions in the general laws of the Mashantucket Pequot Tribe which are inconsistent with the provisions of these Rules are repealed; provided, however, that nothing contained in these Rules shall be deemed to repeal provisions in the general laws which provide for the confidentiality of records.

M.P.R.E. 1105

Rule 1105. Effective Date

These Rules shall apply to all trials, hearings and depositions occurring on or after the effective date adopted by the Mashantucket Pequot Tribal Council. Any subsequent amendments shall be effective upon adoption by the Mashantucket Pequot Tribal Council.

MASHANTUCKET PEQUOT RULES OF APPELLATE PROCEDURE

Refs & Annos

M.P.R.A.P. 1

Rule 1. Scope of Rules

a. These Rules govern procedure in appeals to the Mashantucket Pequot Court of Appeals ("Appellate Court") from any final judgment of the Mashantucket Pequot Tribal Court ("tribal court").

b. Any procedure, issue, question or other matter not covered by these Rules shall be governed by the federal Rules of Appellate Procedure (1994).

M.P.R.A.P. 2

Rule 2. Right of Appeal

a. Any aggrieved party may appeal from a final judgment of the tribal court. A final judgment is one that disposes of all issues in the case.

b. Failure to file an appeal within the time limits imposed by Rule 3 shall result in the dismissal of the appeal.

c. Failure to follow any procedure required by these Rules, other than the timely filing of a notice of appeal, shall not affect the validity of the appeal, but is grounds only for such action as the appellate court deems appropriate, which may include dismissal of the appeal.

d. Appeals may be consolidated by order of the appellate court upon its own motion, or upon motion of a party, or by stipulation of the parties to the several appeals.

e. The Chief Judge may, on his or her own initiative or upon the motion of a party, order that the appeal be heard by a panel of three (3) Appellate Judges.

M.P.R.A.P. 3

Rule 3. The Notice of Appeal

a. A notice of appeal in a civil case shall be filed within 20 days of the filing of the final judgment of the tribal court. In a civil case, notice of the judgment shall be deemed to have issued when judgment is filed with the tribal court clerk. The tribal court clerk shall, on the same day that judgment is issued, send a copy of the judgment to each attorney of record.

b. A notice of appeal in a criminal case shall be filed within 20 days of the date sentence is pronounced.

c. The notice of appeal shall be filed in triplicate with the tribal court clerk accompanied by a certification that a copy has been served upon each counsel of record. The tribal court clerk shall endorse on the forms the date and time of filing, shall docket the appeal, and send one copy to the chief judge of the tribal court.

d. The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order of the trial court appealed from, and shall be signed by the appealing party or counsel. Form 1 in the Appendix of Forms is a suggested form of a notice of appeal.

M.P.R.A.P. 4

Rule 4. The Record on Appeal

The record on appeal shall consist of the original papers and exhibits filed in the tribal court, the docket entries, and the transcript of proceedings, if any. Any party to the appeal shall promptly order from the reporter a transcript of such parts of the proceedings deemed necessary for the appeal and shall pay for the costs of the transcript.

M.P.R.A.P. 5

Rule 5. The Briefs and Motion Papers—General Provisions

a. Briefs and all motion papers shall be printed or typewritten, with double spaced typing, on white 8 1/2″ by 11″ paper.

b. An original and four copies of each brief, any appendix, and any motion papers shall be filed with the tribal court clerk, accompanied by a certificate of service upon all counsel of record.

c. The front cover of each brief and appendix, if a separate document, shall contain the title of the case, the case number, the title of the document (e.g., Brief of Appellant, Brief of Appellee, Appendix); and the name,

address, and telephone number of the party's counsel.

d. The brief of the appellant shall not exceed 30 pages and shall be filed within 30 days after the filing of the notice of appeal.

e. The brief of the appellee shall not exceed 30 pages and shall be filed within 30 days after the filing of the appellant's brief.

f. The appellant may file a reply brief, not to exceed 15 pages, within 15 days after the filing the appellee's brief.

g. Where cases are consolidated or a joint appeal has been filed, the brief of the appellants and that of the appellees shall not exceed the page limitations specified above.

M.P.R.A.P. 6

Rule 6. Contents of the Briefs

The briefs shall contain under appropriate headings and in the order indicated:

a. A table of contents with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited;

b. A statement of the nature of the proceedings and of the facts of the case;

c. A list or statement of the issues presented for review;

d. The argument, divided under appropriate headings into as many parts as there are points to be presented; and

e. A short conclusion stating the precise relief sought.

M.P.R.A.P. 7

Rule 7. Appendices

No appendix is required. However, an appendix may be used to excerpt lengthy exhibits or quotations from transcripts or to set forth any other parts of the record to which the parties wish to direct the particular attention to the appellate court.

M.P.R.A.P. 8

Rule 8. Preargument Conference

a. Prior to the date set for the oral argument, the tribal court clerk shall

schedule a preargument conference between counsel and, in appropriate cases, the parties, and an appellate court judge who shall not be assigned to hear oral argument and decide the appeal.

b. The purposes of the preargument conference are: to consider the simplification of the issues at oral argument; to take any appropriate action to aid the proceedings at oral argument or the disposition of the case on appeal; and to determine whether the case can be resolved prior to oral argument.

c. Except to the extent agreed upon by all parties to the appeal, the proceedings at the preargument conference shall be deemed confidential and shall be brought to the attention of the appellate court judge who will hear and decide the appeal.

d. With the consent of all parties, the preargument conference may be held via conference call or videoconferencing upon rules established by the Appellate Court.

e. Failure of counsel to attend the preargument conference may result in sanctions, including costs and payment of attorney's fees to the opposing party; the prohibition against appearing in any case before the Mashantucket Pequot Court System; or other appropriate discipline.

M.P.R.A.P. 9

Rule 9. Oral Argument

a. Cases will be considered ready for oral argument when the briefs of all parties, including reply briefs, have been filed or the time for filing reply briefs has expired.

b. With the consent of all parties, the oral argument may be held via videoconferencing upon rules established by the Appellate Court.

c. Counsel for the appellant will be entitled to open and close the argument.

d. The time occupied in the argument shall not, without leave of the appellate court, exceed one half hour on each side.

M.P.R.A.P. 10

Rule 10. Motions

a. Once an appeal has been filed, the time provided for taking any step necessary to prosecute or defend the appeal may be extended by an appellate court judge.

b. Extensions shall be granted only upon written motion filed with the tribal

court clerk. The motion shall specify the reason for the requested extension and shall also include a statement as to whether the opposing party consents or objects to the motion. Extensions are not favored and shall be granted only upon a showing of good cause.

c. An opposing party who objects to a motion shall file with the tribal court clerk an objection with reasons in support thereof within seven days from the filing of the motion.

M.P.R.A.P. 11

Rule 11. Costs, Fees, Appointment of Counsel in Criminal Cases

a. At the time of filing the notice of appeal, the appellant shall pay to the tribal court clerk the sum of $125.00 as a filing fee.

b. If a party is indigent and desires to appeal, that party may file a notice of appeal accompanied by a statement under oath reciting facts demonstrating the inability to pay the filing fee. Under these circumstances, the filing fee will be waived.

c. In criminal cases, an indigent party may also file a motion for an order from an appellate court judge that the necessary expenses of prosecuting the appeal be paid by the Mashantucket Pequot Tribe and for appointment of appellate counsel.

M.P.R.A.P. 12

Rule 12. Decisions on Appeal

Decision of the appellate court shall be issued within 45 days from the date of oral argument.

M.P.R.A.P. 13

Rule 13. Reargument

A case decided by one judge of the Appellate Court, may be reargued before a panel of three (3) judges, if on motion of a party three (3) Appellate Court judges agree, or *sua sponte* by the Court with three (3) Appellate Court judges agreeing to such reargument. Unless the time is shortened or extended by court order, a motion for panel rehearing must be filed within fourteen (14) days after entry of judgment.

M.P.R.A.P. 14

Rule 14. General Provisions

a. Filing. If papers must be filed by a certain date, the document must be received by the tribal court clerk by the close of business on that date.

b. Service of Papers Required. All papers filed with the tribal court clerk shall contain a certification that a copy has been served on all other parties. Service on a party represented by counsel shall be made on counsel.

c. Manner of Service. Service may be personal or by mail. Service by mail is complete on mailing.

d. Day. Means a calendar day. When an action is required on a day when the office of the tribal court clerk is not open, the required action is due on the first day that the office of the tribal court clerk is open for business.

M.P.R.A.P. Form 1

Appendix of Forms. Form 1

NOTICE OF APPEAL TO THE MASHANTUCKET PEQUOT COURT OF APPEALS

Name of Appellant)

)

v.) NOTICE OF APPEAL

)

Name of Appellee)

Notice is hereby given that (Name of party taking the appeal) in the above named case hereby appeals to the Mashantucket Pequot Court of Appeals from the (order of judgment briefly described) entered in this action on the ___ day of _____, 19___.

(s) _____

Party or Counsel

_____

Date Signed

MASHANTUCKET PEQUOT CODE OF JUDICIAL CONDUCT

M.P.J.C. Preamble

Preamble

The Mashantucket Pequot Court System is based on the principle that an unbiased, fair and competent judiciary is essential to the administration of tribal justice. The purpose of the Mashantucket Pequot Code of Judicial Conduct is to encourage a spirit of equity toward persons brought before the courts of the Mashantucket Pequot Tribe and to ensure fundamental fairness and due process in all court proceedings.

The Code is intended to establish basic standards to govern the conduct of all Mashantucket Pequot tribal judges. The Code is not intended as an exhaustive guide to conduct. Judges should also be governed in their judicial and personal activities by general ethical standards. The Code is designed to provide standards for the regulation of judicial conduct through disciplinary proceedings where necessary.

The Code is to be applied consistently with applicable tribal laws, rules of court, decisional law, tribal tradition and custom, common sense and in the context of all relevant circumstances.

M.P.J.C. § 1

Section 1. Applicability of Code

Any person, whether or not an attorney, who is an officer of the Mashantucket Pequot Court System and is performing judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below:

a. Part-time judges. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by tribal law to devote time to some other profession or occupation. A part-time judge:

(1) is required to comply with this Code unless otherwise specifically exempted;

(2) shall not practice law either as an attorney or an advocate:

(a) in the Mashantucket Pequot Tribal Court; or

(b) in the Mashantucket Pequot Court of Appeals;

(3) shall not act as an attorney or advocate in a proceeding in which he or she has served as judge or in any related proceeding.

b. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge pro tempore includes a Judge of the Mashantucket Pequot Court of Appeals temporarily serving as Judge of the Mashantucket Pequot Tribal Court. A judge pro tempore:

(1) is required to comply with this Code unless otherwise specifically exempted; and

(2) shall not appear as an attorney or advocate in a proceeding in which he or she has served as a judge or in related proceedings.

Section 2

Section 2. Canons

M.P.J.C. § 2, Canon 1

CANON 1

A judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is essential to justice in the Mashantucket Pequot tribal community. A Mashantucket Pequot tribal judge should help create and maintain such a judiciary, and should observe high standards of conduct toward achieving this goal.

A judge shall maintain a separation between the judicial branch and other branches of tribal government, and shall avoid any contact or duty that violates such a separation.

A judge shall not serve as an elected governmental official of the Mashantucket Pequot Tribe.

M.P.J.C. § 2, Canon 2

CANON 2

A judge shall avoid impropriety and the appearance of impropriety in all of his or her activities.

A judge shall respect and comply with the laws, traditions and customs of the Mashantucket Pequot Tribe and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Mashantucket Pequot judiciary.

A judge shall not allow family, social or other personal relationships to influence his or her judicial conduct. He or she shall not attempt to use the prestige of his or her judicial office to advance the private interests of others nor shall he or she convey the impression that anyone has special influence on him or her as judge.

M.P.J.C. § 2, Canon 3

CANON 3

A judge shall perform the duties of the office impartially and diligently. The judicial duties of a judge shall take precedence over all other activities. The judicial duties of the judge include all the duties of the office prescribed by Mashantucket Pequot Tribal Law. In the performance of these, the following standards apply:

a. Adjudicative responsibilities:

(1) A judge shall adhere to the laws, traditions and customs of the Mashantucket Pequot Tribe. He or she shall not be swayed by partisan interests, public clamor, political pressure, or fear of criticism and shall resist influences on the court by other tribal officials, governmental officials or any others attempting to improperly influence the judge.

(2) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, attorneys, advocates and others with whom he or she deals in his or her official capacity and should require similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.

(3) A judge shall give to every person who is legally interested in a proceeding, or his or her legal counsel, a full right to be heard according to tribal law.

(4) A judge shall refrain from all out-of-court or other communications with parties, witnesses, tribal officials, agents or others concerning a pending proceeding unless all parties to the proceedings are present or represented. A judge may initiate or consider any ex parte communication when expressly authorized by law.

A judge may, however, obtain the advice of a disinterested expert on federal, state or tribal law, custom or tradition or on other sources of law applicable to a proceeding before the Court if the request for advice is limited to points of law or tradition or custom or on other sources of law applicable to a proceeding before the court and does not involve the particular merits of the case. The parties shall be given a reasonable opportunity to respond to information provided by the expert.

(5) A judge shall maintain order in the court. He or she shall not interfere in the proceedings except where necessary to protect the rights of the parties or the dignity of the court. A judge shall not act as an advocate. A judge shall rely only on those procedures which are prescribed by, or are consistent with, the laws, rules, traditions or customs of the Mashantucket Pequot Tribe.

(6) A judge shall dispose promptly of the business of the court.

(7) A judge shall not comment publicly on any proceeding pending in court and shall also prohibit other court personnel from making such public comment.

b. Administrative Responsibilities:

(1) A judge shall discharge the judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial administration. A judge should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall diligently discharge the judge's administrative responsibilities in an efficient and expeditious manner.

(3) A judge shall require his or her staff and court officials to observe high standards of honesty and diligence.

(4) A judge shall take appropriate disciplinary actions against an attorney or advocate for unprofessional conduct of which the judge may become aware. A judge having knowledge that another judge has committed a violation of this Code shall inform the Judicial Conduct Review Board.

c. Disqualification.

(1) A judge shall disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds of disqualification.

(2) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including instances where:

(a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;

(b) the judge served as attorney, advocate or personal representative in the matter before the court, or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;

(c) the judge knows that he or she individually (or any member of the judge's family) has a financial interest in the subject matter in controversy or in a party to the proceeding, or has any other interest that could be substantially affected by the proceedings;

(d) the judge, his or her spouse, or a person in reasonably close family relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as an attorney or advocate in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

d. Alternatives to Disqualification.

(1) A judge disqualified by the terms of Canon 3(c)(2)(c) or Canon 3(c)(2)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his qualification. If based on such disclosure, the parties and attorneys, independently of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge is no longer disqualified, and may participate in proceeding. The agreement, signed by all parties and attorneys, shall be incorporated in the record of the proceeding.

(2) A judge may decline to disqualify himself or herself in any proceeding in which disqualification might otherwise be required under subsections (1) or (2) of this Section, if no other judge is available and disqualification will result in a failure of justice. In such a case, the judge shall disclose on the record the basis for disqualification and shall thereafter disqualify himself or herself if at any time it is possible to transfer the proceeding to another judge without a failure of justice.

M.P.J.C. § 2, Canon 4

CANON 4

A judge may engage in activities to improve the law, the legal system and the administration of justice.

A judge may engage in the following activities, if in doing so, he or she does not cast doubt on his or her capacity to decide impartially any issue that may come before the court:

a. The judge may speak, write, lecture, teach and participate in other activities concerning tribal law, tradition and custom, the legal system of the Mashantucket Pequot Tribe and the administration of justice.

b. The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal judiciary system and the administration of justice, and he or she may otherwise consult with a tribal or executive or legislative body or official but only on matters concerning the general administration of justice or the improvement of the law or the legal system.

M.P.J.C. § 2, Canon 5

CANON 5

A judge shall regulate his or her extra-judicial activities to minimize the

risk of conflict with judicial duties.

a. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

b. Avocational Activities.

(1) A judge may write, lecture, teach and speak on legal and non-legal subjects, and engage in the arts, sports and other social and recreational activities of the Mashantucket Pequot Tribe or elsewhere if these activities do not interfere with the performance of his or her duties.

(2) No judge shall engage in any form of gaming, of any kind (including charitable games), at the Foxwoods Resort Casino operated by the Mashantucket Pequot Gaming Enterprise. Nothing herein shall preclude judges from utilizing other amenities at Foxwoods, including, but not limited to, restaurants, shops, shows, banquet facilities, or hotel accommodations, provided such utilization does not otherwise violate this Code.

c. Civic and Charitable Activities.

(1) A judge may participate in civic, charitable and other tribal activities that do not reflect upon his or her impartiality or interfere with the performance of his or her judicial duties. A judge may participate in any tribal educational, religious, charitable or similar organization. A judge shall not participate in any activity if it is likely that the organization will be involved in proceedings which would ordinarily come before him or her or will be involved in adversary proceedings in either the Mashantucket Pequot Tribal Court or the Mashantucket Pequot Court of Appeals.

(2) A judge shall not use or permit the use of the prestige of judicial office for political fund-raising or membership solicitation. A judge should not be a speaker or the guest of honor at an event held primarily for political fund-raising, but a judge may attend such events.

d. Financial Activities.

(1) A judge should avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her judicial duties, exploit his or her judicial position or involve him or her in frequent transactions with attorneys or others likely to come before the court on which he or she serves.

(2) Except as allowed by the laws and traditions of the Mashantucket Pequot Tribe, neither a judge nor a member of his or her family should accept a gift,

bequest, favor or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings, or on the judge's appearance of fairness. A judge may accept:

(a) a gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) ordinary social hospitality;

(c) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate to the occasion and the relationship;

(d) a gift, bequest, favor or loan from a relative or friend, if the relative or friend is one whose appearance or interest in a case would in any event require the disqualification of the judge under Canon 3(c);

(e) a loan from a lending institution in its regular course of business on the same terms and based on the criteria applied to other applicants; or

(f) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

(3) A judge may receive income, honoraria and reimbursement of expenses attributable to the extra-judicial activities permitted by this Code, if the source of payments does not give the appearance of impropriety.

(a) Income and honoraria shall not exceed a reasonable amount nor shall they exceed what a person who is not a judge would receive as a result of the same activity.

(b) Expense and reimbursement or payment shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount shall be treated as an honorarium.

e. Extra-judicial appointments. Unless allowed by tribal law or tradition, a judge should not accept appointment to any tribal government entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal justice system or the administration of justice. A judge, however, may represent the Mashantucket Pequot Tribe on ceremonial occasions or in connection with historical, educational and cultural activities.

M.P.J.C. § 2, Canon 6

CANON 6

A judge shall refrain from political activity inappropriate to his or her judicial office.

Unless authorized by tribal law or tradition, a judge shall not engage in any tribal political activity except on behalf of measures to improve the law, the tribal justice system or the administration of justice.

M.P.J.C. § 3

Section 3. Discipline and Removal of Judges

In order to ensure compliance with the provisions of this Code, it is necessary to establish a means of enforcement. The disciplinary procedures contained within the Code shall not be utilized in substitution for the judicial appeal process. The Judicial Conduct Review Board is the entity charged herein with the responsibility of reviewing complaints made against judges of the Mashantucket Pequot Tribe. The board is comprised of a broad range of persons and is designed to allow for participation in decision-making by both legal professionals and tribal community members.

a. Filing of Complaints. Complaints filed against a judge shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the chief court clerk, who shall assign a docket number, and acknowledge receipt of the complaint. Upon receipt of such a complaint, the clerk shall immediately notify the Judicial Conduct Review Board.

b. Judicial Conduct Review Board. It is hereby established the Judicial Conduct Review Board which has the authority to hear complaints concerning the conduct of judges, to recommend disciplinary actions against them, and/or to recommend their removal from the Mashantucket Pequot judiciary if warranted, after a fair hearing.

c. Board Composition. The board shall consist of one judge of the court of appeals; the chief judge of the Mashantucket Pequot Tribal Court, or one other tribal court judge in the event that the chief judge is the subject of the board's focus; one member of the Mashantucket Pequot Tribal Bar chosen randomly by the court clerk; and the chair and vice-chair of the Mashantucket Pequot Judicial Committee, or the designee of the chair or vice-chair of the Mashantucket Pequot Judicial Committee so long as such designee is a member of the Mashantucket Pequot Judicial Committee. The judge of the Mashantucket Pequot Court of Appeals shall serve as chairperson for the Board and shall have the right to vote in all decisions of the board.

No person shall serve on the board if that person has reason to believe that he or she could not act with complete impartiality or if such person's impartiality might be reasonably questioned. No action shall be taken by the board except by vote of a majority of the Board and except as provided by subsections (m) and (n) herein.

d. Investigative Authority. The board shall conduct such investigation as it deems fit. At any stage of such an investigation the board shall have subpoena power and may require a person to appear or produce evidence before the board, and to provide evidence under oath. If the Board determines that the complaint is unfounded, the board shall dismiss the matter, notifying any complainant of its action.

e. Confidentiality. All proceedings before the board shall be confidential, and no information shall be published by the board except:

(1) Upon written request of the Mashantucket Pequot Tribal Council in connection with the consideration of the appointment or reappointment of a person who is or has been a Mashantucket Pequot judge, the board shall provide information on any complaints made against the judicial candidate and the board's disposition thereof; and

(2) Upon request of the person whose conduct is being investigated, or by a majority vote of the Board, after giving that person an opportunity to express his or her views on the question, any hearing held shall be public.

f. Determination to Proceed. The board shall meet at the Mashantucket Pequot courthouse on a day not more than 15 days after the filing of the complaint. The board shall consider each complaint received to determine whether it is within the board's authority to hear:

(1) If the board is unable to make that determination, it may request additional information;

(2) If the board determines that the complaint is not a type within its authority, it shall dismiss the complaint, notify in writing the complainant of its decision, and notify the judge complained against of the nature of the complaint and the board's decision;

(3) If the board determines that a complaint is within its authority to hear, it shall communicate the complaint to the judge complained against by providing him or her with a copy of the complaint and shall request a written response. The board may conduct such investigation of the matter as it deems appropriate. If the board determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for proceeding, it shall dismiss the complaint and notify the complainant and the judge complained against of its decision; or

(4) The dismissal of the complaint does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the board under these Rules. A dismissed complaint may be reconsidered if new information is received upon the basis of which the board determines that such reconsideration is necessary to fulfill the purposes of the disciplinary process.

g. Hearings. The board shall hold a hearing at the request of a majority of its members or of the individual whose conduct is being investigated. Such

hearing shall be had before the board on the record. The board shall have subpoena power and every witness shall be sworn.

h. Rights of the Judge. The judge shall be entitled to be present at the hearing, to be represented by counsel at the judge's own expense, to introduce evidence, to examine and cross-examine witnesses, and to subpoena documents and witnesses.

i. Written Notice. The board shall issue to the judge a written notice containing a statement of alleged misconduct, including any section of the Mashantucket Pequot Code of Judicial Conduct or oath taken upon admittance to office alleged to have been violated, or other alleged disability. The notice shall state alleged facts upon which such charges are based. The board shall make available to the judge all information concerning such charges as the board has acquired.

j. Response to Notice. Within 20 days after receipt of notice, the judge shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which he or she intends to rely at the hearing.

k. Discovery. Discovery shall be allowed under the board's direction upon request to and with the approval of the Board.

l. Evidence. The Mashantucket Pequot Rules of Evidence shall guide evidentiary matters.

m. Board Decision. After hearing a matter, the board shall decide whether it is satisfied by clear and convincing evidence that:

(1) The judge has violated a provision of the Mashantucket Pequot Code of Judicial Conduct and that the violation is of such serious nature as to warrant formal disciplinary action; or

(2) The judge has been convicted of a crime the nature of which casts into doubt his or her continued willingness to conform his or her conduct to the Mashantucket Pequot Code of Judicial Conduct; or

(3) The judge is suffering from a disability which materially affects his or her ability to perform his or her duties.

n. Board Findings and Actions. The board shall make findings of fact and conclusions of law in its written decision. The decision of the board shall be by unanimous vote. If the board decides that a charge has not been established, it shall dismiss the matter and provide written notice to both the judge complained against and any complainant. If the board has decided that a charge has been established, it shall report its written decision to both the judge and the complainant and promptly recommend to the Mashantucket Pequot Tribal Council appropriate disciplinary action.

M.P.J.C. § 4

Section 4. Miscellaneous

a. Title and Citation. This Code may be known and cited as the MASHANTUCKET PEQUOT CODE OF JUDICIAL CONDUCT. The official abbreviated form to this Code is M.P.J.C.

b. Repeal of Inconsistent Laws. Any provisions in the general laws of the Mashantucket Pequot Tribe which are inconsistent with the provisions of this Code are hereby repealed.

c. Effective Date. This Code shall be effective on the date said Code is adopted by the Mashantucket Pequot Tribal Council.

d. Amendments. Amendments to this Code shall be effective upon adoption by the Mashantucket Pequot Tribal Council.

MASHANTUCKET PEQUOT RULES OF LEGAL COUNSEL CONDUCT

M.P.L.C.C. Preamble

Preamble

Pursuant to 1 M.P.T.L. ch. 1, § 14, it is the duty of the judges of the Mashantucket Pequot Court System to "administer justice in all matters within the court's jurisdiction." It is essential to the respect and authority of the Mashantucket Pequot judicial system that its tribal bar members observe standards of ethics which will insure the fair and attentive representation of all persons with cause to come before its courts. The Mashantucket Pequot Rules of Legal Counsel Conduct establish minimum ethical standards of conduct whose observance is required of all legal counsel who undertake to represent persons before the courts of the Mashantucket Pequot Tribe. Therefore, in accordance with 1 M.P.T.L. ch. 1, § 14, the Judges of the Mashantucket Pequot Tribal Court hereby adopt the Mashantucket Pequot Rules of Legal Counsel Conduct.

M.P.L.C.C. Intro.

Introduction

These Rules govern the practice of law by attorneys, lay advocates and advocates before the courts of the Mashantucket Pequot Tribe and with respect to their professional conduct as officers of the court. Any attorney, lay advocate or advocate admitted to, or engaging in the practice of law before the courts of the Mashantucket Pequot Tribe shall be subject to the court's supervision and disciplinary jurisdiction and the provisions of these Rules. These Rules are intended to provide appropriate standards for attorneys, lay advocates and advocates with respect to their practice of law including, but not limited to their relationship with their clients, the general public, other

members of the legal profession, and the courts and agencies of the Mashantucket Pequot Tribe.

A proceeding brought against an attorney or advocate under these Rules shall be an inquiry to determine the fitness of an officer of the court to continue in that capacity. The purpose of such proceeding is not punishment, but protection of the public and the courts from attorneys or advocates who by their conduct have demonstrated that they are unable, or likely to be unable, to discharge properly their professional duties. Further, these Rules are intended to provide for a just determination of complaints alleging misconduct on the part of attorneys or advocates and misunderstandings between legal counsel and their clients. These Rules shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense, delay and inconvenience.

M.P.L.C.C. § 1

§ 1. Admission to Practice

a. Unauthorized Practice. No person shall undertake legal representation of a matter within the jurisdiction of the courts of the Mashantucket Pequot Tribe without first being admitted to practice before said courts. No member of the Mashantucket Pequot tribal bar shall aid any person or entity in the unauthorized practice of law.

b. Qualifications.

(1) Attorneys. A person who is admitted to practice before the highest court of any state of the United States is eligible for admission to practice before the courts of the Mashantucket Pequot Tribe so long as such attorney:

(a) completes and files, with the applicable fee, an application approved by the chief judge of the Mashantucket Pequot Tribal Court;

(b) is in good standing in all jurisdictions in which the attorney is admitted to practice;

(c) certifies that he or she has read and understood these Rules in their entirety;

(d) has not been convicted in any court of a felony within the 10 years prior to the date of the attorney's application;

(e) earns a passing score on the bar examination administered by the chief judge of the Mashantucket Pequot Tribal Court; and

(f) appears before the tribal court and makes oath to uphold all Mashantucket Pequot tribal laws, ordinances, rules of courts and procedures.

(2) Lay Advocates. A member of the Mashantucket Pequot Tribe, who is not an

attorney, may be admitted to practice before the courts of the Mashantucket Pequot Tribe so long as such tribal member:

(a) completes and files an application approved by the chief judge of the Mashantucket Pequot Tribal Court;

(b) has not been convicted in any court of a felony;

(c) certifies that he or she has read and understood these Rules in their entirety;

(d) earns a passing score on the bar examination administered by the chief judge of the Mashantucket Pequot Tribal Court; and

(e) appears before the tribal court and makes oath to uphold all Mashantucket Pequot tribal laws, ordinances, rules and procedures.

(3) Advocate. The chief judge of the tribal court, in his or her discretion, may admit any other person to appear before the courts of the Mashantucket Pequot Tribe so long as such person:

(a) completes and files, with the applicable fee, an application approved by the chief judge of the Mashantucket Pequot Tribal Court;

(b) has not been convicted in any court of a felony;

(c) has not been disbarred by any jurisdiction;

(d) is not under suspension from the practice of law by any jurisdiction;

(e) certifies that he or she has read and understood these Rules in their entirety;

(f) earns a passing score on the bar examination administered by the chief judge of the Mashantucket Pequot Tribal Court; and

(g) Appears before the tribal court and makes oath to uphold all Mashantucket Pequot Tribal Laws, ordinances, rules of courts and procedures.

c. Misstatements on Admission. In connection with a person's application for admission to the tribal bar, such person shall not make any statement which the person knows or should know is false and misleading, nor shall the person fail to disclose any fact or information which the person knows or should know is material to such application.

M.P.L.C.C. § 2

§ 2. Rules of Conduct

All legal counsel admitted to practice pursuant to Section 1 herein shall be

specifically subject to these Rules.

M.P.L.C.C. § 2, Rule 1

Rule 1. Definitions. The Following Definitions Shall Apply to these Rules

a. "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

b. "Consult" or "consultation" denotes communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question.

c. "Firm" or "law firm" denotes a legal counsel or legal counsels in a private firm, legal counsels employed in the legal department of a corporation or other organization and legal counsels employed in legal services organization or for public or tribal agencies.

d. "Fraud" or "fraudulent" denotes conduct having the purpose to deceive and not merely negligent misrepresentation or failure to apprise another of relevant information.

e. "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

f. "Legal counsel" denotes an attorney, lay advocate or advocate admitted to practice before the courts of the Mashantucket Pequot Tribe.

g. "Partner" denotes a member of a partnership and a shareholder in a law firm organized as a professional corporation.

h. "Reasonable" or "reasonably" when used in relation to conduct by legal counsel denotes the conduct of a reasonably prudent and competent legal counsel.

i. "Reasonable belief" or "reasonably believes" when used in reference to legal counsel denotes that legal counsel believes the matter in question and that the circumstances are such that the belief is reasonable.

j. "Reasonably should know" when used in reference to legal counsel denotes that legal counsel of reasonable prudence and competence would ascertain the matter in question.

k. "Substantial" when used in reference to degree or extent denotes a material of clear and weighty importance.

M.P.L.C.C. § 2, Rule 2

Rule 2. Competence

a. Legal counsel shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. Legal counsel shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, legal counsel shall abide by the client's decision, after consultation with legal counsel, as to a plea to be entered, whether to request a jury trial and whether the client will testify.

b. Legal counsel's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

c. Legal counsel may limit the objectives of the representation if the client consents after consultation.

d. Legal counsel shall not counsel a client to engage, or assist a client, in conduct that legal counsel knows is criminal or fraudulent, but legal counsel may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

e. When legal counsel knows that a client expects assistance not permitted by the rules of professional conduct or other law, legal counsel shall consult with the client regarding the relevant limitations on legal counsel's conduct.

M.P.L.C.C. § 2, Rule 3

Rule 3. Diligence

Legal counsel shall act with reasonable diligence and promptness in representing a client.

M.P.L.C.C. § 2, Rule 4

Rule 4. Communication

a. Legal counsel shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

b. Legal counsel shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

M.P.L.C.C. § 2, Rule 5

Rule 5. Confidentiality of Information

a. Legal counsel shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation, and except as stated in paragraphs (b), (c), and (d).

b. Legal counsel shall reveal such information to the extent legal counsel reasonably believes necessary to prevent the client from committing a criminal act that legal counsel believe is likely to result in death or substantial bodily harm.

c. Legal counsel may reveal such information to the extent legal counsel reasonably believes necessary to:

(1) prevent the client from committing a criminal act that legal counsel believes is likely to result in substantial injury to the financial property or interest or property of another;

(2) rectify the consequences of a client's criminal or fraudulent act in the commission of which legal counsel's services had been used.

d. Legal counsel may reveal such information to establish a claim or defense on behalf of legal counsel in a controversy between legal counsel and the client, to establish a defense to a criminal charge or civil claim against legal counsel based upon conduct in which the client was involved, or to respond to allegation in any proceeding concerning legal counsel's representation of the client.

M.P.L.C.C. § 2, Rule 6.1

Rule 6.1. Conflict of Interest: General Rule

a. Legal counsel shall not represent a client if the representation of that client will be directly adverse to another, unless:

(1) legal counsel reasonably believes the representations will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

b. Legal counsel shall not represent a client if the representation of that client may be materially limited by legal counsel's responsibilities to another client or to a third person, or by legal counsel's own interests, unless:

(1) legal counsel reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

Rule 6.2. Conflict of Interest: Prohibited Transaction

a. Legal counsel shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which legal counsel acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;

(2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(3) the client consents in writing thereto.

b. Legal counsel shall not use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation.

c. Legal counsel shall not prepare an instrument giving legal counsel or a person related to legal counsel as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donor.

d. Prior to the conclusion of representation of a client, legal counsel shall not make or negotiate an agreement giving legal counsel literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

e. Legal counsel shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) legal counsel may advance court costs and expenses of litigation, provided the client remains ultimately responsible for such expenses; or

(2) legal counsel representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

f. Legal counsel shall not accept compensation for representing a client from one other than the client unless:

(1) the client consents in writing after consultation;

(2) there is no interference with legal counsel's independence of professional judgment or with the client-legal counsel relationship; and

(3) information relating to representation of a client is protected as required by Rule 5.

g. Legal counsel who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents in writing after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

h. Legal counsel shall not make an agreement prospectively limiting legal counsel's liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.

i. Legal counsel related to another legal counsel as a parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who legal counsel knows is represented by the other legal counsel except upon written consent by the client after consultation regarding the relationship.

j. Legal counsel shall not acquire a proprietary interest in the cause of action or subject matter of litigation legal counsel is conducting for client, except that legal counsel may:

(1) acquire a lien granted by law to secure legal counsel's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

M.P.L.C.C. § 2, Rule 7

Rule 7. Declining or Terminating Representation

a. Except as stated in paragraph (c), legal counsel shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law;

(2) legal counsel's physical or mental condition materially impairs legal counsel's ability to represent the client; or

(3) legal counsel is discharged.

b. Except as stated in paragraph (c), a legal counsel may withdraw from representing a client if withdrawal can be accomplished without material

adverse effect to the interest of the client or if:

(1) the client persists in a course of action involving legal counsel's services that legal counsel reasonably believes is criminal or fraudulent;

(2) the client has used legal counsel's services to perpetrate a crime or fraud;

(3) the client insists upon pursuing an objective that legal counsel considers repugnant or imprudent;

(4) the client fails substantially to fulfill an obligation to legal counsel regarding legal counsel's services and has been given reasonable warning that legal counsel will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on legal counsel or has been rendered unreasonably difficult by the client; or

(6) other good cause for withdrawal exists.

c. When ordered to do so by the court, legal counsel shall continue representation notwithstanding good cause for terminating the representation.

d. Upon termination of representation, legal counsel shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. Legal counsel may retain papers relating to the client to the extent permitted by other law.

M.P.L.C.C. § 2, Rule 8

Rule 8. Advisor

In representing a client, legal counsel shall exercise independent professional judgment and render candid advice. In rendering advice, legal counsel may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation.

M.P.L.C.C. § 2, Rule 9

Rule 9. Meritorious Claims and Contentions

Legal counsel shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. Legal counsel, in a proceeding that could result in incarceration, may nevertheless so defend his or her client in the proceeding so as to require that each element of the case be established.

M.P.L.C.C. § 2, Rule 10

Rule 10. Expediting Litigation

Legal counsel shall make reasonable efforts to expedite litigation consistent with the interests of the client.

M.P.L.C.C. § 2, Rule 11

Rule 11. Candor Toward the Court

a. Legal counsel shall not knowingly:

(1) make a false statement of material fact or law to a court;

(2) fail to disclose a material fact to a court when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the court legal authority in the controlling jurisdiction known to legal counsel to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that legal counsel knows to be false. If legal counsel has offered material evidence and come to know of its falsity, legal counsel shall take reasonable remedial measures.

b. The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 5.

c. Legal counsel may refuse to offer evidence that legal counsel reasonably believes is false.

d. In an ex parte proceeding, legal counsel shall inform the court of all material facts known to legal counsel which will enable the court to make an informed decision, whether or not the facts are adverse.

M.P.L.C.C. § 2, Rule 12

Rule 12. Fairness to Opposing Party and Counsel

Legal counsel shall not:

a. Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. Legal counsel shall not counsel or assist another person to do any such act;

b. Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

c. Knowingly disobey an obligation under the rules of a court except for an open refusal based on an assertion that no valid obligation exists;

d. In pretrial procedure, make a frivolous discovery request or fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

e. In trial, allude to any matter that legal counsel does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

f. Request a person other than a client to refrain from voluntarily giving relevant information to another party unless;

(1) the person is a relative or an employee or other agent of a client; and

(2) legal counsel reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

g. Present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

M.P.L.C.C. § 2, Rule 13

Rule 13. Impartiality and Decorum of the Court

Legal counsel shall not:

a. Seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

b. Communicate ex parte with such a person except as permitted by law; or

c. Engage in conduct intended to disrupt the court.

M.P.L.C.C. § 2, Rule 14

Rule 14. Trial Publicity

a. Legal counsel shall not make any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if legal counsel know or reasonably should know that it will have a substantial

likelihood of materially prejudicing an adjudicative proceeding.

b. A statement referred to in paragraph (a) ordinarily is likely to have such an effect when it refers to a matter triable to a jury and the statement relates to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information legal counsel knows or reasonably should know is likely to be inadmissible as evidence in a trial and would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until proven guilty.

c. Notwithstanding paragraphs (a) and (b) (1–5), legal counsel involved in the investigation or litigation of a matter may state without elaboration:

(1) the general nature of the claim or defense;

(2) the information contained in a public record;

(3) that an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exist the likelihood of substantial harm to an individual or to the public interest; and

(7) In a criminal case:

(a) identity, residence, occupation and family status of the accused;

(b) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(c) the fact, time and place of arrest; and

(d) the identity of investigating and arresting officers or agencies and the length of the investigation.

M.P.L.C.C. § 2, Rule 15

Rule 15. Legal Counsel as Witness

Legal counsel shall not act as an advocate at a trial in which legal counsel is likely to be a necessary witness except where:

a. the testimony relates to an uncontested issue;

b. the testimony relates to the nature and value of legal services rendered in the case; or

c. disqualification of legal counsel would work substantial hardship on the client.

M.P.L.C.C. § 2, Rule 16

Rule 16. Special Responsibilities of a Tribal Prosecutor

The tribal prosecutor in a criminal case shall:

a. Refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

b. Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

c. Not seek to obtain from an unrepresented accused acceptance of a plea until said accused has been advised of the right to representation and important pretrial rights, such as the right to a probable cause determination by the court; and

d. Make timely disclosure to the defense of all evidence of information known to the prosecutor that tends to negate the guilt of the accused.

M.P.L.C.C. § 2, Rule 17

Rule 17. Truthfulness in Statements to Others

In the course of representing a client, legal counsel shall not knowingly;

a. Make a false statement of material fact or law to a third person; or

b. Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting in a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 5.

M.P.L.C.C. § 2, Rule 18

Rule 18. Communication with Person Represented by Counsel

In representing a client, legal counsel shall not communicate about the subject of the representation with a party legal counsel knows to be represented by another legal counsel in the matter, unless legal counsel has the written consent of the other legal counsel or is authorized by law to do so.

M.P.L.C.C. § 2, Rule 19

Rule 19. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a legal counsel shall not state or imply that legal counsel is disinterested, when legal counsel knows or reasonably should know that the unrepresented person misunderstands legal counsel's role in the matter. Legal counsel shall make reasonable efforts to correct the misunderstanding.

M.P.L.C.C. § 2, Rule 20

Rule 20. Respect for the Rights of Third Persons

In representing a client, legal counsel shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

M.P.L.C.C. § 2, Rule 21

Rule 21. Communications Concerning Services

Legal counsel shall not make any false or misleading statement about him or herself or about his or her services. A communication is false or misleading if it:

a. Contains a material misrepresentation of fact or law, or omits a fact

necessary to make the statement considered as a whole not materially misleading;

b. Is likely to create an unjustified expectation about the results legal counsel can achieve, or states or implies that legal counsel can achieve results by means that violate these rules or other law; or

c. Compares legal counsel's services with other legal counsel's services, unless the comparison can be factually substantiated.

M.P.L.C.C. § 2, Rule 22

Rule 22. Advertising

a. Legal counsel shall not initiate personal or live telephone contact, including telemarketing contact, with a prospective client for the purpose of obtaining professional employment, except in the following circumstances:

(1) if the prospective client is a close friend, relative, former client or one whom legal counsel reasonably believes to be a client;

(2) under the auspices of a public or charitable legal services organization; or

(3) if the prospective client is a business organization, a not-for-profit organization or governmental body and the lawyer seeks to provide services related to the organization.

b. Legal counsel shall not contact, or send a written communication to, a prospective client for the purpose of obtaining professional employment if:

(1) legal counsel knows or reasonably should know that the physical, emotional or mental health of the person is such that the person could not exercise reasonable judgment in employing legal counsel;

(2) it has been made known to legal counsel that the person does not want to receive communications from legal counsel;

(3) the communication involves coercion, duress, or harassment; or

(4) the written communication concerns a specific matter and legal counsel knows or reasonably should know that the person to whom the communication is directed is represented by legal counsel in the matter.

M.P.L.C.C. § 2, Rule 23

Rule 23. Bar Admission and Disciplinary

An applicant for admission to the bar, or legal counsel in connection with a

bar admission application or in connection with a disciplinary matter, shall not:

a. knowingly make a false statement of material fact; or

b. fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 5.

M.P.L.C.C. § 2, Rule 24

Rule 24. Statements

Legal counsel shall not make a statement that legal counsel knows to be false or with reckless disregard as to its truth or falsity concerning the qualification or integrity of a judge, peacemaker, adjudicatory officer, or of a candidate for appointment to judicial office.

M.P.L.C.C. § 2, Rule 25

Rule 25. Reporting Professional Misconduct

a. Legal counsel having knowledge that another legal counsel has committed a violation of these Rules that raises a substantial question as to that legal counsel's honesty, trustworthiness or fitness as legal counsel in other respects, shall inform the chief judge of the Mashantucket Pequot Tribal Court.

b. Legal counsel having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

c. This Rule does not require disclosure of information otherwise protected by Rule 5.

M.P.L.C.C. § 2, Rule 26

Rule 26. Misconduct

It is misconduct for legal counsel to:

a. violate or attempt to violate the Rules of Legal Counsel Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

b. commit a criminal act that reflects adversely on legal counsel's honesty, trustworthiness or fitness to serve as legal counsel in other respects;

c. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

d. engage in conduct that is prejudicial to the administration of justice;

e. state or imply an ability to influence improperly a government agency or official; or

f. knowingly assist a judge or judicial officer in conduct that is a violation of the Mashantucket Pequot Code of Judicial Conduct or other law.

M.P.L.C.C. § 2, Rule 27

Rule 27. Jurisdiction

Legal counsel, admitted to practice in this jurisdiction, are subject to the disciplinary authority of this jurisdiction although engaged in practice elsewhere.

M.P.L.C.C. § 3

§ 3. Disciplinary Procedures

M.P.L.C.C. § 3, Rule 28

Rule 28. Disciplinary Process

a. Any claimed violation of the Rules of Legal Counsel Conduct as set forth herein may be reported in writing to the chief judge of the Mashantucket Pequot Tribal Court, who shall then appoint, at the court's expense, a Special Tribal Bar Counsel to conduct an investigation into the matter within a reasonable time after receipt of such complaint.

b. Written notice of such complaint shall be provided to legal counsel against whom the complaint is filed. Legal counsel shall have a period of 15 days from the date of the notice within which to respond to the complaint.

c. The chief judge, in consultation with one other judge of the Mashantucket Pequot Tribal Court, shall determine whether or not there is probable cause to believe that a violation of the Rules of Legal Counsel Conduct has been committed. Such determination shall be made within 45 days of the date the legal counsel's response is due. Both the complainant and legal counsel shall receive written notice of such determination by the court, and the reasons therefore.

d. When a determination has been made that there is no probable cause that a violation of the Rules of Legal Counsel Conduct has been committed, the matter shall be closed, and shall be sealed until further order of the court.

e. When a determination has been made that there is probable cause that a

violation of the Rules of Legal Counsel Conduct has been committed, the Mashantucket Pequot Tribal Court shall conduct a hearing with a panel to consist of at least two judges of the court, one of said judges having not made the determination of probable cause. The Special Tribal Bar Counsel shall present the case against the legal counsel. The court shall provide notice of such hearing to all parties to the complaint, setting forth the date, time and place at which the hearing will be conducted. Such hearing shall be closed to the public and subject to the following:

(1) continuances may be granted in the discretion of the court for good cause shown;

(2) any motions filed in the matter shall be filed no later than seven days in advance of the date upon which the complaint is to be heard;

(3) any oral or documentary evidence may be received by the court as may be consistent with the Mashantucket Pequot Rules of Evidence, but the court shall exclude irrelevant, immaterial or unduly repetitious evidence;

(4) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(5) documentary evidence may be received in form of copies or excerpts if the original is not readily available. Upon reasonable and timely requests, the parties may be given an opportunity to compare the copy to the original;

(6) parties may be represented by legal counsel; and

(7) any of the parties or their legal counsel may conduct direct and cross-examination of witnesses.

f. After the close of the hearing, the court shall render its decision within 30 business days. Upon completion of the hearing and rendering of a decision, the matter shall be deemed conclusively determined.

g. The court shall have the power to take any of the following action with respect to legal counsel determined to have violated the Rules of Legal Counsel Conduct after hearing duly held:

(1) privately reprimand such legal counsel;

(2) publicly reprimand such legal counsel;

(3) impose monetary fines against such legal counsel;

(4) suspend legal counsel from practice before the courts of the Mashantucket Pequot Tribe for a definite period of time; or

(5) order the disbarment of legal counsel.

h. For any violation of these Rules occurring before the Mashantucket Pequot

Tribal Court or before the Mashantucket Pequot Court of Appeals, the judge observing such violation may take immediate action concerning such violation and shall then refer such matter to the other judicial officers of the Mashantucket Pequot Court System in accordance with the procedure set forth herein.

i. The chief judge shall transmit a certified copy of the order imposing discipline, except an order of private reprimand, on legal counsel resulting from the disciplinary proceedings herein to the disciplinary authority of any other jurisdiction in which the disciplined legal counsel is licensed or authorized to practice.

M.P.L.C.C. § 3, Rule 29

Rule 29. Reciprocal Discipline

a. Upon the receipt of a certified copy of an order that a legal counsel admitted to practice before the courts of the Mashantucket Pequot Tribe has been subject to discipline in another jurisdiction (including any tribal or federal court or any tribal, state or federal administrative body or agency), the Mashantucket Pequot Tribal Court shall enter an order of notice containing a copy of the order from the other jurisdiction and directing the respondent legal counsel to inform the Mashantucket Pequot Tribal Court within 30 days from service of the order of notice of any claim that the imposition of the identical discipline by the Mashantucket Pequot Tribal Court would be unwarranted and the reasons therefor. Special Tribal Bar Counsel appointed by the court shall cause this order of notice to be served upon the respondent legal counsel by registered or certified mail with restricted delivery and return receipt requested.

b. In the event that the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline to be imposed by the Mashantucket Pequot Tribal Court may, but need not, be deferred.

c. Upon the expiration of 30 days from service of the notice under subsection (a) above, the Court, after reasonable notice and hearing, may enter such order as the evidence warrants and may impose the identical discipline unless Special Tribal Bar Counsel or the respondent legal counsel established, or the Court concludes, that

(1) the procedure in the other jurisdiction did not provide reasonable notice or opportunity to be heard;

(2) there was significant infirmity of proof establishing the misconduct;

(3) imposition of the same discipline would result in grave injustice; or

(4) the misconduct established does not justify discipline under these Rules.

M.P.L.C.C. § 3, Rule 30

Rule 30. Conviction of Crimes

a. Upon notice of a legal counsel's conviction of a crime by any jurisdiction, the chief judge of the Mashantucket Pequot Tribal Court shall appoint a Special Tribal Bar Counsel to investigate the circumstances of said conviction. Upon the filing with the court by Special Tribal Bar Counsel of a certificate of the clerk of any court establishing that a legal counsel has been convicted of a crime demonstrating unfitness to engage in the practice of law, whether the conviction resulted from a plea of guilty or nolo contendre or from a verdict after a trial or otherwise, the court shall, if satisfied that the crime demonstrates unfitness to practice law, enter an order to show cause why legal counsel should not be immediately suspended from the practice of law, regardless of the pendency of an appeal of the conviction, pending final disposition of any disciplinary proceeding affording the legal counsel opportunity to be heard, may make such order of suspension as may be advisable in the interest of the tribal community and/or the public, the tribal bar and the court. The court may, in its discretion, choose to defer the hearing on the order to show cause until all appeals from the conviction are concluded.

b. A certificate of final judgment of conviction of a legal counsel for any crime shall be conclusive evidence of the commission of a crime in any disciplinary proceeding based upon the conviction subject to the provisions of paragraph (c) below.

c. A legal counsel suspended hereunder will be reinstated immediately upon the filing of a certificate that the underlying conviction for a crime has been reversed or set aside. The reinstatement need not terminate any disciplinary proceeding then pending against legal counsel.

d. The clerk of the Mashantucket Pequot Tribal Court wherein a legal counsel has been convicted of a crime covered by paragraph (a) shall transmit a certificate thereof to the chief judge of the Mashantucket Pequot Tribal Court and to Special Tribal Bar Counsel within 10 days of said conviction.

M.P.L.C.C. § 4

§ 4. Applicability of Tribal Law

M.P.L.C.C. § 4, Rule 31

Rule 31. Other Provisions and Interpretation of Rules

a. Nothing contained in these Rules shall be construed to repeal or limit any provisions contained in Mashantucket Pequot Tribal Law regarding the conduct of legal counsel and disciplinary measures applicable thereto.

b. These Rules shall be read in such a manner as to achieve uniformity in

interpretation with applicable tribal law.

M.P.L.C.C. § 5

§ 5. Effective Date

In accordance with 1 M.P.T.L. ch. 1 § 14, these Rules are effective upon adoption by the judges of the Mashantucket Pequot Tribal Court.