

**Mashantucket Pequot Tribal Laws**  
**Volume 2**  
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MASHANTUCKET PEQUOT TRIBAL LAWS ANNOTATED

TITLE 24. PROBATE LAW

CHAPTER 1. PROBATE COURT—ADMINISTRATIVE PROVISIONS

24 M.P.T.L. ch. 1 § 1

**§ 1. Name**

This law shall be known as the Mashantucket Pequot Tribal Probate Code.

24 M.P.T.L. ch. 1 § 2

**§ 2. Establishment of the Probate Court**

There is hereby established a division of the Mashantucket Pequot Tribal Court to be known as the Probate Court (hereinafter the Probate Court), which shall have jurisdiction over all inheritance and probate matters arising within the Mashantucket Pequot Tribe Reservation and all dependent tribal communities (hereinafter "tribal lands"), and inheritance and probate related matters involving or pertaining to tribal members and their families who receive benefits and services from the Tribe.

24 M.P.T.L. ch. 1 § 3

**§ 3. General Index**

A general index shall be kept in the Probate Court of the records of all estates which have been or are pending, in which shall be entered the name of each such estate and the date and character of each proceeding in the Probate Court.

24 M.P.T.L. ch. 1 § 4

**§ 4. Records**

The records and files of the Probate Court shall be kept in a fire-resistant safe cabinet, except when the records and files are in actual use for the purpose of examination, recording, copying, or entry, or when the records and files, after being recorded or copied, are placed in storage as records and files not in current use.

**§ 5. Certification of Records and Files**

The records and files of the Probate Court may be certified by the judge or clerk of the court, any one of whom is authorized to use and affix the seal of the court. All such certified copies of records and files, with or without the seal of the court, shall be legal evidence, all orders, judgments and decrees of the Probate Court, rendered after notice and from which no appeal is taken, shall be conclusive and shall be entitled to full faith, credit and validity and shall not be subject to collateral attack, except for fraud.

**CHAPTER 2. PROBATE COURT—JURISDICTIONS, POWERS**

**§ 1. General Powers**

The Probate Court shall have the power to:

- a. grant administration of intestate estates of any person who has died domiciled on tribal lands;
- b. admit wills to probate of any person who has died domiciled on tribal lands;
- c. except as limited by an applicable statute of limitations, determine title or rights of possession and use in and to any real, tangible or intangible property that constitutes, or may constitute, all or part of any trust, any decedent's estate, or any estate under control of a guardian or conservator, which trust or estate is otherwise subject to the jurisdiction of the Probate Court, including the rights and obligations of any beneficiary of the trust or estate and including the rights and obligations of any joint tenant with respect to survivorship property;
- d. construe the meaning and effect of any will or trust agreement if a construction is required in connection with the administration or distribution of a trust or estate otherwise subject to the jurisdiction of the Probate Court, or, with respect to an intervivos trust, if that trust is or could be subject to jurisdiction of the court on request for an accounting pursuant to Chapter 3, Section 26, provided such an accounting need not be required;
- e. to the extent provided for in Chapter 3, Section 26, call executors, administrators, trustees, guardians, conservators, persons appointed to sell the land of minors, and attorneys-in-fact acting under powers of attorney created in accordance with Chapter 9, Section 1, to account concerning the estates entrusted to their charge; and

f. make any lawful orders or decrees to carry into effect the power and jurisdiction conferred upon them by the laws of the Mashantucket Pequot Tribal Nation (hereinafter "Tribe").

### **CHAPTER 3. PROBATE COURT-PROCEDURES**

24 M.P.T.L. ch. 3 § 1

#### **§ 1. Entry Fees**

There shall be no entry fees for any proceeding to the Probate Court.

24 M.P.T.L. ch. 3 § 2

#### **§ 2. Miscellaneous Costs**

The Probate Court may charge a fee for recordings, notices, service of process and certified copies.

24 M.P.T.L. ch. 3 § 3

#### **§ 3. Payment of Costs, Fees and Expenses**

a. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter with respect to a decedent's estate shall be paid for by the executor, administrator, or if there is no such fiduciary, by a transferee.

b. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter with respect to an accounting shall be paid by the trustee, guardian, conservator or other fiduciary.

c. The costs, fees and expenses provided for in connection with proceedings under Section 2 of this Chapter commenced on motion of the Probate Court shall be paid by the party against whom such costs are assessed by the court.

d. In all other cases, the petitioner shall pay the costs, fees and expenses unless otherwise provided by law.

24 M.P.T.L. ch. 3 § 4

#### **§ 4. Giving of Orders of Notice**

Any order of notice of a hearing in any proceeding in, or matter pending before, the Probate Court, which is required by law to be given to interested

persons, may be made by the judge, or the clerk of court.

24 M.P.T.L. ch. 3 § 5

**§ 5. Manner of Notice to be Fixed by Order of Court**

The Probate Court may make any proper order for notice to be given to any person residing out of or absent from tribal lands and, except as otherwise provided, to any person within the tribal lands to whom particular notice of any proceeding before such court is required by law. The notice given under the order shall be a legal notice to such person.

24 M.P.T.L. ch. 3 § 6

**§ 6. Giving of Public Notice**

a. Whenever public notice is required in any proceeding in, or matter pending before, the Probate Court, except as provided in Sections 4 to 7 of this chapter, inclusive, such notice shall be by publication in a newspaper of general circulation in the area, but not *The Pequot Times*, the length of time which the court directs. The court may prescribe such further notice as it deems requisite.

b. Notwithstanding subsection (a) of this Section, notice by publication is not required if actual notice is received by all parties interested in a matter or proceeding unless such notice is requested by an interested party or is required by the court.

24 M.P.T.L. ch. 3 § 7

**§ 7. Special Notice to be Given on Written Request**

a. Any person who is interested in any estate, trust or other matter pending in any Probate Court, or who is interested in any application that may be made to any Probate Court for the probating of a will or the granting of administration, may, in person or by attorney, file with the court a written request for special notice to be given to him or his attorney of any application to the court and of any order passed by the Probate Court in such estate, trust or other matter. The request shall state the estate, trust or other matter, cause or proceeding of which notice is desired and the post-office address of the person desiring the notice. Thereupon the Probate Court shall give notice to such person or his attorney of any hearing in such estate, trust or other matter at least seven days before the time assigned for the hearing, in whatever manner the court finds to be reasonable under the circumstances.

b. Any request for a special notice in the matter of probating a will or granting administration, before any application is made therefor, shall be obligatory upon the Court for a period of 30 days from the date of filing the

same.

24 M.P.T.L. ch. 3 § 8

**§ 8. Reconsideration, Modification or Revocation of Order or Decree**

a. Except as provided in subsection (e) of this Section, any order or decree made by Probate Court ex parte may, in the discretion of the court, be reconsidered and modified or revoked by the court. Reconsideration may be made on the court's own motion or, for cause shown satisfactory to the court, on the written application of any interested person. Such motion or application shall be made or filed before any appeal has been allowed or after withdrawal of all appeals which have been allowed. For the purposes of this Section, an ex parte order or decree is an order or decree entered in a proceeding of which no notice is required to be given to any party and no notice is given.

b. Except as provided in subsections (a) and (e) of this Section, any order or decree other than a decree authorizing the sale of real estate made by the Probate Court may, in the discretion of the court, be reconsidered and modified or revoked by the court, on the court's own motion or on the written application of any interested person. Such application shall be made or filed within 120 days after the date of such order or decree and before any appeal is allowed or after withdrawal of all appeals. The court may reconsider and modify or revoke any such order or decree for any of the following reasons:

- (1) for any reason, if all parties in interest consent to reconsideration, modification or revocation;
- (2) for failure to provide legal notice to a party entitled to notice under law;
- (3) to correct a scrivener's or clerical error;
- (4) upon discovery or identification of parties in interest unknown to the court at the time of the order or decree.

c. Upon any modification or revocation there shall be the same right of and time for appeal as in the case of any other order or decree.

d. A hearing may be held in the discretion of the court on any motion or application for reconsideration, modification or revocation, and notice of the time and place of such hearing shall be given, in such manner as the court shall order, to all persons to whom notice of the order or decree to be reconsidered or notice of the hearings concerning such order or decree, was given, and to all persons by whom any such notice was waived, and to such other persons as the court may determine.

e. Except as provided in Chapter 6 Section 16, a decree or order made in reference to any estate may not be modified or revoked by the Probate Court as to assets lawfully transferred or distributed prior to the date of issuance of notice of hearing on a motion or application for reconsideration of such decree or order, or, if the court determines not to hold any such hearing, prior to

the date of the court's order of revocation or modification.

24 M.P.T.L. ch. 3 § 9

**§ 9. Examination of Witnesses**

The Probate Court may, on its own motion or upon written application of any person having an interest in any matter before it, summon any person to appear and give testimony under oath relating to such matter.

24 M.P.T.L. ch. 3 § 10

**§ 10. Return of Compliance with Order of Court**

When the Probate Court orders any person to do any act, such person shall, upon compliance with the order, make written return to the court, which shall be prima facie evidence of the due execution of the order. The court may in its discretion require that such return be made under oath.

24 M.P.T.L. ch. 3 § 11

**§ 11. Participation of the Health and Human Services Department in Proceedings**

In any proceeding in the Probate Court in which the Tribe is interested through its Health and Human Services Department, any employee of such department shall be permitted to participate fully in the proceeding in the same manner as any other interested party before the court. The judge of the Probate Court shall not require that the Tribe be represented by an attorney-at-law as a condition of participation.

24 M.P.T.L. ch. 3 § 12

**§ 12. Appointment of Guardian Ad Litem for Minors and Incompetent, Undetermined and Unborn Persons**

a. In any proceeding before the Probate Court, the judge may appoint a guardian ad litem for any minor or incompetent, undetermined or unborn person, or may appoint one guardian ad litem for two or more of such minors or incompetent, undetermined or unborn persons, if it appears to the judge that one or more persons as individuals, or as member of a designated class or otherwise, have or may have an interest in the proceedings, and that one or more of them are minors, incompetent persons or persons undetermined or unborn at the time of the proceeding.

b. The appointment shall not be mandatory, but shall be within the discretion of the judge.

c. Any order or decree passed or action taken in any such proceeding shall

affect all the minors, incompetent persons or persons thereafter born or determined for whom the guardian ad litem has been appointed, in the same manner as if they had been of the age of majority and competent and present in court after legal notice at the time of the action or the issuance of the order or decree.

d. Any appointment of a guardian ad litem may be made with or without notice and, if it appears to the judge that it is for the best interests of a minor having a parent or guardian to have as guardian ad litem some person other than the parent or guardian, the judge may appoint a disinterested person to be the guardian ad litem.

e. When the appointment is made in connection with the settlement of a decedent's estate or the settlement of the account of a trustee or other fiduciary, the person so appointed shall be authorized to represent the minor or incompetent, undetermined or unborn person in all proceedings for the settlement of the estate or account and subsequent accounts of the trustee or other fiduciary, or until his appointment is terminated by death, resignation or removal.

f. The guardian ad litem may be removed by the judge, without notice, whenever it appears to the judge to be in the best interests of the ward or wards of the guardian.

g. Any guardian ad litem appointed under the provisions of this Section may be allowed reasonable compensation by the judge appointing him and shall be paid as a part of the expenses of administration.

24 M.P.T.L. ch. 3 § 13

**§ 13. Examination of Incapable Party. Expense**

In any matter before the Probate Court in which the capacity of a party to the action is at issue, the court may order an examination of any allegedly incapable party by a physician or psychiatrist or, where appropriate, a psychologist, licensed to practice in the state of Connecticut. The expense of such examination may be charged against the petitioner, the respondent, the party who requested such exam or the estate of the alleged incapable in such proportion as the judge of the court determines. If any such party is unable to pay such expense and files an affidavit with the court demonstrating the inability to pay, the reasonable compensation shall be established by the judge.

24 M.P.T.L. ch. 3 § 14

**§ 14. Probate Bonds**

a. As used in this Chapter, except as otherwise provided, "bond" or "probate bond" means a bond with security given to secure the faithful performance by an appointed fiduciary of the duties of his trust and the administration of and

accounting for all moneys and other property coming into his hands, as fiduciary, according to law.

b. Except as otherwise provided, every bond or probate bond shall be payable to the Tribe, shall be conditioned for the faithful performance by the principal in the bond of the duties of his trust and the administration of and accounting for all moneys and other property coming into his hands, as fiduciary, according to law, and shall be in such amount and with such security as shall be required by the judge of probate. If bond is required of a fiduciary, his appointment shall not be effective until the bond has been accepted by the Probate Court.

24 M.P.T.L. ch. 3 § 15

**§ 15. Prohibition on Judges, Officers and Employees of Probate Court Acting as Sureties or Issuing Probate Bonds**

A judge of probate or officer or employee of the Probate Court shall not act as surety for, and shall not personally or as agent for any surety or bonding company, issue a probate bond to any administrator, executor, trustee or other person required to furnish a bond in any proceeding pending before the Probate Court.

24 M.P.T.L. ch. 3 § 16

**§ 16. Substitution of New Bond**

a. The principal or the surety, or the heirs, executors or administrators of the surety, upon any bond taken by Probate Court, may make written application to the court for an order permitting or requiring a new bond to be given in place of the existing bond. Thereupon the court shall cause reasonable notice of the application to be given to the surety, if the application is made by the surety, his heirs, executors or administrators, and to all persons whom the court finds to be interested in the estate for the security of which the bond was given, to appear and be heard upon the application at a time and place stated in the notice.

b. If, upon hearing, the court finds that to grant the application would not prejudice the estate, it may authorize the principal to give a new probate bond, or order him to give a new bond within a time which it may limit. If the principal, having been ordered to give a new bond, fails to do so within the time limited by the court, it may remove him and appoint another in his stead.

If the new bond is given to the approval of the court, the surety on the original bond and his representatives shall not be liable for any breach of the bond committed after the court approves the bond.

24 M.P.T.L. ch. 3 § 17

**§ 17. Filing and Recording Bonds**



The Probate Court shall cause all bonds taken by it to be filed and recorded. In case of the loss of any bond, a certified copy of the record of the bond shall be admissible in evidence.

24 M.P.T.L. ch. 3 § 18

**§ 18. Examination of Estate. Removal of Principal**

a. The surety upon any bond taken by the Probate Court, or any person interested in the bond, may at any time make written application to the court for an order requiring the principal to exhibit fully in writing before such court the condition of the estate held by him, so that it may be ascertained whether the estate is being properly managed. Thereupon the court shall cause reasonable notice of such application to be given to the principal. If, upon hearing, the court finds that such application was made in good faith, it shall make such order.

b. If the principal refuses to obey such order or if, upon his obeying it, the court finds that the estate is not being properly managed by him, it shall remove him and appoint another in his place.

24 M.P.T.L. ch. 3 § 19

**§ 19. Action on Probate Bond by Aggrieved Person**

a. Any person claiming to be aggrieved by the breach of a probate bond, as representative of the estate in connection with which the bond was given, or in his own right or in the right of himself and all others having an interest in the estate, may bring an action to recover for the breach in his own name.

b. If, upon an action or a bond brought by one not acting as a representative of the estate, the judge concludes that the action ought to be prosecuted on behalf of all persons interested in the estate in connection with which the bond was given, he may order that the action shall include all such persons; but, in that event, such persons need not be named in the writ or complaint.

c. The plaintiff in any action brought by him as representative of the estate or on his behalf and that of all persons interested in it shall account for any moneys recovered to the Probate Court in which the estate is in settlement. The court may allow to the plaintiff a reasonable sum for his disbursements and services in the action and in any subsequent proceedings to enforce payment of any sum recovered, to be paid from the amount recovered or by the estate.

24 M.P.T.L. ch. 3 § 20

**§ 20. Enforcement of Judgment on Bond**

a. Any representative of an estate or any person suing on his own behalf and that of all others interested in the estate, who secures a judgment upon a probate bond, may file a judgment lien in his own name as representative of the

estate or as representing himself and all other interested persons. He may, with the permission of the judge of the Probate Court, bring any proper action to enforce the lien. He may, by order of the Probate Court secured as provided in Section 23 of this Chapter, sell any such lien or any real property obtained by the enforcement of the lien or upon execution and he may release the lien by a certificate of discharge.

b. If any person bringing such an action on his own behalf and that of all others interested in the estate dies or is guilty of a breach of duty, the Probate Court may appoint some other person in his stead. Such other person shall, upon giving a bond as provided in Section 19 of this Chapter, acceptable to the court, be vested with the same rights and subject of the same duties as the person in whose stead he is acting with reference to the action, the enforcement of any judgment recovered or lien thereon and the discharge of any such lien.

24 M.P.T.L. ch. 3 § 21

#### **§ 21. Compromise and Settlement of Claims**

Upon application by executors, guardians, conservators, administrators, trustees in insolvency and trustees appointed or whose appointment has been approved by the Probate Court, the court may, after public notice and hearing, authorize such fiduciaries to compromise and settle any doubtful or disputed claims or actions, or any appeal from probate in favor of or against the estates or persons represented by them.

24 M.P.T.L. ch. 3 § 22

#### **§ 22. Suit upon Claims. Time Limitation**

When any guardian, conservator or testamentary or other trustee required to account in the Probate Court is unable to settle or adjust any claim against him as such, or when any such guardian, conservator or trustee and a claimant against him are unable to agree concerning the amount or validity of such claim, such guardian, conservator or trustee may give written notice to such claimant of the disallowance of his claim, wholly or in part. Unless such claimant commences a suit against such guardian, conservator or trustee within four months after such notice has been given, such claimant shall be barred of his claim against such guardian, conservator or trustee, except such part as has been allowed, and of any such claim against the estate or trust; but, if such creditor dies within such four months and before suit has been brought, a period of four months from his death shall be allowed to his executor or administrator within which to commence such suit.

24 M.P.T.L. ch. 3 § 23

#### **§ 23. Sale of Chose in Action and Other Property**

Before the final settlement of any estate, the Probate Court may order the sale of the credits and chooses in action belonging to such estate, and may at any time order the sale of personal property, and in the case of an insolvent debtor's estate of all or any property, as it finds for the interest of the estate, in a manner and after notice which it judges reasonable. The court, in making orders for the sale of the property described herein, may order it to be sold at public or private sale at the discretion of the person authorized to make the sale. After a hearing the court may authorize that the property be sold to the fiduciary either directly or under the provisions of Section 24 of this Chapter, except that if a public sale is ordered, the fiduciary may be the purchaser only if the sale is made under Section 24 of this Chapter. In the case of any proposed sale to a fiduciary, any notice sent to interested parties and any public notice shall indicate that the fiduciary is the proposed purchaser.

24 M.P.T.L. ch. 3 § 24

**§ 24. Sale of Personal Property by Other than Fiduciary**

a. Upon the written application of the conservator of the estate of any person, guardian of the estate of any minor, administrator or trustee appointed by the court, including a trustee of a missing person, or the executor or trustee under any will admitted to probate by the court, after public notice and other notice which the court may order and after hearing, the Probate Court may authorize a person other than the fiduciary to sell the whole or any part of or any interest in any personal property of any incapable person, minor, missing person, deceased person or trustee, or any property to which the fiduciary may hold legal title in such capacity, if:

(1) such person has first given a probate bond that he will faithfully administer and account for the proceeds of the sale according to law; and

(2) the court finds that to grant the application would be in the best interests of the parties in interest. If any party having an interest in such personal property is not in being or is not ascertained or is under a disability, the court shall appoint a guardian ad litem to represent the interest of such party at the hearing, unless such party already is represented by a guardian or by a conservator. Such order, and the sale thereunder, shall be conclusive upon all persons then or thereafter existing whose interests have been so represented.

b. The person selling the personal property shall pay to the fiduciary the sum for which such personal property was sold.

c. The Probate Court shall direct whether the sale shall be public or private, and, if public, the notice thereof which shall be given, and, if private, may authorize the sale at a price and upon terms, including such mortgage or mortgages, as it considers reasonable or advisable.

24 M.P.T.L. ch. 3 § 25

**§ 25. When Probate Bond not Required**

The Probate Court may dispense with the requirement of a probate bond as set forth in Sections 23 and 24 of this Chapter, if: (1) the fiduciary is a bank or trust company authorized to do business and maintaining a place of business in the state of Connecticut; (2) the fiduciary is a foreign bank or trust company which has qualified and been approved as such fiduciary; (3) the fiduciary is excused by the will from giving a probate bond; or (4) the Probate Court determines that a bond is not required for the protection of interested parties.

24 M.P.T.L. ch. 3 § 26

**§ 26. Jurisdiction of Accounts of Fiduciaries. Appointment of Auditor to Examine Accounts**

a. The Probate Court shall have jurisdiction of the interim and final accounts of testamentary trustees, trustees appointed by the Probate Court, conservators, guardians, persons appointed by the Probate Court to sell the land of minors, executors, administrators and trustees in insolvency, and, to the extent provided for in this Section, shall have jurisdiction of accounts of the actions of trustees of inter vivos trusts and attorneys-in-fact acting under powers of attorney created in accordance with Chapter 9, Section 1.

b. A trustee or settlor of an inter vivos trust or an attorney-in-fact or the grantor of such power of attorney may make application to the Probate Court for allowance of the trustee's or attorney's actions under such trust or power.

c. (1) Any beneficiary of an inter vivos trust may petition the Probate Court for an accounting by the trustee or trustees. The court may, after hearing with notice to all interested parties, grant the petition and require an accounting for such periods of time as it determines are reasonable and necessary on finding that: (a) the beneficiary has an interest in the trust sufficient to entitle him to an accounting; (b) cause has been shown that an accounting is necessary, and (c) the petition is not for the purpose of harassment.

(2) The Probate Court shall have jurisdiction to require an accounting under this Section if: (a) a trustee of the trust resides on the tribal lands; (b) in the case of a corporate trustee, the trustee has its principal place of business on the tribal lands; (c) any of the trust assets are maintained or evidences of intangible property of the trust are situated on tribal lands; or (d) the settlor resides on tribal lands.

(3) As used in this Section, "beneficiary" means any person currently receiving payments of income or principal from the trust, or who may be entitled to receive income or principal or both from the trust at some future date, or the legal representative of such person.

d. The action to submit an accounting to the court, whether by an inter vivos trustee or attorney acting under a power of attorney created in accordance with Chapter 9, Section 1 or whether pursuant to petition of another party, shall

not subject the trust or the power of attorney to the continuing jurisdiction of the Probate Court.

e. If the court finds such appointment to be necessary and in the best interests of the estate, the court upon its own motion may appoint an auditor, to examine accounts over which the court has jurisdiction under this Section, except those accounts on matters in which the fiduciary or co-fiduciary is a corporation having trust powers. Costs of the audit may be charged to the fiduciary, any party in interest and the estate, in such proportion as the court shall direct if the court finds such charge to be equitable. Any such share may be paid by the Tribe, if the Probate Court determines that the person obligated to pay is unable to pay or to charge such amount to the estate would cause undue hardship.

f. Upon the allowance of any such account, the court shall determine the rights of the fiduciaries or the attorney-in-fact rendering the account and of the parties interested in the account, subject to appeal as in other cases. The court shall cause notice of the hearing on the account to be given in such manner and to such parties as it directs.

24 M.P.T.L. ch. 3 § 27

**§ 27. Statement in Lieu of Account when Fiduciary is Sole Beneficiary**

a. Except as provided in subsection (b) of this Section, or when any beneficiary is a trustee of a testamentary or inter vivos trust, if the fiduciary of a decedent's estate is the sole beneficiary of the residue of the estate, or if multiple fiduciaries of a decedent's estate are the only beneficiaries of the residue of the estate, and if all dispositions, if any, to other beneficiaries are bequests of specific personal property or of an amount certain or devises of specific real property, the fiduciary may, in lieu of any other accounting required under this chapter, file with the Probate Court a statement under oath that all debts, funeral expenses, taxes and expenses of administration have been paid, and such bequests and devises, if any, have been distributed and receipts therefor obtained. The statement shall include the total of any amount reported on the return of claims filed under Chapter 6, Section 44 and an itemized list of all funeral expenses, taxes and expenses of administration. The receipts of the beneficiaries of such bequests and devises shall be filed with the Probate Court at the time such statement is filed. The Probate Court may thereafter enter a decree releasing and discharging the fiduciary and the sureties on his bond, if any, from any further liability. Any fiduciary so discharged shall be excused from filing an accounting and any further returns with the court.

b. The Probate Court may, for cause shown, refuse to accept the statement and require an accounting from the fiduciary.

24 M.P.T.L. ch. 3 § 28

**§ 28. Periodic Rendering of Accounts; Hearing. Nature of Account. Exceptions**

a. All conservators, guardians, persons appointed by the Probate Court to sell land of minors and trustees, including those entrusted with testamentary trusts unless excused by the will creating the trust, shall render periodic accounts of their trusts under oath to the Probate Court at least once during each three-year period and more frequently if required to do so by the will or trust instrument creating the trust. Periodic accounts for filing only may be submitted to the court at any time during each three-year period. Upon receipt of a periodic account, the court shall cause notice of it and of its availability for examination at the court to be given in such manner and to such parties as it deems reasonable. Any such party may apply to the court for a hearing on the account. If an application for such a hearing is not received by the court from a party in interest within the time stated in the notice, the periodic account will be filed without hearing thereon and without allowance or disallowance thereof, and shall not be recorded. At the end of each three-year period from the date of the last allowance of a periodic account, or upon the earlier receipt of a final account, there shall be a hearing on all periodic accounts not previously allowed, and the final account, if any, in accordance with Sections 29 and 30 of this Chapter.

b. Each such periodic account shall include an inventory of the trust estate showing fully how the principal of the fund is invested and the items of income and expenditure. If there has been no change in the identity of the items comprising the principal of the fund since the last account which has been accepted and approved, it shall not be necessary to include an inventory of the trust estate.

c. If the estate held by any person in any such fiduciary capacity is less than \$2,000, he shall not be required to render such account unless so ordered by the court.

24 M.P.T.L. ch. 3 § 29

**§ 29. Allowance of Interim Accounts. Notice and Hearing**

The Probate Court shall direct what notice, if any, shall be given to the parties in interest of the filing of any account described in Section 28 herein, and of the hearing thereon, and may adjust and allow the account. The court may make any order necessary and proper to secure the execution of the duties of such fiduciary, subject to appeal as in other cases.

24 M.P.T.L. ch. 3 § 30

**§ 30. Notice and Hearing on Final Accounts**

When an executor, administrator, conservator, guardian, trustee in insolvency or trustee of a testamentary trust exhibits his final account to the Probate Court for allowance, the court shall appoint a time and place for a hearing on the account and shall cause notice of the hearing to be given as it directs.

Such fiduciary shall swear or affirm under oath to the truth of the account.

24 M.P.T.L. ch. 3 § 31

**§ 31. Settlement of Account of Deceased Fiduciary**

Whenever an executor, administrator, conservator, guardian, trustee in insolvency or trustee of any testamentary trust dies before completing and accounting for his trust, the executor or administrator of the deceased fiduciary shall settle the deceased fiduciary's account in the Probate Court. The amount found due from or to the deceased fiduciary shall be paid in the same manner as it would have been paid to or by him if the account had been settled in his lifetime.

24 M.P.T.L. ch. 3 § 32

**§ 32. Appeals from Probate**

Any person aggrieved by any order, denial or decree of the Probate Court in any matter, unless otherwise specially provided by law, may appeal therefrom to the Mashantucket Pequot Court of Appeals. Appeals from any decision rendered in any case after a record is made shall be on the record and shall not be a trial de novo.

24 M.P.T.L. ch. 3 § 33

**§ 33. Time of Taking Appeals**

a. An appeal under Section 32 of this Chapter by those of the age of majority and who are present or who have legal notice to be present, shall be taken within 30 days. If such persons have no notice to be present and are not present, then appeal shall be taken within 12 months.

b. An appeal from any Probate order for the payment of claims or dividends on claims against any insolvent estate shall not be allowed unless it is taken within 30 days after the making of such order.

24 M.P.T.L. ch. 3 § 34

**§ 34. Time of Taking Appeals by Minors or Nonresidents**

a. Except as provided in this Section, all appeals by persons who are minors at the time of the making of the order, denial or decree appealed from shall be taken within 12 months after they arrive at the age of majority.

b. In the case of any minor who has a guardian or guardian ad litem appointed and qualified by the Probate Court at the time of the making of the order, denial or decree, the time in which the minor or anyone on his behalf may

appeal therefrom shall be one month from the date of such order, denial or decree if the guardian or guardian ad litem has had legal notice, as provided for the particular proceeding, of the time and place of the hearing on such proceeding concerning which such order, denial or decree was made.

c. All appeals by persons who were not present at such time and did not have legal notice to be present shall be taken within 12 months thereafter.

d. Any judge or clerk of the Probate Court or any fiduciary may cause written notice of any order, denial or decree of the Probate Court to be given to any person of the age of majority, or to the guardian or guardian ad litem of any minor who has not had legal notice of the hearing on the proceeding at which the order, denial or decree was passed and who may be aggrieved thereby. In any such case the person, minor, guardian or guardian ad litem may appeal only within one month after receiving such notice.

24 M.P.T.L. ch. 3 § 35

#### **§ 35. Amendment to Appeal**

In the event of any defect in the form of an appeal taken under the provisions of Section 32 of this Chapter by any aggrieved person, such person may obtain from the Probate Court an amendment to the appeal correcting the defect, provided the order for amendment is granted not later than 90 days after the date of the order, denial or decree of the Probate Court from which the appeal was originally taken.

24 M.P.T.L. ch. 3 § 36

#### **§ 36. Interest of Appellant to be Stated**

In each appeal from probate, the interest of the appellant shall be stated in the motion for appeal, unless such interest appears on the face of the proceedings and records of such Probate Court.

24 M.P.T.L. ch. 3 § 37

#### **§ 37. Order of Notice**

The Probate Court, in allowing an appeal, shall make such order of notice to persons interested as it deems reasonable. When the notice has been given by the appellant and proved to the court, the Court of Appeals may hear the appeal without further notice.

24 M.P.T.L. ch. 3 § 38

#### **§ 38. Appellee to Give Bond**



a. In any appeal from any order or decree of the Probate Court, if the appellee is the party who applied for the order or decree and if the appellee appears in the Court of Appeals to contest the matter being appealed, the Court of Appeals may, at its discretion, order the appellee to give bond to the Mashantucket Pequot Tribal Nation for the payment to the appellant of his costs of suit if judgment is rendered for the appellant.

b. If the appellee neglects to comply with the order of the court, the court may make any disposition of the case favorable to the appellant that it deems proper.

#### **CHAPTER 4. FIDUCIARIES**

24 M.P.T.L. ch. 4 § 1

##### **§ 1. "Fiduciary" Defined**

As used in Chapter 4, unless otherwise defined or unless otherwise required by the context, "fiduciary" includes an executor, administrator, trustee, conservator or guardian.

24 M.P.T.L. ch. 4 § 2

##### **§ 2. Fiduciary Certificate Effective for one Year**

A certificate of the appointment of a fiduciary issued by the Clerk of the Court shall be sufficient evidence of the authority and identity of such fiduciary for all purposes for one year after the date of such issuance, in the absence of actual notice of revocation.

24 M.P.T.L. ch. 4 § 3

##### **§ 3. When Payments by Fiduciaries Protected**

a. Any person, acting as a fiduciary as defined by Section 1 of this Chapter or in any other fiduciary capacity, who in good faith makes payments or delivers property or estate pursuant to the order of the Probate Court before an appeal has been taken from such order, shall not be liable for the money so paid, or the property so delivered, even if the order under which such payment or delivery has been made is later reversed, vacated or set aside.

b. This Section shall not prevent a recovery of such money or property by the person entitled to it from any person receiving it or in possession of it.

24 M.P.T.L. ch. 4 § 4

#### **§ 4. Investment of Funds**

a. Custody of Securities. Transfer of Title. In the absence of an express provision to the contrary in the instrument, judgment, decree or order creating a trust or other fiduciary relationship or appointing a fiduciary, such fiduciary may entrust the custody of any bonds, stocks or other securities of the fiduciary estate to any national banking association, state bank, trust company or state bank and trust company in the state of Connecticut or New York or in the Commonwealth of Massachusetts or Pennsylvania, which is a member of the Federal Reserve System and whose capital, surplus and undivided profits in the aggregate are not less than 50 million dollars. Any such fiduciary may transfer title to any such bonds, stocks or other securities without any court order to do so.

b. Prudent investor rule.

(1) Except as provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule, as set forth in (b) to (m).

(2) The prudent investor rule is a default rule that may be expanded, restricted, eliminated or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.

c. Standard of care. Portfolio strategy. Risk and return objectives.

(1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee's investment and management decisions respecting individual assets shall be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries: (i) General economic conditions; (ii) the possible effect of inflation or deflation; (iii) the expected tax consequences of investment decisions, strategies and distributions; (iv) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property; (v) the expected total return from income and the appreciation of capital; (vi) related trusts and other income and resources of the beneficiaries; (vii) needs for liquidity, for regularity of income and for preservation or appreciation of capital; (viii) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; (ix) the size of the portfolio; and (x) the nature and estimated duration of the trust.

(4) A trustee shall take reasonable steps to verify facts relevant to the

investment and management of trust assets.

(5) Subject to the standard of sections (b) to (m), inclusive, a trustee may invest in any kind of property or type of investment.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

d. Diversification. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

e. Duties at inception of trusteeship. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of sections (b) to (m), inclusive.

f. Loyalty. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

g. Impartiality. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

h. Investment costs. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee.

i. Reviewing compliance. The prudent investor rule expresses a standard of conduct, not outcome. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action.

j. Delegation of investment and management functions.

(1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in: (i) Selecting an agent; (ii) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and (iii) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trustee and to the trust to exercise reasonable care to comply with the scope and terms of the delegation and to exercise the delegated function with reasonable care, skill and caution. An attempted exoneration of the agent from liability for failure to meet such a duty is contrary to public policy and void.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to Mashantucket Pequot Tribal Law, an agent submits to the jurisdiction of the courts of Mashantucket and can be held liable by the courts of this tribe for any breach of duty arising out of the delegation agreement or the terms of sections (b) to (m), inclusive.

k. Language invoking standards of act. The following terms or comparable language in a trust instrument, unless otherwise limited or modified by the instrument, authorizes any investment or strategy permitted under sections (b) to (m), inclusive: "Investments permissible by tribal law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

l. Uniformity of application and construction. Sections (b) to (m), inclusive, shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of said sections.

m. Applicability. These provisions apply to trust existing on or created after June 7, 2005. As applied to trusts existing on June 7, 2005 sections (b) to (m), these provisions govern only decisions or actions occurring after that date.

24 M.P.T.L. ch. 4 § 5

#### **§ 5. Investments may be Maintained as Received**

Trust funds received by executors, trustees, guardians or conservators may be kept invested in the securities received by them, unless it is otherwise ordered by the Probate Court or unless the instrument under which such trust was created directs that a change of investments shall be made, and the fiduciaries thereof shall not be liable for any loss that may occur by depreciation of such securities.

24 M.P.T.L. ch. 4 § 6

#### **§ 6. Fiduciary Powers Re: Increase in Capital Stock Assets of Estate**

Whenever any fiduciary holds shares of the stock of any corporation as assets of the estate in his charge and there is an increase of the capital stock of any such corporation, such fiduciary may, with the consent of the Probate Court, either (1) subscribe for and take the shares of the increased capital

stock to which such estate may be entitled or (2) sell and transfer to others the right to subscribe for such shares.

24 M.P.T.L. ch. 4 § 7

### **§ 7. Definitions**

As used in Sections 7 to 19 of this Chapter, inclusive:

- a. "Income Beneficiary" means the person to whom income is presently payable or for whom it is accumulated for distribution as income;
- b. "Inventory Value" means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax;
- c. "Remainderman" means the person entitled to principal, including income which has been accumulated and added to principal;
- d. "Trustee" means an original trustee and any successor or added trustee.

24 M.P.T.L. ch. 4 § 8

### **§ 8. Duty of Trustee Re: Receipts and Expenditures**

a. A trust shall be administered with due regard to the respective interests of income beneficiaries and remaindermen. A trust is so administered with respect to the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to income or principal or partly to each:

- (1) in accordance with the terms of the trust instrument, notwithstanding contrary provisions of Sections 7 to 19 of this Chapter inclusive;
- (2) in the absence of any contrary terms of the trust instrument, in accordance with the provisions of said Sections; or
- (3) if neither of the preceding rules of administration is applicable, in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which persons of ordinary prudence, discretion and judgment would act in the management of their own affairs.

b. If the trust instrument gives the trustee discretion in crediting a receipt or charging an expenditure to income or principal or partly to each, no inference of imprudence or partiality arises from the fact that the trustee has made an allocation contrary to a provision of Sections 7 to 19 of this Chapter, inclusive.

24 M.P.T.L. ch. 4 § 9

## **§ 9. Income. Principal. Charges**

a. Income is the return in money or property derived from the use of principal, including return received as: (1) rent of real or personal property, including sums received for cancellation or renewal of a lease; (2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in Section 13 of this Chapter on bond premium and bond discount; (3) income earned during administration of a decedent's estate as provided in Section 11 of this Chapter; (4) corporate distributions as provided in Section 12 of this Chapter; (5) accrued increment on bonds or other obligations issued at discount as provided in Section 13 of this Chapter;

(6) receipts from business and farming operations as provided in Section 14 of this Chapter; (7) receipts from disposition of natural resources as provided in Sections 15 and 16 of this Chapter; (8) receipts from other principal subject to depletion as provided in Section 17 of this Chapter; (9) receipts from disposition of unproductive and under-productive property as provided in Section 18 of this Chapter.

b. Principal is the property which has been set aside by the owner or the person legally empowered so that it is held in trust eventually to be delivered to a remainderman while the return or use of the principal is in the meantime taken or received by or held for accumulation for an income beneficiary. Principal includes:

(1) consideration received by the trustee on the sale or other transfer of principal or on repayment of a loan or as a refund or replacement or change in the form of principal;

(2) proceeds of property taken on eminent domain proceedings;

(3) proceeds of insurance upon property forming part of the principal except proceeds of insurance upon a separate interest of an income beneficiary;

(4) stock dividends, receipts on liquidation of a corporation, and other corporate distributions as provided in Section 12 of this Chapter;

(5) receipts from the disposition of corporate securities as provided in Section 13 of this Chapter;

(6) royalties and other receipts from disposition of natural resources as provided in Sections 15 and 16 of this Chapter;

(7) receipts from other principal subject to depletion as provided in Section 17 of this Chapter;

(8) any profit resulting from any change in the form of principal except as provided in Section 18 of this Chapter on unproductive and under-productive property;

(9) receipts from disposition of unproductive and under-productive property as provided in Section 18 of this Chapter.

c. After determining income and principal in accordance with the terms of the

trust instrument or of Sections 7 to 19 of this Chapter, inclusive, the trustee shall charge to income or principal expenses and other charges as provided in Section 19 of this Chapter.

24 M.P.T.L. ch. 4 § 10

**§ 10. Right to Income. Apportionment of Income**

a. An income beneficiary is entitled to income from the date specified in the trust instrument, or, if none is specified, from the date an asset becomes subject to the trust. In the case of an asset becoming subject to a trust by reason of a will, it becomes subject to the trust as of the date of the death of the testator even though there is an intervening period of administration of the testator's estate.

b. In the administration of a decedent's estate or an asset becoming subject to a trust by reason of a will,

(1) income receipts due but not paid at the date of death of the testator are principal;

(2) income receipts in the form of periodic payments other than corporate distributions to stockholders, including rent, interest, distributions from mutual funds and common trust funds or annuities, not due at the date of the death of the testator shall be treated as accruing from day to day. That portion of the receipt accruing before the date of death is principal, and the balance is income.

c. In all other cases, any income receipt from an income-producing asset is income even though the receipt was earned or accrued in whole or in part before the date when the asset became subject to the trust.

d. On termination of an income interest, the income beneficiary whose interest is terminated, or his estate, is entitled to

(1) income undistributed on the date of termination;

(2) income due but not paid to the trustee on the date of termination;

(3) income in the form of periodic payments other than corporate distributions to stockholders, including rent, interest, distributions from mutual funds and common trust funds or annuities, not due on the date of termination, accrued from day to day.

e. Corporate distributions to stockholders shall be treated as due on the day fixed by the corporation for determination of stockholders of record entitled to distribution or, if no date is fixed, on the date of declaration of the distribution by the corporation.

24 M.P.T.L. ch. 4 § 11

## **§ 11. Income Earned During Administration of Decedent's Estate**

a. Unless the will otherwise provides and subject to subsection (b) of this Section, all expenses incurred in connection with the settlement of a decedent's estate, including debts, funeral expenses, estate taxes, penalties concerning taxes, family allowances unless otherwise ordered by the Probate Court, fees of attorneys and personal representatives, and court costs shall be charged against the principal of the estate.

b. Unless the will otherwise provides, income from the assets of a decedent's estate after the death of the testator and before distribution, including income from property used to discharge liabilities, shall be determined in accordance with the rules applicable to a trustee under Sections 7 to 19 of this Chapter, inclusive, and distributed as follows:

(1) To specific legatees and devisees, the income from the property bequeathed or devised to them respectively, less taxes, ordinary repairs, and other expenses of management and operation of the property, and an appropriate portion of interest accrued since the death of the testator and of taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration;

(2) to all legatees of pecuniary bequests not in trust, simple interest in the amount of 6% per year on the pecuniary bequest commencing one year from the date of death or, if later, one year from the date on which the legacy is payable;

(3) to all other legatees and devisees, the balance of the income, less the balance of taxes, ordinary repairs, and other expenses of management and operation of all property from which the estate is entitled to income, interest accrued since the death of the testator, and taxes imposed on income, excluding taxes on capital gains, which accrue during the period of administration, in proportion to their respective interests in the undistributed assets of the estate computed at times of distribution on the basis of inventory value; provided the amount of income earned during the further administration of the estate from and after the date of payment of any estate tax, inheritance tax, or other expenses of administration, which individually or cumulatively, after the last adjustment required hereunder, exceed ten thousand dollars shall be distributed to such beneficiaries in proportion to their respective interests in the undistributed assets of the estate after the making of such payment on the basis of the fair market value of such assets immediately after the making of such payment.

c. Income received by a trustee under subsection (b) shall be treated as income of the trust.

d. Income earned during the administration of the estate which is payable to a trust under subsection (b) of this subsection may be paid to the income beneficiary of the trust by the executor unless the payment of said income is at the discretion of the designated trustee, in which case, the payment may be made by the executor to such income beneficiary upon obtaining the written consent of the trustee.



**§ 12. Corporate Distributions**

a. Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

b. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to (1) a call of shares; (2) a merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or (3) a total or partial liquidation of the corporation, including any distribution which the corporation indicates is a distribution in total or partial liquidation or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

c. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

d. Except as provided in subsections (a), (b), and (c) of this Section, all corporate distributions are income, including cash dividends, distributions of or rights to subscribe to shares or securities or obligations of corporations other than the distributing corporation, and the proceeds of the rights or property distributions; provided, when a dividend is payable in shares or other securities or obligations of corporations other than the distributing corporation and the trustee determines that either the income beneficiaries or the remaindermen would profit unreasonably or inequitably at the expense of the other from the application of this Section, the trustee may apportion such dividend between income and principal or allocate the same in whole or part to income or principal in such manner and in such proportions as the trustee in its discretion shall deem reasonable and equitable in order to preserve the respective interests in the trust estate. Except as provided in subsections (b) and (c) of this Section, if the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income.

e. The trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of Sections 7 to 19 of this Chapter, inclusive, concerning the source or character of dividends or distributions of corporate assets.

**§ 13. Bond Premium and Discount**

a. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in subsection (b) for discount bonds. No provision shall be made for amortization of bond premiums or for accumulation of discount. The proceeds of a sale, redemption or other disposition of bonds or other obligations are principal.

b. The increment in value of a bond or other obligation for the payment of money bearing no stated interest but payable or redeemable at maturity or at a future time at an amount in excess of the amount in consideration of which it was issued is income. If the income accrues pursuant to a fixed schedule of appreciation such income is distributable to the beneficiary at the time the increment occurs and the trustee may transfer the amount thereof from principal to income on each such date. Whenever unrealized increment is distributed as income but out of principal the principal shall be reimbursed from the income when realized.

24 M.P.T.L. ch. 4 § 14

**§ 14. Business and Farming Operations**

a. If a trustee uses any part of the principal in the continuance of a business of which the settlor was a sole proprietor or a partner, the net profits of the business, computed in accordance with generally accepted accounting principles for a comparable business, are income. If a loss results in any fiscal or calendar year, the loss falls on principal and shall not be carried into any other fiscal or calendar year for purposes of calculating net income.

b. Generally accepted accounting principles shall be used to determine income from an agricultural or farming operation, including the raising of animals or the operation of a nursery.

24 M.P.T.L. ch. 4 § 15

**§ 15. Disposition of Natural Resources**

a. If any part of the principal consists of a right to receive royalties, overriding or limited royalties, working interests, production payments, net profit interests, or other interests in minerals or other natural resources in, on or under land, the receipts from taking the natural resources from the land shall be allocated as follows:

(1) if received as rent on a lease or extension payments on a lease, the receipts are income.

(2) if received from a production payment, the receipts are income to the extent of any factor for interest or its equivalent provided in the governing

instrument. There shall be allocated to principal the fraction of the balance of the receipts which the unrecovered cost of the production payment bears to the balance owed on the production payment, exclusive of any factor for interest or its equivalent. The receipts not allocated to principal are income.

(3) if received as a royalty, overriding or limited royalty, or bonus, or from a working, net profit, or any other interest in minerals or other natural resources, receipts not provided for in the preceding subdivisions of this Section shall be apportioned on a yearly basis in accordance with this subdivision whether or not any natural resource was being taken from the land at the time the trust was established. 27.5% of the gross receipts, but not to exceed 50% of the net receipts remaining after payment of all expenses, direct and indirect, computed without allowance for depletion, shall be added to principal as an allowance for depletion. The balance of the gross receipts, after payment therefrom of all expenses, direct and indirect, is income.

b. This Section does not apply to timber, water, soil, sod, dirt, turf, or mosses.

24 M.P.T.L. ch. 4 § 16

#### § 16. Timber

If any part of the principal consists of land from which merchantable timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 17

#### **§ 17. Other Property Subject to Depletion**

Except as provided in Sections 15 and 16 of this Chapter, if any part of the principal consists of property subject to depletion, including leaseholds, patents, copyrights, royalty rights and rights to receive payments on a contract for deferred compensation, the receipts from such property shall be allocated in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 18

#### **§ 18. Unproductive and Underproductive Property**

a. An income beneficiary is entitled to a portion of the proceeds of sale of any part of principal as delayed income when the trust principal as a whole has not produced income as required under subdivision (3) of subsection (a) of Section 8 of this Chapter. The trustee shall allocate the proceeds of sale in accordance with subdivision (3) of subsection (a) of Section 8 of this Chapter.

b. An income beneficiary or his estate is entitled to delayed income under this Section as if it accrued from day to day during the time he was a beneficiary.

c. Nothing in this Section shall deprive the income beneficiary of any rights he may have under law to require the trustee to invest the trust property in accordance with the standards set forth in subdivision (3) of subsection (a) of Section 8 of this Chapter.

24 M.P.T.L. ch. 4 § 19

#### **§ 19. Charges against Income and Principal**

a. The following charges shall be made against income:

(1) ordinary expenses incurred in connection with the administration, management, or preservation of the trust property, including regularly recurring taxes assessed against any portion of the principal, water rates, premiums on insurance taken upon the interests of the income beneficiary, remainderman, or trustee, interest paid by the trustee, and ordinary repairs;

(2) one-half of court costs, attorney's fees, and other fees on periodic judicial accounting, unless the court directs otherwise;

(3) court costs, attorney's fees and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(4) one-half of the trustee's regular compensation, and one-half of all fees paid at least annually to banks, trust companies and registered investment advisers for investment advisory and custodial services, whether based on a percentage of principal or income, and other expenses reasonably incurred for current management of principal and application of income;

(5) any tax levied upon receipts defined as income under Sections 7 to 19 of this Chapter, inclusive, or the trust instrument and payable by the trustee; and if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any interest on the estate or inheritance tax that is apportioned to the trust.

b. If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period of time and withhold from distribution sufficient sums to regularize distributions.

c. The following charges shall be made against principal:

(1) Trustee's compensation and fees for investment advisory and custodial services not chargeable to income under subdivision (4) of subsection (a) of this Section, expenses reasonably incurred in connection with principal, Court costs and attorney's fees primarily concerning matters of principal, trustee's compensation computed on principal as an acceptance, distribution, or termination fee;

(2) charges not provided for in subsection (a), including the payments on principal of an indebtedness, including a mortgage amortized by periodic payments of principal, expenses for preparation of property for sale, and, unless the Court directs otherwise, expenses incurred in maintaining or defending any action to construe the trust or protect it or the property or assure the title of any trust property;

(3) extraordinary repairs or expenses incurred in making a capital improvement to principal, including special assessments;

(4) any tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority;

(5) if an estate or inheritance tax is levied in respect of a trust in which both an income beneficiary and a remainderman have an interest, any amount apportioned to the trust, including penalties, even though the income beneficiary also has rights in the principal.

d. Regularly recurring charges payable from income shall be apportioned to the same extent and in the same manner that income is apportioned under Section 10 of this Chapter.

24 M.P.T.L. ch. 4 § 20

## **§ 20. Construction of Statutes in this Part**

a. Definitions. As used in Sections 20 to 23 of this Chapter, inclusive,

(1) the term "fiduciary" means the one or more executors or administrators c.t.a. or administrators c.t.a., d.b.n. of the estate of a decedent, or the one or more trustees of a testamentary or inter vivos trust estate, or any successor or successors to the original fiduciary, or any substitute, or any ancillary fiduciary, whether corporate or individual and whether or not specifically named in the will or trust instrument, and includes the terms "co-fiduciary", "co-executor" and "co-trustee".

(2) the term "settlor" means the creator of an inter vivos trust, whether called "settlor", "grantor", "donor", or "trustor" in the instrument.

(3) the terms "will" and "trust instrument" include, respectively, codicils to a will and amendments to a trust as the context may require.

(4) "QTIP" means qualified terminable interest property as defined under Section 2056(b)(7)(B) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. Use of terminology. In all cases, the singular includes the plural of said terms and vice versa. Reference to any person by use of the neutral term "it" includes masculine and feminine and vice versa.

c. Incorporation of certain powers by reference in will or trust instrument. By an expressed intention of the testator or settlor so to do contained in a will or in an instrument in writing whereby a trust estate is created inter vivos, any one or more or all of the powers or any portion thereof enumerated in Section 21 of this Chapter, as they exist at the time of the signing of a will by the testator or at the time of the signing by the first settlor who signs a trust instrument, may be, by appropriate reference made thereto, incorporated in such will or other instrument, with the same effect as though such language were set forth verbatim in such will or other instrument. If a codicil or amendment to a trust instrument has been executed, the incorporated powers contained in such will or other instrument shall remain unchanged unless modified or otherwise altered by such codicil or amendment. Incorporation of one or more or all of the powers contained in said Section by reference to said Section shall be in addition to and not in limitation of other powers in the will or other instrument and of the common law powers or other statutory powers of the fiduciary. Any one or more or all of the additional powers or any portions thereof enumerated in Section 22 of this Chapter also may be incorporated by reference as therein provided but only to the extent they are individually referred to in such will or other instrument. In the event of a conflict between one or more of the powers contained in Sections 21 and 22 of this Chapter and the express terms of the will or other instrument, the terms of such will or other instrument shall govern. In the event of a conflict between one or more of the powers contained in Sections 21 and 22 of this Chapter, and any other provision of the general statutes, the power or powers contained in Sections 21 and 22 of this Chapter shall govern.

d. Limitation of power. No discretionary power or authority conferred upon a fiduciary as provided in Sections 21 to 23 of this Chapter, inclusive, may be exercised by such fiduciary in such a manner as, in the aggregate, to deprive the trust or the estate involved of an otherwise available tax exemption, deduction or credit, expressly including the marital and orphans deductions and the deduction for transfers for public, charitable and religious uses, except as otherwise prescribed by the testator or settlor, or operate to attract or impose a tax upon a settlor or estate of a testator or upon any other person as owner of any portion of the trust or estate involved. Notwithstanding any provisions contained in or incorporated by reference into a will or trust instrument, no person shall have a power to make any equitable adjustments affecting any qualified terminable interest property or a QTIP trust. For the purposes of this subsection, "equitable adjustments" means adjustments to trust corpus or income or both which involve a reallocation of assets from the account of one beneficiary to that of another to compensate for disproportionate sharing of a tax burden resulting from a tax election. The exercise of a power in violation of the restriction contained in this subsection shall render the action by the fiduciary or any other person with regard to that violation void. "Tax" means a federal, state, whether that of the Tribe, Connecticut, another state or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico, local, municipal or foreign, whether national, provincial, state, local or municipal, income, gift, estate, generation-skipping, inheritance, succession, accessions or other death tax, duty or excise imposed on the transfer of property at death or by gift. "Marital deduction" and "deduction for transfers for public, charitable and religious uses", shall have the same meaning and application as shall exist under the federal Internal Revenue Code in effect at the death of the testator

or at the time a trust becomes irrevocable, as the case may be.

e. Construction of other types of instruments. Nothing herein shall be construed to prevent the incorporation of the powers enumerated in Sections 21 or 22 of this Chapter in any other kind of instrument or agreement.

24 M.P.T.L. ch. 4 § 21

## **§ 21. Powers**

The following powers may be incorporated by reference as provided in Sections 20 and 23 of this Chapter:

(1) Retain Original Property. To retain for such time as the fiduciary shall deem advisable any property, real, personal or mixed, which the fiduciary may receive, even though the retention of such property by reason of its character, amount, proportion to the total estate or otherwise would not be appropriate for the fiduciary apart from this provision. The fiduciary shall not retain non-income-producing property in a trust intended to qualify for the marital deduction without the consent of the life beneficiary of said trust or his legal representative, including his guardian or conservator.

(2) Sell, Mortgage or Exchange Property. To sell, exchange, alter, assign, transfer, grant options to buy, sign real estate listing agreements; to convey, pledge, hypothecate; and to mortgage, lease and sublease, even beyond the period of the estate or any trust; to partition or otherwise dispose of any property or interest therein; to do any of such acts without an order of any court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the fiduciary shall deem advisable; to transfer and convey the property or any interest therein, in fee simple absolute or otherwise free of all trusts. The receipts of the fiduciary for moneys or things paid or delivered shall be effective discharges therefrom to the persons paying or delivering the same and no one either dealing with the fiduciary or from whom the fiduciary shall receive any money, property or other credit shall be required to see to the application thereof or shall be under any duty to follow the proceeds or other consideration received by the fiduciary from such sale or exchange. No one dealing with the fiduciary, or with any real, personal or mixed property which is or was estate or trust property, shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale is herein authorized or directed or otherwise as to the purpose or regularity of any acts of the fiduciary purporting to be done in pursuance of any other provisions or powers herein incorporated or granted.

(3) Invest and Reinvest. To invest and reinvest, as the fiduciary shall deem advisable, in stocks of any class, bonds, debentures, notes, mortgages or other securities as well as in investment trusts, mutual funds and common trust funds, to open accounts in any type of commercial or savings bank, savings and loan association, credit union or similar organization or company, whether within or without the state of Connecticut and to acquire by lease or purchase any interest in real property or real estate investment trusts whether such investment is in or outside the state of Connecticut or the United States and

even though such investment shall not be of the character approved by applicable law but for this provision. Notwithstanding any other provisions to the contrary, neither a trustee of an irrevocable trust, intended to qualify for the federal gift tax exclusion as a gift of a present interest under Section 2503(b) or 2503(c) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, nor the trustee of a trust providing for payment of all income therefrom to the life beneficiary, including a QTIP trust, may under any circumstances invest or reinvest in unproductive, under-productive or non-income-producing property, or acquire any life insurance, endowments or annuities unless explicitly so authorized in the trust instrument.

(4) Invest Without Diversification. To make investments which cause a greater proportion of the total property held by the fiduciary to be invested in investments of one kind than would be considered appropriate for the fiduciary apart from this provision.

(5) Exercise Stock Options. To exercise any stock options owned by the testator or settlor at his death or acquired by or held in any trust, to borrow money and pledge any assets, including stock acquired by the exercise thereof, to obtain funds for the exercise thereof, to retain any stock purchased by the exercise of such options for such time as the fiduciary deems advisable, and to exercise all other powers in respect of such stock as though such stock formed a part of the estate at the time of death or a part of any trust.

(6) Pay Taxes and Expenses. To pay taxes; to pay calls, assessments and any other sums chargeable or accruing against or on account of shares of stock, debentures or other corporate securities in the hands of a fiduciary, whenever such payment may be legally enforceable against the fiduciary or any property of the estate or trust, or if the fiduciary deems payment expedient and for the best interests of the estate or trust; to pay for repairs and other expenses incurred in the management, collection, care, administration and protection of the trust or estate including fiduciary compensation and attorneys' fees.

(7) Receive Additional Property. To receive additional property from any source and administer such additional property as a portion of the appropriate trust or estate under the management of the fiduciary, provided the fiduciary shall not be required to receive such property without the fiduciary's consent unless such property is devised or bequeathed to the fiduciary in its fiduciary capacity in which case the fiduciary must receive such property or resign.

(8) Borrow Money. To borrow money and to assume indebtedness for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the fiduciary shall deem advisable, including the powers of a corporate fiduciary to borrow from its own banking department, for the purpose of paying debts, taxes, administration expenses, or other charges against the estate or any trust, or any part thereof, and to mortgage, pledge or otherwise encumber such portion of the estate or any trust as may be required to secure such loan or loans, and to renew existing loans either as maker or endorser.

(9) Vote Shares. To vote shares of stock owned by the estate or owned by any trust stockholders' meetings in person or by special, limited, or general proxy, with or without power of substitution.



(10) Register in Name of Nominee. To hold any investment in the name of a nominee or in any form in which title will pass by delivery, but the fiduciary shall be liable for any act of the nominee in connection with the investment so held. Any corporation or its transfer agent may presume conclusively that the nominee is the actual owner of securities submitted for transfer.

(11) Use of Private Nominees. To form a general or limited partnership or partnerships under any name or names of the fiduciary's selection for the purpose of taking and holding title to all or any of the assets comprising the estate or trust property and for becoming the named beneficiary of any or all of the insurance policies therein; said partnership or partnerships shall have the power to deposit, withdraw, sell, loan, mortgage, lease, assign, convey, exchange, transfer or deal with said estate or trust property in all ways permitted to the fiduciary and to take any such action over the signature of only one partner or of the partnership itself; and any broker, bank, savings bank, savings and loan association, and any corporation or its transfer agent or registrar may presume conclusively that said partnership or partnerships are the actual owners of the bank deposits, savings and loan shares and securities registered in their names and submitted for transfer or registration.

(12) Take and Exercise Options, Rights and Privileges. To take options for acquisition of property, to exercise all options, rights, and privileges to convert stocks, bonds, debentures, notes, mortgages, or other property into other stocks, bonds, debentures, notes, mortgages, or other property; to subscribe for other or additional stocks, bonds, debentures, notes, mortgages, or other property; and to hold such stocks, bonds, debentures, notes, mortgages, or other property so acquired as investments of the estate or trust so long as the fiduciary shall deem advisable.

(13) Participate in Reorganizations. To unite with other owners of property similar to any which may be held at any time in the decedent's estate or in any trusts in carrying out any plan for the consolidation or merger, dissolution or liquidation, foreclosure, lease or sale of the property; incorporation or re-incorporation, acquisition, re-capitalization, reorganization or readjustment of the capital or financial structure of any corporation, company or association the securities of which may form any portion of an estate or trust; to become and serve as a member of a stockholders' or bondholders' protective committee; to deposit securities in accordance with any plan agreed upon; to pay any assessments, expenses, or sums of money that may be required for the protection or furtherance of the interest of the distributees of an estate or beneficiaries of any trust with reference to any such plan; and to receive as investments of any estate or any trust any securities issued as a result of the execution of such plan.

(14) Renew and Extend Obligations. To continue any obligation, whether secured or unsecured, upon and after maturity with a renewal or extension upon such terms as the fiduciary shall deem advisable, without regard to the value of the security, if any, at the time of such continuance, even though such continuance may extend beyond the period of the estate or of any trust.

(15) Foreclose and Bid in. To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien

securing such bond, note or other obligation, and to bid in the property at such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(16) Insure. To carry such insurance coverage, including but not limited to public liability, fire, rent, title or casualty insurance for such hazards and in such amounts, either in stock companies or in mutual companies, as the fiduciary shall deem advisable. A fiduciary or a fiduciary's employee who is a director of any corporation, more than 19% of whose stock is held by the estate or any trust, may use estate or trust assets to purchase and pay premiums on insurance to indemnify himself from liability resulting from acting with conflicting interests and from other acts in his capacity as a director.

(17) Collect. To collect, receive and give receipts for rents, issues, profits, and income of an estate or trust.

(18) Litigate, Compromise or Abandon. To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the estate or trusts the fiduciary shall deem advisable, and the fiduciary's decision shall be conclusive between the fiduciary and the beneficiaries of the estate or trust in the absence of fraud, bad faith or gross negligence of the fiduciary. No beneficiary serving as a co-fiduciary and no settlor serving as a fiduciary or co-fiduciary may participate in any decision as to claims between him and the estate or trust. Any claim by a settlor or beneficiary serving as a co-fiduciary shall be determined only by the other co-fiduciary.

(19) Employ and Compensate Agents, etc. To employ and compensate persons deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or administration of any trust including, but not limited to: servants, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, real estate managers, rental agents, realtors, appraisers, and investment counsel, custodians and other professional advisers as reasonably may be required or desired in managing, protecting and investing the estate or any trusts without liability for any neglect, omission, misconduct, or default of such person provided such person was selected and retained with due care on the part of the fiduciary. If investment counsel is selected, which at the time of selection has a reputation in its community for competence and fair dealing, its selection and retention shall be considered as having been made with due care, provided the fiduciary continues to retain such counsel only so long as such counsel maintains said reputation. Under said circumstances, the fiduciary shall have no investment responsibility whatever and may act without independent investigation upon the recommendations of any such person, without liability for any neglect, omission, misconduct, or default of such person.

(20) Acquire and Hold Property of Two or More Trusts Undivided. To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division shall become necessary in order to make a distribution; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, that the provisions of this

subdivision shall not defer the vesting in possession of any share or part of share of the estate or trust.

(21) Distribute in Cash or Kind. To make distribution of assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, provided shares may be composed differently and specific assets may be allocated to particular distributions; to make such distribution either upon final distribution or during one or more preliminary distributions, at the then current values, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to make reasonable determinations of said values for the purpose of making distribution if there is more than one distributee thereof, which determination shall be binding upon the distributees, provided no settlor serving as a fiduciary of an irrevocable trust and no beneficiary serving as a fiduciary of any trust shall have such power.

(22) Pay to or for Minors or Incompetents. To make payments in money or in property, to or for a minor or incompetent in any one or more of the following ways:

(a) to such minor or incompetent directly, if the fiduciary in its sole and absolute discretion deems such payment advisable;

(b) to apply directly in payment for the support, maintenance, education, and medical, surgical, hospital, or other institutional care of such minor or incompetent;

(c) to the legal or natural guardian of such minor or conservator of such incompetent;

(d) to any other person, whether or not appointed guardian of the person or conservator by any court, who shall, in fact have the care and custody of the person of such minor or incompetent. The fiduciary shall not be under any duty to see to the application of the payments so made and the receipt by such person shall be full acquittance to the fiduciary.

(23) Determine Income and Principal Questions. To determine in accordance with applicable law, where not otherwise provided by Connecticut's Principal and Income Act, all questions with respect to the manner in which expenses and charges, including the fiduciary's compensation as such, are to be borne and receipts are to be credited as between principal and income.

(24) Capital Gain from Mutual Funds. The fiduciary is directed to allocate to principal all distributions representing capital gains received from the sale of securities held by regulated investment companies, real estate investment trusts or mutual funds owned by the trust.

(25) Manage Real Property.

(a) To improve, manage, protect, develop, acquire and make additions to, exchange, and abandon any real property or any interest therein;

(b) to dedicate to public use or, where legally permissible, to withdraw from

such dedication, parks, streets, highways, or alleys;

(c) to subdivide or re-subdivide any real property;

(d) to borrow money for the purposes authorized by this subdivision for such periods of time and upon such terms and conditions as to rates, maturities and renewals as the fiduciary shall deem advisable and to mortgage or otherwise encumber any such property or part thereof, whether in possession or reversion;

(e) to lease or sublease any such property or part thereof to commence at the present or in the future, upon such terms and conditions, including options to renew or purchase, and for such period or periods of time as the fiduciary deems advisable, although such period or periods may extend beyond the duration of the trust or the administration of the estate involved;

(f) to make gravel, sand, oil, gas and other mineral leases, subleases, contracts, licenses, conveyances or grants of every nature and kind which are lawful in the jurisdiction in which such property lies or to employ an ancillary fiduciary or fiduciaries so to act;

(g) to manage and improve timber and forests on such property, to sell the timber and forest products, and to make grants, leases, and contracts with respect thereto;

(h) to make, modify, renew or extend leases and subleases as lessor or lessee;

(i) to employ agents to rent and collect rents;

(j) to grant and create easements and release, convey, or assign any right, title, or interest with respect to any easement on real property or part thereof and enter into party wall agreements;

(k) to erect, make repairs, replacements or improvements, structural or otherwise, or to renovate any building or other improvement on real property, and to alter, raze, remove or demolish any building or other improvement in whole or part;

(l) to survey, partition, and adjust boundaries; and to make plats of any real property; and

(m) to deal with any such property and every part thereof in all other ways and for such other purposes or considerations as would be lawful for any person owning the same.

(26) Deal with Other Trusts. In dealing with one or more other trusts, the fiduciary may sell property, real, personal or mixed to, or exchange property with, the trustee of any trust which the testator or the settlor or his spouse or any child of his has created, for such estates and upon such terms and conditions as to sale price, terms of payment, and security as the fiduciary shall deem advisable, and no fiduciary shall have any duty to follow the proceeds of any such sale, provided a fiduciary who is the settlor of an irrevocable trust or a fiduciary who is a spouse or child of the settlor or testator, whether or not the trust is irrevocable, shall not have such power,

nor shall a fiduciary who is also a beneficiary of another trust have any such power to deal with the trust of which he is beneficiary.

(27) Make Advances. In its sole and absolute discretion and without in any way being required so to do, to advance money for the protection of the trust or estate, and for all expenses, losses and liabilities sustained in the administration of the trust or estate or because of the holding or ownership of any trust or estate assets, for which advances and any interest thereon the fiduciary shall have a lien on the assets of the trust or estate as against a beneficiary, and in its sole and absolute discretion and without in any way being required so to do, to advance, without provision for reimbursement, cash to the executor of the will or administrator of the estate of the testator or settlor or of his spouse if there are insufficient liquid assets to pay debts, taxes or administration expenses of the decedent, or of his deceased spouse.

(28) Maintain Reserves. To maintain reasonable reserves for depreciation, depletion, other than percentage depletion, and for amortization, and obsolescence.

(29) Make Contracts and Execute Instruments; No Duty of Inquiry. To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers herein granted. No party dealing with a fiduciary need inquire as to the existence or proper exercise of any power of said fiduciary, whether said power is granted directly or incorporated by reference.

(30) Perform Decedent's Executory Contracts. The fiduciary may in its discretion, complete performance of the decedent's valid executory contracts which, at the time of his death, had not been fully performed.

(31) Use of Property by Distributee. During the administration of the testator's estate, the fiduciary shall have the discretion to permit any beneficiary to have the use, possession, and enjoyment, without charge, of any real estate or tangible personal property devised, bequeathed or ultimately distributable to said person, so long as he lives, and if he dies before his right to said property becomes absolute or before said property is distributed to him, neither he nor his estate shall be held liable for any loss, destruction, damage, depreciation or waste of said property except through his fault or neglect. Neither the existence nor exercise of this power shall be deemed a constructive or actual distribution of the property to which it relates.

(32) Continue Business. To the extent and upon such terms and conditions and for such periods of time as the fiduciary shall deem necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form or organization, including but not limited to the power:

(a) effect incorporation, dissolution, merger, consolidation or sale of all or substantially all of the assets, either for cash or in exchange for stock or other securities, or to make other changes in the form of the organization of the business or enterprise, and to diminish, enlarge or change the scope of nature or nature of any business;

(b) to dispose of any interest therein or acquire the interest of others therein;

(c) to contribute thereto or invest therein additional capital or to lend money thereto, in any such case upon such terms and conditions as the fiduciary shall approve from time to time except that a settlor of an irrevocable trust who is serving as a fiduciary thereof shall not have this power;

(d) to determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole, but such allocation must be done in accordance with applicable law;

(e) to control, direct and manage the business, delegate all or any part of the fiduciary's power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the business;

(f) to hire and discharge officers and employees, to fix their compensation and define their duties; and to employ, compensate and discharge agents, attorneys, consultants, accountants and such other representatives as the fiduciary may deem appropriate, including the right to employ any beneficiary, or individual fiduciary, in any of the foregoing capacities;

(g) to pledge other assets of the estate or trust as security for loans made to such business;

(h) to retain in the business such amount of the net earnings for working capital and other purposes of the business as the fiduciary may deem advisable in conformity with sound business practice, provided such retention does not impair any right of a beneficiary to receive all income from his share of any trust;

(i) to purchase, process and sell merchandise of every kind and description;

(j) to purchase and sell machinery and equipment, furniture and fixtures and supplies of all kinds;

(k) to sell or liquidate all or any part of any business at such time and price and upon such terms and conditions, including credit, as the fiduciary may determine, including a sale to any partner, officer or employee of the business or to any individual fiduciary as beneficiary hereunder, provided any such sale shall be for adequate and full consideration and no such sale shall be made to an individual fiduciary who is also a beneficiary thereunder;

(l) to invest other estate or trust funds in such business; and to loan funds from the trust to such business; and

(m) in all cases in which the fiduciary is required to furnish statements to beneficiaries or to file accounts in any Court or in any other public office, it shall not be necessary to itemize business receipts and disbursements and distributions of property but it shall be sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary

shall be permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(33) Appoint Ancillary Fiduciaries. The fiduciary may itself act or it may select one or more persons or corporations to act as an ancillary fiduciary or fiduciaries and, to the extent permitted by applicable law, all of the powers held by the domiciliary fiduciary are hereby granted to the ancillary fiduciary or fiduciaries and all costs of ancillary administration may be paid from either the domiciliary estate or trust or the ancillary estate or trust, as the fiduciary may decide in its sole discretion.

(34) Postpone Distribution and Accounting. To postpone distribution and accounting with respect to any trust for a year from the date of the termination of the trust, if in the judgment of the fiduciary such postponement shall be necessary or advisable.

(35)(a) Alternate Valuation Date. The fiduciary may elect to value the estate for tax purposes at the values of its assets on the date of decedent's death or at those values on an estate tax valuation date other than the date of the decedent's death, whether or not such election increases or decreases the federal estate tax. No adjustments shall be required to be made between income and principal or between the property interests passing to any beneficiaries which may be affected as a result of such election.

(b) Administration and Other Expenses. To the extent permitted by law, the fiduciary may elect to claim certain administration expenses, casualty losses, medical and other expenses as deductions either on the income tax returns of the estate or of the decedent or on the federal estate tax return or partly on each. The fiduciary shall elect to claim from time to time such expenses as deductions on the particular tax returns which in the fiduciary's opinion should result in the lowest total taxes being paid by the estate and its beneficiaries, regardless of whether such expenses may be payable from the income or principal of such estate, and the fiduciary is not required to make adjustments between income or principal or between the property interests passing to any beneficiaries which may be affected on account of such election, except that:

(i) where one or more residuary legatees of a will containing a so-called pre-residuary marital deduction formula provision is a charitable organization, as defined in Section 501(c) of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws, in effect at the date of the death of the testator of a will incorporating Sections 20 to 23 of this Chapter, inclusive, and

(ii) the fiduciary elects to treat such expenses in whole or in part as income tax deductions with the result that federal estate taxes paid from and chargeable to such principal are greater than if the contrary election had been made, an amount equal to the difference in such estate taxes shall be reimbursed to such principal from the income.

(c) Joint Returns. The fiduciary is specifically authorized but not required to execute and file a joint income tax return with the surviving spouse or his

executor or administrator for the year of the decedent's death and for any prior years. The fiduciary is also authorized but not required to execute and file a gift tax return with the decedent's spouse or his executor or administrator, if any gift tax return is required of either the decedent or his spouse for any quarter in the year in which death occurs or for any quarter or year prior thereto. The fiduciary is authorized but not required to consent to treat any gifts made by such decedent's spouse as being made one-half by the decedent. The fiduciary may pay such income and gift taxes as are chargeable to the decedent and, in its discretion, may pay the entire amount of such taxes. The fiduciary shall incur no personal liability for any action taken by it in good faith in accordance with any of the foregoing authorizations.

(d) Installment Payment of Estate Taxes. The fiduciary is authorized in its discretion to elect to pay all or any part of the federal estate tax on the estate in installments under the provisions of Section 6166 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws.

(e) Request for Extension of Time for Paying Estate Tax. The fiduciary is authorized in its discretion to request an extension of time for paying the federal estate tax, or any installment thereof on the estate or any amounts determined as a deficiency thereon under the provisions of Section 6161 or 6163 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

(f) Election of Special Use Valuation. The fiduciary is authorized to make all elections with respect to valuations authorized by Section 2032A and related Sections of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

(g) Pension and Profit-Sharing Plans. To elect, either revocably or irrevocably, to receive death benefits and any other sums payable with respect to any pension and profit-sharing plans in a lump sum, in installments or as an annuity; to waive the benefit of any income averaging provisions available for distributions from pension and profit-sharing plans; to elect a different mode of distribution with respect to each applicable pension and profit-sharing plan. The term, "pension and profit-sharing plan", includes any pension, profit-sharing, thrift, stock purchase, or bonus plan as well as any so called "Keogh" plans and individual retirement accounts. A decedent's spouse, if acting as a fiduciary, shall take no part in the exercise of any election under any pension or profit-sharing plan.

(h) in making any of the elections authorized in subparagraph (d), (e), (f) or (g) of this subdivision, the fiduciary is authorized to take all action it deems necessary to implement said elections without incurring personal liability for any action taken or omitted by it in good faith under said authorization.

(36) Surrender of Stock for Redemption. The fiduciary is authorized in its discretion to surrender shares of stock in any corporation to the corporation issuing such stock for redemption, accepting in payment for the redeemed shares



cash, notes or other property; and to vote the shares of stock of any corporation in favor of the redemption of shares of its stock included in determining the gross estate of a decedent, either for cash, notes or other property, including a redemption of such shares designed to provide funds for the payment of the decedent's death taxes, funeral expenses and administration expenses under the provisions of Section 303 of the federal Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or any corresponding provision of applicable revenue laws and the fiduciary shall incur no personal liability for any action taken or omitted by it in good faith in accordance with any of the foregoing authorizations.

(37) Pooling Agreements and Voting Trusts. To enter into any kind of pooling agreements and voting trusts, even though such action may involve delegation of authority.

(38) Exculpation. The fiduciary is hereby exonerated from any liability resulting from its retention, sale or operation, whether due to losses, depreciation in value or actions taken or omitted to be taken with respect to any business, farm or real estate interests held in an estate or trust, nor shall the fiduciary be liable for any loss to or depreciation of any other estate or trust property, so long as it is acting in good faith in the management thereof and exercising reasonable care and diligence, but the fiduciary is not exonerated from his own bad faith, willful misconduct or gross negligence.

(39) Environmental Hazards. To take any action necessary to deal with or prevent problems created by environmental hazards, including, but not limited to, conducting assessments, taking any remedial action to contain, clean up or remove environmental hazards and expending estate or trust assets to accomplish any such action.

24 M.P.T.L. ch. 4 § 22

## **§ 22. Additional Powers**

Any one or more or all of the following additional powers or any portion thereof may be incorporated by reference, as provided in Section 20 of this Chapter but only to the extent they are individually referred to in such will or other instrument:

(1) Stock of Fiduciary. To retain and invest and reinvest in and purchase any stock or other securities issued by the fiduciary in its individual capacity, or by any parent holding company of the fiduciary, including any stock dividends thereon and any securities issued in lieu thereof as the result of any re-capitalization, reorganization, consolidation or merger. Furthermore the fiduciary may exercise or sell any rights, or exercise part and sell part thereof, including rights to buy fractional shares, issued to it by reason of its ownership of any such security; and may retain and hold any security so acquired and vote and issue general or limited proxies to vote said stock.

(2) Buy Insurance and Annuities. To retain and to purchase insurance

contracts, on the life of any beneficiary or of any person in whom a beneficiary has an insurable interest, or annuity contracts for any beneficiary and to pay the premiums thereon out of such beneficiary's portion of principal or income as the fiduciary, in its discretion, shall determine.

(3) Invest in Partnerships, etc. To retain, invest and reinvest in partnerships, joint ventures, leases, real estate syndicates, small business investment companies and hedge funds.

(4) Speculative Assets. To retain, trade and speculate in any real, personal or mixed property as the fiduciary shall deem advisable, wherever situated, including but not limited to:

(a) Any one or more or all commodities and commodity options regularly traded on exchanges in or outside the United States, in either spot or futures contracts, claims, straddles, spreads or any other type of commodity contract, whether long or short;

(b) puts, calls, straddles and options in any domestic or foreign securities and short sales of such contracts and of securities;

(c) interests in oil, gas, coal, gravel, sand, timber, sulfur, precious and semiprecious stones, minerals, metals and their ores, including but not limited to iron, aluminum, copper, rhodium, palladium, platinum, radium, uranium and gold and silver bullion, bars, bricks and coins, and any other mineral and timber rights, royalties, leases and payments, and interests in computer hardware and software;

(d) any interests in breeding of dairy cattle, horses, hogs, sheep, dogs, cats or other animals;

(e) postage and revenue stamps, postal covers, coins, jewelry, rare books, paintings, etchings, statues, sculptures, antiques, curios, antique firearms and edged weapons, and other collectible items and art objects;

(f) aircraft, ships, railroad locomotives, rolling stock, buses, antique automobiles and other vehicles;

(g) foreign currencies and United States Treasury bills including future contracts in such assets, whether long or short.

(5) Oil and Gas Interests. To have power with respect to oil, natural gas, minerals, and all other natural resources and rights to any interests therein, together with all equipment rights pertaining thereto, including oil and gas royalties, leases, payments, or other oil and gas interests of any character, whether owned in fee, as lessee, lessor, licensee, concessionaire or otherwise, either alone or jointly with others as partner, joint tenant, or joint venturer or in any other non-corporate manner, to:

(a) make oil, gas and mineral leases or subleases;

(b) pay delayed rents, lease bonuses, royalties, overriding royalties, taxes, assessments, and all other charges;

(c) sell, lease, exchange, mortgage, pledge or otherwise hypothecate any or all of such rights and interests;

(d) surrender or abandon, with or without consideration, any or all of such rights and interests;

(e) make farm-out, pooling, repressuration and unitization agreements;

(f) make reservations or impose conditions on the transfer of any such rights or interests;

(g) employ the most advantageous business form in which properly to exploit such rights and interests, whether as corporations, general or limited partnerships, mining partnerships, joint ventures, co-tenancies, or otherwise;

(h) drill, test, explore, mine, develop and otherwise exploit any and all such rights and interests;

(i) produce, process, sell or exchange all products recovered through the exploitation of such rights and interests, and to enter into contracts and agreements for or in respect of the installation or operation of absorption, reprocessing or other processing plants;

(j) carry any or all such interests in the name or names of a nominee or nominees;

(k) delegate, to the extent permitted by law, any or all of the powers set forth herein to the operator of such property; and

(l) employ personnel, rent office space, buy or lease office equipment, contract and pay for geological surveys and studies, procure appraisals, and generally to conduct and engage in any and all activities incident to the foregoing powers, with full power to borrow and pledge in order to finance such activities. The fiduciary shall have the right to rely on the judgment and recommendations of the operators of such property and need not make an independent investigation before acting on their reasonable recommendations.

(6) Form Corporation or Other Entity. To form a corporation or other entity under the laws of any jurisdiction and to transfer, assign, and convey to such corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of any such corporation or entity, and to continue to hold such stock, securities and obligations.

(7) Fiduciary May Become Director or Officer. To vote for any individual fiduciary or any employee, officer or director of any corporate fiduciary, to be a director, officer, or both, of any corporation or small business investment company in which the estate or trust may be interested and to belong to any committee relating in any way to such corporation or company; and to serve as such director, officer, committee member, or any or all of them, and receive proper remuneration for such services, and to exercise its discretion with respect to all matters concerning the affairs of such corporation or company, and to consent to corporate or partnership sales, exchanges, leases,

mortgages and encumbrances, without in any way being accountable for any such acts to any beneficiaries.

(8) Operate Farm. To continue any agricultural operation received by the fiduciary pursuant to the will or other instrument and to do any and all things deemed advisable by the fiduciary in the management and maintenance of any farm, which term includes, but is not limited to, a farm, garden, orchard, ranch, timber tract or dairy; and to do any and all things concerning the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including but not limited to the following powers:

(a) to operate the farm with hired labor, tenants or sharecroppers;

(b) to lease or rent the farm for cash or for a share of the crops;

(c) to purchase or otherwise acquire farm machinery and equipment and livestock;

(d) to undertake the construction, repairs and improvements to farm buildings of all kinds needed in the fiduciary's judgment, for the operation of the farm;

(e) to make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting, or marketing, or for the construction, repair, or improvement of farm building, or for the purchase of farm machinery or equipment or livestock;

(f) to employ approved soil conservation practices in order to conserve, improve, and maintain the fertility and productivity of the soil;

(g) to protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is for the best interest of the estate, or any trust;

(h) to ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

(i) to engage in the production of livestock, poultry or dairy products, and to construct such fences and buildings and plant such pastures and crops as may be necessary to carry on such operations;

(j) to market the products of the farm;

(k) in general, to employ good husbandry in the operation of the farm.

(9) Residential Realty. To retain any residential real property or apartment and the contents of said real property or apartment received by it hereunder, to purchase, to rent and to maintain residential real property including an ordinary, cooperative or condominium apartment for occupancy, rent free, by any of the beneficiaries hereunder, so long as one or more of them wish to use and occupy it as a home, and to sell it when it is no longer so used and occupied, to pay all rent, taxes, assessments, repairs and other charges for maintaining such real and personal property or apartment, including title, public liability, fire and extended coverage insurance, and to make such purchases or

payments out of such beneficiary's portion of the principal or income, in accordance with applicable law, as the fiduciary in its sole discretion shall determine.

(10) Deal with Estate and Trust. To deal in every way with the estate and trust of the settlor or testator, including but not limited to the purchase from, the sale to, the exchange of assets with such estate and trust, or the making of loans thereto, either secured or unsecured and either interest-free or at such rates of interest as the fiduciary shall determine, and to make loans from an estate to a trust, in the discretion of the fiduciary. The powers described herein may be exercised by the fiduciary even though it is the legal representative of the estate, and the fiduciary shall not incur any liability for any loss resulting from the exercise of any such power.

(11) Suits on Insurance Policies. To institute any proceeding at law or in equity to enforce the payment of any life insurance policy payable to the fiduciary and to do any and all things which it in its sole discretion deems advisable for the purpose of collecting any sums which may be due or payable under any such policy, provided, that the fiduciary shall be under no obligation to institute or enter into any such litigation to enforce the payment of any such policy until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part.

(12) Advancement of Income. The fiduciary, other than a beneficiary serving as a fiduciary, shall have the discretion to advance income to or for the use of any beneficiary and the fiduciary shall have a lien therefor on that beneficiary's future benefits.

(13) Majority Action Permissible. Where there are three or more fiduciaries, the decision of a majority of the fiduciaries shall bind all of the fiduciaries, but an absent or dissenting fiduciary who joins in carrying out the decision of the majority shall not be liable for the consequences of any majority decision if said absent or dissenting fiduciary promptly files a written notice, by certified mail, of his dissent with its co-fiduciaries and with:

(a) the Probate Court having jurisdiction over any estate or trust,

(b) the income beneficiaries of any inter vivos trust, provided that liability for failure to join in administering the estate or trust or in preventing a breach of the trust may not thus be avoided.

(14) Reduce Interest Rates. To reduce the interest rate from time to time on any obligation, whether secured or unsecured, constituting a part of an estate or trust.

(15) Establish and Maintain Reserves. In lieu of the basic power specified in subdivision (28) of Section 21 of this Chapter, the fiduciary shall have the power to set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation-obsolescence, amortization, depletion, other than percentage depletion, of mineral, timber or other wasting assets, and for repairs, improvements, and general maintenance of buildings, or other property

out of rents, profits, or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries; provided that the provisions of this subdivision shall not affect the ultimate interests of beneficiaries in such reserves, although no beneficiary may compel distribution of amounts held in such reserves.

(16) Investment Philosophy. To invest with emphasis on growth and capital appreciation, and to apply the same criteria to both new assets and those already in the estate or trust. The fiduciary shall not be liable for any good faith action taken by it but only for negligence, since some assets in which it is authorized to invest are not ordinarily deemed suitable for fiduciary investment.

(17) Investment during Estate Administration. To invest and reinvest the assets of the estate actively and aggressively during the period of administration thereof.

(18) Premium and Discount. To determine whether or not to amortize from income as a sinking fund any premium paid to acquire property and to accrue any discount received at the time of acquisition thereof.

(19) Re-mortgage and Refinance Real Estate. To re-mortgage and refinance real estate for any one or more of the following purposes:

(a) business reasons;

(b) to obtain funds to pay:

(i) estate, inheritance, transfer, succession, generation-skipping or other death taxes or duties;

(ii) income, property, excise or other similar taxes;

(iii) interest and penalties on any tax, and

(iv) debts and funeral and administration expenses of the settlor or testator;  
or

(c) to invest or reinvest or speculate in real, personal or mixed property of any description and wherever situated.

(20) Terminate Small Trusts. To terminate any trust by distributing to the then income beneficiary of such trust the entire principal thereof, or an annuity purchased therewith, absolutely and free of trust, if the fiduciary, other than a beneficiary or the settlor serving as such, in its sole discretion, deems continuation of such trust unwarranted in view of the size of the trust.

(21) Distribute Directly to Remaindermen. To distribute property directly from the estate to the remaindermen of any trust, without the interposition of such trust, if the facts at the time for such distribution are such that no trust of such property would be operative under the terms of the will.

(22) Disclaimer of Power. To disclaim part or all of any one or more of the incorporated or specifically granted powers of the fiduciary by instrument in writing filed with the will, trust or other instrument incorporating this power and by complying with the provisions of Chapter 11, Sections 8 to 12, inclusive.

(23) Comply with Stock Restrictions. To observe and comply with any limitations on the disposition of any stock existing in the articles of incorporation, bylaws or other contract affecting such shares.

(24) Continue Subchapter S Election. To file appropriate consent to the continuation of any Subchapter S election in existence at the time of the testator's death, within the period required by the applicable provision of the federal Internal Revenue Code then in effect.

(25) Acquire Interest in Trust Asset. To acquire an undivided or an individual interest in a trust or estate asset in which the fiduciary, in any fiduciary capacity, holds an undivided interest.

(26) Income to Custodian for Minor. Any and all income or principal that is distributed, paid to or applied for the benefit of a minor may, in the discretion of the fiduciary, be paid to any person or corporation who is serving as a custodian for the benefit of said minor under the Uniform Gifts to Minors Act. If there is no such custodian, the fiduciary may appoint an adult member of the minor's family, a guardian of the minor, a bank with trust powers, or himself, herself, or itself to serve as such custodian and receive such payments.

(27) General Powers. To exercise every power and discretion in the management of the estate and the trusts created hereunder as the fiduciary would have if it were the absolute owner thereof. This general power shall not be limited in any way by the powers incorporated or granted herein, but no beneficiary serving as a co-fiduciary may participate in any decision, under this or any other power, that affects or could affect the share of such beneficiary relative to that of any other beneficiary in income, principal or in a trust remainder.

24 M.P.T.L. ch. 4 § 23

**§ 23. Short Title: Fiduciary Powers Act**

Sections 20 to 23 of this Chapter, inclusive, shall be known as the "Fiduciary Powers Act." Any unqualified reference thereto by name or words of similar import shall be deemed to include all the powers listed in Section 21 of this Chapter, at the time of signing the will or trust instrument, but none of the additional powers listed in Section 22 of this Chapter.

24 M.P.T.L. ch. 4 § 24

#### **§ 24. Replacement of Fiduciary**

a. Removal of Fiduciary for Cause. If any fiduciary becomes incapable of executing his trust, neglects to perform the duties of his trust, wastes the estate in his charge, or fails to furnish any additional or substitute Probate bond ordered by the court, the Probate Court having jurisdiction may, upon its own motion, or upon the application and complaint of any person interested or of the surety upon the fiduciary's probate bond, after notice and a hearing, remove such fiduciary.

b. Resignation of fiduciary. The Probate Court, after notice and hearing, may accept or reject the written resignation of any fiduciary, but such resignation shall not be accepted until such fiduciary has fully and finally accounted for the administration of his trust to the acceptance of such court.

c. Resignation or Removal of Testamentary Trustee or Guardian. Trustees appointed by a testator to execute a trust created by will and testamentary guardians may resign or be removed, and the vacancies filled by the Probate Court in the manner provided under this Section, unless otherwise provided by the will.

d. Appointment of Successor Fiduciary. Bond. Except as otherwise provided in subsection (c) of this Section, upon the death, removal or acceptance of the resignation of any fiduciary before the completion of his duties, the Probate Court may appoint a suitable person to fill the resultant vacancy and such successor fiduciary shall give a probate bond.

e. Effect on lawsuits. All suits in favor of or against the original fiduciary shall survive to and may be prosecuted by or against the person appointed to succeed him.

24 M.P.T.L. ch. 4 § 25

#### **§ 25. Appeal from Removal of Fiduciary. Effect on Successor Fiduciary**

a. When any fiduciary has been removed for cause by the Probate Court, as provided in Section 24 of this Chapter, the fiduciary may appeal from such order of removal in the manner provided in Chapter 3, Sections 32 to 38, inclusive. In the event of an appeal from the order of removal taken by the fiduciary who has been removed, the appointment of a successor shall not be stayed by the appeal but shall be a temporary appointment. Such successor fiduciary shall act during the pendency of the appeal and until the appeal is withdrawn or final judgment entered thereon.

b. If the order of removal is sustained upon appeal, such appointment shall become permanent.

c. If the order of removal is vacated upon appeal, such appointment may be terminated, subject to the obligation of such successor fiduciary to render a final account, and the acts of the successor fiduciary for the period of the pendency of the appeal shall be of full effect.



24 M.P.T.L. ch. 4 § 26

**§ 26. Enforcement of Delivery of Estate to Successor**

The Probate Court, after the removal of any fiduciary and the appointment of a successor fiduciary, may enforce the delivery to the successor fiduciary of any estate held by the former fiduciary by virtue of his original appointment in the same manner as a court of equity might do.

**CHAPTER 5. WILLS: EXECUTION AND CONSTRUCTION**

24 M.P.T.L. ch. 5 § 1

**§ 1. Who may Make a Will**

Any person 18 years of age or older or an emancipated minor, and of sound mind, may dispose of his estate by will.

24 M.P.T.L. ch. 5 § 2

**§ 2. Making and Execution of Wills. Wills Executed Outside Tribal Lands**

A will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence; but any will executed according to the laws of the state, Native American Tribes, or country where it was executed may be admitted to probate in the tribal court and shall be effectual to pass any property of the testator situated on the tribal lands.

24 M.P.T.L. ch. 5 § 3

**§ 3. Implied and Express Revocation of Wills**

a. If, after the making of a will, the testator marries or is divorced or his marriage is annulled or dissolved or a child is born to the testator or a minor child is legally adopted by him, and no provision has been made in such will for such contingency, such marriage, divorce, annulment, dissolution, birth or adoption of a minor child shall operate as a revocation of such will, provided such divorce, annulment or dissolution shall not operate as a revocation of such will if the spouse of the testator was not a beneficiary under such will.

b. A will or codicil shall not be revoked in any other manner except by burning, canceling, tearing or obliterating it by the testator or by some person in his presence by his direction, or by a later will or codicil.

24 M.P.T.L. ch. 5 § 4

**§ 4. Devise or Bequest to Subscribing Witness**

Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void unless such will or codicil is legally attested without the signature of such witness, or unless such devisee or legatee is an heir to the testator. The competency of such witness shall not be affected by any such devise or bequest. The interest of any witness in any community, church, society, association or corporation, beneficially interested in any devise or bequest, shall not affect such devise or bequest or the competency of such witness.

24 M.P.T.L. ch. 5 § 5

**§ 5. Reference to Document Creating Trust**

The reference in a will or codicil to a trust document by which a devise or bequest is made to such trust shall not thereby cause such trust or such part of the assets thereof distributed to it by such devise or bequest to be subject to the jurisdiction of the Probate Court in which such will or codicil is admitted to Probate.

24 M.P.T.L. ch. 5 § 6

**§ 6. Uniform Testamentary Additions to Trusts Act**

a. A will may validly devise or bequeath property to the trustee or trustees of a trust established or to be established:

(1) during the testator's lifetime by the testator, by the testator and some other person or persons, or by some other person or persons including a funded or non-funded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts; or

(2) at the testator's death by the testator's devise to the trustee or trustees if the trust is identified in the testator's will or codicil and its terms are set forth in a written instrument, other than a will or codicil, executed before, concurrently with, or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust. The devise or bequest shall not be invalid because the trust is amendable or revocable, or because the trust was amended after the execution of the will or after the testator's death.

b. Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised or bequeathed, and shall be administered and disposed of in accordance with the provisions of the governing instrument setting forth the

terms of the trust, including any amendments thereto made before or after the testator's death.

c. Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death shall cause the devise or bequest to lapse.

d. This Section may be cited as the "Uniform Testamentary Additions to Trusts Act".

24 M.P.T.L. ch. 5 § 7

#### **§ 7. Effect of Devise of all Real Property**

Every devise purporting to convey all the real property of the testator shall be construed to convey all the real property belonging to him at the time of his decease, unless it clearly appears by his will that he intended otherwise.

24 M.P.T.L. ch. 5 § 8

#### **§ 8. Reference to Internal Revenue Code**

A devise or bequest, outright or in trust, given in any will or codicil or republication thereof in any codicil shall not be deemed invalid by reason of any reference therein to the federal Internal Revenue Code or any treasury regulation issued thereunder.

24 M.P.T.L. ch. 5 § 9

#### **§ 9. Gift to Spouse; Reference to Federal Provisions Re: Estate Tax and Marital Deduction**

When any will, offered for probate in tribal court makes provision for a gift, whether outright or in trust, to or for the benefit of the spouse of the testator or testatrix, such gift shall not be held to be invalid on any of the following grounds: (1) that the amount of any such gift is required to be computed or ascertained by reference to the federal statutes, or any treasury regulation issued thereunder, authorizing the allowance of a marital deduction in the computation of the federal estate tax or by reference to determinations or settlements of any kind whatsoever, whether by agreement, litigation or otherwise, in the proceedings for the assessment of said federal estate tax in the estate of such testator or testatrix; (2) that any such gift is required to be satisfied only by property which qualifies under said federal statutes, or such regulation, for such marital deduction; or (3) that any property allotted to the satisfaction of any such gift is required to be allotted at the values determined for such property, whether by agreement, litigation or otherwise, in such proceedings for the assessment of said federal estate tax or at values to be determined in any other reasonable manner.

24 M.P.T.L. ch. 5 § 10

**§ 10. Encumbrances on Property of Decedent or on Proceeds of Insurance Policy on Life of Decedent not Chargeable Against Assets of Decedent's Estate**

a. Where any property, subject to any lien, security interest or other charge at the time of the decedent's death, is specifically disposed of by will, passes to a distributee, or passes to a joint tenant under a right of survivorship, or where the proceeds of any policy of insurance on the life of the decedent are payable to a named beneficiary and such policy is subject to any lien, security interest or other charge, the fiduciary, as defined in Chapter 6, Section 37, is not responsible for the satisfaction of such encumbrance out of the assets of the decedent's estate, unless, in the case of a will, the testator has expressly or by necessary implication indicated otherwise. A general provision in the will for the payment of debts is not such an indication.

b. Any such encumbrance is chargeable against the property of the decedent or the proceeds of a policy of insurance on the life of the decedent, subject thereto. Nothing in this Section imposes upon a testamentary beneficiary, distributee, joint tenant or named insurance beneficiary any personal liability for the payment of the debt secured by such encumbrance.

c. Where any lien, security interest or other charge encumbers:

(1) property passing to two or more persons, the interest of each such person shall, only as between such persons, bear its proportionate share of the total encumbrance;

(2) two or more properties, each such property shall, only as between the recipients thereof, bear its proportionate share of the total encumbrance.

24 M.P.T.L. ch. 5 § 11

**§ 11. Bequest of Perishable Property for Life or Years**

When a testator, by his will, bequeaths the use, for life or for a term of years, of any livestock, provisions, wearing apparel or other personal property which will necessarily be consumed by using, such bequest shall give to the legatee an absolute estate in the property so bequeathed.

**CHAPTER 6. DECEDENTS' ESTATES**

24 M.P.T.L. ch. 6 § 1

**§ 1. Settlement of Small Estates without Probate of Will or Letters of Administration**

a. The surviving spouse of any person who dies, or if there is no surviving spouse, any of the next of kin of such decedent, or if there is no next of kin

or if such surviving spouse or next of kin refuses, then any suitable person whom the court deems to have a sufficient interest may, in lieu of filing an application for admission of a will to probate or letters of administration, file an affidavit in the Probate Court in the district wherein the decedent resided, stating, if such is the case, that all debts of the decedent have been paid in the manner prescribed by Section 48 of this Chapter, at least to the extent of the fair value of all of the decedent's assets, when: (1) such decedent leaves property of the type described in subsection (b) of this Section and (2) the aggregate value of any such property as described in subsection (b) of this Section does not exceed the sum of \$20,000.

b. Such property includes:

(1) A deposit in any bank;

(2) equity in shares in any savings and loan association, federal savings and loan association or credit union, doing business in this state;

(3) corporate stock or bonds;

(4) any unpaid wages due from any corporation, firm, individual, association or partnership located in this state;

(5) a death benefit payable from any fraternal order or shop society or payable under any insurance policy for which the decedent failed to name a beneficiary entitled under the bylaws and regulations of such order or society or under the terms of such insurance policy to receive such death benefit;

(6) other personal property, tangible or intangible, including a motor vehicle or motor vehicles and a motor boat or motor boats registered in his name; or

(7) an unreleased interest in a mortgage with or without value.

c. Thereafter, except as provided in subsection (e) of this Section, the probate judge shall issue a decree finding that no probate proceedings have been instituted in connection with the estate of such decedent and authorizing either the holder of such property or the registrant thereof, including the authority issuing the registration, to transfer the same or pay the amount thereof to the persons legally entitled thereto. The Probate Court may issue such certificates and other documents as may be necessary to carry out the intent of this Section. If the petitioner indicates in such affidavit that the assets listed in such affidavit or a portion thereof are necessary to pay the funeral director who buried such decedent or to pay debts due for the last sickness of the decedent, the court may order the payment of such assets directly to such funeral director or to those creditors to whom debts are due for the last sickness of the decedent to the extent necessary to pay their preferred claims for funeral expenses or expenses for the decedent's last sickness, or may order such assets sold and the proceeds from such sale paid directly to the funeral director or such creditors. Any decree issued by the court may authorize the surviving spouse or next of kin, or some suitable person whom the court deems to have a sufficient interest, to release an interest in any mortgage reported under the provisions of this Section.

d. If there is no surviving spouse or next of kin of a person who dies leaving property as described in this Section, the funeral director who buried such decedent or any creditor to whom a debt is due for the last sickness of the decedent may file in the Probate Court an affidavit as described in this Section that such funeral director or any creditor to whom a debt is due for the last sickness of the decedent has a lawful preferred claim for funeral expenses or expenses for the decedent's last sickness. Thereupon such court may, in its discretion, authorize either the holder of such property or the registrant thereof, as aforesaid, to transfer the property or pay from the property the amount of such claim, or to pay proceeds from the sale of any such assets ordered sold by the court, to such funeral director or any creditor to whom a debt is due for the last sickness of the decedent, in satisfaction of the amount of the claim of each.

e. If an affidavit is filed under subsection (a) of this Section in lieu of an application for admission of a will to probate or letters of administration and the fair value of the property of the decedent exceeds the total amount of claims, including any amounts allowed to the family under Section 25 of this Chapter, the court shall proceed as follows:

(1) If no purported last will and testament is found, the court shall order distribution of the excess in accordance with the laws of intestate succession;

(2) If the decedent left a duly executed last will and testament and the will provides for a distribution which is the same as that under the laws of intestate succession, the court shall order distribution of the excess in accordance with the laws of intestate succession;

(3) If the decedent left a duly executed last will and testament and the will provides for a distribution different from that under the laws of intestate succession, and the heirs at law of such decedent sign a written waiver of their right to contest the will, the court shall order the excess to be paid in accordance with the terms of the will;

(4) If the will directs a distribution different from the laws of intestate succession, and the heirs at law do not waive their right to contest the admission of such will, the will shall be offered for Probate in accordance with Section 8 of this Chapter. In such case, the court may issue a decree under this Section only if the persons entitled to take the bequests under the will consent, in writing, to the distribution of the bequests in accordance with the laws of intestate succession. If the claims against the estate exceed the value of the property of such decedent, the claims shall be paid in accordance with the priorities set forth in Section 48 of this Chapter. As used in this subsection, the term "will" includes any duly executed codicil thereto.

f. Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account thereof.

g. As a condition of such transfer or payment, the registrant or holder may require the filing of appropriate waivers, the execution of a bond of indemnity and a receipt for such transfer or payment.

24 M.P.T.L. ch. 6 § 2

**§ 2. Payment of Medical or Health Benefits**

When any decedent is entitled to payment of medical benefits, tribal, federal, or state, or insurance or health benefits or proceeds, or other intangible personal property owned by or payable to him or to his estate in a sum not exceeding \$1,000, the probate judge may name an administrator, ex parte, for the purpose of enabling distribution to the surviving spouse or, if there is no surviving spouse, to the next of kin of such decedent or to the funeral director or physician, as the case may be, upon evidence satisfactory to him that all debts have been paid or provided for as prescribed by Section 48 of this Chapter.

24 M.P.T.L. ch. 6 § 3

**§ 3. Applicability of Statutes**

Sections 1 and 2 of this Chapter shall apply only to estates of decedents for whom no will is presented for Probate or no application for administration is filed within 30 days after death.

24 M.P.T.L. ch. 6 § 4

**§ 4. Custodian of Will to Deliver it after Testator's death. Penalty**

a. Any person having in his possession any will or codicil shall, forthwith, after he has knowledge of the death of the testator, deliver such will either to the person designated to be the executor or one of the persons designated to be an executor thereof, or to the judge or clerk of the Probate Court.

b. On the neglect of such person to do so within the period of 30 days after he has knowledge of the death of the testator, he shall be fined not more than \$1,000.

24 M.P.T.L. ch. 6 § 5

**§ 5. Executor to Exhibit Will for Probate. Penalty for Failure**

a. Every person having knowledge of his designation in a will as an executor of a testator's estate shall, within 30 days next after the death of the testator, apply for Probate of the will to the Probate Court.

b. Every such person neglecting to do so shall be fined not more than \$100.

24 M.P.T.L. ch. 6 § 6

**§ 6. Opening of Safe Deposit Boxes to Search for a Will**

Whenever the sole owner of a safe deposit box dies, his next of kin, spouse, or any person showing a sufficient interest in the presence of a will may apply to the Probate Court for an order to open the decedent's safe deposit box to obtain any will or cemetery deed that may be contained therein. The Probate Court may issue such order ex parte. The safe deposit box shall be opened in the presence of an officer of the bank who shall make return of such order to the court stating: (a) that only the will or cemetery deed was removed from the safe deposit box or (b) that there was no such will or cemetery deed in the safe deposit box and nothing was removed.

24 M.P.T.L. ch. 6 § 7

**§ 7. Proof of Will out of Court**

Any or all of the attesting witnesses to any will may, at the request of the testator or, after his decease, at the request of the executor or any person interested under it, make and sign an affidavit before any officer authorized to administer oaths in or out of the state of Connecticut or tribal lands, stating such facts as they would be required to testify to in court to prove such will. The affidavit shall be written on such will or, if that is impracticable, on some paper attached thereto. The sworn statement of any such witness so taken shall be accepted by the Probate Court as if it had been taken before the court.

24 M.P.T.L. ch. 6 § 8

**§ 8. Hearing Required before Proving or Rejecting a Will. Notice**

The Probate Court shall, before proving or disapproving any last will and testament, or codicil thereto, hold a hearing thereon, of which notice, either public or personal or both, as the court may deem best, has been given to all parties known to be interested in the estate, unless all parties so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. The finding by the court that the estate is not more than sufficient to pay the expenses of administration and of the funeral and last sickness shall be sufficient cause to dispense with such notice.

24 M.P.T.L. ch. 6 § 9

**§ 9. Recording of a Will Proved Outside Tribal Lands**

a. When a will conveying property situated on the tribal lands has been proved and established outside tribal lands by a court of competent jurisdiction, the executor of such will or any person interested in such property may present to the Probate Court, an authenticated and exemplified copy of such will and of the record of the proceedings proving and establishing the will and request



that such copies be filed and recorded. The request shall be accompanied by a complete statement in writing of the property and estate of the decedent on the reservation. If, upon a hearing, after such notice to other parties in interest as the court orders, no sufficient objection is shown, the Probate Court shall order such copies to be filed and recorded, and they shall thereupon become a part of the files and records of such court, and shall have the same effect as if such will had been originally proved and established in such Probate Court.

b. Nothing in this Section shall give effect to a will made on the reservation by an inhabitant thereof which has not been executed according to the laws of the Tribe.

c. If the Probate Court finds sufficient objection to such will, the applicant shall offer competent proof of the contents and legal sufficiency of the will except that the original thereof need not be produced unless so directed by the Probate Court.

24 M.P.T.L. ch. 6 § 10

**§ 10. When Bond Required of Executor. Amount of Bond. Reduction of Bond**

a. A probate bond shall be required of an executor, unless such bond is excused as provided by law.

b. If the will designates a person to be an executor and directs that no bond or that a bond of a certain amount only shall be required of such executor, the Probate Court shall follow such provisions of the will if no objection to such provisions has been filed, provided, if an objection has been filed or the Probate Court determines that for cause shown the filing of a bond is necessary for the protection of creditors, a bond shall be required in an amount which shall not be less than an amount equal to twice the amount of the debts of the deceased as estimated by the court or to the amount named in the will, whichever of such amounts is the greatest.

24 M.P.T.L. ch. 6 § 11

**§ 11. Administration with the Will Annexed and De Bonis Non**

a. If no person has been designated in a will to be executor, or if the person designated in the will to be executor has died or refuses to accept or is incapable of accepting such trust, and no alternate or successor has been named, the court shall commit the administration of the estate, with the will annexed, to any person or persons in accordance with the order of priority for the appointment of administrators under subsection (c) of Section 19 of this Chapter, except that any person who is entitled to a bequest or devise under such will, or his or her designee, shall have priority over a person who is not so entitled, or on the objection of any one interested under such will or of any creditor, which objection is found reasonable by the court, the court may commit the administration of the estate, with the will annexed, to any person

whom the court deems proper, taking a probate bond.

b. If during the settlement of an estate, the executor or the administrator with the will annexed appointed by the court dies or resigns or is removed from such trust, and no alternate or successor has been named in the will, the court shall appoint an administrator of the estate with the will annexed, de bonis non, subject to the same provisions as to hearing, notice, waiver of or order dispensing with notice, selection of the administrator and bond, as are stated in this Section and Section 8 of this Chapter.

c. If the person designated in the will to be executor has died or refuses to accept or is incapable of accepting such trust, or if during the settlement of the estate, the executor appointed by the court dies, or resigns or is removed from such trust, and the will names an alternate or a successor, the court shall appoint such alternate or successor executor named in said will as executor, who shall have all the powers and duties as provided in the will. Such appointment shall be subject to the same provisions as to hearing, notice, waiver of or order dispensing with notice, and bond, as are stated in this Section and Sections 8 and 10 of this Chapter.

24 M.P.T.L. ch. 6 § 12

#### **§ 12. Executor to Administer Intestate Part of an Estate**

When a will which disposes of only a part of the estate of the testator is admitted to Probate, the executor of such will, or the administrator with the will annexed, shall, unless otherwise specified in such will, be, ex officio, the administrator of the intestate estate and shall proceed to settle the entire estate according to the will and according to law.

24 M.P.T.L. ch. 6 § 13

#### **§ 13. Executor of an Executor**

The executor of an executor shall not as such administer the estate of the first testator.

24 M.P.T.L. ch. 6 § 14

#### **§ 14. Notice of Devise or Bequest to Corporation**

Within 30 days after the admission to probate of any will containing a devise or bequest to any corporation or voluntary association, the judge or clerk of the Probate Court shall mail, postage paid, a written notice thereof, directed to the devisee or legatee at the place where it is located.

24 M.P.T.L. ch. 6 § 15

**§ 15. Expenses of Executor or Administrator in Will Contest**

a. The Probate Court shall allow to the executor his just and reasonable expenses in defending the will of such person in the Probate Court, whether or not the will is admitted to probate.

b. If there is an appeal from the order or decree of such court, admitting or refusing to admit to probate the will of such person, the Probate Court shall allow to the executor or administrator his just and reasonable expenses in supporting and maintaining or defending against such will, on such appeal.

c. Such expenses shall be charged by such court pro rata against the respective rights or shares of the devisees and legatees under such will and the distributees of such estate.

24 M.P.T.L. ch. 6 § 16

**§ 16. Court may Annul Orders Passed Under**

a. Revoked Will. Subsequent Settlement Procedure. When it appears to the Probate Court, pending proceedings before it for the settlement of the estate of a deceased person as a testate estate, that the will under which such proceedings were commenced and have been continued had been revoked in accordance with the provisions of subsection (b) of Section 4 of Chapter 5, the court shall have power to revoke, annul and set aside any order or decree proving or approving the will so revoked and any other order or decree made and passed by such court in the settlement of the estate under such will.

b. The court may thereafter proceed with the settlement of the estate under a subsequent will if there is one or, if there is no subsequent will, may grant administration on the estate of such deceased person and proceed with the settlement of the estate as an intestate estate upon such notice to all parties in interest as the court orders.

24 M.P.T.L. ch. 6 § 17

**§ 17. Procedure if, on Appeal, Will is Set Aside after Partial Settlement.  
Effect on Fiduciary**

When a will is admitted to probate by the Probate Court, and an appeal is taken from the probate of such will, the acts done in good faith by the executor of such will or by an administrator with the will annexed in settling the estate of the testator shall be deemed valid to the same extent as if no appeal had been taken. When an inventory and appraisal have been returned to court by such executor or administrator with the will annexed, and when an order limiting the time for the presentation of claims against the estate of such testator has been passed and published, a further inventory and appraisal shall not be required except of property not included in the inventory returned to court, and further time need not be given for presentation of claims against such estate, if upon such appeal such will is set aside by the appellate court.

Nothing in this Section shall authorize the executor or administrator with the

will annexed to pay any legacies named in the will so appealed from while such appeal is pending.

24 M.P.T.L. ch. 6 § 18

**§ 18. Procedure if Will is Found after Partial Settlement**

When it appears to the Probate Court, during proceedings before it for the settlement of the estate of a deceased person as an intestate estate, that such deceased person left a will, the court shall have power to revoke any order or decree granting letters of administration upon such estate and any other order or decree made by the court in the settlement of such estate as an intestate estate. The court may thereafter proceed with the settlement of such estate under such will, upon notice to all parties in interest as required in the settlement of testate estates. The acts already done in good faith before the court revokes the order or decree granting administration by the administrator of such estate in the settlement thereof shall be deemed valid to the same extent as if such letters had not been revoked. If an inventory and appraisal have been returned to the court by such administrator, a further inventory or appraisal shall not be required, except of property not included in such inventory. If an order limiting the time for the presentation of claims against such estate has been passed and published, further time shall not be required to be given for presentation of such claims.

24 M.P.T.L. ch. 6 § 19

**§ 19. Jurisdiction of Intestate Estates. Probate Costs. Issuance of Letters of Administration**

a. Jurisdiction of Intestate Estates. Probate Costs. When any Indian domiciled on tribal lands dies intestate, the Probate Court shall have jurisdiction to grant letters of administration.

b. Application, Notice and Hearing re: Letters of Administration. Upon application for letters of administration to the Probate Court of the estate of an intestate decedent, the court shall, before granting letters of administration, after notice required by this Section, hold a hearing. Notice of such hearing, either public notice, personal notice or both as the court deems best, shall be given to all persons interested in such estate, unless all persons so interested sign and file in court a written waiver of such notice, or unless the court, for cause shown, dispenses with such notice. The finding by the court that such estate is not more than sufficient to pay the expenses of administration, the funeral and last sickness shall be sufficient cause to dispense with such notice.

c. To Whom Letters of Administration Granted. Upon hearing as required by this Section, the Probate Court having jurisdiction shall grant administration of the intestate decedent's estate to any one or more persons or their designees appointed in the following order, provided such person or persons are entitled to share in the estate of the decedent:

- (1) the surviving spouse;
  - (2) any child of the decedent or any guardian of such child as the court shall determine;
  - (3) any grandchild of the decedent or any guardian of such grandchild as the court shall determine;
  - (4) the decedent's parents;
  - (5) any brother or sister of the decedent;
  - (6) the next of kin entitled to share in the estate, or, on their refusal, incapacity or failure to give bond or upon the objection of any heir or creditor to such appointment found reasonable by the court, to any other person whom the court deems proper.
- d. If the intestate decedent resided off tribal lands leaving property on tribal lands, the Probate Court may, upon notice and hearing as required by this Section, grant administration to such person as the court deems proper.
- e. **Bond Required of Administrator.** The court, upon granting any administration, shall take a Probate bond from the administrator or any successor administrator appointed by the Probate Court.

24 M.P.T.L. ch. 6 § 20

#### **§ 20. Finding of Domicile**

Upon the admission of any will to probate or the appointment of an administrator of the estate of any deceased person, or the placing of a will on file under Section 9 of this Chapter, the Probate Court shall make a finding as to the domicile of such person at the time of death. Upon application of any interested party, the Probate Court may grant any administration or admit any will to probate or place any will on file subject to a subsequent and final finding of domicile, or for any other reason the Probate Court may find proper, and upon such conditions and limitations as the Probate Court shall determine advisable for the due and proper administration of the decedent's estate. Any person interested in such estate may appeal from such finding as provided in Chapter 3, Section 32.

24 M.P.T.L. ch. 6 § 21

#### **§ 21. "Fiduciary" Defined**

As used in Chapter 4, Sections 1, 20 to 22; Chapter 6, Sections 1 to 3, inclusive, 21 to 24 inclusive, and 25 to 30, inclusive, unless otherwise required by the context, "fiduciary" includes the executor or administrator of a decedent's estate.

**§ 22. Appointment of Temporary Administrator or Trustee or an Officer to Preserve Assets. Bond**

Whenever, upon the application of a creditor or other person interested in the estate of a deceased person or insolvent debtor, it is found by the Probate Court of the estate that the granting of administration on the estate or the probating of the will of the deceased or the appointment of a trustee in insolvency will be delayed, or that it is necessary for the protection of the estate of the deceased or insolvent person, the court may, with or without notice, appoint a temporary administrator or trustee to hold and preserve the estate until the appointment of an administrator or trustee or the probating of the will. The court shall require from such administrator or trustee a probate bond. If the court deems it more expedient, it may order any deputy sheriff or constable to take possession of the estate until the appointment of an administrator, executor or trustee.

**§ 23. Powers and Duties of Temporary Appointee. Removal. Account**

a. The temporary administrator or officer appointed pursuant to the provisions of Section 22 of this Chapter shall take immediate possession of all the real and personal property of the deceased, collect the rents, debts and income thereof and do any additional acts necessary for the preservation of the estate that the court authorizes.

b. Such administrator or officer may be authorized by the court to sell any personal property of the estate which is perishable in its nature or which the court finds cannot be retained to advantage, and may be further authorized to make up or complete any stock or materials in an unfinished state, and to continue any business, so far as may be necessary for the preservation of the same.

c. Such administrator or officer shall file forthwith under oath an inventory of all personal property of the deceased and, when ordered to do so, shall exhibit to the court an account of his actions.

d. Such administrator or officer may be removed by the court with or without notice and a successor appointed whenever such action appears to the court advisable.

e. Upon the appointment and qualification of the administrator or the administrator with the will annexed or the qualification of the executor, such temporary administrator or such officer shall exhibit forthwith to the court an account of his trust and deliver to the administrator, executor or administrator with the will annexed all of the estate of the deceased remaining in his hands.

**§ 24. Custody of Remains of Deceased Persons**

The custody and control of the remains of deceased Indian residents of the tribal lands shall belong to the surviving spouse of the deceased. If the surviving spouse had abandoned, and at the time of death was living apart from, the deceased, or if there is no spouse surviving, then such custody and control shall belong to the next of kin, unless the decedent, in a duly acknowledged writing, designated another person to have custody and control of his remains.

The Probate Court may at any time, upon the petition of any of the kin or such person, award such custody and control to that person who seems to the court most fit to have the same. If a deceased Indian resident of the tribal lands leaves no spouse, next of kin or designated person surviving, or if the spouse, next of kin or designated person cannot be contacted after due diligence to assume custody and control of the remains of such decedent as provided in this Section, or if the spouse, next of kin or designated person refuses to assume such custody and control, the Probate Court of the deceased may, upon the petition of a representative of the Tribe or a licensed funeral director grant such custody and control to some suitable person.

24 M.P.T.L. ch. 6 § 25

**§ 25. Allowance for Support of Surviving Spouse and Family. Family Car**

a. The Probate Court may allow out of any real or personal estate of a deceased person in settlement before the Court, including a small estate being settled under the provisions of Section 1 of this Chapter, such amount as it may judge necessary for the support of the surviving spouse or family of the deceased during the settlement of the estate.

b. In making such allowance the court may in its discretion include in its decree ordering such allowance any one or more of the following provisions, to the extent they are not mutually inconsistent:

(1) A provision that such allowance shall run;

(a) for the entire period the estate is in settlement; or

(b) for a fixed period of time not to exceed the period of settlement, in which case such allowance shall be subject to renewal by the court in its discretion;

(2) a provision that such allowance is to be paid in a lump sum;

(3) a provision that such an allowance made for a surviving spouse shall vest in such spouse retroactively as of the moment of death of his spouse so that it will be a fixed sum certain as of said date of death and shall not terminate with the subsequent death or remarriage of the surviving spouse, such allowance to be the absolute property of the surviving spouse, or, if deceased, of the estate of such surviving spouse, without restriction as to use, encumbrance or disposition and for the purpose of this Section, the right to seek such a

vested allowance shall be a vested right as of the date of death of the deceased spouse; and

(4) a provision that such allowance shall be charged ultimately in whole or in part against any right the surviving spouse or other family member for whom an allowance is ordered may have to the income of the estate earned during the period of settlement.

c. The court may also allow for the use during the settlement of the estate by such surviving spouse or family of any motor vehicle maintained by the decedent during his lifetime as a family car.

24 M.P.T.L. ch. 6 § 26

**§ 26. Partition or Sale of Undivided Interest in Decedent's Estate. Notice. Hearing**

a. During the settlement of the estate of any person who died owning an undivided interest in any property not specifically devised or bequeathed, the executor or administrator of the estate and the owner or owners of the major portion of the other interest therein may apply in writing to the Probate Court having jurisdiction of the estate to order partition of the same.

b. Unless the petition for the partition of such interest in property is signed by all the persons in interest, or the guardians of such of them as are minors, or the conservators of such of them as are incapable persons having conservators, the court shall, following public notice, fully hear the case and make all orders as the interests of the parties and the estate demand. In such case the court shall not order partition unless upon full hearing it appears that the best interests of the estate and of the parties concerned will be promoted thereby.

c. If, upon such petition, it is the opinion of the Court of Probate that a sale will better promote the interests of the owners, or that the property cannot be beneficially divided for the purpose of distribution, it may order the sale of any or all such property in such manner and upon such notice as it deems expedient; but unless the petition for the partition or sale of such interest in property is signed by all the persons in interest, or the guardians of such of them as are minors, or the conservators of such of them as are incapable persons having conservators, the court shall, following public notice, fully hear the case and make all orders as the interests of the parties and the estate demand. In such case the court shall not order sale unless upon full hearing it appears that the best interests of the estate and of the parties concerned will be promoted thereby. An order to sell pursuant to this Section shall not be made until the executor, administrator or person designated to sell gives a probate bond to secure the execution of his trust according to the order of the court and according to law unless the Probate Court dispenses with the requirement of a probate bond as provided in Chapter 3, Section 25.

d. The court may appoint for the purpose of partitioning such property a committee of three disinterested persons, who shall be sworn and shall make a



return of their actions to the court according to the order thereof. Such partition, when so made and returned to and accepted by the court, and all orders and decrees relating thereto, shall bind all persons interested therein and their heirs.

e. The portion set to the estate of the deceased person shall be treated as if the same had been partitioned in the lifetime of such deceased person by the court.

f. If the name or residence of any party entitled to share in the proceeds of property so sold is unknown to the court and cannot be ascertained, it shall appoint a trustee for the share of such party. Such trustee shall give a probate bond and shall hold such share until demanded by the person or persons entitled thereto.

24 M.P.T.L. ch. 6 § 27

**§ 27. Court may Authorize Stock and Materials to be Worked up or Business to be Continued**

Fiduciaries of a decedent's estate and trustees in insolvency may be authorized by the Probate Court to work up and complete any stock and materials in an unfinished state, or to continue any business so far as may be expedient for the prudent winding up of the same, if the court finds that it will be for the interest of the estate.

24 M.P.T.L. ch. 6 § 28

**§ 28. Settlement of Estate on Presumption of Death**

a. Any person who has been absent from his home and unheard of for a period of seven or more years shall be presumed to be dead.

b. If such person left a will, it shall be presented for probate, and, if he left no will, administration on his estate shall be granted by the Probate Court, as provided in Section 19 of this Chapter, and his estate may be settled and distributed in the same manner as if he were known to be dead.

c. After such administration and distribution, the fiduciary shall not be liable to the person so presumed to be dead in any action for the recovery of the estate.

24 M.P.T.L. ch. 6 § 29

**§ 29. Time Limited for Granting Administration or Proving Will; Exceptions**

Except as provided in Chapter 4, Section 24, administration of the estate of any person shall not be granted, nor shall the will of any person be admitted to Probate, after 10 years from his decease, unless the Probate Court upon written petition and after public notice and hearing finds that administration

of such estate ought to be granted, or that such will should be admitted to probate; but when any minor is interested, one year shall be allowed after his arrival at the age of majority to take out administration or to cause such will to be proved. In all cases where any person has died leaving property which is not known to those interested in the same within the time above limited, but is discovered afterwards, administration may be granted within one year after its discovery.

24 M.P.T.L. ch. 6 § 30

**§ 30. Settlement of Estate after ten Years. Closure of Estate for Dormancy**

a. Whenever for any cause the settlement of any decedent's estate after the appointment of a fiduciary has been delayed or not completed, the Probate Court before which the same is pending may at its discretion proceed with the settlement of such estate, although more than 10 years have elapsed since any proceedings have been taken, and in such case may make all such orders as might have been proper if such settlement had not been delayed.

b. In any such case in which it appears to the court that the fiduciary has neglected or refused to complete administration of the estate and the appointment of a successor fiduciary would serve no useful purpose, the court may hold a hearing, after giving public notice thereof and notice to such others as the court deems reasonable. Thereafter, on its own motion, the court may order and decree the estate closed for dormancy and the bond released without adjudication and the estate shall be closed and only reopened by further order of the court; provided the bond shall be released for future acts and not for any acts or misdeeds occurring during the period of administration of the estate.

24 M.P.T.L. ch. 6 § 31

**§ 31. "Fiduciary" Defined**

As used in Sections 31 to 36 of this Chapter, inclusive, "fiduciary" includes the executor or administrator of a decedent's estate.

24 M.P.T.L. ch. 6 § 32

**§ 32. Inventory to be Filed. Property Included in Inventory. Appraisal. Time Limits. Sale of Personal Property. Hearing. Return of Sale**

a. (1) Inventory of all the property of every deceased person and insolvent debtor, except real property situated off the tribal lands, duly appraised, shall be made and sworn to by the fiduciary;

(2) When any personal property of a deceased person or insolvent debtor is located outside tribal lands the court may receive an inventory of such property, accompanied by such evidence of its value as it deems sufficient and sworn to by the fiduciary;

(3) The inventory and appraisal of the estate of any deceased nonresident shall include only such interest as the decedent had at the time of his death in the tangible personal property situated on tribal lands and intangible personal property, provided intangible personal property shall not be included if the proceeding in the state of Connecticut with regard to such estate is ancillary to a proceeding in another jurisdiction.

(4) The fiduciary shall appraise or cause to be appraised such inventoried property at its fair market value.

b. (1) The fiduciary shall file the inventory in the Probate Court within two months after the acceptance of the bond or other qualification of the fiduciary.

(2) The court may, for cause shown, extend the time for the filing of such inventory to not more than four months from the qualification of the fiduciary.

c. If the court grants administration of a decedent's estate to a person other than:

(1) the person designated in the will as executor or successor to such executor;

(2) the surviving spouse;

(3) any child of the decedent or any guardian of such child as the court shall determine;

(4) any grandchild of the decedent or any guardian of such grandchild as the court shall determine;

(5) the decedent's parents;

(6) any brother or sister of the decedent; or

(7) the next of kin entitled to share in the estate.

The fiduciary appointed by the court shall file an inventory as required by this Section prior to the sale, either under a power in the will or under the laws of this state, of any property; except that if the fiduciary appointed is a Connecticut bank and trust company or national banking association authorized to do business in Connecticut, such fiduciary shall not be required to file such an inventory of intangible personal property prior to sale. The fiduciary shall send a copy of such inventory to each person interested in the estate and shall notify each such person by certified mail, return receipt requested, that a sale of certain items in the inventory is contemplated. Such notice shall inform the recipient that he or she may object to such sale by filing a notice of objection in writing with the Probate Court within five days after receipt of such notice of sale. Upon receipt of such notice of objection, the court shall set a time and place for a hearing, with notice to all persons interested in the estate.

d. Notwithstanding the provisions of subsection (c), upon application by the fiduciary, the sale of personal property without a hearing prior to the filing of an inventory and notice of sale, provided the court finds that an expeditious sale is necessary for the protection of the estate and a delay would cause irreparable harm to the estate.

e. The fiduciary shall file a return of sale with the court after any sale of personal property of the decedent.

24 M.P.T.L. ch. 6 § 33

### **§ 33. Penalty for not Filing Inventory**

If any fiduciary fails to file in the Probate Court an inventory and appraisal for the estate of a deceased person as required, within the time limited, the court may cite such fiduciary to appear at a time and place therein stated and show cause why he should not be removed. Unless sufficient cause is shown and an inventory and appraisal is forthwith filed, the court shall remove such fiduciary and appoint a successor to complete the administration of such estate.

24 M.P.T.L. ch. 6 § 34

### **§ 34. Objections to Inventory or Appraisal. Notice and Hearing**

a. Within 60 days after the receipt of such inventory and appraisal by the court any interested party may file in the court a statement in writing setting forth in detail such objections as he may have to the acceptance of the inventory or appraisal.

b. Upon the filing of the objections, the court shall order a hearing on the acceptance of the inventory and appraisal to be had within 60 days and not less than 15 days after the filing of the objections. The court shall cause notice of the time and place of the hearing to be forthwith given to the fiduciary of the estate and to each party in interest.

c. The court, upon such hearing, shall hear the objections and may order the fiduciary to amend the inventory or appraisal in any way that it finds proper, and may accept the same as amended.

24 M.P.T.L. ch. 6 § 35

### **§ 35. Appointment of Court-Appointed Appraisers Prohibited**

There shall be no court-appointed appraisers of any decedent's property.

24 M.P.T.L. ch. 6 § 36

**§ 36. Beneficiary Designation Exempt from Laws Governing Transfer by Will**

The designation in accordance with the terms of: (1) an insurance, annuity or endowment contract, or of any agreement issued or entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof; or (2) any thrift plan, savings plan, pension plan, profit-sharing plan, death benefit plan, stock bonus plan, employee stock ownership plan, retirement plan including a self-employed retirement plan, qualified cash or deferred arrangement which is part of a profit-sharing plan or stock bonus plan, individual retirement account, annuity or bond or simplified employee pension plan, of any person to be a beneficiary or owner of any right, title or interest thereunder upon the death of another, shall not be subject to any law governing the transfer of property by will, even though such designation is revocable by the person who made it, or the rights of such beneficiary or owner are otherwise subject to defeasance.

24 M.P.T.L. ch. 6 § 37

**§ 37. Definitions**

For the purposes of Sections 1, 37 to 66, inclusive, 67 and 76 of this Chapter, the following terms shall have the following meanings, unless otherwise specifically provided:

a. "Fiduciary" means an ancillary or domiciliary executor, administrator, administrator c.t.a., administrator d.b.n., administrator c.t.a., d.b.n. and temporary administrator of the estate of a decedent.

b. "Assets" means all property and property interests, whether real or personal, tangible or intangible, corporeal or incorporeal, and choate or inchoate, of a decedent at the time of his death or of the estate of a decedent;

c. "Beneficiary" means any person entitled to legal title to any assets:

(1) under the laws governing descent and distribution;

(2) under the provisions of a will or codicil;

(3) by virtue of a right of election;

(4) in settlement of a will contest; or

(5) by mutual distribution; but shall not include the recipient of assets pursuant to a widow's allowance or family allowance paid by order of the Probate Court.

d. "Claim" means all claims against a decedent:

(1) existing at the time of the decedent's death; or

(2) arising after the decedent's death, including, but not limited to, claims which are mature, unmatured, liquidated, unliquidated, contingent, founded in tort, or in the nature of exoneration, specific performance or replevin.

e. "Creditor" means any person having a claim.

f. "Demonstrative disposition" means a testamentary disposition to be taken out of specified or identified property.

g. "Distributee" means a person who receives assets under the statutes governing descent and distribution.

h. "First fiduciary" means the fiduciary first appointed by the Probate Court to administer the estate of a decedent.

i. "General Disposition" means a testamentary disposition not amounting to a demonstrative, residuary or specific disposition.

j. "Newspaper Notice" means notice published in a newspaper having a substantial general circulation within tribal lands and in the surrounding area but not *The Pequot Times* or its substantial equivalent.

k. "Notice" means a written instrument containing the required information sent to the person to whom the notice is to be given by certified mail or registered mail and the date on which such notice shall be deemed given shall be the date of mailing; provided in the case of notice required to be given by the Probate Court, the term "notice" shall include such forms of notification in addition to certified or registered mail as the Probate Court shall in its discretion direct.

l. "Person" means a natural person, association, board, corporation, partnership or other firm or entity.

m. "Specific disposition" means a testamentary disposition of a specified or identified item.

n. "Spouse" means either a husband or wife who have been joined in lawful marriage.

o. "Testamentary disposition" means a disposition of assets by will.

24 M.P.T.L. ch. 6 § 38

### **§ 38. Notice to Creditors**

a. The Probate Court shall cause newspaper notice to be published at least once notifying all persons having claims to present their claims to the fiduciary. Newspaper notice shall be made within 14 days after the appointment of the first fiduciary. Such notice shall state:

(1) the name of the fiduciary and the address at which claims should be presented;

(2) that persons with claims should promptly present those claims to the fiduciary; and

(3) that failure to promptly present any such claim may result in the loss of rights to recover on such claim.

b. In the event of a failure of publication of such notice, a defective publication of such notice, or the death, resignation or removal of the fiduciary, the Probate Court may, in its discretion, order such supplemental publication of notice as it shall determine.

24 M.P.T.L. ch. 6 § 39

**§ 39. Effect of Failure to Present Claim; Exoneration of Fiduciary**

a. If any claim is not presented on or before the day which is 150 days from the date of the appointment of the first fiduciary, no fiduciary shall be chargeable for any assets that a fiduciary may have paid or distributed in good faith in satisfaction of any lawful claims, expenses or taxes or to any beneficiary before such claim was presented. A payment or distribution of assets by a fiduciary shall be deemed to have been made in good faith unless the creditor can prove that the fiduciary had actual knowledge of such claim at the time of such payment or distribution. Such 150 day period shall not be interrupted or affected by: (1) failure of publication or defective publication of the newspaper notice required by Section 38 of this Chapter; or (2) the death, resignation or removal of a fiduciary, except that the time during which there is no fiduciary in office shall not be counted as part of such period.

b. No fiduciary shall be chargeable for any assets that a fiduciary may have paid or distributed at any time pursuant to a widow's allowance or family allowance ordered by the Probate Court.

24 M.P.T.L. ch. 6 § 40

**§ 40. Optional Notice Procedures; Effect of Failure to Present Claim; Discretionary Extension of Time; Exoneration**

a. A fiduciary may at any time give notice to any person such fiduciary has reason to believe may have a claim that, if such person fails to present any such claim to the fiduciary on or before a date specified in such notice which date shall not be less than 90 days from the date of such notice, such person will be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate. Such notice shall contain the name and address of the fiduciary to whom such claim must be presented. The fiduciary shall not be liable to any creditor, beneficiary or any other person for the decision of the fiduciary to use or refrain from using this optional notice procedure.

b. Any creditor notified in accordance with subsection (a) of this Section, who

fails to present his claim to the fiduciary on or before the date specified in such notice shall be forever barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate. Any creditor who presents his claim on or before the date specified in such notice may not increase such claim following the expiration of such period.

c. Any creditor who, through no fault of his own, has failed to present his claim within the time set forth in the notice given to said creditor pursuant to subsection (a) of this Section may submit an application for an extension of time to file such claim with the Probate Court within 180 days from the date of such notice. Upon such application, the Probate Court may, upon hearing after notice, for cause shown, enter an order extending the time for such creditor to present his claim for a period of not more than 30 days from the date of such order, and no claim so presented shall be barred by the application of subsection (b) of this Section; provided no such extension may be granted which would extend the period for presenting such claim beyond the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 58 of this Chapter, would otherwise have expired.

24 M.P.T.L. ch. 6 § 41

#### **§ 41. Form and Verification of Claims; Presentation**

a. Every claim shall be presented to the fiduciary in writing. In addition, the fiduciary may require the claimant to present proof by affidavit that his claim is justly due, that all payments thereon, if any, have been credited and that he knows of no offsets or evidence of indebtedness and holds no security, except as specifically described in the affidavit.

b. Whenever the fiduciary resides outside of the state, claims may be presented to the fiduciary by filing such claims with the judge of probate in the district where such estate is in settlement. The Probate Court shall promptly forward to the fiduciary a copy of any such claim.

c. No creditor shall be entitled to enforce payment of his claim against assets in the hands of a fiduciary in any proceeding in any court unless his claim is presented in accordance with the provisions of this Section.

d. A claim may be presented to the fiduciary, or filed with the Probate Court pursuant to subsection (b) of this Section, by: (1) personal delivery to the fiduciary or Probate Court, as the case may be; or (2) mailing by regular, certified or registered mail, postage prepaid, to the fiduciary or Probate Court, as the case may be.

e. A claim shall be deemed presented on:

(1) the date on which the fiduciary actually receives the claim in the event the claim is presented by delivery to the fiduciary personally;

(2) the date of mailing in the event the claim is properly mailed to the



fiduciary at the fiduciary's address as set forth in the newspaper notice given under Section 38 of this Chapter, or in the notice given under Section 40 of this Chapter, or in the records of the Probate Court; or

(3) the date of receipt by the court if the claim is presented in accordance with subsection (b) of this Section.

24 M.P.T.L. ch. 6 § 42

#### **§ 42. Unmatured, Contingent or Unliquidated Claims**

a. If, at the death of any person, there shall be an unmatured, contingent or unliquidated claim or an outstanding bond, note, recognizance or undertaking upon which he was principal, surety, or indemnitor and on which at the time of his death the liability was unmatured, contingent or unliquidated, then the Probate Court shall, on the petition of either:

(1) a claimant who has duly presented his claim or

(2) the fiduciary to whom an unmatured, contingent or unliquidated claim has been duly presented, after notice to such persons as the court shall direct, conduct a hearing to determine whether a reserve from the assets of the estate should be established to secure the payment of the unmatured, contingent or unliquidated claim. Following such hearing the Probate Court shall issue an order that:

(a) no reserve be established; or

(b) the fiduciary establish a reserve from the assets of the estate in such amount as the court may deem reasonable to secure the payment of the unmatured, contingent or unliquidated claim when the amount thereof shall become due and payable; provided in no event shall the amount of such reserve exceed the difference between the amount of any such unmatured, contingent or unliquidated claim and the value of any security or collateral to which the creditor may resort for payment of such claim. In fixing the amount to be reserved for the payment of any such claim the Probate Court shall determine the value of any security or collateral to which the creditor may resort for payment of such claim. The order of the Probate Court concerning the establishment of a reserve shall discharge the fiduciary from all personal liability with respect to such unmatured, contingent or unliquidated claim, with the exception of the fiduciary's obligation to maintain any reserve so established.

b. Any such reserve shall be retained by the fiduciary for such period or periods as the Probate Court shall direct for the purpose of being applied to the payment of such claim when matured, fixed and liquidated; except that the Probate Court shall retain jurisdiction over the reserve and may from time to time issue orders regarding the continuation and management of the reserve, including the power to direct the disposition of income and principal. The fiduciary, in managing the reserve, shall be entitled to reasonable compensation and reimbursement for all expenses, including reasonable attorney's fees, which shall be paid out of the reserve. Such portion of the reserve as is not needed to pay the claim when matured, fixed and liquidated

shall be distributed according to law by the fiduciary as directed by the Probate Court.

24 M.P.T.L. ch. 6 § 43

**§ 43. Allowance or Rejection of Claims**

a. The fiduciary shall:

(1) give notice to a person presenting a claim of the rejection of all or any part of his claim;

(2) give notice to any such claimant of the allowance of his claim; or

(3) pay the claim.

b. A notice rejecting a claim in whole or in part shall state the reasons therefor, but such statement shall not bar the raising of additional defenses to such claim subsequently.

c. If the fiduciary fails to reject, allow or pay the claim within 90 days from the date that it was presented to the fiduciary as provided by Section 41 of this Chapter, the claimant may give notice to the fiduciary to act upon the claim as provided by subsection (a) of this Section. If the fiduciary fails to reject, allow or pay the claim within 30 days from the date of such notice, the claim shall be deemed to have been rejected on the expiration of such 30 day period.

24 M.P.T.L. ch. 6 § 44

**§ 44. Return and List of Claims**

Within 60 days following the expiration of the 150 day period set forth in subsection (a) of Section 39 of this Chapter, the fiduciary shall file in the Probate Court a return and list of claims sworn to by the fiduciary containing:

(1) a list of all persons notified pursuant to Section 40 of this Chapter; and (2) a list of all claims presented to the fiduciary within such 150 day period stating as to each such claim whether and to what extent such claim was allowed or rejected.

24 M.P.T.L. ch. 6 § 45

**§ 45. Determination of Claims Presented if Fiduciary Dies, Resigns or is Removed**

A successor fiduciary may apply to the Probate Court to determine: (1) any and all claims presented to any predecessor fiduciary; (2) the time of presentation of each such claim; (3) whether optional notice was given by any predecessor fiduciary to any persons pursuant to Section 40 of this Chapter; and (4) whether and to what extent each such claim was rejected, allowed or

paid by any predecessor fiduciary. Upon application by a successor fiduciary, after notice to such persons as the court shall direct, the court shall hear and decide the foregoing matters and the court's decision with regard thereto shall, unless timely appealed, be final and conclusive.

24 M.P.T.L. ch. 6 § 46

**§ 46. Suit Against Estate on Rejected Claim; Time within which to Commence Suit or File Application**

a. No person who has presented a claim shall be entitled to commence suit unless and until such claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter.

b. Unless a person whose claim has been rejected:

(1) commences suit within 120 days from the date of the rejection of his claim, in whole or in part; or

(2) files a timely application pursuant to Section 47 of this Chapter, he shall be barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate, except for such part as has not been rejected. If such person dies within 30 days from the date of the rejection of his claim and before suit is commenced or an application is filed, his fiduciary shall be allowed a period of 120 days from the date of his death within which to commence such suit or to file the application provided for in Section 47 of this Chapter. If such person dies more than 30 days but within 120 days from and including the date of the rejection of his claim and before suit is commenced, his fiduciary shall be allowed a period of 120 days from the date of his death within which to commence such suit.

24 M.P.T.L. ch. 6 § 47

**§ 47. Hearing on Rejected Claims by Probate Court or Appointment of Counsel; Costs**

a. Whenever a claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter, the person whose claim has been rejected may, within 30 days from and including the date of such rejection, make application to the Probate Court to hear and decide such claim or, in the alternative, may apply to the court for the appointment of counsel of one or more disinterested persons, at least one of whom shall be an attorney-at-law, admitted to practice in the tribal court, hear and decide such claim. The Probate Court shall not appoint as counsel any officer or employee of the Probate Court or any person employed by or associated in the practice of law with the judge of the court. The court may, in its discretion, grant the application, hear and decide such claim if the application so requests or appoint such counsel to hear and decide such claim. The court shall notify the applicant and the fiduciary of its action granting or denying the application within 15 days after receipt of the application.

b. Upon application of such counsel upon its own motion, the Probate Court shall give notice of the time and place set forth for the hearing to decide such claim to such persons as the court may direct at least 10 days before the hearing date.

c. If the application to receive and decide such claim by the court or for the appointment of counsel is denied, the claimant shall commence suit within 120 days from and including the date of the denial of his application or be barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor or beneficiary of the estate.

d. (1) If the Probate Court appoints more than one counsel, it shall appoint an odd number of counselors and a determination by a majority of such counsel shall constitute the decision of counsel.

(2) When any counselor is unable to complete his duties, the Probate Court may appoint a successor counselor or allow the remaining counselor to complete the duties of the counselor.

(3) The Probate Court may remove any counselor for cause and appoint another in his place.

e. The determination of such counsel shall be final on the date the report of such counsel is filed in the Probate Court, and the court shall thereupon enter an order approving the report unless the court finds that the counselor were guilty of misconduct substantially affecting the validity of the report or that the report is clearly erroneous. Upon rejection of the report, the Probate Court may hear and determine such claim or appoint a different counsel to hear and determine such claim as otherwise provided in this Section.

f. Such counsel may be allowed such reasonable compensation and expenses as the Probate Court shall determine, the cost of which may be apportioned between the creditor and the estate as the court shall direct. In the event that the Probate Court shall receive and decide a claim, costs shall not be assessed other than that permitted by Chapter 3, Section 1.

24 M.P.T.L. ch. 6 § 48

#### **§ 48. Order of Payment of Claims, Expenses and Taxes**

Claims, expenses and taxes in the settlement of a decedent's estate shall be entitled to preference and payment in the following order of priority: (1) funeral expenses; (2) expenses of settling the estate; (3) claims due for the last sickness of the decedent; (4) all lawful taxes and all claims due the United States; (5) all claims due any laborer or mechanic for personal wages for labor performed by such laborer or mechanic for the decedent within three months immediately before the decease of such person; (6) other preferred claims; and (7) all other claims allowed in proportion to their respective amounts.

24 M.P.T.L. ch. 6 § 49

**§ 49. Payment of Funeral and Last Illness Expenses of Married Person**

The funeral expenses and expenses of the last illness of a married person shall be paid out of his or her estate, if sufficient therefor. If such estate is not sufficient therefor, such expenses shall be paid by his or her spouse.

24 M.P.T.L. ch. 6 § 50

**§ 50. Payment of Claims of Fiduciary**

A fiduciary shall not pay any personal claim of his own until such claim has been approved by the Probate Court after newspaper notice and hearing, unless the court, for cause shown, waives such notice and hearing. If any such claim is wholly or partly secured, it may be paid out of such security at any time after such approval. The unsecured portion of any such claim and any unsecured claim shall not be paid until after such approval and until after the expiration of the 150 day period provided for in subsection (a) of Section 39 of this Chapter.

24 M.P.T.L. ch. 6 § 51

**§ 51. Liability of Beneficiaries**

a. Subject to the provisions of Sections 52 to 58 of this Chapter, inclusive, a beneficiary is liable, in an action or actions, to the extent of the fair market value on the date of distribution of any assets received by him as a beneficiary from the estate of a decedent, for the expenses of administering the estate, claims, funeral expenses of the decedent, and all taxes for which the estate is liable, which have not previously been recovered out of assets held by the fiduciary or from any other source described in subsection (b) of this Section.

b. No liability may be imposed upon any such beneficiary under subsection (a) of this Section, unless the plaintiff establishes satisfactorily to the court that the obligation to him cannot be fully satisfied:

(1) because there are insufficient assets available for such purpose in the hands of the fiduciary;

(2) by action against persons prior in liability to the defendant under subsections (a), (b) and (c) of Section 52 of this Chapter, because such persons are insolvent or for any other reason, other than not being amenable to suit in tribal court on the reservation, cannot be made to answer for their liabilities; and

(3) by the enforcement, under Chapter 5, Section 10, of any lien, security interest or other charge he holds against assets of the decedent specifically disposed of by will or passing to a distributee, or against the proceeds of any

policy of insurance on the life of the decedent payable to a named beneficiary.

24 M.P.T.L. ch. 6 § 52

**§ 52. Order of Liability; Preferences**

a. Except as otherwise provided in subsections (c) and (d) of this Section, beneficiaries are liable, as provided in Section 51 of this Chapter, in the following order:

- (1) distributees;
- (2) residuary beneficiaries;
- (3) beneficiaries of general dispositions; and
- (4) beneficiaries of specific dispositions of personal property.

b. For the purposes of subsection (a) of this Section:

- (1) a beneficiary of a demonstrative disposition shall be treated as a beneficiary of a general disposition to the extent the property or fund charged with a demonstrative disposition has adeemed;
- (2) beneficiary of a demonstrative disposition shall be treated as a beneficiary of a specific disposition if the property or fund charged with a demonstrative disposition has not adeemed, to the extent of the value of such property or fund.

c. A beneficiary who receives assets, which assets are security for the payment of a debt of the decedent, shall be liable for such debt prior to any other beneficiary, in an amount not to exceed the difference between the fair market value of such assets received by him and the amount which such secured creditor shall have realized on the disposition of such security.

d. The order of liability provided in subsection (a) of this Section shall not apply to the liability for an estate, succession or other death tax under the law of any jurisdiction, with respect to any property required to be included in the gross tax estate of a decedent under the provisions of any such law. The apportionment of the United States estate taxes, and the liability under Section 51 of this Chapter of beneficiaries consequent to such apportionment, are governed by the provisions of Connecticut General Statutes Sections 12-401 and 12-376, respectively, and the apportionment of such taxes assessed by another jurisdiction, and the liability of the beneficiaries under Section 51 of this Chapter therefor, shall be governed by the apportionment statutes of such other jurisdiction.

e. The express or implied intention of the testator to prefer certain beneficiaries shall be effective to vary the order of liability prescribed by subsection (a) of this Section.

f. If in an action under Section 51 of this Chapter, it is established to the

satisfaction of the court that:

(1) The defendant is liable for the payment of two or more of the obligations described in subsection (a) of said Section, preference in the payment of such obligations must be given in the order prescribed by law for payment of the obligations of the decedent and his estate.

(2) An unsatisfied obligation described in subsection (a) of said Section exists which is legally preferred to that of the plaintiff, the existence of such unsatisfied obligation is a defense to the action if the aggregate value of the assets passing to the defendant does not exceed the defendant's pro rata share, as provided in Section 53 of this Chapter, of such unsatisfied obligation. If the aggregate value of the assets passing to the defendant exceeds such pro rata share of such unsatisfied obligation, the plaintiff, subject to the provisions of Section 53 of this Chapter, may recover such excess from the defendant.

g. (1) If at any time payment with respect to an obligation described in subsection (a) of Section 51 of this Chapter is made by a beneficiary having a lower order of liability than another beneficiary or beneficiaries, or out of assets due such beneficiary having a lower order of liability, then the beneficiary having a lower order of liability shall be entitled to recover the amount so paid from any beneficiary prior in liability to him under subsection (a) of this Section who remains liable under Chapter 5, Section 12, Chapter 6, Sections 37 to 78, inclusive and Section 87 of this Chapter without regard to the limitations of Sections 53 and 56 of this Chapter.

(2) If by application of subdivision (1) of subsection (g) of this Section any beneficiary has paid more than his ratable obligation, as defined in Section 53 of this Chapter, such beneficiary shall be entitled to contribution from any beneficiary within the same order of liability without regard to the limitations of Sections 53 and 56 of this Chapter.

24 M.P.T.L. ch. 6 § 53

#### **§ 53. Maximum Liability of Beneficiary**

Except as otherwise provided in subsections (c) and (g) of Section 52 of this Chapter, the maximum liability to which a beneficiary is subject under subsection (a) of Section 51 of this Chapter is his ratable obligation, in the proportion that the value of the assets passing to him bears to the value of all such assets passing to beneficiaries within the same order of liability as his under subsection (a) of Section 52 of this Chapter, and no judgment may be had or entered in favor of any plaintiff against any such beneficiary for more than such ratable obligation.

24 M.P.T.L. ch. 6 § 54

#### **§ 54. Liability of Beneficiary-Fiduciary**

a. As used in this Section, "beneficiary-fiduciary" means either:

(1) a fiduciary as defined in Section 37 of this Chapter; or

(2) a trustee, guardian, conservator, committee, and any other person who, in a fiduciary capacity, has received assets as a beneficiary or as the personal representative of a beneficiary.

b. A beneficiary-fiduciary shall not be chargeable for any assets that such beneficiary-fiduciary may have paid or distributed in good faith before a claim is presented to such beneficiary-fiduciary. A payment or distribution of assets by a beneficiary-fiduciary shall be in good faith unless the creditor can prove that the beneficiary-fiduciary had actual knowledge of such claim at the time of such payment or distribution.

c. A transferee of assets from a beneficiary-fiduciary who has not furnished adequate and full consideration in money or moneys worth to the beneficiary-fiduciary for such assets shall be liable to the extent of the value of such assets so received in the same manner and to the same extent as if such transferee were the original beneficiary. For the purposes of this subsection, the term "transferee" means the person to whom or for whose benefit the beneficiary-fiduciary has paid or distributed such assets.

24 M.P.T.L. ch. 6 § 55

**§ 55. Action not Impaired by Failure to Present Claim to Fiduciary. Proper Person to Sue Following Final Distribution**

a. Except as otherwise provided in subsection (b) of Section 40 and Section 58 of this Chapter, the failure of a plaintiff to present his claim to the fiduciary as prescribed by law shall not impair his right to maintain an action against the beneficiaries under Section 51 of this Chapter; provided nothing contained herein shall extend the time limited for the commencement of an action to enforce plaintiff's claim.

b. Following final distribution of all assets known to a fiduciary, any suit on an unsatisfied obligation described in subsection (a) of Section 51 of this Chapter shall be brought against beneficiaries and not against the fiduciary, unless the plaintiff is seeking to have the fiduciary personally surcharged.

24 M.P.T.L. ch. 6 § 56

**§ 56. Action Against one or more Beneficiaries**

An action may be brought against one or more of the beneficiaries under Section 51 of this Chapter, but no defendant shall be liable, except as otherwise provided in subsections (c) and (g) of Section 52 of this Chapter, for more than his ratable obligation as described in Section 51 of this Chapter.

24 M.P.T.L. ch. 6 § 57



**§ 57. Title of Bona Fide Purchaser from Beneficiary Protected**

The entry and filing of a judgment recovered against a beneficiary in an action brought under Section 51 of this Chapter does not affect the rights of a prior purchaser, in good faith and for valuable consideration, from such beneficiary of any assets which would otherwise be subject to such judgment. When the subsequent purchaser is so protected, the judgment is enforceable against such beneficiary but not in excess of the value of the assets received by him on the date of distribution or his ratable obligation as described in Section 53 of this Chapter.

24 M.P.T.L. ch. 6 § 58

**§ 58. Statutes of Limitation; Suspension. Maximum Periods Applicable to Claims. After-Accruing Claims**

Claims shall be subject to the following provisions:

a. If any person against whom a claim exists dies within 30 days prior to the date the applicable statute of limitations on such claim would otherwise expire, a period of 30 days from the date of the appointment of his fiduciary shall be allowed within which to present such claim.

b. The running of any limitation period applicable to the claim of any person, shall, provided such claim was presented to the fiduciary prior to expiration of the applicable period of limitations, be suspended from the time of presentation of such claim until such claim has been rejected, in whole or in part, as provided in Section 43 of this Chapter, provided upon such rejection, such person may commence suit or file an application as provided in Section 46 of this Chapter.

c. Except as provided in subsections (b) and (d) of this Section, no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent, or any creditor or beneficiary of such estate but within: (1) two years from the date of the decedent's death; or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 40 of this Chapter, would otherwise have expired, whichever shall first occur.

d. With respect to any claim arising after the death of a decedent, no claim may be presented and no suit on such claim may be commenced against the fiduciary, the estate of the decedent, or any creditor or beneficiary of the estate but within: (1) two years from the date the claim arose; or (2) the date upon which the statute of limitations applicable to such claim, including any period of limitation established pursuant to Section 40 of this Chapter, would otherwise have expired, whichever shall first occur.

24 M.P.T.L. ch. 6 § 59

**§ 59. Determination of Insolvency**

The Probate Court shall direct the fiduciary of the estate of a deceased person which is represented to be insolvent to publish newspaper notice and to give notice to such persons as the court may direct to appear if they see cause before the court, at a time and place appointed by it and designated in such notice, to be heard relative to such representation. After hearing, the court shall determine whether such estate shall be declared insolvent and shall send a copy of the decree to all persons in interest.

24 M.P.T.L. ch. 6 § 60

**§ 60. Determination of Insolvency after Partial Settlement**

When, during the settlement of the estate of a deceased person, the fiduciary represents the estate to be insolvent, the Probate Court shall set a time and place for a hearing on such representation and the court shall proceed in the manner prescribed in Section 59 of this Chapter.

24 M.P.T.L. ch. 6 § 61

**§ 61. Notice to Creditors. Presentation of Claims; Effect of Failure to Present Claim. Discretionary Extension of Time**

a. Within 14 days after the determination of insolvency, the Probate Court shall cause newspaper notice to be published at least once notifying all persons having claims to present such claims to the fiduciary. Such notice shall state:

(1) the name of the fiduciary and the address at which claims should be presented;

(2) that the estate has been found insolvent and any creditor who fails to present his claim on or before the date specified in such notice, which date shall be 150 days from the date of the determination of insolvency, shall be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor of the estate. In the event of a failure of publication of such notice, a defective publication of such notice, or the death, resignation or removal of the fiduciary, the Probate Court may, in its sole discretion, order such supplemental publication of notice as it shall determine.

b. The fiduciary shall give notice to all creditors of which the fiduciary has actual knowledge that any creditor who fails to present any claim he may have to the fiduciary on or before the date specified in such notice, which date shall be 150 days from and including the date of the determination of insolvency, shall be forever barred from asserting or recovering on any such claim from the fiduciary, the estate of the decedent or any creditor of the estate. Such notice shall be given no later than 30 days prior to the expiration of such 150 period and shall contain the name and address of the fiduciary to whom claims must be presented.

c. Any creditor who fails to present his claim to the fiduciary within 150 days

from the date of the determination of insolvency shall be forever barred from asserting or recovering on such claim from the fiduciary, the estate of the decedent or any creditor of the estate. Any creditor who presents his claim within such 150 day period may not increase such claim after the expiration of such period. Such 150 day period shall begin on the date of the determination of insolvency and shall not be interrupted or affected by any failure of publication or defective publication of the notice required by subsection (a) of this Section, or by the death, resignation or removal of a fiduciary, except that the time during which there is no fiduciary in office shall not be counted as part of such period.

d. Any creditor who, through no fault of his own, has failed to present his claim within the time set forth in the notices given to said creditor pursuant to subsections (a) and (b) of this Section may submit an application for an extension of time to file such claim with the Probate Court within 60 days after the expiration of the time limited to present claims. Upon such application, the Probate Court may, upon hearing after notice, for cause shown, enter an order extending the time for such creditor to present his claim for a period of not more than 30 days from and including the date of such order, and no claim so presented shall be barred by the application of subsection (c) of this Section.

e. Claims shall be presented in the manner set forth in Section 41 of this Chapter.

24 M.P.T.L. ch. 6 § 62

**§ 62. Creditor having Secured Claim. Determination of Value of Security**

a. If a creditor presenting a claim to the fiduciary has security for his claim, such creditor shall be entitled to participate in the estate only with respect to the excess of his claim over the fair market value of the security unless such creditor files in the Probate Court a written election to relinquish such security.

b. The fiduciary shall determine the fair market value of any security held by a creditor submitting a claim and shall give such creditor and the Probate Court notice of the value and how such value was determined. Such creditor may, within 30 days from the date of such notice, file in the Probate Court an objection to the fiduciary's valuation, and the Probate Court shall, within 30 days from and including the date on which such objection was received by the Probate Court, hold a hearing, after notice, on such valuation and shall enter an order establishing the value of such security.

24 M.P.T.L. ch. 6 § 63

**§ 63. Fiduciary's Report. Notice to Creditors. Hearing. Appeal**

a. As soon as practicable after the expiration of the 150 day period for presentation of claims, the fiduciary shall file a report in the Probate Court;

(1) listing all claims presented;

(2) specifying with respect to each claim whether such claim was allowed or rejected, in whole or in part; and

(3) listing the names and addresses of all creditors given notice in accordance with Section 61 of this Chapter.

b. Within 30 days after the filing of the fiduciary's report, the Probate Court shall hold a hearing on the acceptance of said report and shall give notice of the hearing to each creditor who presented a claim to the fiduciary. Following such hearing, the court shall accept, accept with modifications or reject such report, and shall order distribution of the assets or moneys as it shall find payable in accordance with Section 48 of this Chapter. Any creditor aggrieved by the order of the Probate Court may either:

(1) appeal from the order of distribution in accordance with Sections 32 to 38 of this Chapter, inclusive; or

(2) proceed in accordance with Section 47 of this Chapter.

c. In the event of an appeal or a proceeding under Section 47 of this Chapter, the order of distribution shall be stayed pending resolution of such appeal or proceeding; provided the court may, if it deems appropriate, order the fiduciary to set aside assets sufficient to assure pro rata payment of any creditor who has appealed or who has proceeded under Section 47 of this Chapter, and to distribute the remaining assets in accordance with the order of distribution.

24 M.P.T.L. ch. 6 § 64

#### **§ 64. Estate Found Solvent after Finding of Insolvency**

When any estate of a deceased person in settlement as an insolvent estate proves to be solvent, the Probate Court, after notice and hearing, shall order the estate settled in accordance with Sections 37 to 58 of this Chapter, inclusive; provided: (1) no further newspaper notice shall be required; and (2) any notifications to creditors given under subsection (b) of Section 61 of this Chapter shall be the equivalent and have the same legal effect as a notice under Section 40 of this Chapter, except that the time for presentation shall remain as the date stated in the notice under subsection (b) of Section 61 of this Chapter, and any other time periods in Section 40 of this Chapter shall be adjusted accordingly.

24 M.P.T.L. ch. 6 § 65

#### **§ 65. Suits Against Insolvent Estate Prohibited; Pending Suits**

Except as provided by Section 63 of this Chapter, no suit shall be brought

against the fiduciary of an estate in course of settlement as insolvent. If judgment has been rendered against such fiduciary before the commencement of its settlement as an insolvent estate, execution shall not issue, but the creditor may present his judgment to the fiduciary and receive his proportionate share of the estate with the other creditors. If judgment has not been rendered, any pending suit shall abate and the creditor shall submit his claim to the fiduciary and may request that costs incurred in connection with the suit up to the date of abatement be added to the claim.

24 M.P.T.L. ch. 6 § 66

#### **§ 66. Settlement of Estate Without Claims Procedures**

When it appears to the Probate Court that the assets of the estate of any deceased person in settlement before the court, exclusive of the articles which may be legally set out to the surviving spouse and the allowance for support of such spouse and that of the family of the deceased, will not be more than sufficient to pay the funeral expenses, the expenses of settling the estate, the expenses of the last sickness and the lawful taxes and claims due the Mashantucket Pequot Tribe and the United States, the court may, after notice and hearing, ascertain the amount of such funeral and other expenses and of such taxes and preferred claims, and order that the settlement of the estate be completed without following the procedures otherwise required by Sections 59 to 65 of this Chapter, inclusive.

24 M.P.T.L. ch. 6 § 67

#### **§ 67. "Fiduciary" Defined**

As used in Sections 67 to 77, inclusive, and Sections 81 to 91 of this Chapter, inclusive, unless otherwise required by the context, "fiduciary" includes the executor or administrator of a decedent's estate.

24 M.P.T.L. ch. 6 § 68

#### **§ 68. Protection of Legacies**

a. All pecuniary legacies given in any will shall, if the personal property of the testator is insufficient for the payment thereof, be a charge on his real property not specifically described and devised, unless otherwise directed in such will.

b. Specific legacies shall not be taken or sold for the payment of debts and charges against the estate of the testator when there is other property, real or personal, sufficient and available therefor and not specifically devised or bequeathed; but real property may be sold in lieu thereof, when it is necessary for such purpose, unless such will otherwise directs.

24 M.P.T.L. ch. 6 § 69

**§ 69. Contribution Where Estate is Taken to Pay Debts**

When any estate bequeathed or devised to any person is taken for the payment of debts and charges, all the other legatees, devisees or heirs shall contribute their proportional part of the estate to the person from whom such legacy or devise is taken and he may maintain an action to compel such contribution.

24 M.P.T.L. ch. 6 § 70

**§ 70. When Distributees to Give Security for Contingent or Future Debts**

Each person to whom any part of an estate is distributed or paid by order of the Probate Court and each person to whom any property is devised or bequeathed when no sufficient provision has been made by the will for the payment of the debts out of some particular property shall, upon the request of any person having a claim against the estate, contingent or not yet matured, give a bond to the state, with surety to the acceptance of the Probate Court. The bond shall stipulate that if, after the settlement of the estate, debts appear and are allowed, such person will pay to the fiduciary his proportional part of such debts and of the charges of the fiduciary.

24 M.P.T.L. ch. 6 § 71

**§ 71. Distribution of Estates**

a. Court to Ascertain Heirs and Distributees. The Probate Court shall ascertain the heirs and distributees of each intestate estate, and the heirs and distributees of, and their respective shares in, each testate estate so far as the will may leave the same indefinite and necessary to be defined or so far as it is necessary to give effect to an agreement made in accordance with the provisions of Section 74 of this Chapter.

b. Court to order fiduciary to distribute estate. The court shall order the administrator or other fiduciary charged with the administration of the estate to deliver possession of or pay over the intestate estate and the shares in each testate estate so far as the will may leave the same indefinite and necessary to be defined to the person or persons entitled thereto in the proportions provided by law, or, if distributors are appointed or a mutual distribution is filed, as provided in Section 73 of this Chapter, or if disinterested persons are appointed to make division or an agreement is filed, as provided in Section 74 of this Chapter, the court shall order the fiduciary of the estate to deliver possession of or pay over the same in accordance with the division made by such distributors or mutual distribution or agreement, as the case may be. The fiduciary shall take proper receipts for any such delivery or payment.

24 M.P.T.L. ch. 6 § 72

## **§ 72. Distribution of Estate, Testate in Part**

When part of an estate has been devised or bequeathed and part is intestate and held in common with the devisees or legatees, the Probate Court may order a distribution of such estate.

24 M.P.T.L. ch. 6 § 73

## **§ 73. Distribution of Intestate Estates**

a. After payment of expenses and charges, an intestate estate shall be distributed by the administrator or other fiduciary charged with the administration of the estate; provided the Probate Court may, in its discretion, on its own motion or upon application by any interested person, appoint three disinterested persons to make the distribution.

b. If all the persons interested in the estate legally capable of acting and all fiduciaries for any other persons interested in the estate make and file in the Probate Court a division of the estate, made, executed and acknowledged like deeds of land in the state of Connecticut, such division, being recorded in the records of the court, shall be a valid distribution of the estate. Any such fiduciary may petition the Probate Court which appointed him for permission to enter into such a division, and such permission may be granted or, for cause shown, denied by the court, after a hearing on such petition held on such notice as the court may order.

24 M.P.T.L. ch. 6 § 74

## **§ 74. Division of Estate among Joint Legatees**

a. When a testator orders an estate to be divided among two or more legatees without appointing any person to divide it, or if he appoints persons to divide it who refuse or are unable to do so, or when in any will any estate or interest has been given to two or more persons jointly, and the same is susceptible of a division, the executor or other fiduciary charged with the administration of the estate shall make the division, provided the court before which such will was proved may, in its discretion, during the settlement of the estate of the testator, on its own motion or on the request of anyone interested, appoint three disinterested persons to make the division. Such division shall, when accepted by the court, be binding on all persons interested.

b. If the legatees or heirs are legally capable of acting and make a division in writing, in the manner provided for the division of an intestate estate, such division shall be valid.

c. Whenever there has been a contest with respect to the validity, admissibility to probate or construction of a will, if all persons interested in the estate, including persons interested as contestants or fiduciaries acting in behalf of a contestant, make and file in the court an agreement as to

the division of the estate, in writing, executed and acknowledged in the same manner as provided for conveyances of land in the state of Connecticut, such agreement shall be a valid division of the estate if approved by the Probate Court. Any such fiduciary may petition the Probate Court which appointed him for permission to enter into such an agreement. The court may grant such petition or may deny such petition. Such petition shall not be denied unless a hearing has been held thereon for which the court shall make such order of notice as it deems reasonable.

24 M.P.T.L. ch. 6 § 75

**§ 75. Personal Property that may be set out to Spouse from Insolvent Estate**

When the personal property of the deceased, exclusive of household goods exempt from execution, is not sufficient for the payment of his or her debts, the Probate Court shall set out such household goods and may set out any other exempt property to the surviving spouse.

24 M.P.T.L. ch. 6 § 76

**§ 76. Succession upon Death of Spouse. Statutory Share**

a. On the death of a spouse, the surviving spouse may as provided in subsection (c) of this Section, take a statutory share of the property passing under the will of the deceased spouse. The "statutory share" means one-third of the estate owned by the deceased spouse at the time of his or her death, after the payment of all debts and charges against the estate. The right to such third shall not be defeated by any disposition of the property by will to other parties.

b. If the deceased spouse has by will devised or bequeathed a portion of his or her property to his or her surviving spouse, such provision shall be taken to be in lieu of the statutory share unless the contrary is expressly stated in the will or clearly appears therein; but, in any such case, the surviving spouse may elect to take the statutory share in lieu of the provision of the will.

c. The surviving spouse, or the conservator or guardian of the estate of the surviving spouse, with the approval, after public notice and hearing, of the Probate Court by which such conservator or guardian was appointed, shall, not later than 150 days from the date of the appointment of the first fiduciary, as defined in Section 37 of this Chapter, file a notice, in writing, of his or her intention to take the statutory share with the Probate Court before which the estate is in settlement, and if such notice is not so filed, the surviving spouse shall be barred of such statutory share.

d. If the Probate Court has allowed a support allowance under Section 25 of this Chapter from the deceased spouse's estate for support of the surviving spouse and for the support of his or her family, the surviving spouse shall not take his or her statutory share until the expiration of the time for which the



support allowance is made.

e. The statutory share shall be set out by the fiduciary charged with the administration of the estate or, in the discretion of the Probate Court on its own motion or on application by any interested person, by distributors appointed by the Probate Court.

f. The provisions of this Section with regard to the statutory share of the surviving spouse in the property of the deceased spouse shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of the statutory share.

g. A surviving husband or wife shall not be entitled to a statutory share, as provided in subsection (a) of this Section, or an intestate share, as provided in Section 77 of this Chapter, in the property of the other if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

24 M.P.T.L. ch. 6 § 77

**§ 77. Intestate Succession. Distribution to Spouse**

a. If there is no will, or if any part of the property, real or personal, legally or equitably owned by the decedent at the time of his or her death, is not effectively disposed of by the will or codicil of the decedent, the portion of the intestate estate of the decedent, determined after payment of any support allowance from principal pursuant to Section 25 of this Chapter, which the surviving spouse shall take is:

(1) If there is no surviving issue or parent of the decedent, the entire intestate estate absolutely;

(2) If there is no surviving issue of the decedent but the decedent is survived by a parent or parents, the first \$100,000 plus three-quarters of the balance of the intestate estate absolutely;

(3) If there are surviving issue of the decedent all of whom are also issue of the surviving spouse, the first \$100,000 plus one-half of the balance of the intestate estate absolutely;

(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate absolutely.

b. For the purposes of this Section issue shall include children born out of wedlock and the issue of such children who qualify for inheritance under the provisions of Section 78 of this Chapter.

24 M.P.T.L. ch. 6 § 78

**§ 78. Distribution to Children. Children Born out of Wedlock may Inherit**

a. After distribution has been made of the intestate estate to the surviving spouse in accordance with Section 77 of this Chapter, all the residue of the real and personal estate shall be distributed in equal proportions, according to its value at the time of distribution, among the children and the legal representatives of any of them who may be dead, except that children or other descendants who receive estate by advancement of the intestate in his lifetime shall themselves or their representatives have only so much of the estate as will, together with such advancement, make their share equal to what they would have been entitled to receive had no such advancement been made.

b. (1) Children born before marriage whose parents afterwards are lawfully married shall be deemed legitimate and inherit equally with other children.

(2) A child born out of wedlock shall inherit from:

(a) his or her mother; and

(b) his or her father, provided

(i) such father has been adjudicated the father of such child by a court of competent jurisdiction; or

(ii) the father has acknowledged under oath in writing to be the father of such child, or

(iii) paternity is established by the Probate Court, after the death of either the father or the child, by clear and convincing evidence that the father has acknowledged in writing that he is the father of the child and has openly treated the child as his.

c. For the purposes of this Section,

(1) issue shall include children born out of wedlock and the issue of such children provided both the child born out of wedlock and any of such issue qualify for inheritance under this Section; and

(2) legal representatives shall include legal representatives of children born out of wedlock, provided both the child born out of wedlock through whom such legal representatives inherit and the legal representatives qualify for inheritance under this Section.

24 M.P.T.L. ch. 6 § 79

**§ 79. Distribution of Intestate Estate of Minor**

If any minor child dies intestate, unmarried and without issue, before any distribution of the estate, the portion of such deceased child shall be distributed as if such child had died in the lifetime of his parent.

**§ 80. Distribution of Intestate Estate of Child to Father where Paternity Established after Death**

For the purposes of this law, the father of a child born out of wedlock shall be considered a parent, provided paternity is established: (1) prior to the death of such father by a court of competent jurisdiction; or (2) after the death of such father by the Probate Court, provided paternity established after death is ineffective to qualify the father or his kindred to inherit from or through the child unless it is demonstrated by clear and convincing evidence that the father has acknowledged in writing that he is the father of the child and has openly treated the child as his.

**§ 81. Distribution when there are no Children or Representatives of them**

a. (1) If there are no children or any legal representatives of them, then, after the portion of the husband or wife, if any, is distributed or set out, the residue of the estate shall be distributed equally to the parent or parents of the intestate, provided no parent who has abandoned a minor child and continued such abandonment until the time of death of such child, shall be entitled to share in the estate of such child or be deemed a parent for the purposes of subdivisions (2) to (4), inclusive, of this subsection.

(2) If there is no parent, the residue of the estate shall be distributed equally to the brothers and sisters of the intestate and those who legally represent them.

(3) If there is no parent or brothers and sisters or those who legally represent them, the residue of the estate shall be distributed equally to the next of kin in equal degree. No representatives shall be admitted among collaterals after the representatives of brothers and sisters.

(4) If there is no next of kin, then the residue of the estate shall be distributed equally to the stepchildren and those who legally represent them.

b. In ascertaining the next of kin in all cases, the degree of kindred according to the rule of the civil law shall be used.

c. Relatives of the half blood shall take the same share under this Section that they would take if they were of the whole blood.

**§ 82. Simultaneous Death; Disposition of Property**

a. When no Sufficient Evidence of Survivorship. When the title to property or the devolution thereof depends upon priority of death and there is no

sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this Section.

b. Successive Beneficiaries. When two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that such beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and such portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

c. Joint tenants. When there is no sufficient evidence that two joint tenants have died otherwise than simultaneously, the property so held shall be distributed one-half as if one had survived and one-half as if the other had survived. If there are more than two joint tenants and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

d. Life or accident insurance. When the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

e. Applicability. This Section shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision had been made for distribution of property otherwise than as provided by this Section.

24 M.P.T.L. ch. 6 § 83

**§ 83. When Deaths of Husband and Wife Presumed Simultaneous**

It shall be presumed that the deaths of husband and wife were simultaneous when there is no evidence to indicate the priority of death of either.

24 M.P.T.L. ch. 6 § 84

**§ 84. Death of Devisee or Legatee**

When a legatee, being a child, stepchild, grandchild, brother or sister of the testator, dies before him, and no provision has been made in the will for such contingency, the issue of such legatee shall take the estate so devised or bequeathed.

24 M.P.T.L. ch. 6 § 85

**§ 85. Shares May be set out in Personal Property**

After the share or interest of the husband or wife has been distributed and set

out, in the distribution of any estate, the share or interest of any distributee of the estate may be distributed and set out to such distributee in personal property.

24 M.P.T.L. ch. 6 § 86

**§ 86. Distribution when Heir, Legatee or Distributee is Presumed to be Dead.  
Liability of Fiduciary**

a. If, at any hearing before a Probate Court on an application for an order for the distribution of the estate or for the payment of legacies provided for in the will of a deceased person whose estate is in process of settlement in the court, it is found by the court that any person who if living would be an heir at law of such decedent, or a legatee or distributee under such will, has been absent from his home and unheard of for a period of seven years or more next prior to the date of the death of the decedent and until the date of such hearing, the court shall find as a presumptive fact that such person died prior to the death of the decedent whose estate is in settlement, and shall order such distribution of the estate or payment of such legacies as would have been made if such person was known to have died prior to the death of the decedent whose estate is in settlement.

b. After such administration and distribution, the fiduciary shall not be liable to the person so presumed to be dead in any action for the recovery of the estate.

24 M.P.T.L. ch. 6 § 87

**§ 87. When Person Guilty of Killing Another to Inherit from or Receive Property or Insurance Proceeds as Beneficiary of Victim**

a. A person finally adjudged guilty, either as the principal or accessory, in any jurisdiction, of any crime, the essential elements of which are substantially similar to those enumerated under the Connecticut General Statutes Section 53a-54(a) or 53a-54(b), shall not inherit or receive any part of the estate of the deceased, whether under the provisions of any act relating to intestate succession, or as legatee, or otherwise under the will of the deceased, or receive any property as beneficiary or survivor of the deceased; and such person shall not inherit or receive any part of the estate of any other person when such homicide or death terminated an intermediate estate, or hastened the time of enjoyment. With respect to inheritance under the will of the deceased, or rights to property as heir, legatee or beneficiary of the deceased, the person whose participation in the estate of another or whose right to property as such heir, legatee or beneficiary is so prevented under the provisions of this Section shall be considered to have predeceased the person killed. With respect to property owned in joint tenancy with rights of survivorship with the deceased, such final adjudication as guilty shall be a severance of the joint tenancy, and shall convert the joint tenancy into a tenancy in common as to the person so adjudged and the deceased but not as to any remaining joint tenant or tenants, such severance being effective as of the time such adjudication of guilty becomes final.

b. (1) A named beneficiary of a life insurance policy or annuity who intentionally causes the death of the person upon whose life the policy is issued or the annuitant, is not entitled to any benefit under the policy or annuity, and the policy or annuity becomes payable as though such beneficiary had predeceased the decedent.

(2) A conviction under Connecticut General Statutes Section 53a-54(a), 53a-54(b), 53a-54(c), 53a-54(d), 53a-55 or 53a-55(a), shall be conclusive for purposes of this subsection. In the absence of such a conviction, the tribal court may determine by the common law, including equity, whether the named beneficiary is entitled to any benefit under the policy or annuity. In any proceeding brought under this subsection, the burden of proof shall be upon the person challenging the eligibility of the named beneficiary for benefits under a life insurance policy or annuity.

(3) Any insurance company making payment according to the terms of its policy or annuity is not liable for any additional payment by reason of this Section unless it has received at its home office or principal address written notice of a claim under this Section prior to such payment.

24 M.P.T.L. ch. 6 § 88

#### **§ 88. Distribution of Damages for Causing Death**

All damages recovered for injuries resulting in death, after payment of the costs and expenses of suit, all expenses of last illness and all funeral bills, the expenses of administration and claims against the estate and such amount for the support of the surviving spouse or family of the deceased during the settlement of the estate as the Probate Court may allow, shall be distributed as personal estate in accordance with the last will and testament of the deceased if there is one or, if not, in accordance with the law concerning the distribution of intestate personal estate.

24 M.P.T.L. ch. 6 § 89

#### **§ 89. Property Due Person Residing Outside United States**

When it appears that a legatee, distributee, cestui or beneficiary not residing within the territorial limits of the United States of America or any territory or possession thereof would not have the benefit or use or control of property due him or that special circumstances make it desirable that delivery to him be deferred, the Probate Court may in its discretion order: (1) that such legacy or distributive share be paid in whole or in part, to the executor, administrator, trustee or interested party for use by him in the purchase of goods such as food, clothing, medicine and the necessities of life to be sent to such legatee, distributee, cestui or beneficiary and that thereafter the executor, administrator, trustee or interested person account to the court indicating the purchase of such goods and forwarding the receipt for the same sent by said legatee, distributee, cestui or beneficiary; or (2) that such

property be converted into available funds and paid to the treasurer of the state of Connecticut, to be invested by him at his discretion and, together with any proceeds thereof, to be held subject to such further order as the court may enter, provided the reasonable fees, as allowed by the court, of the attorney for any such legatee, distributee, cestui or beneficiary whose funds are payable to the state treasurer hereunder shall be considered a lien thereon and shall be paid by the fiduciary having such funds in charge to such attorney prior to payment to the state treasurer.

24 M.P.T.L. ch. 6 § 90

**§ 90. Securing of Interest of Remainderman in Personal Property after Life Estate**

When a life estate in any personal property is given by will to one with remainder to another, and there is no trustee named for such property during the continuance of the life estate therein, the Probate Court may order the executor to deliver such personal property to the person having the life estate upon his giving a Probate bond. It shall be the duty of the person having the life estate thereupon to safely and properly keep such property to be delivered to the person entitled to receive it on the determination of the life estate therein. If such person fails to give bond as provided in this Section, the court shall appoint a trustee for such property during the continuance of such life estate who shall give a probate bond. The annual expense of such trust shall be chargeable upon the annual income of such property.

24 M.P.T.L. ch. 6 § 91

**§ 91. When Property Escheats to the Mashantucket Pequot Tribal Nation. Procedure**

After five years, when no owner of any estate can be found, it shall be presumed abandoned and it shall escheat to the Mashantucket Pequot Tribal Nation.

24 M.P.T.L. ch. 6 § 92

**§ 92. Short Title: Mashantucket Pequot Uniform Disposition of Community Property Rights at Death Act**

Sections 92 to 99 of this Chapter, inclusive, may be cited as the "Mashantucket Pequot Uniform Disposition of Community Property Rights at Death Act."

24 M.P.T.L. ch. 6 § 93

**§ 93. Application**

The provisions of Sections 92 to 99 of this Chapter, inclusive, shall apply to the disposition at death of the following property acquired by a married

person: All personal property, wherever situated: (1) which was acquired as, or became and remained, community property under the laws of another jurisdiction; or (2) all or the proportionate part of that property acquired with the rents, issues or income of, or the proceeds from or in exchange for, that community property; or (3) traceable to that community property.

24 M.P.T.L. ch. 6 § 94

#### **§ 94. Rebuttable Presumptions**

In determining the applicability of the provisions of Sections 92 to 99 of this Chapter, inclusive, to specific property, the following rebuttable presumptions apply: (1) property acquired during marriage by a spouse of the marriage while domiciled in a jurisdiction under whose laws property could then be acquired as community property is presumed to have been acquired as, or to have become and remained, property to which Sections 92 to 99 of this Chapter, inclusive, apply; and (2) personal property wherever situated, acquired by a married person while domiciled in a jurisdiction under whose laws property could not then be acquired as community property, title to which was taken in a form which created rights of survivorship, is presumed not to be property to which Sections 92 to 99 of this Chapter, inclusive, apply.

24 M.P.T.L. ch. 6 § 95

#### **§ 95. Disposition of Property at Death**

Upon death of a married person, one-half of the property to which Sections 92 to 99 of this Chapter, inclusive, apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of the Tribe. One-half of such property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of the Tribe. With respect to property to which Sections 92 to 99 of this Chapter, inclusive, apply, the one-half of the property which is the property of the decedent is not subject to the right of the surviving spouse to elect against the will.

24 M.P.T.L. ch. 6 § 96

#### **§ 96. Perfection of Title of Surviving Spouse**

If the title to any property to which Sections 92 to 99 of this Chapter, inclusive, apply was held by the decedent at the time of death, title to such property of the surviving spouse may be perfected by an order of the Probate Court or by execution of an instrument by the personal representative or the heirs or of the decedent with the approval of the Probate Court. Neither the personal representative nor the Probate Court has a duty to discover or attempt to discover whether property held by the decedent is property to which Sections 92 to 99 of this Chapter, inclusive, apply, unless a written demand is made by the surviving spouse or the spouse's successor in interest.



**§ 97. Perfection of Title of Personal Representative or Heir**

If the title to any property to which Sections 92 to 99 of this Chapter, inclusive, apply is held by the surviving spouse at the time of the decedent's death, the personal representative or an heir or of the decedent may institute an action to perfect title to the property. The personal representative has no fiduciary duty to discover or attempt to discover whether any property held by the surviving spouse is property to which Sections 92 to 99 of this Chapter, inclusive, apply unless a written demand is made by an heir, or creditor of the decedent.

**§ 98. Security Interest of Purchaser for Value or Lender**

a. If a surviving spouse has apparent title to property to which Sections 92 to 99 of this Chapter, inclusive, apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the personal representative or an heir of the decedent.

b. If a personal representative or an heir of the decedent has apparent title to property to which Sections 92 to 99 of this Chapter, inclusive, apply, a purchaser for value or a lender taking a security interest in the property takes his interest in the property free of any rights of the surviving spouse.

c. A purchaser for value or a lender shall not be required to inquire whether a vendor or borrower acted properly.

d. The proceeds of a sale or creation of a security interest shall be treated in the same manner as the property transferred to the purchaser for value or a lender.

**§ 99. Creditor's Rights**

Sections 92 to 99 of this Chapter, inclusive, shall not: (1) affect rights of creditors with respect to property to which said Sections apply; (2) prevent married persons from severing or altering their interests in property to which said Sections apply; or (3) authorize a person to dispose of property by will if it is held under limitations imposed by law preventing testamentary disposition by that person.

**CHAPTER 7. TRUSTS**

**§ 1. Trustee to Receive Proceeds of Pension, Retirement, Death Benefit and Profit-Sharing Plans**

a. As used in this Section, "proceeds" means the proceeds paid upon the death of any insured, employee or participant under any thrift plan or trust, savings plan or trust, pension plan or trust, death benefit plan or trust, stock bonus plan or trust including any employee's stock ownership plan or trust; any retirement plan or trust, which includes self-employed retirement plans and individual retirement accounts, annuities and bonds; and the proceeds of any individual, group or industrial life insurance policy, or accident and health insurance policy and any annuity contract, endowment insurance contract or supplemental insurance contract.

b. (1) Proceeds may be made payable to a trustee under a trust agreement or declaration of trust in existence on the date of such designation, and identified in such designation. Such proceeds shall be paid to such trustee and held and disposed of in accordance with the terms of such trust agreement or declaration of trust, including any written amendments thereto in existence on the date of the death of the insured, employee or participant. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee as beneficiary to receive such proceeds.

(2) Proceeds may be made payable to a trustee of a trust to be established by will. Upon issuance of a decree qualifying a trustee so named, such proceeds shall be payable to the trustee to be held and disposed of in accordance with the terms of such will as a testamentary trust. A designation which in substance names as such beneficiary the trustee under the will of the insured, employee or participant, shall be taken to refer to the will of such person actually admitted to probate, whether executed before or after the making of such designation.

c. Such Proceeds may be Payable in More than One Installment. If no qualified trustee claims such proceeds from the insurer or other payor within 18 months after the death of the insured, employee or participant, or if satisfactory evidence is furnished to the insurer or other payor within such period showing that there is or will be no trustee to receive such proceeds, such proceeds shall be paid by the insurer or other payor to the personal representative or assigns of the insured, employee or participant, unless otherwise provided by agreement with the insurer or other payor during the lifetime of the insured, employee or participant.

d. Except to the extent otherwise provided by the trust agreement, declaration of trust or will, proceeds received by the trustee shall not be subject to the debts of the insured, employee or participant, to any greater extent than if such proceeds were payable to the beneficiaries named in the trust; and for all purposes, including the succession and transfer tax, they shall not be deemed payable to or for the benefit of the estate of the insured, employee or participant.

e. Proceeds so held in trust may be commingled with any other assets which may properly become part of such trust.

24 M.P.T.L. ch. 7 § 2

## **§ 2. Bonds of Testamentary Trustees**

When a testator has appointed a trustee to execute a trust created by his will, the Probate Court shall, unless otherwise provided in the will, require of such trustee a probate bond. If any trustee refuses to give such bond, the refusal shall be deemed a refusal to accept or perform the duties of such trust; but the bond without surety of any public or charitable corporation or cemetery association to which any bequest or devise is made in trust shall be deemed sufficient. Whenever by any will it is provided that the trustee or trustees thereunder shall not be required to give a probate bond, or shall be required to give a bond which in the judgment of the Probate Court having jurisdiction is insecure or inadequate, the court may, upon the application of any person interested, require such trustee or trustees at any time to furnish a probate bond in accordance with Chapter 3, Section 14.

24 M.P.T.L. ch. 7 § 3

## **§ 3. Vacancies in Office of Trustee**

When any person has been appointed trustee of any estate, or holds as trustee the proceeds of any estate sold, and no provision is made by law or by the instrument under which his appointment is derived for the contingency of his death or incapacity or for his refusal to accept such trust or for his resignation of such trust, or when a trust has been created by will and no trustee has been appointed in the will or when more than one trustee has been appointed and thereafter a trustee so appointed dies, becomes incapable, refuses to accept or resigns such trust, the Probate Court may, on the happening of any such contingency, appoint some suitable person to fill such vacancy, taking from him a probate bond, unless in the case of a will it is otherwise provided therein, in which case the provisions of Section 2 of this Chapter shall apply.

24 M.P.T.L. ch. 7 § 4

## **§ 4. Legal Title Vests in Trustee Appointed to Fill Vacancy**

When the legal title to any property has vested in a trustee and the trusteeship has become vacant, such legal title shall vest in his successor immediately upon his appointment and qualification.

24 M.P.T.L. ch. 7 § 5

**§ 5. Foreign Trustee's Custody of Trust Estate. Jurisdiction of Probate Court over Trusts Created by Nondomiciliaries**

a. When any person not a resident of tribal lands is the owner of a life estate or income during life in any personal property on tribal lands that may thereafter be converted into money, and the child or children of such life tenant or person entitled to such life use or income, residing in the same state as such life tenant or person entitled to such life use or income, are entitled to the remainder upon the termination of such life estate, life use or income, such life tenant having procured the appointment of a trustee or other legal custodian of the property in which he has such interest under the laws of the place of his residence, such custodian may apply in writing to the Probate Court for the possession and removal of such property. In such application the trustee or custodian shall allege that he has been legally appointed such custodian in the jurisdiction in which such life tenant resides, and that he has therein given a probate bond valid according to the requirements of such jurisdiction, and security thereon, or an increase in an existing bond and security, in an amount equal to the value of all such estate of such person to be removed from this state. Such bond and the decree of the court appointing such custodian shall provide that if the child or children of such life tenant are for any reason unable to take or receive the property upon the termination of the life estate or estate aforesaid, it is to be held and paid over by such custodian to such persons as the Probate Court in this state ordering such removal directs. Upon such custodian filing for record in the Probate Court an exemplified copy of the record of the court by which he was appointed, it shall, after a hearing upon such notice as the court orders to the person having such estate in custody and after proof that all known debts against it on the reservation have been paid or satisfied, appoint the applicant to be guardian, conservator or trustee without further bonds, and authorize the person having such estate in his custody to deliver it to the applicant, who may demand, sue for and recover it and remove it from the reservation.

b. Any one or more of the vested beneficial owners of interests established by a testamentary transfer of personal property wherever situated, in trust or under custodianship established and administered outside of the reservation, who are residents of the reservation may petition the Probate Court if any of such beneficial owners reside on the reservation to assume jurisdiction of such trust or custodianship. In the petition, such beneficial owner or owners shall allege that it would be in the best interest of some or all of such beneficial owners and not adverse to any of such owners for the trust or custodianship to be administered in the Probate Court or that all such beneficial owners consent to the administration of the trust or custodianship in the Probate Court. The Probate Court, after hearing with notice as it directs, including notice to any Court having jurisdiction over the trust or custodianship, upon written consent of all such beneficial owners or satisfaction that the allegations in the petition are true and upon proof that such transfer is not prohibited by law, may assume jurisdiction. If a Probate bond is required under the laws of the state in which the transferring court is located on the reservation, such bond shall be given to the Probate Court prior to the assumption of jurisdiction by such court. Upon transfer and assumption of jurisdiction and administration of such trust or custodianship to the reservation, the record shall be established in the Probate Court as if the estate were being originally established for administration on tribal lands and the provisions of the tribal laws shall

govern the trust or custodianship and its administration.

24 M.P.T.L. ch. 7 § 6

**§ 6. Appointment of Trustee when Person has Disappeared. Trustee's Rights and Duties. Procedure if Person Reappears**

a. When any Mashantucket Pequot Tribal Member, domiciled on tribal lands and having property has disappeared so that after diligent search his whereabouts cannot be ascertained, the Probate Court, upon the application of the spouse, or a relative, creditor or other person interested in the property of such person, shall, after public notice and a hearing thereon, appoint a trustee of the property of such person.

b. Diligent search shall be deemed to have been made for any person who has disappeared while serving with the armed forces when such person has been reported or listed as missing, missing in action, interned in a neutral country or beleaguered, besieged or captured by an enemy.

c. Such trustee, upon giving a probate bond, shall have charge of such property, and he shall have the same powers, duties and obligations as a conservator of the estate of an incapable person. With the approval of the Probate Court, such trustee may use any portion of the income or principal of such property for the support of the spouse and minor children of such person.

d. Upon its own motion or upon the application of any interested person, the Probate Court may, after public notice and a hearing thereon, remove, discharge, require an accounting from, or appoint a successor to, such trustee.

e. The Probate Court may continue such trustee in office until satisfactory proof of the death of such person is furnished, until proceedings are taken to settle his estate on the presumption of his death under the provisions of Chapter 6, Section 28, or for a period of seven years from the time of the disappearance of such person if he remains unheard of.

f. In case of the reappearance of such person, the Probate Court shall, on his application, after hearing and public notice thereof, order the restoration of such property to the person entitled thereto and the discharge of such trustee, after acceptance of the trustee's account.

24 M.P.T.L. ch. 7 § 7

**§ 7. Suspension of Fiduciary Powers During Armed Forces Service**

a. When any fiduciary of any trust other than a testamentary trust is engaged in service in the armed forces, which prevents his giving the necessary attention to his duties as the fiduciary, the Probate Court, upon petition of the fiduciary or any person interested in such estate, may, upon such notice as the court deems suitable and after hearing, order the suspension of the powers and duties of the fiduciary for the period of such service and until the further order of the court.

b. The Probate Court may appoint a substitute fiduciary to serve for the period of suspension whether or not there remains any fiduciary to exercise the powers and duties of the fiduciary who is in such service. Said court may decree that the ownership and title to the trust res shall vest in the substitute fiduciary or co-fiduciary or both and that the duties and such of the powers and discretions as are not personal to the fiduciary may be exercised by the co-fiduciary or substitute fiduciary and may make such further orders as said court deems advisable for the proper protection of such fund or estate.

c. The Rules of Court with respect to judgments under the Selective Service Act shall not apply to actions under this Section.

d. Upon a petition therefor, the court may order the reinstatement of the fiduciary when his service in the armed forces has terminated.

24 M.P.T.L. ch. 7 § 8

**§ 8. Income from Property Acquired by Trustee by Conveyance or Foreclosure when Mortgage Formerly held by Trustee**

In any case in which a trustee holds a mortgage upon property for the benefit of one or more tenants for life or limited term, with remainder over to another or others, and such trustee acquires title to such property by conveyance or foreclosure, such acquired property shall be a principal asset in lieu of such mortgage, and such tenant or tenants for life or limited term shall be entitled to the net income from such acquired property from the date of its acquisition.

24 M.P.T.L. ch. 7 § 9

**§ 9. Distribution by Testamentary Trustee upon Completion of Trust**

The trustee of any testamentary trust which has terminated may, unless the will creating the trust otherwise directs, after settling his final account, deliver the property remaining in his hands to the remainderman upon the order of the Probate Court, without returning the same to the estate of the decedent.

24 M.P.T.L. ch. 7 § 10

**§ 10. Distribution of Assets of Inoperative Trust**

When the facts at the time of distribution from an estate to a trust or from a testamentary trust to a successive trust are such that no trust would be operative under the terms of the instrument creating such trust or successive trust because of the death of the life tenant, or because the beneficiary has reached a stipulated age, or for any other reason, the fiduciary of such estate or prior trust may distribute, with the approval of the Probate Court having jurisdiction, directly from the estate or prior trust to the remaindermen of such trust, the corpus of such trust and any income earned during the period of estate administration or administration of the prior trust and distributable to

such remaindermen, without the interposition of the establishment of such trust or successive trust.

24 M.P.T.L. ch. 7 § 11

**§ 11. Settlement of Trust Estate when Beneficiary has been Absent seven Years**

The trustee of any trust for the benefit of any person who has been absent from his home and unheard of for seven years or more may settle his account as such trustee in the Probate Court. Upon the order of the court, the trustee shall distribute such trust estate to the persons entitled to the remainder thereof as determined by the court, and the trustee shall not thereafter be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof. A person shall not be entitled to receive any portion of such estate from the trustee until such person has filed in the Probate Court a bond with surety to the acceptance of the court, payable to the Mashantucket Pequot Tribal Nation, conditioned to return such trust estate to the trustee or his successor on the reappearance of the person presumed to be dead within 13 years from the date of such order authorizing distribution. After the expiration of such 13 year period, such person entitled to the remainder shall not be liable to any such absent beneficiary, his heirs, executors, administrators or assigns in any action for such trust estate or any interest therein or income thereof.

24 M.P.T.L. ch. 7 § 12

**§ 12. Termination of Small Trusts**

a. Except as otherwise provided by the trust or Chapter 7, Section 27 with respect to charitable trusts, the Probate Court under this Section may terminate a trust, in whole or in part, on application therefor by the trustee, by any beneficiary entitled to income from the trust, or by such beneficiary's legal representative, after reasonable notice to all beneficiaries who are known and in being and who have vested or contingent interests in the trust, and after holding a hearing, if the court determines that all of the following apply:

(1) The continuation of the trust is:

(a) uneconomic when the costs of operating the trust, probable income and other relevant factors are considered; or

(b) not in the best interest of the beneficiaries;

(2) the termination of the trust is equitable and practical; and

(3) the current market value of the trust does not exceed the sum of \$40,000.

b. If the Probate Court orders termination of the trust, in whole or in part, it shall direct that the principal and undistributed income be distributed to

the beneficiaries in such manner as the Probate Court determines is equitable. The Probate Court may also make such other order as it deems necessary or appropriate to protect the interests of the beneficiaries.

c. No trust may be terminated over the objection of its settlor or where the interest of the beneficiaries cannot be ascertained. The provisions of this Section shall not apply to spendthrift trusts.

d. The Probate Court may terminate a testamentary trust pursuant to this Section if the Probate Court has jurisdiction over the accounts of the testamentary trustee. The Probate Court may terminate an inter vivos trust pursuant to this Section if the trustee or settlor is a Mashantucket Pequot tribal member and is domiciled on tribal lands.

24 M.P.T.L. ch. 7 § 13

**§ 13. Tribal Court Jurisdiction to Reform Instrument to Ensure Allowance of Marital Deduction. Qualified Domestic Trust**

a. If any marital deduction would not be allowed by reason of Section 2056(d)(1) of the Internal Revenue Code of 1986 with respect to any interest in property passing under any will, trust agreement or other governing instrument because such interest fails to comply with the requirements of Sections 2056(d)(2)(A) and 2056A(a) of said Code, the tribal court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument of comply with those requirements so as to allow a marital deduction under Section 2056(a) of said Code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. The tribal court shall be empowered to reform any such will, trust agreement or other governing instrument to the extent necessary to ensure the allowance of the marital deduction described in subsection (a) of this Section.

c. Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed within the period of time specified in Chapter 11, Sections 1 to 5, inclusive.

24 M.P.T.L. ch. 7 § 14

**§ 14. Statutory Rule Against Perpetuities**

a. A non-vested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive; or

(2) the interest either vests or terminates within 90 years after its creation.



b. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

c. A non-general power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within 90 years after its creation.

d. In determining whether a non-vested property interest or a power of appointment is valid under subdivision (1) of subsection (a), (b), or (c) of this Section, the possibility that a child will be born to an individual after the individual's death is disregarded.

e. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument:

(1) seeks to disallow the vesting or termination of any interest or trust beyond;

(2) seeks to postpone the vesting or termination of any interest or trust until; or

(3) seeks to operate in effect in any similar fashion upon, the later of

(a) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(b) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor described in subparagraph (a) of this subsection. Nothing in this subsection shall affect the validity of the other provisions of the trust or other property arrangement or of the governing instrument.

**§ 15. When Non-Vested Property Interest or Power of Appointment Created**

a. Except as provided in subsections (b) and (c) of this Section and in subsection (a), of Section 17 of this Chapter, the time of creation of a non-vested property interest or a power of appointment is determined under general principles of property law.

b. For purposes of Sections 14 to 17 of this Chapter, inclusive, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(1) a non-vested property interest; or

(2) a property interest subject to a power of appointment described in subsections (b) or (c) of Section 14 of this Chapter, the non-vested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates; or

(3) for purposes of Sections 14 to 17 of this Chapter, inclusive, a non-vested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the non-vested property interest or power of appointment in the original contribution was created.

24 M.P.T.L. ch. 7 § 16

**§ 16. Reformation**

Upon the petition of an interested person, the court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the 90 years allowed by subdivision (2) of subsections (a), (b) or (c) of Section 14 of this Chapter if a non-vested property interest or a power of appointment becomes invalid under Section 14 of this Chapter: (1) a class gift is not but might become invalid under Section 14 of this Chapter and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or (2) a non-vested property interest that is not validated by subdivision (1) of subsection (a) of Section 14 of this Chapter can vest but not within 90 years after its creation.

24 M.P.T.L. ch. 7 § 17

**§ 17. Exclusions from Statutory Rule Against Perpetuities**

The provisions of Section 14 of this Chapter do not apply to:

a. A non-vested property interest of a power of appointment arising out of a non-donative transfer, except a non-vested property interest or a power of appointment arising out of

(1) premarital or post-marital agreement;

- (2) separation or divorce settlement;
  - (3) spouse's election;
  - (4) similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;
  - (5) contract to make or not to revoke a will or trust;
  - (6) contract to exercise or not to exercise a power of appointment;
  - (7) transfer in satisfaction of a duty of support; or
  - (8) reciprocal transfer.
- b. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;
- c. A power to appoint a fiduciary;
- d. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasible vested interest in the income and principal;
- e. A non-vested property interest held by a charity, government or governmental agency or subdivision, if the non-vested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;
- f. A non-vested property interest in a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a non-vested property interest or a power of appointment that is created by an election or a participant or a beneficiary or spouse; or
- g. A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

24 M.P.T.L. ch. 7 § 18

**§ 18. "Majority" Defined for Trusts Executed prior to October 1, 1972**

Whenever the word "majority" is used in a will or trust instrument executed prior to October 1, 1972, it shall be construed to mean a person who has

attained the age of 21.

24 M.P.T.L. ch. 7 § 19

#### **§ 19. Rule Against Perpetuities**

"Second look" doctrine. In applying the rule against perpetuities to an interest in property created before October 1, 1989, limited to take effect at or after the termination of one or more life estates in, or lives of, persons in being when the period of said rule commences to run, the validity of the interest shall be determined on the basis of facts existing at the termination of such one or more life estates or lives. For the purpose of this Section, an interest which must terminate not later than the death of one or more persons is a life estate although it may terminate at an earlier time.

24 M.P.T.L. ch. 7 § 20

#### **§ 20. Reduction of Age Contingency to Preserve Interest**

If an interest in property created before October 1, 1989, would violate the rule against perpetuities as modified by Section 19 of this Chapter because such interest is contingent upon any person attaining or failing to attain an age in excess of 21, the age contingency shall be reduced to 21 as to all persons subject to the same age contingency.

24 M.P.T.L. ch. 7 § 21

#### **§ 21. Exemption of Certain Trusts Funds from the Rule Against Perpetuities**

Any trust (a) created by the Mashantucket Pequot Tribal Nation, or (b) created by an employer as part of a stock bonus, pension, disability, death benefit or profit-sharing plan for the benefit of some or all employees, to which contributions are made by the employer or employees or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the funds held in trust, shall not be deemed to be invalid as violating any existing law or rule of law against perpetuities or suspension of the power of alienation of the title to the property. Any such trust may continue for such time as may be necessary to accomplish the purposes for which it has been created. The income arising from any property held in any such trust may be permitted to accumulate in accordance with the terms of such trust and the plan of which such trust forms a part for such time as may be necessary to accomplish the purposes for which such trust has been created. Any rule of law against perpetuities or suspension of the power of alienation of the title to property shall not invalidate any such trust.

24 M.P.T.L. ch. 7 § 22

## **§ 22. Charitable Trusts**

Any charitable trust or use created in writing, or any public and charitable trust or use for aiding and assisting any person or persons to be selected by the trustees of such trust or use to acquire education, shall forever remain to the uses and purposes to which it has been granted according to the true intent and meaning of the grantor and to no other use.

24 M.P.T.L. ch. 7 § 23

## **§ 23. Charitable Uses Determined by Trustee, when**

Any person may, by will, deed or other instrument, give, devise or bequeath property, real or personal or both, to any trustee or trustees, and may provide in such instrument that the property so given, devised or bequeathed shall be held in trust and the income or principal applied in whole or in part for any charitable purpose. A donor or testator shall not be required to designate in such will, deed or other instrument the particular charitable purpose or class of purposes for which the property shall be used or the income applied. Any such gift, devise or bequest shall be valid and operative, provided the donor or testator shall give to the trustee or trustees thereof or to any other person or persons, the power to select, from time to time and in such manner as such donor or testator may direct, the charitable purpose or purposes to which such property or the income thereof shall be applied; and such gift, devise or bequest, accompanied by such power of selection, shall not be void by reason of uncertainty.

24 M.P.T.L. ch. 7 § 24

## **§ 24. Gifts to Charitable Community Trust**

Any person may incorporate by reference in any will, deed or other instrument, the terms, conditions, trusts, uses or purposes of any existing written or printed resolution, declaration or deed of trust passed by any corporation or executed by any person whereby there is established or is attempted to be established any charitable community trust. Any gift, devise or bequest so given to any person or corporation, in trust for any use or purpose of such charitable community trust, shall be valid and effectual notwithstanding that the terms, conditions, uses and purposes thereof are not otherwise recited in such deed, will or other instrument than by such reference; and the property so given to such person or corporation shall be used for the purposes and upon the terms, conditions and trusts contained in such resolution, declaration or deed of trust establishing such community trust, so far as the same do not conflict with the intent of the donor or testator as expressed in such will, deed or other instrument. Any gift, devise or bequest so made shall not be void for uncertainty or invalid because such resolution, declaration or deed of trust establishing such community trust was not executed by the testator or donor in accordance with statutory provisions, provided such will, deed or other instrument is executed in accordance with such provisions.

**§ 25. Community Trustees to Render Annual Accounts. Hearing on Adjustment and Allowance**

a. The trustee or trustees of any charitable community trust shall annually render an account under oath to the Probate Court. The account shall include an inventory of the estate held by such trustee or trustees and shall state the manner in which the principal of such fund is invested and the items of income and expenditure.

b. The Probate Court shall direct the notice, if any, which shall be given of the hearing upon the adjustment and allowance of any such account. The court may adjust and allow the account and make any order necessary to secure the execution of the duties of such trustee or trustees, subject to appeal as provided for appeals from orders of the Probate Court.

**§ 26. Probate Court Jurisdiction to Reform Instruments to Federal Tax Requirements**

a. If any deduction under Section 170, Section 2055 or Section 2522 of the Internal Revenue Code of 1986 is not allowable with respect to any interest in property passing under any will, trust agreement or other governing instrument to a person, or for a use, described in Section 170(c), Section 2055(a) or Section 2522(a) and (b) of said code because such interest shall fail to comply with the requirements of Section 170(f)(2), Section 2055(e)(2) or Section 2522(c)(2) of said code, the Probate Court shall have jurisdiction over any action brought to reform such will, trust agreement or other governing instrument in accordance with the provisions of Section 170(f)(7), Section 2055(e)(3) or Section 2522(c)(4) of said code so that such deduction may be allowed under the applicable provisions of said code. All references contained in this Section to any Section of the Internal Revenue Code of 1986 shall mean that Section of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended.

b. The Probate Court shall be empowered to reform any such will, trust agreement or other governing instrument only to the extent necessary in order to ensure the allowance of any deduction described in subsection (a) of this Section, and only to the extent the court finds that such reformation is consistent with the original intent of the testator or donor.

c. This Section shall not be construed to effect a change in any dispositive provisions of the governing instrument as provided in Section 22 of this Chapter.

d. Any reformation of any will, trust agreement or other governing instrument in accordance with the provisions of this Section shall be effective whether or not a disclaimer has been filed within the period of time specified in Chapter

10, Sections 1 to 5, inclusive.

24 M.P.T.L. ch. 7 § 27

### **§ 27. Termination of Charitable Trusts**

a. As used in this Section:

(1) "Charitable Beneficiary" and "Charitable Entity" shall include, without limitation, towns, ecclesiastical society and cemetery associations owning or controlling the operation of a cemetery or burial ground;

(2) "Charitable Trust" shall mean a trust for the benefit of one or more charitable beneficiaries.

b. In any case where the current market value of the assets of a testamentary or inter vivos charitable trust is less than \$65,000 any trustee thereof, any charitable beneficiary specifically designated in the governing instrument or the general counsel of the Tribe may petition the Probate Court for an order terminating the trust. If such a trust has not been under the jurisdiction of the Probate Court prior to any such petition, the petition shall only be brought if the grantor, if living, or any trustee is a member of the Tribe and resides on tribal lands. Upon receipt of such a petition, the court shall order a hearing and cause notice thereof to be given to the general counsel, the trustees, the grantor of the trust, if living, and any charitable beneficiary of the trust specifically designated in the governing instrument. If at such a hearing the court determines that continuation of the trust is uneconomic when the costs of operating the trust, probable income and other relevant factors are considered or not in the best interest of the beneficiaries, the court may order termination of the trust and distribution of the trust assets to any charitable beneficiary specifically designated in the governing instrument or, in the event no such beneficiary exists, to such other charitable trusts or charitable entities, including any community trust or foundation, as the court may determine will fulfill the charitable purposes of the trust being so terminated.

24 M.P.T.L. ch. 7 § 28

### **§ 28. Definitions**

As used in Sections 28 to 36 of this Chapter, inclusive:

a. "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, a governmental organization to the extent that it holds funds exclusively for any of these purposes, or a charitable community trust as described in Section 24 of this Chapter;

b. "Institutional Fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include:

(1) a fund held for an institution by a trustee that is not an institution, other than a fund which is held for a charitable community trust; or

(2) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund;

c. "Endowment Fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

d. "Governing Board" means the body responsible for the management of an institution or of an institutional fund;

e. "Historic Dollar Value" means the aggregate fair value in dollars of:

(1) an endowment fund at the time it became an endowment fund;

(2) each subsequent donation to the fund at the time it is made; and

(3) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

f. "Gift Instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

24 M.P.T.L. ch. 7 § 29

#### **§ 29. Expenditure of Net Appreciation, Standards**

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 35 of this Chapter. This Section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

24 M.P.T.L. ch. 7 § 30

#### **§ 30. Exception and Restriction on Expenditure of Net Appreciation. Construction**

Section 29 of this Chapter does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A



restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income", "interest", "dividends" or "rents, issues or profits", or "to preserve the principal intact", or a direction which contains other words of similar import.

24 M.P.T.L. ch. 7 § 31

### **§ 31. Accumulation of Annual Net Income, Standards**

The governing board may accumulate so much of the annual net income of an endowment fund as is prudent under the care established by Section 35 of this Chapter and may hold any or all of such accumulated income in an income reserve for subsequent expenditure for the uses and purposes for which such endowment fund is established or may add any or all of such accumulated income to the principal of such endowment fund as is prudent under said standard. This Section does not limit the authority of the governing board to accumulate income or to add the same to principal of an endowment fund as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

24 M.P.T.L. ch. 7 § 32

### **§ 32. Exception and Restriction of Accumulation of Annual Net Income. Construction**

Section 31 of this Chapter does not apply if and to the extent that the applicable gift instrument indicates the donor's intention that income of an endowment fund shall not be accumulated or shall not be added to the principal of the fund. A restriction against accumulation or addition to principal may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to apply to the uses and purposes of the fund the "income", "interest", "dividends", "currently expendable income" or "rent, issues or profits", or a direction which contains other words of similar import.

24 M.P.T.L. ch. 7 § 33

### **§ 33. Investment of Institutional Funds**

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may: (1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof; (2)

retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable; (3) include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and (4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

24 M.P.T.L. ch. 7 § 34

**§ 34. Delegation of Powers of Investment**

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

a. delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

b. contract with independent investment advisers, investment counsel or managers, banks or trust companies so to act; and

c. authorize the payment of compensation for investment advisory or management services.

24 M.P.T.L. ch. 7 § 35

**§ 35. Standards Applicable to Actions of Governing Board**

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, member of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

24 M.P.T.L. ch. 7 § 36

**§ 36. Release of Restriction in Gift Instrument: Written Consent, Court Order. Limitations. Doctrine of Cy-Pres Applicable**

a. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund;

b. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply, in the name of the institution, to the Probate Court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The general counsel of the Tribe shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund;

c. A release under this Section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected;

d. This Section does not limit the application of the doctrine of cy-pres or approximation.

#### **CHAPTER 8. MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT**

24 M.P.T.L. ch. 8 § 1

##### **§ 1. Definitions**

As used in Sections 1 to 9 of this Chapter, inclusive, unless the context otherwise requires:

a. "Adult Person" means a person who has attained the age of 21 years;

b. "Bank" means a bank or credit union owned or managed by the Tribe or its employees, a state bank and trust company, national banking association or savings bank;

c. "Broker" means a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions and also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;

d. "Court" means the Probate Court of the Tribe;

e. "The Custodial Property" includes:

(1) all securities, money, life insurance and endowment policies, annuity contracts and the proceeds of life insurance and endowment policies and annuity contracts, interests in general and limited partnerships, tangible personal property, under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive;

(2) the income from the custodial property; and

(3) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of such securities, money, life insurance or endowment policies, annuity contracts, the proceeds from life insurance and endowment policies and annuity contracts, interests in general and limited partnerships, and interests in tangible personal property.

f. "Custodian" means a person so designated in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive;

g. A "Guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;

h. "Issuer" means a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;

i. "Legal Representative" of a person means his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;

j. A "Member" of a "Minor's Family" means any of the minor's parents, stepparents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;

k. A "Minor" is a person who has not attained the age of 21 years;

l. A "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

m. "Transfer Agent" means a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;

n. "Trust Company" means a bank authorized to exercise trust powers;

o. "Savings and Loan Association" means savings and loan associations and federal savings and loan associations;

p. "Life Insurance and Endowment Policies and Annuity Contracts" means only life insurance and endowment policies and annuity contracts on the life of a minor or a member of the minor's family as defined in subsection (j) of this Section;

q. "Credit Union" means a tribal, state or federally chartered credit union.

24 M.P.T.L. ch. 8 § 2

## **§ 2. Methods of Making Gift**

a. An adult person may, during his lifetime, make a gift of a security, an interest in a general partnership, an interest in a limited partnership, money, a life insurance policy, an endowment policy, an annuity contract, the proceeds of life insurance or endowment policies and annuity contracts, or tangible personal property to a person who is a minor on the date of the gift:

(1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult person or a trust company, followed, in substance, by the words: "As custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act";

(2) If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or to a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian: "GIFT UNDER THE MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT: I, ....(name of donor), hereby deliver to ....(name of custodian) as custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act, the following security(ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) .... (dated) .... (signature of donor) .... (name of custodian) hereby acknowledges receipt of the above described security(ies) as custodian for the above minor under the Mashantucket Pequot Uniform Gifts to Minors Act. Dated: .... (signature of custodian)".

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank, or to a savings and loan association, or a credit union for credit to an account or for purchase of shares in the name of the donor, another adult person or a bank with trust powers, followed, in substance, by the words: "As custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act".

(4) If the subject of the gift is a life insurance or endowment policy or an annuity contract, the ownership of the policy or contract shall be registered by the donor of such policy or contract in his own name, in the name of another adult person or a trust company, followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and such policy or contract shall be delivered to the person in whose name it is thus registered as custodian. If the policy or contract is registered in the name of the donor, as custodian, such registration shall of itself constitute the delivery required by this subsection. If the subject of

the gift is the proceeds of a life insurance or endowment policy or an annuity contract, where the ownership of such policy or contract has not been given, the ownership of such proceeds may be transferred either revocably or irrevocably by merely designating as a primary or contingent beneficiary another adult person or trust company, followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and such custodian shall be authorized to claim and receive such proceeds in his capacity as such custodian.

(5) If the subject of the gift is an interest in a general or limited partnership, by delivering an assignment of such interest to the donor in his own name, another adult person or a bank with trust powers, followed, in substance by words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act", and by notifying in writing, the other general partner or partners and the donee of such gift. In the case in which the assignment is made to the donor in his own name, notification to the other general partner or partners shall constitute the delivery required by this subsection.

(6) If the subject of the gift is an interest in tangible personal property, by delivery of an instrument of conveyance to the custody for such minor under the Mashantucket Pequot Uniform Gifts to Minors Act, executed and acknowledged by the donor and specifying that the gift is made subject to said act.

b. An adult person may, by will, make a specific bequest of a security, a general bequest of money, an interest in a general or a limited partnership, one or more articles of tangible personal property or a share of his or her residuary estate to a person who is a minor on the date of the testator's death:

(1) If the subject of the bequest is a security in registered form by directing his executor to register such security in the name of another adult person or a trust company, in the form provided in subsection (g) of Section 4 of this Chapter;

(2) If the subject of the bequest is a security not in registered form, by directing his executor to deliver it to an adult person or to a trust company accompanied by a statement in the following form, in substance, signed by the executor and the person designated as custodian: "SPECIFIC BEQUEST UNDER THE MASHANTUCKET PEQUOT UNIFORM GIFTS TO MINORS ACT: I, ....(name of executor), hereby deliver to ....(name of custodian) as custodian for ....(name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act, the following security(ies): (Insert an appropriate description of the security or securities delivered sufficient to identify it or them) on behalf of ...."

(3) If the subject of the bequest is an interest in a general or a limited partnership, a specific bequest of money, one or more articles of tangible personal property, or a share in the residuary estate, by directing his executor, in the case of an interest in a general or limited partnership, to execute an assignment of such interest in the form provided in subdivision (6) of subsection (a) of this Section and deliver said assignment to said person and to the other general partner or partners, and in the case of a specific bequest of money or of one or more articles of tangible personal property, or a

share in the residuary estate, to distribute such money or article or articles of tangible personal property such share under the provisions of subsection (c) of this Section.

c. (1) If a devise or bequest is distributable by will, the will may state that the devise or bequest is made under the Mashantucket Pequot Uniform Gifts to Minors Act, and unless the testator in his will designates the custodian, who shall be an adult or a bank with trust powers, the testator's personal representative making a distribution of the property shall, subject to any limitations contained within the will, have the power to distribute to an existing custodian or, if none, to a custodian who shall be an adult or a bank with trust powers, selected by the testator's personal representative in accordance with the provisions of Section 7 of this Chapter, and such personal representative shall distribute the subject of the gift or bequest by transferring it in the manner and form provided for in subdivisions (1) to (3), inclusive, of subsection (b) and under this subsection.

(2) If the instrument specifically so provides, any distributions by a trustee or trustees under an inter vivos or testamentary trust instrument of income or principal or both income and principal to a minor may be made to a custodian for such minor under the Connecticut Uniform Gifts to Minors Act; and unless the testator or settlor in his will or trust instrument designated a custodian, who shall be an adult or a bank with trust powers, the trustee or trustees shall, subject to any limitations contained within the will or trust instrument, have the power to distribute to an existing custodian or, if none, to a custodian who shall be an adult or a bank with trust powers selected in accordance with the provisions of Section 7 of this Chapter, and such trustee or trustees shall distribute the subject of the gift or bequest by transferring it in the manner and form provided in subdivisions (1) to (5), inclusive, of subsection (a) of this Section. The provisions of this subsection shall apply to distributions by an executor, trustee or trustees in the same manner as the provisions of subsection (a) apply to any donor making a gift during his lifetime. Any trustee or trustees of an inter vivos trust making any distribution under this subsection may do so without court order.

d. Any gift or bequest made in a manner prescribed in subsection (a) or (b) of this Section may be made to only one minor and only one person may be the custodian. If the custodian named by the testator or settlor predeceases the testator or settlor, or if he refuses or declines to act, or if after being appointed custodian he resigns or is removed, and the testator or settlor has made no provision for a successor custodian, then the successor custodian shall be appointed in accordance with the provisions of Section 7 of this Chapter.

e. A donor who makes a gift to a minor in a manner prescribed in subsection (a) or his executor, trustee or trustees in the case of a gift under subsection (b), shall promptly do all things within his power to put the subject of the gift or bequest in the possession and control of the custodian, but neither the failure of the donor or his executor, trustee or trustees to comply with this subsection, nor the designation by the donor, his executor, trustee or trustees of an ineligible person as custodian, nor renunciation by the person designated as custodian shall affect the consummation of the gift or bequest.

**§ 3. Gift or Bequest to be Irrevocable. Rights and Powers Granted Custodian, Issuers, Transfer Agents, Brokers**

a. A gift, devise or bequest made in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, is irrevocable and conveys to the minor indefeasibly vested legal title to the custodial property given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in said Sections.

b. By making a gift or bequest in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, the donor incorporates in his gift all the provisions of said Sections and grants to the custodian, and to any issuer, transfer agent, bank, savings and loan association, credit union, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in said Sections.

24 M.P.T.L. ch. 8 § 4

**§ 4. Powers and Duties of Custodian**

a. The custodian shall collect, hold, manage, invest and reinvest the custodial property.

b. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose.

c. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of 12 years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education.

d. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of 21 years or, if the minor dies before attaining the age of 21 years, he shall thereupon deliver or pay it over to the estate of the minor.

e. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property in any property described in subsections (a) and (b) of Section 2 of this Chapter, including life insurance and endowment policies on the life of the minor or that of another person in whom the minor has an insurable interest, as would a prudent man of discretion and intelligence who is seeking a reasonable income and the



preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain any property given to the minor in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive.

f. The custodian may sell, exchange, convert, surrender or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer of a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian.

g. The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank or savings and loan association or credit union in the name of the custodian, followed, in substance, by the words: "As custodian for (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act". The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

h. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of 12 years.

i. A custodian has, with respect to the custodial property, in addition to the rights and powers provided in this chapter, all the rights and powers which a guardian has with respect to property not held as custodial property.

j. If the subject of the gift is a life insurance or endowment policy or an annuity contract, the custodian:

(1) shall have all the incidents of ownership in such policy or contract which he may hold as custodian, to the same extent as if he were the owner thereof, but only in his fiduciary capacity as custodian. The designated beneficiary of any such policy or contract on the life of a person other than the minor shall be the minor or the custodian, in his fiduciary capacity as custodian and the designated beneficiary of any such policy or contract on the life of the minor may be the minor's spouse, parents, siblings or the minor's estate; and

(2) may pay premiums on the policy or contract out of the custodial property.

24 M.P.T.L. ch. 8 § 5

## **§ 5. Reimbursement of Custodian**

- a. A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties.
- b. A custodian may act without compensation for his services.
- c. Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services.
- d. Except as otherwise provided in Sections 1 to 9 of this Chapter, inclusive, a custodian shall not be required to give a bond for the performance of his duties.
- e. A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in Sections 1 to 9 of this Chapter, inclusive.

24 M.P.T.L. ch. 8 § 6

**§ 6. Responsibility of Issuer, Transfer Agent, Bank, Life Insurance Company, Savings and Loan Association, Credit Union, Broker or Other Person**

No issuer, transfer agent, bank, life insurance company, savings and loan association, credit union, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated as custodian by the purported donor or by the custodian or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by Sections 1 to 9 of this Chapter, inclusive, or is obliged to inquire into the validity or propriety under said Sections of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. No issuer, transfer agent, bank, life insurance company, savings and loan association, broker or other person acting on any instrument of designation of a successor custodian, executed as provided in Section 7 of this Chapter by a minor to whom a gift has been made in a manner prescribed in Sections 1 to 9 of this Chapter, inclusive, and who has attained the age of 12 years, is responsible for determining whether the person designated by the minor as successor custodian has been duly designated, or is obliged to inquire into the validity or propriety under said Sections of the instrument of designation.

24 M.P.T.L. ch. 8 § 7

**§ 7. Successor Custodian. Resignation of Custodian**

- a. Only an adult or a trust company is eligible to become successor custodian.

A donor may designate a successor custodian at the same time as he makes a gift under the provisions of Sections 1 to 9 of this Chapter, inclusive, by executing and dating an "instrument of designation of a successor custodian by a donor" before a subscribing witness other than the successor and delivering a copy of such instrument to such successor and such custodian. Unless a custodian has received such an instrument from the donor, such custodian may designate his successor by executing and dating an "instrument of designation of a successor custodian by a custodian" before a subscribing witness other than the successor. The instrument of designation of a successor custodian by a custodian may but need not contain the resignation of the custodian. If the donor does not so designate a successor custodian at the time of making the initial gift to a particular custodian for a particular minor under said Sections and the custodian does not so designate his successor before he dies or becomes legally incapacitated and the minor has attained the age of 12 years, the minor may designate a successor custodian by executing an "instrument of designation of a successor custodian by the minor donee" before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed in said Sections.

b. The designation of the successor custodian as provided in subsection (a) takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item, if it is a security in registered form or a life insurance or endowment policy or annuity contract, to be registered, with the issuing insurance company in the case of a life insurance or endowment policy or annuity contract, in the name of the successor custodian followed, in substance, by the words: "As custodian for .... (name of minor) under the Mashantucket Pequot Uniform Gifts to Minors Act"; and

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

c. A custodian who executes an instrument of designation of his successor containing the custodian's resignation as provided in subsection (a) shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in the instrument. The legal representative of a custodian who dies or becomes legally incapacitated shall promptly do all things within his power to put each item of the custodial property in the possession and control of the successor custodian named in an instrument of designation executed as provided in subsection (a) by the custodian or, if none, by the minor if he has attained the age of 12 years, or, if none, in the possession and control of the guardian of the minor if he has a guardian. If the custodian has executed as provided in subsection (a) more than one instrument of designation, his legal representative shall treat the instrument dated on an earlier date as having been revoked by an instrument dated on a later date.

d. If a person designated as custodian or as successor custodian as provided in

subsection (a) is not eligible, dies or becomes legally incapacitated before the minor attains the age 21 years and if no successor custodian who is eligible and has not died or become legally incapacitated has been designated as provided in subsection (a), the legally appointed guardian of the property of the minor, if the minor has a legally appointed guardian of his property, shall be successor custodian and, if the minor has no legally appointed guardian of his property, then the legally appointed guardian of the person of the minor, if the minor has a legally appointed guardian of his person, shall be successor custodian, and if the minor has no legally appointed guardian of his property or his person, then the father of the minor shall be successor custodian, unless the minor's parents are separated or divorced and the mother has been awarded custody of the minor by a court or if the minor has no living and legally competent father, then the mother of the minor shall be successor custodian and, if the minor has no legally appointed guardian or living and legally competent parents or parent, a donor, his legal representative, the legal representative of the custodian or an adult member of the minor's family may petition the court for the designation of the successor custodian.

e. A donor, the legal representative of a donor, a successor custodian, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of 12 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.

f. Upon the filing of a petition as provided in this Section, the court shall grant an order, directed to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

24 M.P.T.L. ch. 8 § 8

#### **§ 8. Petition for Accounting**

a. The minor, if he has attained the age of 12 years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.

b. The court, in a proceeding under Sections 1 to 9 of this Chapter, inclusive, or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

24 M.P.T.L. ch. 8 § 9

#### **§ 9. Not Exclusive Method of Gift**

Sections 1 to 9 of this Chapter, inclusive, shall not be construed as providing an exclusive method for making gifts to minors.

#### **CHAPTER 9. DURABLE POWER OF ATTORNEY**

24 M.P.T.L. ch. 9 § 1

##### **§ 1. Power of Attorney to Survive Disability or Incompetence**

a. The subsequent disability or incompetence of a principal shall not revoke or terminate the authority of any person who acts under a power of attorney in a writing executed by the principal, if the writing contains the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incompetence; provided the power of attorney is executed and witnessed in the same manner as provided for deeds in the state of Connecticut.

b. If a conservator of the estate of the principal is appointed after the occurrence of the disability or incompetence referred to in subsection (a) of this Section, the power of attorney shall cease at the time of the appointment, and the person acting under the power of attorney shall account to the conservator rather than to the principal.

#### **CHAPTER 10. POWERS OF APPOINTMENT**

24 M.P.T.L. ch. 10 § 1

##### **§ 1. Power of Appointment May be Released; Definitions**

a. As used in Sections 1 to 5 of this Chapter, inclusive:

(1) "Power of Appointment" includes all powers which are in substance and effect powers of appointment regardless of the language used in creating them; and

(2) "Release" includes:

(a) an instrument wherein the person who executes it in substance states that he wholly releases, or agrees in no respect to exercise or participate in the exercise of, a power of appointment; and

(b) an instrument wherein the person who executes it in substance states that he releases all right to exercise, or participate in the exercise of, a power of appointment otherwise than within limits therein defined, or agrees not to exercise, or participate in the exercise of, a power of appointment otherwise than within the limits therein defined.

b. A power of appointment, whether or not coupled with an interest, and whether the power is held by the donee in an individual or in a fiduciary capacity, may be released, wholly or partially, by the donee thereof, unless otherwise expressly provided in the instrument creating the power.

24 M.P.T.L. ch. 10 § 2

## **§ 2. Method of Release**

A power releasable according to Section 1 of this Chapter may be released, wholly or partially, by the delivery of a written release executed by the donee of the power, for consideration or under seal, to any person who could be adversely affected by the exercise of the power, or to any person who, alone or with another or others, holds in trust property subject to the power, or, in the case of a power created by will, by the filing of such release in the Probate Court in which the will was proved or allowed.

24 M.P.T.L. ch. 10 § 3

## **§ 3. Extent of Release**

A release executed by the donee of a power releasable according to Section 1 of this Chapter, and delivered or filed in accordance with Section 2 of this Chapter, shall be effective to release the power to the extent provided in such release.

24 M.P.T.L. ch. 10 § 4

## **§ 4. Effect of Release of one Donee upon other Donees**

If a power of appointment releasable according to Section 1 of this Chapter is or may be exercisable by two or more persons in conjunction with one another or successively, a release or disclaimer of the power, in whole or in part, executed and delivered or filed, in accordance with Section 2 of this Chapter, by any one of the donees of the power, shall, subject to the provisions of Section 2 of this Chapter, be effective to release or disclaim, to the extent therein provided, all right of such person to exercise, or to participate in the exercise of, the power, but, unless the instrument creating the power otherwise provides, shall not prevent or limit the exercise or participation in the exercise thereof by the other donee or donees thereof.

24 M.P.T.L. ch. 10 § 5

## **§ 5. Exercise in Favor of Further Power**

a. Except to the extent otherwise expressly provided in the instrument creating the power, the donee of a power of appointment over any trust may appoint all

or any part of the property subject to such power in further trust and may create further special powers of appointment. Where the donee of the original power could have appointed the property outright to the donee of the further power, any restrictions on the class of permissible appointees imposed by the donor of the original power shall lapse with the exercise of such power. The trustee of any trust the property of which is so appointed shall transfer and pay over such appointed property to the trustee designated by the donee, to be administered subject to the jurisdiction of any court having jurisdiction over the trust to which such property is appointed.

b. Nothing contained in this Section shall be construed to permit the creation of any interest which violates the rule against perpetuities.

24 M.P.T.L. ch. 10 § 6

#### **§ 6. Exercise of Power of Appointment of Property**

The donee of a power to appoint property to anyone other than his estate shall not have the power to appoint property to himself, his estate, his creditors or the creditors of this estate, but may appoint to anyone not expressly excluded from the class of permissible appointees.

24 M.P.T.L. ch. 10 § 7

#### **§ 7. Applicability if Power of Appointment of Property**

The provisions of Section 6 of this Chapter shall apply to all wills and trusts, regardless of the testator's date of death or the date the will or trust was executed, unless: (1) the power of appointment expressly included the power to appoint to the donee, his estate, his creditors or the creditors of his estate; or (2) a contrary intention of the donor is demonstrated by clear and convincing evidence.

### **CHAPTER 11. DISCLAIMER OF PROPERTY**

24 M.P.T.L. ch. 11 § 1

#### **§ 1. Definitions**

a. The provisions of Sections 1 to 5 of this Chapter, inclusive, shall be liberally construed to promote their underlying purpose and policy of readily permitting the disclaimer of interests.

b. As used in said Sections,

(1) "Non-testamentary Instrument" includes, but is not limited to, a trust other than a trust created under a will, an annuity, a policy of life, health or accident insurance, a bank account or any contract or other document naming

another party as beneficiary thereof whether such beneficiary takes by survivorship, payment on death or outright grant, but does not include a will.

(2) "Interest" means any interest in property, including any power, even if held in a fiduciary capacity.

c. A disclaimer which complies with the requirements of said Sections is irrevocable.

24 M.P.T.L. ch. 11 § 2

**§ 2. Disclaimer of Property in Decedent's Estate. Time Limitation. Effect of Disclaimer**

a. An heir, next of kin, legatee, person succeeding to a disclaimed interest, beneficiary under a testamentary instrument, trustee of a non-testamentary trust, donee of a power of appointment granted by a testamentary instrument or appointee under a power of appointment exercised by a testamentary instrument, may disclaim in whole or in part any interest by delivering a written disclaimer in the manner hereinafter provided.

b. A guardian of the estate, conservator of the estate, executor, administrator or other personal representative of the estate of a minor, incapable person, or decedent, or the trustee of a testamentary trust, if such fiduciary deems it in the best interests of those interested in the estate of such person or such trust and not detrimental to the interests of such minor, incapable person, decedent's estate or such trust, with the approval of the Probate Court having jurisdiction over such minor's, incapable person's or decedent's estate or such trust, may disclaim on behalf of such estate or such trust within the same time and in the same manner as could a capable person.

c. The disclaimer shall:

(1) describe the interest disclaimed;

(2) be executed by the disclaimant in the manner provided for the execution of deeds of real property either by the laws of the state of Connecticut or by the laws of the place of execution; and

(3) declare the disclaimer and the extent thereof.

d. A disclaimer under this Section shall be effective if made in the following manner:

(1) A disclaimer of a present interest shall be delivered not later than the date which is nine months after:

(a) the death of the decedent, or the donee of the power or,

(b) the day on which the disclaimant attains the age of 18 years, whichever is later;



(2) a disclaimer of a future interest shall be delivered not later than the date which is nine months after:

(a) the event that determines that the taker of the interest is finally ascertained and his interest indefeasibly vested, or

(b) the day on which the disclaimant attains the age of 18 years, whichever is later;

(3) the disclaimer shall be delivered to the legal representative of the estate of the decedent or deceased donee of the power or the holder of the legal title to the property to which the interest relates. Although not a condition to disclaimer, if within such nine-month period, a copy of such disclaimer and a receipt therefor, executed by such legal representative or such holder of legal title in the same manner as provided for the disclaimer, are filed in the Probate Court.

e. If a disclaimer is made pursuant to this Section, and the deceased owner or donee of a power of appointment has not provided for another disposition, the interest disclaimed shall devolve as if the disclaimant had predeceased the decedent or, if the disclaimant has been designated to take under a power of appointment exercised by a testamentary instrument, as if the disclaimant had predeceased the donee of the power. If a disclaimer is addressed to an interest disposed of by a particular provision of an instrument, then the interest disclaimed shall devolve as if the disclaimant had predeceased the decedent, but only for purposes of that provision, and such interest may devolve to or for the benefit of the disclaimant under other provisions of such instrument or by intestacy. Any future interest that takes effect in possession or enjoyment at or after the termination of the interest disclaimed shall take effect as if the disclaimant had predeceased the decedent or the donee of the power. A disclaimer shall relate back for all purposes to the date of death of the decedent or of the donee.

24 M.P.T.L. ch. 11 § 3

**§ 3. Right to Disclaim Barred, When. Binding Effect of Disclaimer or Waiver**

a. The right to disclaim an interest is barred by any:

(1) assignment, conveyance, encumbrance, pledge or transfer of the interest or any part thereof;

(2) written waiver of the right to disclaim such interest;

(3) acceptance of such interest or any of its benefits; or

(4) sale of such interest under judicial sale, made before the disclaimer is effected.

b. The right to disclaim shall exist notwithstanding any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction.

c. A disclaimer or a written waiver of the right to disclaim, shall be binding upon the disclaimant or person waiving and all parties claiming by, through or under such disclaimant or person.

24 M.P.T.L. ch. 11 § 4

**§ 4. Right to Disclaim Under other Law**

The provisions of Sections 1 to 5 of this Chapter, inclusive, shall not abridge the right of any person to assign, convey, release, or renounce any interest arising under any other statute or under common law.

24 M.P.T.L. ch. 11 § 5

**§ 5. Disclaimer of Property Passing Under Non-Testamentary Instrument. Time Limitation. Effect of Disclaimer**

a. A grantee, donee, joint-tenant of personalty, person succeeding to a disclaimed interest, beneficiary under a non-testamentary instrument, trustee of a non-testamentary trust, donee of a power of appointment granted by a non-testamentary instrument, or an appointee under a power of appointment exercised by a non-testamentary instrument may disclaim in whole or in part any interest by delivering a written disclaimer in the manner hereinafter provided.

b. A guardian of the estate, conservator of the estate, executor, administrator or other personal representative of the estate of a minor, incapable person, or decedent, or the trustee of a non-testamentary trust, if such fiduciary deems it in the best interests of those interested in the estate of such person or such trust and not detrimental to the interests of such minor, incapable person or decedent's estate or such trust, with the approval of the Probate Court may disclaim on behalf of such estate or such trust within the same time and in the same manner as could a capable person.

c. The disclaimer shall:

- (1) describe the interest therein disclaimed;
- (2) be executed by the disclaimant in the manner provided for the execution of deeds of real property either by the laws of the state of Connecticut or by the laws of the place of execution; and
- (3) declare the disclaimer and the extent thereof.

d. A disclaimer under this Section shall be effective if made in the following manner.

- (1) A disclaimer of a present interest shall be delivered not later than the date which is nine months after the effective date of the non-testamentary instrument. A disclaimer of a future interest shall be delivered not later than the date which is nine months after the event determining that the taker

of the interest is finally ascertained and such interest is indefeasibly vested.

(2) If the disclaimant does not have actual knowledge of the existence of the interest, the disclaimer shall be delivered not later than the date which is nine months after the disclaimant has actual knowledge of the existence of the interest. If the disclaimant has not attained the age of 18 years, the disclaimer shall be delivered not later than the date which is nine months after such person has attained the age of 18 years.

(3) The disclaimer shall be delivered to the transferor of the interest, his legal representative, or the holder of the legal title to the property to which such interest relates.

(4) The effective date of a revocable, non-testamentary instrument is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest.

e. If an interest has devolved to the disclaimant under a non-testamentary instrument and such instrument does not provide for another disposition, the interest disclaimed shall devolve as if the disclaimant had died before the effective date of such instrument. A disclaimer shall relate back for all purposes to that date. Any future interest that takes effect in possession or enjoyment at or after the termination of the interest disclaimed shall take effect as if the disclaimant had died before the effective date of the non-testamentary instrument that transferred the interest disclaimed. If a disclaimer is addressed to an interest disposed of by a particular provision of a non-testamentary instrument then the interest disclaimed shall devolve as if the disclaimant had died before the effective date of such instrument, but only for purposes of that provision, and such interest may devolve to or for the benefit of the disclaimant under other provisions of such instrument or by intestacy.

## **CHAPTER 12. PROTECTED PERSONS AND THEIR PROPERTY**

24 M.P.T.L. ch. 12 § 1

### **§ 1. Administrator of Veterans' Affairs to be Party in Interest**

a. The Administrator of Veterans' Affairs, created by Act of the Congress of the United States, or his successor, shall be a party in interest in any proceedings brought under any provision of the laws of the Mashantucket Pequot Tribe for the appointment of a guardian of a veteran of any war or other beneficiary on whose account benefits of compensation, adjusted compensation, pension or insurance or other benefits are payable by the Veterans' Administration.

b. The Administrator of Veterans' Affairs or his successor shall be an interested party in the administration of the estate of any ward on whose account the benefits are payable or whose estate includes assets derived from

benefits paid by the Veterans' Administration, its predecessor or successor.

c. Written notice shall be given by registered or certified mail, unless waived in writing, to the division of the office of the Veterans' Administration having jurisdiction over the area in which the court is located, of the time and place for hearing on any petition or pleading or in connection with any proceeding pertaining to or affecting in any manner the administration of the estate of any beneficiary of the Veterans' Administration. Notice shall be mailed in time to reach such office not less than 10 days before the date of the hearing or other proceeding.

24 M.P.T.L. ch. 12 § 2

**§ 2. Investment of Funds in Insurance and Annuity Contracts by Conservator or Guardian of Estate**

Upon application of a conservator or the guardian of the estate of a ward, the Probate Court may authorize the conservator or guardian to invest income or principal of the estate, to the extent found reasonable by the Court under all the circumstances, in one or more policies of life or endowment insurance or one or more annuity contracts issued by a life insurance company deemed suitable by said Court, on the life of the ward or incapable person, or on the life of a person in whose life the ward or incapable person has an insurable interest. Any such policy or contract shall be the sole property of the ward or incapable person whose funds are invested in it.

24 M.P.T.L. ch. 12 § 3

**§ 3. Testamentary Guardian or Co-Guardians**

The surviving parent of any minor may by will appoint a person or persons who shall be guardian or co-guardians of the person of such minor, a guardian or co-guardians of the estate or both. Such appointment shall not supersede the previous appointment of a guardian made by the Probate Court.

24 M.P.T.L. ch. 12 § 4

**§ 4. Payment by Guardian or Conservator of Administration Expenses of Deceased Protected Person**

a. Upon the death of a minor with respect to whose estate a guardian has been duly appointed by the Probate Court, has qualified and is acting as such, and upon the death of a person with respect to whose estate a conservator has been duly appointed, has qualified and is acting as such, if:

(1) the estate consists entirely of personalty; and

(2) the estate remaining in the hands of the guardian or conservator at the time of the death of the protected person is not more than sufficient to pay expenses incurred during the lifetime of the protected person and not paid as

of the date of death, administration expenses necessary to the settlement of the fiduciary's final account and the funeral expenses, including the cost of a suitable monument and cemetery plot, then such guardian or conservator may pay such expenses and take credit therefor on his final account.

b. If the estate is less than sufficient to pay all such expenses in full, the provisions of Chapter 6, Section 48 as to order of payment shall govern.

24 M.P.T.L. ch. 12 § 5

## **§ 5. Definitions**

For the purposes of Sections 5 to 18 of this Chapter, inclusive, the following terms shall have the following meanings:

a. "Conservator of the Estate" means a person, a tribal official, or a private profit or nonprofit corporation except a hospital or nursing home as defined in the Connecticut General Statutes Section 19a-521, appointed by the Probate Court under the provisions of Sections 5 to 18 of this Chapter, inclusive, to supervise the financial affairs of a person found to be incapable of managing his or her own affairs or of a person who voluntarily asks the Probate Court for the appointment of a conservator of the estate, and includes a temporary conservator of the estate appointed under the provisions of Section 12 of this Chapter.

b. "Conservator of the Person" means a person, a tribal official, or a private profit or nonprofit corporation, except a hospital or nursing home as defined in the Connecticut General Statutes Section 19a-521, appointed by the Probate Court under the provisions of Sections 5 to 18 of this Chapter, inclusive, to supervise the personal affairs of a person found to be incapable of caring for himself or herself or of a person who voluntarily asks the Probate Court for the appointment of a conservator of the person, and includes a temporary conservator of the person appointed under the provisions of Section 12 of this Chapter.

c. "Incapable of Caring for One's Self" means a mental, emotional or physical condition resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which results in the person's inability to provide medical care for physical and mental health needs, nutritious meals, clothing, safe and adequately heated and ventilated shelter, personal hygiene and protection from physical abuse or harm and which results in endangerment to such person's health.

d. "Incapable of Managing His or Her Affairs" means that a person has a mental, emotional or physical condition resulting from mental illness, mental deficiency, physical illness or disability, chronic use of drugs or alcohol, or confinement, which prevents that person from performing the functions inherent in managing his or her affairs, and the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care or welfare of the person or those entitled to be supported by that person and that the person is unable to take the necessary steps to obtain or provide funds which are needed for the support, care or

welfare of the person or those entitled to be supported by such person.

e. "Involuntary Representation" means the appointment of a conservator of the person or the estate, or both, after a finding by the Probate Court that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

f. "Respondent" means either a minor or adult person for whom an application for a voluntary or involuntary representation has been filed.

g. "Voluntary Representation" means the appointment of a conservator of the person or estate, or both, upon request of the respondent, without a finding that the respondent is incapable of managing his or her affairs or incapable of caring for himself or herself.

h. "Ward" means a person for whom involuntary representation is granted under Sections 5 to 18 of this Chapter, inclusive.

24 M.P.T.L. ch. 12 § 6

#### **§ 6. Naming of own Conservator for Future Incapacity**

a. Any person who has attained at least 18 years of age, and who is of sound mind, may designate in writing a person or persons whom he desires to be appointed as conservator of his person or estate or both, if he is thereafter found to be incapable of managing his affairs.

b. The designation shall be executed, witnessed and revoked in the same manner as provided for wills in Chapter 5, Sections 3 and 4; provided, any person who is so designated as a conservator shall not qualify as a witness.

c. Such written instrument may excuse the person or persons so designated from giving the probate bond required under the provisions of Section 11 of this Chapter, if appointed thereafter as a conservator.

24 M.P.T.L. ch. 12 § 7

#### **§ 7. Application for Voluntary Representation**

Any person domiciled on tribal lands or tribal members wherever they reside may make application to the Probate Court for voluntary representation either for the appointment of a conservator of the person or a conservator of the estate, or both. If the application excuses bond, no bond shall be required by the court unless later requested by the respondent or unless facts are brought to the attention of the court that a bond is necessary for the protection of the respondent. Upon receipt of the application, the court shall set a time and place for hearing and shall give such notice as it may direct to the petitioner, the petitioner's spouse, if any, and to other interested parties, if any. After seeing the respondent in person and hearing his or her reasons for the application and after explaining to the respondent that granting the

petition will subject the respondent or respondent's property, as the case may be, to the authority of the conservator, the court may grant voluntary representation and thereupon shall appoint a conservator of the person or estate or both, and shall not make a finding that the petitioner is incapable.

The conservator of the person or estate or both, shall have all the powers and duties of a conservator of the person or estate of an incapable person appointed pursuant to Section 11 of this Chapter. If the respondent subsequently becomes disabled or incapable, the authority of the conservator shall not be revoked as a result of such disability or incapacity.

24 M.P.T.L. ch. 12 § 8

#### **§ 8. Release from Voluntary Representation**

Any person who is under voluntary representation as provided by Section 7 of this Chapter shall be released from voluntary representation upon giving 30 days written notice to the Probate Court.

24 M.P.T.L. ch. 12 § 9

#### **§ 9. Application for Involuntary Representation. Penalty for Fraudulent or Malicious Application of False Testimony**

An application for involuntary representation may be filed by any person alleging that a respondent is incapable of managing his or her affairs or incapable of caring for himself or herself and stating the reasons for the alleged incapability. The application shall be filed in the Probate Court for any person who is domiciled on tribal lands or tribal members wherever they may reside.

24 M.P.T.L. ch. 12 § 10

#### **§ 10. Notice of Hearing. Appointment of Counsel**

a. Upon an application for involuntary representation, the court shall issue a citation to the following enumerated parties to appear before it at a time and place named in the citation, which shall be served on the parties at least seven days before the hearing date, which date shall not be more than 30 days after the receipt of the application by the Probate Court unless continued for cause shown. Notice of the hearing shall be sent within 30 days after receipt of the application.

(1) The court shall direct that personal service be made, by the tribal police or an indifferent person, upon the following:

(a) the respondent, except that if the court finds personal service on the respondent would be detrimental to the health or welfare of the respondent, the court may order that such service be made upon counsel for the respondent, if any, and if none, upon the attorney appointed under subsection (b) of this Section;

(b) the respondent's spouse, if any, if the spouse is not the applicant, except that in cases where the application is for involuntary representation pursuant to Connecticut General Statute Section 17b-456, and there is no spouse, the court shall order notice by certified mail to the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives, and if none, the next of kin of such respondent.

(2) The court shall order such notice as it directs to the following:

(a) the applicant;

(b) to the Administrator of Veteran's Affairs by registered or certified mail, if the respondent is receiving veterans' benefits or the Veteran's Home and Hospital, or both, if the respondent is receiving aid or care from such hospital, or both;

(c) the children of the respondent and if none, the parents of the respondent and if none, the brothers and sisters of the respondent or their representatives;

(d) the person in charge of the hospital, nursing home or some other institution, if the respondent is in a hospital, nursing home or some other institution.

(3) The court, in its discretion, may order such notice as it directs to other persons having an interest in the respondent and to such persons the respondent requests be notified.

b. (1) The notice required by subdivision (1) of subsection (a) of this Section shall specify:

(a) the nature of involuntary representation sought and the legal consequences thereof;

(b) the facts alleged in the application; and

(c) the time and place of the hearing.

(2) The notice shall further state that the respondent has a right to be present at the hearing and has a right to be represented by an attorney at his or her own expense. If the respondent is unable to request or obtain counsel for any reason, the court shall appoint an attorney to represent the respondent in any proceeding under this title involving the respondent. If the respondent is unable to pay for the services of such attorney, the reasonable compensation for such attorney shall be paid by the Probate Court. If the respondent notifies the court in any manner that he or she wants to attend the hearing on the application but is unable to do so because of physical incapacity, the court shall schedule the hearing on the application at a place which would facilitate attendance by the respondent but if not practical, then the judge shall visit the respondent, if he or she is on tribal lands, before the hearing. Notice to all other persons required by this Section shall state only



the nature of involuntary representation sought, the legal consequences thereof and the time and place of the hearing.

24 M.P.T.L. ch. 12 § 11

**§ 11. Hearing. Appointment of Conservator**

a. At any hearing for involuntary representation, the court shall receive evidence regarding the condition of the respondent, including a written report or testimony by one or more physicians licensed to practice medicine in the state of Connecticut or Rhode Island who have examined the respondent within 30 days preceding the hearing. The report or testimony shall contain specific information regarding the disability and the extent of its incapacitating effect. The court may also consider such other evidence as may be available and relevant, including but not limited to a summary of the physical and social functioning level or ability of the respondent, and the availability of support services from the family, neighbors, community, or any other appropriate source. Such evidence may include, if available, reports from the Mashantucket Pequot Department of Health and Human Services, public health nurse, public health agency, psychologist, coordinating assessment and monitoring agencies, or such other persons as the court deems qualified to provide such evidence. The court may waive the requirement that medical evidence be presented if it is shown that the evidence is impossible to obtain because of the absence of the respondent or his or her refusal to be examined by a physician or that the alleged incapacity is not medical in nature. If this requirement is waived, the court shall make a specific finding in any decree issued on the petition stating why medical evidence was not required.

b. The court may hold the hearing on the application at a place within tribal land other than its usual courtroom if it would facilitate attendance by the respondent.

c. If the court finds by clear and convincing evidence that the respondent is incapable of managing his or her affairs then the court shall appoint a conservator of his or her estate. If the court finds by clear and convincing evidence that the respondent is incapable of caring for himself or herself, then the court shall appoint a conservator of his or her person.

d. When selecting a conservator to be appointed for the respondent, the court shall be guided by the best interests of the respondent. The respondent may, by oral or written request, if at the time of the request he or she has sufficient capacity to form an intelligent preference, nominate a conservator who shall be appointed unless the court finds the appointment of the nominee is not in the best interests of the respondent. In such case, or in the absence of any such nomination, the court may appoint any qualified person, authorized tribal official or corporation in accordance with subsections (a) and (b) of Section 5 of this Chapter.

e. Upon the request of the respondent or his or her counsel, made within 30 days of the date of the decree, the court shall make and furnish findings of fact to support its conclusion.

f. If the court appoints a conservator of the estate of the respondent, it shall require a Probate bond. The court may, if it deems it necessary for the protection of the respondent, require a bond of any conservator of the person appointed hereunder.

24 M.P.T.L. ch. 12 § 12

**§ 12. Appointment of Temporary Conservator**

a. Upon written application of any person deemed by the court to have sufficient interest in the welfare of the respondent, including but not limited to the spouse or any relative of the respondent, the Probate Court may, if it finds the respondent to be incapable of managing his or her affairs or incapable of caring for himself or herself, appoint a temporary conservator. The temporary conservator shall have charge of the property or of the person of the respondent or both for such period of time or for such specific occasion as the court finds to be necessary, provided a temporary appointment shall not be valid for more than 30 days.

b. An appointment shall not be made unless:

(1) there is presented to the judge a certificate, signed by two physicians licensed to practice medicine or surgery in this state, stating that they have examined the person and that it is their opinion that his condition renders him incapable; and

(2) the court finds that irreparable injury to the mental or physical health or financial or legal affairs of the respondent will result if a conservator is not appointed forthwith.

c. The court may, if it deems it to be in the best interests of the respondent, hold a hearing on any application for temporary conservator under this Section, in which case the provisions of Section 10 of this Chapter shall apply, except that the seven-day notice requirement set forth in Section 10 of this Chapter shall be waived. The application shall be acted upon within 48 hours after the filing thereof, Saturdays and Sundays excluded, unless continued for cause shown. The certificate shall state the date of examination, which shall not be more than three days before the date of signature. The judge may, in his discretion, require a temporary conservator to give a probate bond.

24 M.P.T.L. ch. 12 § 13

**§ 13. Duties of Conservator of the Estate. Application for Distribution of Gifts of Income and Principal from the Estate**

a. A conservator of the estate appointed under Sections 7, 11, or 12 of this Chapter shall, within two months after the date of his or her appointment, make and file in the Probate Court, an inventory under oath of the estate of his or her ward, with the properties thereof appraised or caused to be appraised, by such conservator, at fair market value as of the date of his appointment. Such inventory shall include the value of the ward's interest in all property in

which the ward has a legal or equitable present interest, including, but not limited to, the ward's interest in any joint bank accounts or other jointly held property. The conservator shall manage all the estate and apply so much of the net income thereof, and, if necessary, any part of the principal of the property, which is required to support the ward and those members of the ward's family whom he has the legal duty to support and to pay his debts, and may sue for and collect all debts due the ward.

b. Any conservator of the estate of a married person may apply such portion of the property of the ward to the support, maintenance and medical treatment of the ward's spouse which the Probate Court, upon hearing after notice, decides to be proper under the circumstances of the case.

c. Notwithstanding the provisions of Chapter 3, Section 28, the court may, and at the request of any interested party shall, require annual accountings from any conservator of the estate and the court shall hold a hearing on any such account with notice to all persons entitled to notice under Section 12 of this Chapter.

d. Upon application of a conservator of the estate, after hearing with notice to all parties who may have an interest as determined by the court, the court may authorize the conservator to pay and distribute gifts of income and principal from the estate of the ward in such amounts or in such form as the court approves, to individuals and qualified charities as defined in the Internal Revenue Code of 1986, or any corresponding internal revenue code of the United States, as from time to time amended. Such gifts shall be authorized only if the court finds that:

(1) in the case of individuals not related to the ward by blood or marriage, the ward has made a previous gift to that individual prior to being declared incapable;

(2) in the case of a charity, the ward had made a previous gift to such charity or pledged a gift in writing to such charity prior to being declared incapable;

(3) the estate of the ward is more than sufficient to carry out the duties of the conservator as set forth in subsections (a) and (b) of this Section, both for the present and foreseeable future, including due provision for the continuing proper care, comfort and maintenance of such ward in accordance with such ward's established standard of living and for the support of persons the ward is legally obligated to support;

(4) the purpose of the gifts is not to diminish the estate of the ward so as to qualify the ward for federal or state aid or benefits; and

(5) in the case of a ward capable of making an informed decision, the ward has no objection to such gift. The court shall give consideration to the following:

(a) the medical condition of the ward, including the prospect of restoration to capacity;

(b) the size of the ward's estate;

(c) the provisions which, in the judgment of the court, such ward would have made if he or she had been capable, for minimization of income and estate taxes consistent with proper estate planning.

24 M.P.T.L. ch. 12 § 14

#### **§ 14. Duties of Conservator of the Person**

The conservator of the person shall have:

- a. the duty and responsibility for the general custody of the respondent;
- b. the power to establish his or her place of abode within the tribal lands in accordance with tribal laws;
- c. the power to give consent for his or her medical or other professional care, counsel, treatment or service;
- d. the duty to provide for the care, comfort and maintenance of the ward;
- e. the duty to take reasonable care of the respondent's personal effects; and
- f. the duty to report at least annually to the Probate Court regarding the condition of the respondent. The preceding duties, responsibilities and powers shall be carried out within the limitations of the resources available to the ward, either through his own estate or through the assistance of Tribe.

24 M.P.T.L. ch. 12 § 15

#### **§ 15. Court to Resolve Conflicts between Conservators**

If a person has both a conservator of the person and a conservator of the estate who are not the same person and a conflict arises between the two concerning the duties and responsibilities or authority of either, the matter shall be submitted to the Probate Court which appointed the conservators. Upon hearing, the court shall order the course of action which in the court's discretion is in the best interests of the person under conservatorship.

24 M.P.T.L. ch. 12 § 16

#### **§ 16. Conservator of Nonresident's Property**

a. If any person domiciled out of and owning tangible personal property within tribal lands is incapable of managing his affairs, the Probate Court may, on the written application of a husband, wife or relative or of a conservator, committee or guardian having charge of the person or estate of the incapable person and after notice pursuant to Section 12 of this Chapter or such reasonable notice as the court may order, and a hearing as required pursuant to

Section 13 of this Chapter appoint a conservator of the estate for the tangible personal property on tribal lands of the incapable person pursuant to Section 13 of this Chapter.

b. If a conservator of the estate has been appointed for such an incapable person in the jurisdiction of such person's domicile,

(1) the court may, on application of such conservator to act as conservator for tangible personal property of the incapable person on tribal lands, appoint such person as conservator of the estate without a hearing, on presentation to the court of a certified copy of the conservator's appointment in the jurisdiction of the incapable person's domicile; and

(2) if the application is for the appointment of a person other than the out-of-jurisdiction conservator to act as conservator of the estate, the court, at its hearing on the application, may accept a certified copy of the out-of-jurisdiction appointment of a conservator as evidence of incapacity. As used in this subsection, a "conservator of the estate" in another jurisdiction includes any person serving in the equivalent capacity in such jurisdiction.

c. The conservator of the estate for the property on tribal lands shall give a probate bond, and shall, within two months after the date of his appointment, make and file in the Probate Court, under oath, an inventory of all the tangible personal property on the reservation of the incapable person, appraised or caused to be appraised, by such conservator, at fair market value as of the date of the conservator's appointment.

d. The proceeds of any sale of tangible personal property may be transferred to the conservator, committee or guardian having charge of the person and estate of the incapable person in the jurisdiction where the incapable person is domiciled, following the application and proceedings which are required by the laws of the Tribe.

24 M.P.T.L. ch. 12 § 17

**§ 17. Termination of Conservatorship. Review by Court**

a. (1) If the Probate Court finds a ward to be capable of caring for himself or herself, the court shall, upon hearing and after notice, order that the conservatorship of the person be terminated. If the court finds upon hearing and after notice which the court prescribes, that a ward is capable of managing his or her own affairs, the court shall order that the conservatorship of the estate be terminated and that the remaining portion of his or her property be restored to the ward.

(2) If the court finds upon hearing and after notice which the court prescribes, that a ward has no assets of any kind remaining, the court may order that the conservatorship of the estate be terminated. The court shall thereupon order distribution of the remaining assets to the conservator of the person or, if there is no conservator or the conservator declines or is unable to accept, to some suitable person, to be determined by the court, to hold for the benefit of the ward, upon such conservator or person giving such probate

bond, if any, as the court orders.

(3) If any ward having a conservator dies, his or her property shall be delivered to his or her executor or administrator.

b. (1) In any case under subsection (a) of this Section the conservator shall file in the court his or her final account, and the court shall audit the account and allow the account if it is found to be correct. If the ward is living, the ward and his or her attorney, if any, shall be entitled to notice by regular mail of any hearing held on the final account.

(2) The Probate Court shall send written notice annually to the ward and his or her attorney that the ward has a right to a hearing under this Section. Upon receipt of request for such hearing the court shall set a time and date for the hearing, which date shall not be more than 30 days from the receipt of the application unless continued for cause shown.

c. The court shall review each conservatorship at least every three years, and shall either continue, modify or terminate the order for conservatorship. The court shall receive and review written evidence as to the condition of the ward. The conservator, the attorney for the ward and a physician licensed to practice medicine in the state of Connecticut or Rhode Island, shall each submit a written report to the court within 45 days of the court's request for such report. If the ward is unable to request or obtain an attorney, the court shall appoint an attorney. If the ward is unable to pay for the services of the attorney, the reasonable compensation of such attorney shall be paid the Probate Court. The physician shall examine the ward within the 45 day period preceding the date of submission of his report.

d. If the court determines, after receipt of the reports from the attorney for the ward, the physician and the conservator, that there has been no change in the condition of the ward since the last preceding review by the court, a hearing on the condition of the ward shall not be required, but the court, in its discretion, may hold such hearing. If the attorney for the ward, the physician or conservator requests a hearing, the court shall hold a hearing within 30 days of such request.

24 M.P.T.L. ch. 12 § 18

#### **§ 18. Compensation of Conservator if Ward Unable to Pay**

If a ward is unable to pay for the services of a conservator appointed pursuant to the provisions of this law, the reasonable compensation of such conservator shall be paid by the Mashantucket Pequot Tribe pursuant to rules and regulations and at rates established by the Mashantucket Pequot Tribal Court.

### **CHAPTER 13. LIVING WILL**

24 M.P.T.L. ch. 13 § 1

**§ 1. Probate Court Jurisdiction Concerning Living Wills**

The Probate Court shall have jurisdiction over any dispute concerning the meaning or application of any provision of a living will, as defined herein. With respect to any communication of a declarant's wishes other than by means of a document executed in accordance with this Chapter, the court shall consider whether there is clear and convincing evidence of such communication.

24 M.P.T.L. ch. 13 § 2

**§ 2. Definition of Living Will**

A living will means a written statement made and executed in compliance with this Chapter containing a declarant's wishes concerning any aspect of his or her health care, including the withholding or withdrawal of life support systems.

24 M.P.T.L. ch. 13 § 3

**§ 3. Form of Document re: Health Care Instructions, Appointment of Health Care Agent or Conservator of the Person**

Any person 18 years of age or older may execute a document which contains health care instructions, the appointment of a health care agent, for health care decisions and an appointment of a conservator of the person for future incapacity. Such document shall be signed and dated by the declarant with at least two witnesses who are over the age of 18.

ADDENDUM THESE ARE MY HEALTH CARE INSTRUCTIONS, MY APPOINTMENT OF A HEALTHCARE AGENT FOR HEALTH CARE DECISIONS, AND THE DESIGNATION OF MY CONSERVATOR OF THE PERSON FOR MY FUTURE INCAPACITY.

To any physician who is treating me: These are my health care instructions, including those concerning the withholding or withdrawal of life support systems, together with the appointment of my health care agent for health care decisions, and the designation of my conservator of the person for future incapacity. As my physician, you may rely on any decision made by my health care agent or conservator of my person for health care decisions if I am unable to make a decision for myself.

I, \_\_\_\_\_, the maker of this document, request that if my condition is deemed terminal or if I am determined to be permanently unconscious, I be allowed to die and not be kept alive through life support systems. By terminal condition, I mean that I have an incurable or irreversible medical condition which, without the administration of life support systems, will, in the opinion of my attending physician, result in death within a relatively short time. By permanently unconscious I mean that I am in a permanent coma or persistent vegetative state which is an irreversible condition in which I am at no time aware of myself or the environment and show no behavioral response to the environment. The life support systems which I do not want include, but are not limited to: artificial respiration, cardiopulmonary resuscitation and

artificial means of providing nutrition and hydration. I do want sufficient pain medication to maintain my physical comfort. I do not intend any direct taking of my life, but only that my dying not be unreasonably prolonged.

I appoint \_\_\_\_\_ to be my health care agent and my attorney-in-fact for health care decisions. If my attending physician determines that I am unable to understand and appreciate the nature and consequences of health care decisions and unable to reach and communicate an informed decision regarding treatment, my health care agent is authorized to:

- (1) Convey to my physician my wishes concerning the withholding or removal of life support systems;
- (2) Take whatever actions are necessary to ensure that my wishes are given effect;
- (3) Consent, refuse or withdraw consent to any medical treatment as long as such action is consistent with my wishes concerning the withholding or removal of life support systems; and
- (4) Consent to any medical treatment designed solely for the purpose of maintaining physical comfort.

If \_\_\_\_\_, is unwilling or unable to serve as my health care agent and my attorney-in-fact for health care decisions, I appoint, to be my alternative health care agent and my attorney-in-fact for health care decisions. If a conservator of my person should need to be appointed, I designate \_\_\_\_\_ be appointed my conservator. If \_\_\_\_\_ is unwilling or unable to serve as my conservator, I designate \_\_\_\_\_. No bond shall be required of either of them in any jurisdiction.

ATTESTATION

This document was signed in our presence by \_\_\_\_\_ the author of this document, who appeared to be eighteen years of age or older, of sound mind and able to understand the nature and consequences of health care decisions at the time this document was signed. The author appeared to be under no improper influence. We have subscribed this document in the author's presence and at the author's request and in the presence of each other.

\_\_\_\_\_  
(Witness)      (Witness)

\_\_\_\_\_  
(Address)      (Address)

\_\_\_\_\_



(City, State and Zip Code) (City, State and Zip Code)

\_\_\_\_\_

(Date) (Date)

MASHANTUCKET )

)

PEQUOT RESERVATION )

We, the subscribing witnesses, being duly sworn and over the age of eighteen years, attest that we witnessed the execution of these health care instructions, the appointments of a health care agent and an attorney-in-fact, and the designation of a conservator for future incapacity by the author of this document; that the author has declared the same to be the author's instructions, appointments and designation in our presence; that we thereafter subscribed the document as witnesses in the author's presence, at the author's request, and in the presence of each other; that at the time of the execution of said document the author appeared to us to be eighteen years of age or older, of sound mind, able to understand the nature and consequences of said document, and under no improper influence, and we make this attestation at the author's request this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_

(Witness) (Witness)

Subscribed and sworn to before me this \_\_\_\_\_ day \_\_\_\_\_ of 200\_\_.

\_\_\_\_\_ Notary Public

My commission expires: \_\_\_\_\_

(Print or type name of all persons signing under all signatures)

**TITLE 25. RESIDENTIAL FORECLOSURE AND EVICTION LAW**

**CHAPTER 1. SHORT TITLE, FINDINGS, AND PURPOSE**

25 M.P.T.L. ch. 1 § 1

### **§ 1. Short Title**

This Law shall be known as the Residential Foreclosure and Eviction Law of the Mashantucket Pequot Tribal Nation (the "Tribe or MPTN").

25 M.P.T.L. ch. 1 § 2

### **§ 2. Findings**

The Tribal Council of the Tribe (the "Council") hereby finds that:

a. Adequate and clear residential foreclosure and eviction procedures are a necessity for conducting a comprehensive housing program for the financing of Dwellings.

b. Residential foreclosure procedures are necessary to ensure a remedy for Loan Program Lenders in the event of a default. Residential Eviction procedures are necessary to assure the orderly utilization of available housing located on Trust Lands, to provide for the orderly enforcement of rights and obligations of Occupants and Authorized Residents and to provide for an orderly means of removing Unauthorized Residents.

c. Some federal programs require residential foreclosure and eviction procedures as a condition of funding. The Fannie Mae program also requires residential foreclosure and eviction procedures as a condition of participating in the program.

d. A single uniform foreclosure and eviction code would enhance the operations of the Tribal Government.

e. Procedures for the foreclosure of Assignment Mortgages are necessary to provide a remedy for Loan Program Lenders.

f. Procedures for the eviction of Occupants from Dwellings are necessary for the orderly operation of the Mashantucket Pequot Department of Housing, the protection of Tribal Members and the protection of the rights of said Loan Program Lenders.

25 M.P.T.L. ch. 1 § 3

### **§ 3. Purpose**

The purpose of this Law is:

a. To promote greater clarity concerning the rights of Tribal Members with respect to Dwellings.

b. To preserve and protect the rights of Tribal Members and the Tribe in the orderly occupancy of Dwellings.

c. To provide recourse to Loan Program Lenders by providing for an orderly and fair method of foreclosing upon Assignment Mortgages on Assignments arising under 27 M.P.T.L. Land Assignment Law.

d. To provide for an orderly and fair means of evicting those persons found to have committed Unlawful Detainer.

25 M.P.T.L. ch. 1 § 4

#### **§ 4. Exclusion**

The provisions of this Law shall apply only to the adjudication of rights and obligations relating to Dwellings and the appurtenances thereto and shall not apply to commercial leasing, commercial occupancy rights, commercial financing arrangements involving the Tribe or any subdivision of, or any entity formed, owned, or controlled by the Tribe, of every kind and nature including, but not limited to, any aspect of the resort and gaming facilities now or in the future managed, controlled, and operated by the Tribe, whether by and through the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods or otherwise.

### **CHAPTER 2. SCOPE**

25 M.P.T.L. ch. 2 § 1

#### **§ 1. Scope**

The provisions of this Law shall apply only to the following matters relative to Dwellings:

a. The determination of the rights of the holders of Assignments and the rights of Program Loan Lenders holding an Assignment Mortgage interest in such Assignments.

b. The manner by which the rights of Occupants in and to Dwellings are terminated and the eviction of such Occupants.

c. The manner by which the derivative occupancy rights of Authorized Residents are to be terminated.

d. The manner by which eviction and ejection of Authorized Residents and Unauthorized Residents from Dwellings is to be effected.

### **CHAPTER 3. DEFINITIONS**

25 M.P.T.L. ch. 3 § 1

## § 1. Definitions

Capitalized terms, wherever appearing in this law, shall have the meaning as set forth in this section.

a. "Assignment" shall have the same definition as is set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law and shall include any Dwelling thereon located.

b. "Authorized Resident" means any person, not an Occupant, who occupies, or entered into occupancy of a dwelling unit with the knowledge and consent of an Occupant and/or the Mashantucket Pequot Tribal Nation.

c. "Assignment Conveyance" shall have the same definition as is set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law.

d. "Assignment Mortgage" shall have the same definition as is set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law.

e. "Assignment Rights" shall have the same definition as is set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law.

f. "Assignment Value" means the value of an Assignment as determined by the Tribal Court in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

g. "Auction" shall mean the sale of an Assignment directed by the Tribal Court in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

h. "Day" shall mean a calendar day. In the event an action or notice is required to be due or otherwise performed on a Day that is not a regular business day of the Tribal Court then any such action or notice shall be deferred until the next regular business day of the Tribal Court.

i. "Debt" means an obligation of a Tribal Member to pay a sum of money or perform an obligation to a Loan Program Lender (as defined hereafter), when such obligation(s) are secured by a Assignment Mortgage pursuant to the terms of a Loan Program duly adopted or approved by the Tribe.

j. "Debtor" means a Tribal Member who owes a Debt to a Loan Program Lender.

k. "DOH" or "Tribe's Housing Department" shall mean the Mashantucket Department of Housing.

l. "Dwelling" means a house, apartment, or other residential unit located on Trust Lands. No residential unit located on property other than Trust Lands shall be deemed a Dwelling for purposes of this Law.

m. "Judgment Debt" means the total monetary judgment awarded by the Tribal Court to a Loan Program Lender in the context of a foreclosure of an Assignment Mortgage pursuant to Chapter 4, Section 3 of this Title.

n. "Loan Program" shall have the same definition as set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law.

o. "Occupant" means a Tribal Member who is the holder of an Assignment, the holder of a Residential Interest in a Dwelling and also includes a non-Tribal Member who claims a Residential Interest in a Dwelling by or through a Tribal Member. For purposes of this definition, a Residential Interest is the interest granted by, or arising under an Occupancy Agreement or otherwise recognized by tribal law, or the policies, procedures, and regulations of the Tribe's Housing Department, with regards to a Dwelling. The foregoing definition shall not be construed as to grant to any non-Tribal Member any legal or equitable rights in and to a Dwelling unless the same are specifically recognized by Tribal Law or the policies, procedures, and regulations of the Tribe's Housing Department.

p. "Occupancy Agreement" means a written agreement between the Tribe and a Tribal Member conferring rights to occupy a Dwelling located on Trust Land. An Assignment does not constitute an Occupancy Agreement for any purpose under this Title.

q. "Proceeds" includes whatever is received from the Auction, sale, exchange, collection, or other disposition of the Assignment pursuant to Chapter 4 of this Title. Insurance payable by reason of loss or damage to the Mortgaged property constitutes Proceeds, except to the extent that it is payable to someone other than a party to the Assignment Mortgage.

r. "Loan Program Lender" shall have the same definition as is set forth in 27 M.P.T.L. Chapter 1, Section 4 Land Assignment Law.

s. "Tribal Member" means an individual who is an enrolled member of the Tribe in good standing.

t. "Tribal Court" shall mean the courts established by Title 1 of the Laws of the Tribe.

u. "Trust Land(s)" means any land held in trust by the United States of America for the benefit of the Mashantucket (Western) Pequot Tribe.

v. "Unauthorized Resident" means any person occupying or residing in a Dwelling, who is not an Occupant or Authorized Resident.

#### **CHAPTER 4. FORECLOSURE OF ASSIGNMENT MORTGAGE**

25 M.P.T.L. ch. 4 § 1

##### **§ 1. Limitation on Self-Help Remedies**

a. The remedies inuring to the benefit of Loan Program Lenders for defaults under an Assignment Mortgage provided for in this Ordinance shall be exclusive. No "self-help" remedies including, but not limited to, "lock outs" shall be

valid or permitted.

b. A Debtor may not voluntarily surrender an Assignment that is subject to an Assignment Mortgage to a Loan Program Lender. A Debtor may transfer an Assignment subject to an Assignment Mortgage provided such transfer is with the written consent of the Loan Program Lender and is made following at least 10 days notice to the Tribe as provided for in Section 4(a) of this Chapter. Any provision contained in an Assignment Mortgage or supplemental agreement purporting to otherwise provide for a voluntary surrender of an Assignment in advance of, or as a result of, default on a Debt shall be null and void.

25 M.P.T.L. ch. 4 § 2

## **§ 2. Jurisdiction**

a. The Tribal Court shall have exclusive jurisdiction to hear an action to determine any Debt and to enforce any Assignment Mortgage encumbering any Assignment. The Tribal Court is expressly authorized and empowered to direct the judicial sale of an Assignment by Auction as hereafter provided for. All such Actions shall be tried to the Tribal Court without any right to a trial by jury.

b. The Tribal Court is further authorized and empowered to enter such other orders and fashion such other remedies as are consistent with the purposes and intent of this Chapter and are necessary for the orderly and equitable administration of justice.

25 M.P.T.L. ch. 4 § 3

## **§ 3. Action to Foreclose Assignment Mortgage**

a. An action to enforce or foreclose an Assignment Mortgage shall be commenced by the filing of a complaint in the Tribal Court by the Loan Program Lender seeking the Auction of the Assignment so encumbered and such other relief as may be recognized by Tribal Law. The complaint may also seek ejectment of the Debtor or any Occupant or Authorized Resident as may claim an interest in any Dwelling appurtenant to such Assignment. The complaint may also seek ejectment of any Unauthorized Resident from such Dwelling.

b. A complaint to foreclose an Assignment Mortgage shall name the Debtor as the defendant. Such complaint may also name as additional defendants any Occupant, Authorized Resident and Unauthorized Resident as the Loan Program Lender may have reason to believe occupies such Dwelling or may otherwise claim an interest in or to such Dwelling. The Loan Program Lender as plaintiff shall have the right to amend the complaint to add such additional defendants at any time prior to final judgment in accordance with the Mashantucket Pequot Rules of Civil Procedure. No complaint may name as a party the United States of America nor name the Tribe without the express, prior written consent of such defendant in each instance but a copy of each complaint filed shall be served on the Office of Legal Counsel to the Tribe. The complaint may be served in

the manner provided for service of notice pursuant to Chapter 5, Section 5(b) of this Title.

c. The Loan Program Lender shall bear the burden of proof in proving the default(s) entitling the Loan Program Lender to relief under the Assignment Mortgage, the existence and amount of the Debt secured by the Assignment Mortgage, and the rights of the Loan Program Lender with respect to the Assignment. The Tribal Court, after a hearing in compliance with its rules, shall make a determination of the rights of the parties based upon the preponderance of the evidence and, if such default(s) and the Debt is proven and the rights of the Loan Program Lender to enforcement under the Assignment Mortgage is upheld, the Tribal Court shall order the sale of the Debtor's Assignment by Auction as herein provided for and may enter such further orders as the Tribal Court may deem appropriate, including the ejection of the Debtor and any Occupant, Authorized Resident or Unauthorized Resident who is party to the action upon such terms as the Tribal Court may order. When so ordering any ejection, the Tribal Court shall not be bound by the eviction provisions of Chapter 5 of this Title but may incorporate by analogy such provisions of said Chapter as the Tribal Court may deem helpful to the fair and efficient administration of justice.

d. The Tribal Court shall determine the Assignment Value as of the date of entry of judgment and shall include such value in its judgment. The Assignment Value of the Debtor's Assignment shall be the fair market value of the Debtor's Assignment Rights as of the date of entry of judgment with due regard to the value of any residence or other improvement thereon located. To assist the Tribal Court in determining Assignment Value, the Tribal Court may direct DOH to obtain an appraisal at DOH's expense.

e. The Tribal Court shall determine the Judgment Debt as of the date of entry of judgment. The Judgment Debt shall be the sum of money the Tribal Court determines is due and payable to the Loan Program Lender under the terms of the Assignment Mortgage, the promissory note thereby secured and any other document otherwise evidencing or securing the Debt, to the extent allowed for by the Laws of the Tribe. In determining the Judgment Debt, the Tribal Court may award to the Loan Program Lender reasonable attorney's fees, costs of collection and an amount determined by the Court as a reasonable equivalent to per diem interest for the period commencing on the date of entry and running through such date as the Tribal Court determines. Proceeds would normally be disbursed pursuant to Section 7 of this Chapter. The Judgment Debt found by the Tribal Court shall be binding upon the parties absent further action by the Tribal Court for good cause shown, notwithstanding when or if the obligations of Debtor to the Loan Program Lender are discharged in full.

f. The Tribal Court shall determine whether the Assignment Value exceeds the Judgment Debt as of the date of entry of judgment. If so, the judgment shall be enforced by Auction as hereafter provided for. If not, and the Judgment Debt exceeds the Assignment Value, Tribal Court shall proceed in accordance with the provisions of Section 9 of this Chapter.

g. Subject to subsection (f), above, and the provisions of Sections 6 and 9 of this Chapter, the Tribal Court shall proceed to order the sale of the Assignment by Auction after notice as hereafter provided unless the Tribe

exercises any express right to redeem the Assignment arising under Tribal Law, as may be provided in the Assignment Mortgage or as may arise under the terms of any Loan Program under which the Assignment Mortgage was issued.

h. The Auction of the Assignment subject to the Assignment Mortgage by order of the Tribal Court shall be by Auction conducted by DOH in open Tribal Court at such time between the hours of 9:00 a.m. and 5:00 p.m. and on such regular tribal business day as the Tribal Court shall direct. The date of Auction set by the Tribal Court shall be no less than 30 or more than 45 days from the date of entry of judgment by the Tribal Court. The Tribal Court shall direct DOH to act as its agent to conduct the Auction and DOH shall bear all cost and expense incurred relative to the same.

25 M.P.T.L. ch. 4 § 4

#### **§ 4. Auction of Assignment; Notice**

a. By United States certified mail, return receipt requested, the Tribal Court shall provide prompt notice of entry of judgment and a copy of such judgment to the Tribal Council Chairman, to the Office of Legal Counsel to the Tribe and to such other person(s) as the Council may from time to time designate. The failure to provide such notice shall not affect the validity of the judgment entered.

b. The Tribal Court shall direct DOH to post a Notice of Auction in at least four conspicuous public places on the Reservation, including one copy posted at the Tribal Post Office, one copy posted in the Community Center, one copy posted on the Assignment to be sold, and one copy posted at the Tribal Court. Each Notice of Auction shall: (1) specify the Assignment to be sold at Auction; (2) state the date and time of the Auction and that the Auction shall be held in the Tribal Court; (3) state the amount of the Judgment Debt and that the same constitutes a reserve below which no bid need be accepted; (4) state the amount of the Assignment Value; and (5) state any financial requirements to become a qualified bidder as may be imposed by the Tribal Court to facilitate an orderly and effective Auction process. The Notice of Auction shall be posted for a minimum of 20 days prior to any Auction.

c. The Tribal Court may direct such additional notice be given as the Tribal Court may determine will best serve the purposes of this ordinance.

25 M.P.T.L. ch. 4 § 5

#### **§ 5. Conduct of Auction**

a. All Auctions shall be conducted by DOH in accordance with the directions, rules, policies and procedures of the Tribal Court as may be established in accordance with Tribal Law and/or as the Tribal Court may determine the circumstances of the pending matter may require. The Tribe shall be a qualified bidder as of right and any Tribal Member who meets the financial requirements imposed by the Tribal Court, if any, shall be allowed to bid at



the Auction, including the Debtor. No other person, including but not limited to the Loan Program Lender, shall be deemed a qualified bidder at any Auction.

b. No judge of the Tribal Court or any officer of DOH may bid at any Auction.

c. At any time prior to the opening of the Auction by DOH, the Debtor may redeem the Assignment by motion and payment of the Judgment Debt to the Tribal Court in good and immediately negotiable funds. The Tribal Court may condition its granting of the Debtor's motion for redemption upon the Debtor reimbursing any cost or expense of DOH incurred.

d. All rights of the Debtor to redeem the Assignment, however, shall lapse and terminate upon the opening of the first Auction of the Assignment by DOH, whether or not such Auction is later determined by the Tribal Court to be unsuccessful and whether or not a re-Auction of the Assignment is conducted, all as hereafter provided for. The limited right of the Debtor to redeem provided for in subsection (c) of this Section shall not be renewed or otherwise extended to Debtor or any party claiming by or through Debtor beyond such opening of the first Auction.

e. After the conclusion of the Auction, DOH shall cause all of the details of the sale to be entered onto a return provided to the Tribal Court including, but not limited to: (1) the date and location of posting of the Notice of Auction; (2) the full identification of the Assignment; (3) the name of the plaintiff Loan Program Lender; (4) the name of all bidders at the Auction and the particulars of their financial qualification, if applicable; and (5) the amount of the highest bid made by each such bidder.

f. The Tribal Court shall examine the return of DOH and shall award the Auction to the bidder making the highest bid that is equal to or greater than the Judgment Debt. If no bids are received equal to or greater than the Judgment Debt, the Court shall determine that the reserve was not met and the Tribal Court shall not recognize the Auction unless the foreclosing Loan Program Lender consents to accept a lesser bid in its sole and absolute discretion. If such consent is granted and the bidder making the highest bid less than the Judgment Debt is awarded the Auction, the Tribal Court shall enter a deficiency judgment against the Debtor for the difference between the amount of such bid as paid and the Judgment Debt. If such consent is not granted, then the Tribal Court shall proceed as set forth in subsection (h) of this Section.

g. The successful bidder shall have 30 days from the date of award by the Tribal Court to deposit with the Tribal Court the full bid less any amounts previously paid to the Tribal Court, if any. If such successful bidder fails, for any reason, to timely pay such balance, all deposits paid by such bidder, if any, shall be forfeited to the Tribal Court as additional sale Proceeds to be distributed upon the completion of a subsequent sale and the Tribal Court shall in open court after adequate notice to the parties re-examine the return of DOH pursuant to subsection (e) of this Section, as if the next highest bidder on that return was the original highest bidder. If there is no acceptable bid pursuant to said subsection, then the Tribal Court shall proceed as set forth in subsection (h) of this Section.

h. If after a finding by the Tribal Court of no acceptable bid under subsection

(g) of this Section or a finding by the Tribal Court of non-recognition of an Auction under subsection (f) of this Section, the Tribal Court shall determine after a hearing whether the interest of the Loan Program Lender are best served by an immediate re-auction of the Assignment. If so, the Tribal Court shall order a re-auction of the Assignment to be held in not less than 60 days from the date of unacceptable bid or non-recognition by the Tribal Court in accordance with the provisions of this Section and such notice as the Tribal Court may deem appropriate for the efficient and orderly administration of justice. If the Tribal Court determines otherwise and finds that a delay beyond the 60 day period for re-Auction is in the best interest of the Loan Program Lender and the efficient and orderly administration of justice, the Tribal Court shall name the DOH as trustee of the Tribal Court for the benefit of the Loan Program Lender pursuant to Section 9 of this Chapter. The Tribal Court may name DOH as a party of interest to the action in any hearing conducted under this subsection and may issue any orders with respect to possession of the Assignment during the pendency of a re-Auction as the Court may find best protects the rights of the Loan Program Lender.

25 M.P.T.L. ch. 4 § 6

#### **§ 6. Private Sale in Lieu of Auction**

The provisions of this Chapter with regards to Auction notwithstanding, the Tribal Court may waive the requirement of Auction and approve the terms of a private sale after hearing upon motion made by Debtor, the Loan Program Lender or the Tribe (if the Tribe elects to intervene for the limited purpose of requesting its own private purchase of the Assignment) if the Tribal Court finds the terms satisfactory. Notwithstanding, if the sales price proposed for such private sale is less than the Judgment Debt, the Tribal Court shall not approve such private sale unless:

- a. The Loan Program Lender consents to the terms of the private sale; and
- b. The Debtor either consents to the terms of the private sale or, as a condition to approval in the absence of such consent, that the Loan Program Lender covenants to release the Debtor from any obligation to such Lender arising by virtue of any shortfall between the sales price proposed and the Judgment Debt.

Unless otherwise directed by the Tribal Court, the proceeds of a private sale shall be treated the same as proceeds of an Auction.

25 M.P.T.L. ch. 4 § 7

#### **§ 7. Disbursement of Proceeds**

Unless otherwise ordered by the Tribal Court after hearing and for good cause shown, Proceeds shall be disbursed as follows:

- a. With respect to payment in full of the bid of the successful bidder awarded

the Auction under Section 5 of this Chapter, the Tribal Court shall direct the disbursement of the Proceeds received first to the Loan Program Lender on account of the discharge of the Judgment Debt, then to any obligations of the Debtor to the Tribe found by the Court in any proceedings (included but not limited to any Auction expenses of DOH) and then to Debtor.

b. With respect to any partial disbursements made to the Loan Program Lender out of rental income received by DOH as trustee pursuant to Section 9 of this Chapter, the Loan Program Lender may elect to credit against the Judgment Debt only that portion of such disbursements remaining after deduction of the then accrued Interest Offset. For purposes of this paragraph, the "Interest Offset" shall be the amount that is equal to unpaid interest on the unpaid Judgment Debt if the same had accrued from the date of judgment to the date of calculation at a rate equal to the lesser of: (1) the default rate, if any, set forth in the Assignment Mortgage or in the promissory note secured thereby; or (2) at a rate of ten per cent per annum. The Interest Offset, as disbursed out of the Section 9 use and occupancy payments received by DOH, shall be retained by the Loan Program Lender as compensation for the delay in liquidation of the Loan Program Lender's security interest, and shall not otherwise entitle the Loan Program Lender to any sum in excess of the Judgment Debt.

25 M.P.T.L. ch. 4 § 8

#### **§ 8. Conveyance by the Court of the Auctioned Assignment**

a. Upon completion of the Auction process and timely payment in full by the successful bidder awarded the Auction by the Tribal Court, the Tribal Court shall by its order effect an Assignment Conveyance to such successful bidder. Upon the recording of such order pursuant to the provisions of Chapter 5 of Title 27 of the Tribal Law, such conveyance shall be in full force and effect and the Assignment Rights thereby conveyed shall be free and clear of any and all interest of the Debtor, the Loan Program Lender or any person claiming by or through the Debtor or Loan Program Lender, however arising.

b. The Debtor shall have no right of redemption except as expressly provided for in subsections (c) and (d) of Section 5 of this Chapter.

c. Nothing contained in this Chapter shall be deemed to constitute a prohibition of any action by the Tribe against any Debtor whose Assignment was so foreclosed for any sum expended by the Tribe in connection therewith, including but not limited to an action to collect any sums paid to or retained by any third party under the terms of any Loan Program in connection therewith.

25 M.P.T.L. ch. 4 § 9

#### **§ 9. DOH as Trustee for Loan Program Lender in the Event of Insufficient Equity or Voided Auction**

a. If the Tribal Court determines that the Judgment Debt exceeds the Assignment Value as provided for in Section 3(f) of this Chapter, or if pursuant to

Section 5(h) of this Chapter the Tribal Court determines that a re-Auction within the prescribed time period is not in the best interest of the Loan Program Lender, then the Tribal Court shall order the immediate ejectment of the Debtor and all Occupants, Authorized Residents and Unauthorized Residents in accordance with Section 4(c) of this Chapter (if such order had not previously been entered by the Tribal Court), direct DOH to inspect the Assignment and all improvements thereto and report to the Tribal Court as to the condition of the same and conditionally convey the Assignment Rights of the Debtor to DOH as trustee of the Tribal Court for the benefit of the Loan Program Lender. Following receipt of such DOH report and after hearing held by motion of DOH made for such purpose, the Tribal Court may in its discretion increase the Judgment Debt to cover any repairs as may be required to render any housing unit comprising part of the Assignment habitable and in good and rentable condition but in no event shall any such finding affect the provisions of Section 7 of this Chapter relative to the priority of the disbursement of Proceeds. If no such motion is filed within 14 days of the date exclusive possession of the Assignment is provided to DOH (subject to the Tribal Court's right to extend such period for good cause shown), or upon a decision by the Tribal Court after such a hearing relative to the amount of the Judgment Debt, the Judgment Debt shall thereafter be fixed and no longer subject to adjustment for any reason, including but not limited to the passage of time and judgment shall be deemed final as it relates to the Debtor and all parties claiming by or through Debtor.

b. Upon naming DOH trustee of the Assignment as aforesaid, the Tribal Court shall direct DOH to undertake the following actions:

(1) Prepare and maintain such Dwelling for use by an Occupant, selected as provided for below, at the sole cost and expense of DOH. Any such cost and expense incurred by DOH are subject to DOH's subordinate rights under Section 7 of this Chapter with respect to disbursement.

(2) Solicit Tribal Members to enter into an Occupancy Agreement upon such terms as the Tribal Court may approve for the protection of the Loan Program Lender provided that in no event shall the use and occupancy payments due from such Occupant(s) be less than fair rental value nor shall the term be for more than one year.

(3) Enter in to such Occupancy Agreements with such Tribal Member(s) upon approval of the Tribal Court after hearing.

(4) As Trustee for the Tribal Court and the Loan Program Lender, collect all use and occupancy payments due under such Occupancy Agreements and remit the same promptly to the Loan Program Lender in accordance with Section 7 of this Chapter.

(5) To periodically account to the Loan Program Lender and to the Tribal Court for its discharge of its duties hereunder.

(6) To otherwise act with respect to the Assignment as it would with respect to any Dwelling subject to an Occupancy Agreement.

c. All Occupancy Agreements entered into pursuant to this Section are expressly

for the purpose of preserving the Dwelling and the rights of the Loan Program Lender pending the conclusion of a successful Auction or re-Auction, as the case may be, while providing the Loan Program Lender the benefit of the interim disbursements provided for in Section 7(b) of this Chapter to the extent reasonably possible. Upon motion of DOH or the Loan Program Lender, the Tribal Court shall determine after hearing whether a re-Auction of the Assignment within 60 days of the end of the term of any pending Occupancy Agreement (or if no such Occupancy Agreement, a re-Auction within 60 days of the hearing on such motion) is in the best interest of the Loan Program Lender and the orderly and efficient administration of justice. If so, the Tribal Court shall order a re-Auction in accordance with Section 5(h) of this Chapter. If not, the Tribal Court shall direct DOH to proceed with the discharge of its obligations as trustee as set forth in this Section 9.

## **CHAPTER 5. EVICTIONS FROM DWELLINGS**

25 M.P.T.L. ch. 5 § 1

### **§ 1. Limitation on Self-Help Remedies**

The remedies for recovery of possession of a Dwelling provided for in this Chapter shall be exclusive and shall apply to all Trust Lands of the Tribe wherever located. No "self-help" remedies including, but not limited to, "lock outs" shall be valid or permitted. An Occupant may voluntarily surrender a Dwelling to the MPTN only with the prior written agreement of MPTN and upon satisfaction of the terms and conditions of such written agreement. The rights of the Tribe, as provided herein, cannot be modified by contract.

25 M.P.T.L. ch. 5 § 2

### **§ 2. Jurisdiction**

a. The Tribal Court shall have exclusive jurisdiction to hear an action to determine the rights of any party arising under an Occupancy Agreement that relate to a Residential Real Property Interest or otherwise relating in any way to a Dwelling. Such Actions shall be tried to the Tribal Court without any right to a trial by jury.

b. The Tribal Court shall have exclusive jurisdiction to hear an eviction action as herein provided. Such Actions shall be tried to the Tribal Court without any right to a trial by jury.

25 M.P.T.L. ch. 5 § 3

### **§ 3. Definition of Unlawful Detainer**

A person commits an "Unlawful Detainer" if, he or she:

- a. continues in possession of the Dwelling, or any part thereof, after the expiration of the term provided for in an Occupancy Agreement;
- b. fails to pay any sum as required by the Occupancy Agreement;
- c. commits a breach of any other agreement or covenant contained in the Occupancy Agreement;
- d. is a person in possession or occupation of a Dwelling in a manner that is not expressly permitted by Tribal Law or the policies, procedures, and regulations of the MPTN Housing Department;
- e. was an Authorized Resident, but whose authorization to occupy the Dwelling has been terminated by MPTN or the Occupant of the Dwelling; or
- f. is an Unauthorized Resident of a Dwelling.

25 M.P.T.L. ch. 5 § 4

**§ 4. Remedies for Unlawful Detainer**

- a. MPTN may, in the exercise of its sole discretion, serve Notice upon any person committing an Unlawful Detainer, specifying the basis for such Unlawful Detainer.
- b. If the basis for an Unlawful Detainer is one of the grounds set forth in Section 3(b), (c), and (d) of this Chapter, said notice shall set forth a period of ten business Days to cure the same. If such person fails to cure the basis for such Unlawful Detainer within the time period allowed MPTN may, in the exercise of its sole discretion, commence eviction proceedings against such person.
- c. If the basis for such Unlawful Detainer is one of the grounds set forth in Section 3(a), (e) and (f) of this Chapter, said notice shall provide for a period of 10 days for the person to whom the notice is directed to vacate the Dwelling. If such person fails to vacate within the time set forth in the notice MPTN may, in the exercise of its sole discretion, commence eviction proceedings against such person.

25 M.P.T.L. ch. 5 § 5

**§ 5. Notice**

- a. An Occupant of a Dwelling may serve notice upon an Unauthorized Resident or Authorized Resident who commits an Unlawful Detainer of such Dwelling. Said notice shall provide for a period of no less than 10 days for the person to whom the notice is directed to vacate the Dwelling. If such person fails to vacate within the time set forth in the notice the Occupant may commence eviction proceedings against such person. MPTN shall be given notice of the initiation of any such action and, upon motion by MPTN, shall be made a party

plaintiff. The provisions of this section shall not apply to domestic disputes which shall be governed by Title 6 of the MPTN Laws.

b. All Notices required by this Chapter shall be served by a disinterested person and may be served upon a person committing Unlawful Detainer:

(1) by delivering a copy to such person; or

(2) by leaving a copy of such notice at the Dwelling that is the subject of the Unlawful Detainer action.

25 M.P.T.L. ch. 5 § 6

### **§ 6. Eviction Proceedings**

a. Except as provided hereafter, all Eviction Proceedings shall be governed by the Mashantucket Pequot Rules of Civil Procedure, as they may be amended from time to time.

b. The plaintiff's eviction complaint, in addition to setting forth the facts and allegations on which the plaintiff seeks to recover, may also set forth therein any relevant circumstances which may have accompanied the alleged Unlawful Detainer and claim damages therefore or compensation for the occupation of the Dwelling or both. When Unlawful Detainer is charged, after default in the payment of rent, the complaint must state the amount of rent owed or other damages sought. The Summons served with said complaint shall notify the defendant that an appearance must be filed within 10 days of the date the summons was served.

c. Notwithstanding the provisions of the Mashantucket Rules of Civil Procedure, no discovery shall be allowed in an eviction proceeding, without the permission of the Tribal Court, which may be granted only upon a showing of compelling need.

d. If the defendant appears but does not plead within three days after said appearance, the plaintiff may file a motion for default for failure to plead. If the defendant fails to plead within three days after the said motion has been filed with the Tribal Court Clerk, the Tribal Court shall forthwith enter judgment that the plaintiff shall recover possession or occupancy of the premises and the court shall issue an Order of Eviction accordingly. The Tribal Court may, in addition to any order regarding possession, also assess damages. In the alternative, the Tribal Court may bifurcate the proceedings and order a later trial for the purpose of assessing damages.

e. All pleadings, including motions, shall advance at least one step within each successive three Days from the preceding pleading or motion. If the defendant fails to plead within any such period, the plaintiff may file a motion for judgment for failure to plead.

f. The Tribal Court shall hear argument on any MPTN Tribal Court Rule 7 motion filed by the defendant in an eviction proceeding within 10 days of the date that the plaintiff responds thereto. The Tribal Court shall make every effort

to decide any such motion in as expeditious a manner as possible.

g. Trial shall be scheduled in any eviction proceeding within 10 days of the close of pleadings. The Tribal Court shall make every effort to enter judgment in as expeditious a manner as possible.

h. The Tribal Court may require the parties to an eviction proceeding to participate in non-binding mediation, providing such mediation does not unduly delay the trial of the case.

25 M.P.T.L. ch. 5 § 7

#### **§ 7. Judgment**

a. If, after hearing, the Tribal Court shall render judgment in favor of the plaintiff granting the plaintiff the remedy of eviction against the defendant, judgment shall be entered for the plaintiff. Such judgment shall confirm in the plaintiff the sole and exclusive possession of the Dwelling and order the defendant to immediately quit and surrender possession of the Dwelling.

b. The judgment shall declare the termination and forfeiture of any Occupancy Agreement ("Order of Eviction"). The Order of Eviction shall further:

(1) Name or identify each person to whom the order applies; and

(2) require the defendant to remove his or her possessions and personal effects from the Dwelling by the date and time specified on the Order of Eviction, which date shall be after the expiration of the stay of execution set forth in Section 7(a) of this Chapter; and

(3) order the Tribal Police, in the event the defendant has not removed himself or herself and their possessions from the Dwelling by the time specified, to remove such defendant and remove, or cause to be removed, the defendant's personal effects; and

(4) order the Tribal Police to store, or cause to be stored, the said possessions and personal effects at the expense of the plaintiff but said expense shall be charged against the defendant; and

(5) order that if such possessions and effects are not called for by the defendant and the expense of such removal and storage is not paid to the plaintiff within 15 days after such eviction, the plaintiff shall sell them at auction or dispose of them in some other commercially reasonable fashion (including discarding them if plaintiff reasonably believes they have no value); and

(6) order any surplus of funds over the amount owed that may result from the disposition, after deduction for any costs of sale, be returned to the defendant.

c. The date specified in the Order of Eviction shall be no sooner than 10 days and no more than 20 days after the date of judgment. The Tribal Court may set



such conditions with respect to said date as it may deem appropriate, except that if the date specified is more than 10 days after the date of judgment, the Tribal Court shall, in addition to any other conditions it may set, order the defendant to make periodic use and occupancy payments to the plaintiff equal to the proportional fair rental value of the premises. Should the defendant fail to make any such payment or should the defendant fail to observe any other condition set by the court, the plaintiff may submit an affidavit to that effect to the Tribal Court, with a copy certified to the defendant in accordance with the Rules of Court. Unless the defendant files an objection within three Days of the filing of said affidavit, the Tribal Court shall issue an amended Order of Eviction providing for immediate removal of the defendant from the premises, in accordance with the procedure set forth in Section 7(b), above.

d. The Tribal Court may also assess damage caused to the plaintiff by the Unlawful Detainer, including but not limited to damage for waste by the defendant, and any sums due MPTN under the Occupancy Agreement.

e. Whenever an Order of Eviction is entered, such defendant and any other person named or identified in the Order of Eviction shall forthwith remove themselves, their possessions and all personal effects on the date and time as set forth on the Order of Eviction unless execution has been stayed pursuant to an order of the Tribal Court.

f. The Tribal Police shall, at least 48 hours prior to the date and time specified in the Order of Eviction, use reasonable efforts to locate and notify the defendant or Occupant of the date and time such eviction is to take place.

The notice shall be served upon each defendant and upon any other person named or identified in the order (minor children holding under the parents or guardians excepted) as provided in Section 5 of this Chapter.

g. Such notice shall be on a form prescribed by the Tribal Court and shall be in clear and simple language and in readable format and shall contain a copy of the Order of Eviction.

h. The Tribal Police shall return to the Dwelling on the date and time of the Order of Eviction and shall execute the requirements of the said Order.

i. Failure of the Tribal Police to perform any act required by an Order of Eviction or to do so within the time specified in this Chapter shall constitute contempt of court by the Chief of the Tribal Police and shall result in a civil penalty against the said Chief equivalent to one week's compensation for each such failure.

25 M.P.T.L. ch. 5 § 8

## **§ 8. Appeal**

a. Stay of Execution. Execution on all judgments rendered pursuant to Section 7 of this Chapter shall be stayed for a period of five Days. No appeal shall be taken from any such judgment unless it is filed within said five Day period.

b. Stay of Execution on Appeal. If an appeal is taken with the five Day period during which execution is stayed, the stay of execution shall remain in effect until the final determination of the cause, unless it appears to the judge who tried the case that the appeal was taken solely for the purpose of delay or unless the defendant fails to make use and occupancy payments as provided for in this Section.

c. Use and Occupancy Payments During Appeal. When any appeal is taken by a defendant, the Tribal Court shall schedule an immediate hearing for the purpose of issuing an order for the periodic payment of use and occupancy by the defendant during the period of the appeal. After hearing, the Tribal Court shall order the defendant to deposit periodic payments with the court clerk equal to the fair rental value of the premises. There shall be a rebuttable presumption that the fair rental value of the premises is equal to the last agreed upon rent or other periodic payment required under the Occupancy Agreement. If the defendant fails to make any payment when due, the Tribal Court shall, upon motion of the plaintiff, issue an Order of Eviction.

d. Distribution of Payments after Appeal. Upon final disposition of the appeal, the Tribal Court shall hold a hearing to determine the amount due each party from the accrued payments for use and occupancy and order distribution in accordance with such determination. Such determination shall be based upon the respective claims of the parties arising during the pendency of the proceedings after the date of the order for payments and shall be conclusive of those claims only to the extent of the total amount distributed.

## **CHAPTER 6. MISCELLANEOUS**

25 M.P.T.L. ch. 6 § 1

### **§ 1. Severability**

If any provision of this Law or its application to any person or circumstance is held invalid, the remainder of the Law or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this Law are severable. All other Tribal Laws inconsistent with this law are hereby repealed.

25 M.P.T.L. ch. 6 § 2

### **§ 2. Effective Date**

The effective date of this law shall be the date of passage by the MPTN Council.

## **TITLE 26. M.P.T.L. TRIBAL FOOD LAW**

## CHAPTER 1.

26 M.P.T.L. ch. 1 § 1

### **§ 1. Adoption of United States Food and Drug Administration Model Food Code**

The United States Food and Drug Administration Model Food Code as adopted by the Mashantucket Pequot Tribal government on April 25, 2003 is the Tribal Food Code and the provisions thereof are hereby incorporated as regulations of the Mashantucket Pequot Tribal Nation to be enforced by the Mashantucket Food Safety and Sanitation Manager (hereinafter "Inspector") or any subsequent office assuming the duties of that position.

26 M.P.T.L. ch. 1 § 2

### **§ 2. Applicability of this Law**

This Law shall be applicable to all individuals or entities purchasing, preparing, or delivering food items as described in the Code for sale to patrons, employees, or others including but not limited to all foods consumed at any Gaming Enterprise location whether owned and operated by the Tribe or otherwise, the Museum, all employee locations, and at all other locations other than private homes located on the Reservation.

26 M.P.T.L. ch. 1 § 3

### **§ 3. Compliance with Tribal Food Code**

All individuals or entities conducting business on the Reservation shall comply with the provisions of the Code and permit free and open access to their facilities and records so as to enable the Inspector to carry out the provisions of this law.

26 M.P.T.L. ch. 1 § 4

### **§ 4. Enforcement of Procedure of Tribal Food Code**

In the event the Inspector becomes aware of conditions which are or may be a violation of the Food Code the Inspector may in the discretion of the Inspector issue verbal warnings or orders or written warnings or orders. In the event the recipient of such warnings or orders does not take action to comply with the Food Code the Inspector may take other proposed written action including but not limited to the imposition of fines not to exceed \$500 for each offense, cease and desist orders or, in the event no other measure shall be reasonably effective, an order to cease the food operation as necessary to prevent continued violations of the Code.

26 M.P.T.L. ch. 1 § 5

## **§ 5. Administrative Appeal Provision**

Any recipient of a proposed fine or order shall have 10 days from the receipt of such written order to respond to same in writing. The Inspector shall confer with the recipient taking into consideration the recipient's response. If the Inspector is satisfied with the response the Inspector shall issue a written order reflecting the resolution of the issue. If the Inspector is not satisfied with the response, the Inspector shall notify the other party in writing that the proposed order and/or fine as amended or otherwise shall remain in effect.

26 M.P.T.L. ch. 1 § 6

## **§ 6. Appeal**

a. The appeal described herein shall be the recipients exclusive cause of action against the Tribe and, the recipient must first exhaust the administrative remedies described herein.

b. The recipient shall then have 20 days from the receipt of such notice of final action to seek a review of same by the Tribal Court.

c. Such review shall be instituted in the same manner that an employment appeal is instituted under Rule 3 of the Mashantucket Pequot Rules of Court.

d. Within 30 days of filing of the appeal the inspector or the inspector's designee shall certify the record of the proceedings to the Tribal Court which will include any and all reports, communications, letters, and orders relating to the issue in question.

e. The Court shall consider the record as well as any evidence presented.

f. The court shall either confirm, reverse, or modify the order. The court shall take into consideration whether the order or fine appealed from was arbitrary or capricious, whether there was a reasonable basis for finding the violation or the need for such order or, whether such action constituted an abuse of discretion on the part of the Inspector.

26 M.P.T.L. ch. 1 § 7

## **§ 7. Injunctive Relief**

In addition to the above actions the Inspector may initiate an action in the Tribal Court as to the individual and/or entities allegedly in violation or potential violation of the Code and such action may include a request for a temporary or permanent injunction as to such activities. When such application to the court alleges an imminent health or safety threat to consumers the court shall expedite the proceedings to the extent reasonably possible. The court

may issue orders as to scheduling, filing, and other matters as necessary to protect the public health and welfare. An action brought under this section, if brought against the Gaming Enterprise, shall be served upon the CEO of the Gaming Enterprise and/or in the absence of the CEO the officer in charge and, if against other individuals, served in hand to such individual or at the individual's place of employment on the reservation, and if against an entity other than the Gaming Enterprise it shall be served upon the person in charge of such entity on the premises at the time of such service.

26 M.P.T.L. ch. 1 § 8

#### **§ 8. Waiver of Sovereign Immunity**

The Mashantucket Pequot Tribal Nation hereby expressly waives its sovereign immunity and the sovereign immunity of the Gaming Enterprise for the limited purpose of suit in the Tribal Court only for the actions described herein either appealing from the actions of the inspector or for actions brought by the inspector seeking relief described above.

26 M.P.T.L. ch. 1 § 9

#### **§ 9. Appeal of Tribal Court Decision**

Any final decision by the Tribal Court may be appealed to the Mashantucket Pequot Court of Appeals. The decision of the Court of Appeals shall be final.

26 M.P.T.L. ch. 1 § 10

#### **§ 10. Effective Date**

This law shall apply to any activities occurring on or after April 25, 2003.

### **TITLE 27. LAND ASSIGNMENT LAW**

#### **CHAPTER 1. PURPOSE, POLICY, DEFINITIONS**

27 M.P.T.L. ch. 1 § 1

#### **§ 1. Title**

The title of this Law shall be the Tribal Land Assignment Law of the Mashantucket (Western) Pequot Tribal Nation. Its short title shall be the Land Assignment Law.

27 M.P.T.L. ch. 1 § 2

## **§ 2. Purpose**

The purpose of this Land Assignment Law is to establish uniform policies and procedures for the Tribe's grant by Assignment to Tribal Members of certain rights to enjoyment, use, development, and transfer of certain specified lands located within the Mashantucket (Western) Pequot Reservation for residential purposes only. Further, the purpose of this Land Assignment Law is to define the rights so granted by the Tribe to Tribal Members with respect to Assignments including, but not limited to, the right to pledge a security interest in the same pursuant to the terms of a Loan Program.

27 M.P.T.L. ch. 1 § 3

## **§ 3. Tribal Residential Land Assignment Policy**

It is hereby declared that the land policy of the Tribe shall be to retain and regain in trust status all lands as now or may in the future constitute "settlement lands" as that term is defined in the Connecticut Indian Land Claims Settlement Act, 25 U.S.C. § 1752(4); that such settlement lands be under the exclusive jurisdiction and sovereign authority of the Tribe; and that all lands under the jurisdiction and sovereign authority of the Tribe be managed in such a way that preserves and protects the long term interests of the Tribe and its Tribal Members; that the grant of Assignments to individual Tribal Members and the vesting in such Tribal Members of certain limited rights of residential use and occupancy and of pledge and transfer as hereafter provided, will promote the interests of the Tribe and its Tribal Members.

27 M.P.T.L. ch. 1 § 4

## **§ 4. Definitions**

In construing the provisions of this Land Assignment Law, the following words or phrases shall have the meanings designated unless a different meaning is expressly provided, or the context clearly indicates otherwise:

a. "Assignee" means an enrolled individual Tribal Member or enrolled Tribal Members to whom an Assignment is conveyed in accordance with the provisions of this Land Assignment Law.

b. "Assignment" means the real property located on the Reservation to which Assignment Rights are made appurtenant and vested in an Assignee pursuant to 27 M.P.T.L., Land Assignment Law expressly including the following:

(1) any tract of land located within an Assignment Area described in, or delineated on, a Survey as suitable for the construction of a Dwelling; and

(2) such tract of land so described or delineated together with any Dwelling now or hereafter located thereon; and

(3) such other improvements as are now or hereafter made to such tract of land

or to such Dwelling by an Assignee in accordance with Tribal Law for the benefit only of such Assignment.

c. "Assignment Area" means the Initial Assignment Area and that portion or those portions of the Reservation as the Tribal Council shall, from time to time, designate by resolution as subject to 27 M.P.T.L., Land Assignment Law.

d. "Assignment Conveyance" means the conveyance to an Assignee of an Assignment and the Assignment Rights appurtenant thereto.

e. "Assignment Mortgage" means a mortgage or other Instrument executed by an Assignee to the benefit of a Loan Program Lender, granting to such lender a security interest in an Assignment. Any mortgage or other Instrument purporting to grant a security interest in an Assignment or in a Dwelling that is not made pursuant to the terms of a Loan Program shall be deemed null, void and of no effect.

f. "Assignment Rights" means those rights appurtenant to an Assignment as specified in 27 M.P.T.L., ch. 2.

g. "Certificate of Assignment" means the written instrument by which an Assignment Conveyance is made.

h. "Certificate of Compliance" has the meaning as set forth in 27 M.P.T.L., ch. 5 § 5.

i. "Certificate of Conveyance" means any document issued by the DOH or the Tribe pursuant to Tribal Law and/or tribal custom which evidences that a named Tribal Member(s) has satisfied all financial obligations of such Tribal Member to the Tribe arising under an Occupancy Agreement and is therefore acknowledged by the Tribe to have certain rights to occupy the Dwelling, subject to any conditions and/or requirements of Tribal Law and custom. A Certificate of Conveyance shall not be deemed an Assignment Conveyance unless and until a Certificate of Assignment evidencing an Initial Assignment Conveyance to an Assignee is Recorded.

j. "Department of Housing" (herein "DOH") means the Mashantucket Pequot Department of Housing, an instrumentality of the Tribe charged with the responsibility of administering this 27 M.P.T.L., Land Assignment Law pursuant to Chapter 1 § 3.

k. "Dwelling" means a house, apartment, condominium, or other residential unit located in the Assignment Area. No residential unit located outside of the Assignment Area shall be considered a Dwelling for purposes of this Assignment Law.

l. "Eligible Tribal Member" has the meaning as set forth in 27 M.P.T.L. ch. 2 § 1.

m. "Initial Assignment" means any Assignment Conveyance in which the Tribe is the grantor or assignor.

n. "Initial Assignment Area" means the geographic area denominated Tribal

Housing Phase 7A as described in TCR030104-01 of 03.

o. "Instrument" means any writing or document evidencing or affecting:

(1) The Assignment Rights of an Assignee in and to an Assignment including, but not limited to, a Certificate of Assignment and a license of such rights as permitted under 27 M.P.T.L., Land Assignment Law;

(2) The rights of a Tribal Member in and to a Dwelling that is not an Assignment, including, but not limited to, an Occupancy Agreement and a Certificate of Conveyance;

(3) The rights of a Loan Program Lender in and to an Assignment including, but not limited to, an Assignment Mortgage; and

(4) The rights of the Tribe in and to an Assignment or Dwelling.

p. "Loan Program" means any loan program, such as Housing and Urban Development ("HUD") Section 184 or Fannie Mae Loan Guarantee programs, as the same may be approved by resolution of the Tribal Council.

q. "Loan Program Lender" means any lender making a loan to an Assignee secured by an Assignment Mortgage, together with any permitted Assignee of, or successor to such lender as provided for by the terms of the Loan Program pursuant to which such loan is made.

r. "Program" means any program heretofore established or authorized by the Tribal Council for the purpose of providing Tribal Members an opportunity to occupy and enjoy a Dwelling and, pursuant to the terms of such Program, to qualify for a Certificate of Conveyance upon the discharge of certain financial and other obligations. Programs include, but are not limited to, the program known as the Alternative Housing Program.

s. "Occupancy Agreement" means a written agreement between the Tribe and a Tribal Member conferring rights to occupy a Dwelling pursuant to a Housing Program. An Occupancy Agreement shall not be deemed an Assignment Conveyance unless and until a Certificate of Assignment evidencing an Initial Assignment Conveyance to an Assignee is Recorded.

t. "Recording", "Record", and "Recorded" shall mean the act of recording an Instrument as a public document in accordance with 27 M.P.T.L., ch. 5.

u. "Reservation" means the Mashantucket (Western) Pequot Reservation, which shall include all lands held in trust by the United States of America for the benefit of the Mashantucket (Western) Pequot Tribe.

v. "Survey" means such maps, surveys, or other documentation defining and delineating an Assignment Area and the Assignments therein established as is certified and adopted by Tribal Council for purposes of this Assignment Law and duly Recorded.

w. "Tribal Clerk" refers to the Office of the Tribal Clerk of the Tribe.



x. "Tribal Council" or "Council" means the Mashantucket Pequot Tribal Council, the governing body of the Tribe.

y. "Tribal Court" means the courts established by the Laws of the Tribe.

z. "Tribal Law" means all laws, resolutions, regulations, ordinances or other form of action by the Tribal Council, and such regulations and policies as are duly adopted by a department of the Tribe in accordance with Tribal Law.

aa. "Tribal Member" means an individual who is an enrolled member of the Tribe in good standing.

bb. "Tribe" means the Mashantucket (Western) Pequot Tribe as recognized by the United States of America and also known as the Mashantucket Pequot Tribal Nation.

## **CHAPTER 2. ASSIGNMENT**

27 M.P.T.L. ch. 2 § 1

### **§ 1. Eligible Tribal Members**

Initial Assignments may only be made to Eligible Tribal Members. An Eligible Tribal Member is a person who:

a. Is an enrolled Tribal Member as defined in 27 M.P.T.L., ch. 1, § 4(aa);

b. Is at least 18 years of age or, if below the age of 18, has a guardian or conservator who has been appointed by the Tribal Court;

c. Is not currently an Assignee under a prior Assignment Conveyance;

d. Has not suffered the cancellation, forfeiture or termination of a prior Assignment Conveyance;

e. Has not suffered divestiture of Assignment rights previously granted arising out of the enforcement by a Loan Program Lender of its rights under an Assignment Mortgage; and

f. Is financially capable as determined by DOH.

27 M.P.T.L. ch. 2 § 2

### **§ 2. Rights Conveyed by Assignment Conveyance**

a. The due execution, delivery, and Recording of a Certificate of Assignment shall vest in the Assignee therein named, the right to occupy and exercise dominion and control over the Assignment therein identified to the exclusion of the rights of other Tribal Members subject to the following:

(1) The rights of the United States of America as fee title owner of the Reservation for the benefit of the Tribe;

(2) The rights of the Tribe to assert its inherent police power with respect to Assignees, Assignments, Dwellings and the uses thereof including, but not limited to, the adoption of Tribal Laws relating to land use control, building codes, and similar Tribal Laws whether of general application to the Reservation or to portions of the Assignment Area;

(3) The rights of the Tribe to tax Assignees, Assignments and/or Dwellings;

(4) The rights of the Tribe to terminate an Assignment for cause pursuant to 27 M.P.T.L., ch. 3;

(5) The rights of a Loan Program Lender arising under an Assignment Mortgage;

(6) The rights of the Tribe for access over, under, into, and upon any Assignment or Dwelling as may be necessary for governmental activities of the Tribe including, but not limited to, the provision of utilities for the benefit of Tribal Members;

(7) The rights of the Tribe in and to all timber, water, water courses, minerals, sand, gravel, and other natural resources located on the Reservation, which rights are reserved to the Tribe to be managed in accordance with Tribal Laws; and

(8) The rights of the Tribe in and to all ceremonial, burial, and sacred grounds, as they may be identified by the Tribal Council from time to time.

The foregoing rights, as so limited, constitute Assignment Rights of an Assignee when conveyed by a Recorded Certificate of Assignment.

b. The Assignment Rights of an Assignee shall include the joint use and occupancy of the Assignment by the spouse and children or step-children of the Assignee, constituting the Assignee's immediate family, and such other persons as may from time to time be permitted by DOH. The joint use and occupancy of the Assignment by any non-Tribal Member or of any such other persons shall at all times be deemed derivative of the rights of the Assignee under the Assignment.

27 M.P.T.L. ch. 2 § 3

### **§ 3. Rights Conveyed by Assignment Mortgage**

a. The due execution and delivery of an Assignment Mortgage by an Assignee shall vest in the Loan Program Lender therein named, a valid security interest in and to such Assignee's Assignment and Assignment Rights. The security interest thereby granted is enforceable in Tribal Court pursuant to the provisions of 25 M.P.T.L., Foreclosure and Eviction Law and in accordance with the terms of such Assignment Mortgage. Any term of an Assignment Mortgage shall be deemed void and not enforceable if it is:

(1) Contrary to the terms and conditions of the Loan Program pursuant to which it is made; or

(2) Contrary to the provision of any Tribal law in effect at the time the Assignment Mortgage was executed. The right of a Loan Program Lender arising under an Assignment Mortgage expressly constitutes a "Security Interest" as that term is defined in 25 M.P.T.L.

b. The security interest in an Assignment granted to a Loan Program Lender shall be perfected by Recording the Assignment Mortgage Instrument.

c. Any purported security interest granted in an Assignment or a Dwelling to the benefit of other than a Loan Program Lender pursuant to a Loan Program shall be deemed null, void, and of no effect.

27 M.P.T.L. ch. 2 § 4

#### **§ 4. Conveyance of Assignment**

An Assignee shall have the right to convey, grant, assign, transfer, pledge, or encumber the Assignee's Assignment only as follows:

a. Conveyance by an Assignee to another Eligible Tribal Member or Eligible Tribal Members of such Assignee's Assignment Rights in and to an Assignment, and whether for value received or by gift;

b. Conveyance of a deceased Assignee's Assignment to an Eligible Tribal Member or Eligible Tribal Members pursuant to the terms of such deceased Assignee's will as probated in the Tribal Courts or otherwise by operation of the intestacy laws of the Tribe as determined by the Tribal Courts;

c. Conveyance of a deceased Assignee's Assignment by will or intestacy to a Surviving Spouse to the extent permitted by 24 M.P.T.L., Probate Law;

d. In accordance with an order of the Tribal Court, conveyance of an Assignee's Assignment to a guardian or conservator for an Eligible Tribal Member or Eligible Tribal Members who are incapable or have not reached the age of majority;

e. Granting of a security interest in an Assignment to a Loan Program Lender pursuant to the terms of an Assignment Mortgage;

f. License or other grant by an Assignee to a Tribal Member or Tribal Members of less than all of such Assignee's Assignment Rights, including, but not limited to, rights to occupy an Assignment provided such license or other grant is evidenced by an Instrument countersigned by DOH indicating its approval and then Recorded prior to the date such grantee is entitled to exercise such rights.

Unless expressly permitted above or as otherwise may be permitted by Tribal Law, any purported conveyance, grant, assignment, transfer, pledge, or

encumbrance of an Assignee's rights, arising under an Assignment Conveyance held by such Assignee, shall be null, void, and unenforceable. Upon Recording an Instrument evidencing a permitted conveyance of an Assignment, the Eligible Tribal Member to whom the Assignment is conveyed shall be the Assignee for all purposes of this Assignment Law.

Except as expressly permitted under this Law with respect to the rights of a Loan Program Lender, any purported Assignment to a corporation, limited liability company, limited partnership, or entity other than a natural person, whether the same is wholly owned or controlled by an Eligible Tribal Member or Eligible Tribal Members and whether or not the same is chartered or created under Tribal Law, shall be null, void and of no effect.

27 M.P.T.L. ch. 2 § 5

### **§ 5. General Provisions**

a. The Scope of this Assignment Law. The provisions of this Assignment Law with respect to Assignments shall apply only to those areas of the Reservation described or delineated in a Survey and designated as an Assignment Area by resolution of Tribal Council. No Assignment relating to any portion of the Reservation not located within an Assignment Area shall be valid.

b. Limitations on Application. In no event shall the provisions of this Assignment Law be deemed to apply to the area of the Reservation designated as the Gaming Enterprise Site in 4 M.P.T.L. ch. 1, § 1(b) nor shall such area be designated as an Assignment Area.

c. Conflict. In the event of a conflict between the provisions of this 27 M.P.T.L., Land Assignment Law and the provisions of any other Tribal Laws affecting the subject matter hereof, the provisions of this Land Assignment Law shall control.

d. No Assignment Area shall by Resolution of the Tribal Council or otherwise lose its designation as such, it being the intent and purpose of this Law that such designation shall be of a continuing and perpetual nature.

e. The Tribal Court shall have exclusive jurisdiction over any matter, claim, or dispute arising out of, or in any way related to, an Assignment, a Dwelling, a Certificate of Assignment, an Occupancy Agreement, a Certificate of Conveyance or otherwise related in any way to the rights and obligations of any person relative to an Assignment or a Dwelling; and

f. The Tribal Court shall have the authority to direct the use of an Assignment and occupancy of a Dwelling by other than the Assignee to the extent necessary for the enforcement of Tribal Law in harmony with the purposes and intent of 27 M.P.T.L., Land Assignment Law.

### **CHAPTER 3. ENFORCEMENT; TERMINATION OF ASSIGNMENT**

**§ 1. Enforcement of Assignee's Obligations by the Tribe**

a. The Tribe, acting directly, or by or through the DOH, may seek in Tribal Court the enforcement of any provision of this Assignment Law and enforcement of the terms of any Instrument in which the Tribe has an interest including, but not limited to, a Certificate of Assignment. The foregoing notwithstanding, unless pursuant to the rights of the Tribe arising under the terms of any Loan Program pursuant to which an Assignment Mortgage is made, only the Loan Program Lender or permitted successor or assign of a Loan Program Lender shall be entitled to enforce its security interest arising under an Assignment Mortgage.

b. The Tribal Court shall have jurisdiction and authority to hear and adjudicate any enforcement action brought pursuant to this Section.

c. The Tribal Court shall specifically be authorized to award monetary damages and to impose such equitable orders as the Tribal Court may deem necessary for the enforcement of Tribal Law in harmony with the purposes and intent of this 27 M.P.T.L., Land Assignment Law.

d. Prior to the commencement of an enforcement action, DOH must provide written notice to the Assignee of any violation and provide a period of not less than 150 and not more than 180 days to cure the violation or violations. If the violation is not cured within the time period stated in such written notice, then the Tribe may commence an enforcement action seeking such remedies as DOH may request. The election by DOH to seek any one or more than one remedy in an enforcement action shall not preclude the Tribe from pursuing any other remedy allowed by Tribal Law including, but not limited to, the termination of an Assignment in accordance with Section 2 of this Chapter.

e. A copy of any notice required under subsection (d) of this Section also shall be sent to any Loan Program Lender or permitted successor or assign as then holds of Record a security interest in the Assignee's Assignment.

**§ 2. Termination of Assignment Rights by the Tribe**

a. In addition to the rights set forth in Section 1 above, and subject to the provisions of this Chapter, the Tribe shall have the right, but not the obligation, to terminate the Assignment Rights of any Assignee upon a determination by DOH or the Tribal Council of good cause shown as that term is defined in subsection (b) of this Section.

b. The following shall constitute good cause for the termination and divestiture of the Assignment Rights of an Assignee in and to an Assignment:

(1) An attempt by an Assignee to convey, assign, pledge, mortgage or otherwise

transfer Assignee's interest in an Assignment except as expressly provided for in this Land Assignment Law;

(2) The failure of any Assignee to use and occupy a Dwelling located on an Assignment as such Assignee's principal place of residence for six or more months in any calendar year, for more than two consecutive calendar years, without written approval of DOH;

(3) The banishment and/or exclusion of an Assignee from the Tribe and from the Reservation under Tribal Law and custom;

(4) The failure of Assignee to materially abide by Tribal Law as it relates to Assignments, Dwellings, and the public health and safety of persons occupying Assignments or Dwellings; and

(5) The failure of an Assignee to commence and/or complete construction of a Dwelling within the time periods provided in Chapter 6 of this Assignment Law.

27 M.P.T.L. ch. 3 § 3

### **§ 3. Procedure for Termination**

The Tribe shall exercise its rights to terminate Assignment Rights only in accordance with the following procedure:

a. DOH shall give written notice to the Assignee of the violations constituting good cause for termination of Assignment Rights and DOH's intent to seek termination of Assignment Rights, which notice shall contain:

(1) The action(s) that must be taken by the Assignee to effect a cure in order to avoid the termination, provided a cure is practicable given the stated grounds for termination and the time allowed for such cure pursuant to subsection (b), below, or a statement that no cure period shall be afforded the Assignee if DOH determines a cure is not practicable given the stated grounds for termination;

(2) The specific good cause reason for the intended termination;

(3) The date on which the termination will be effective and a summary of the consequences of such termination;

(4) The name, phone number, and address of the person or persons in the Tribe or DOH that may be contacted for further information concerning the termination; and

(5) A statement certifying that a copy of this notice has been sent by DOH to any Loan Program Lender who has a security interest in the Assignment affected by notice of intent to seek termination.

b. Provided DOH reasonably concludes a cure is practicable given the stated grounds for termination, DOH shall allow the Assignee a period of not less than 150 days and not more than 180 days to cure or otherwise remedy the condition

or conditions constituting the stated grounds for termination.

c. If the cure period so noticed to the Assignee has expired, and the Assignee has not cured the violations supporting the good cause reason for termination, then DOH may request, in writing, that Tribal Council terminate Assignment Rights. Such a request to Tribal Council shall include a detailed description of the violations supporting the good cause reason for termination, the date the notice of such violation was sent to the Assignee, and the cost to the Tribe of such termination including any amounts due the Loan Program Lender and the Assignee, as provided for in Section 4 of this Chapter.

d. The Tribal Council shall review and act upon all requests to terminate Assignment Rights filed with the Tribal Council within 90 days of such filing.

In the exercise of its sole discretion, Tribal Council may by resolution terminate an Assignment Conveyance provided such resolution also authorizes the expenditure of any monies reasonably determined by the Tribal Council to be payable to any Loan Program Lender with an interest in such Assignment or to the Assignee subject to termination, if any, all as provided for in Section 4 of this Chapter. If Tribal Council fails to so terminate said Assignment Rights within the time provided for in this subsection (d), whether by affirmative act or by failure to act for any reason, such Assignment shall not be terminated.

27 M.P.T.L. ch. 3 § 4

#### **§ 4. Payment in Compensation for Termination**

As the termination of Assignment Rights is an extraordinary remedy and constitutes a forfeiture and taking of a property right, the Tribe shall not terminate an Assignment pursuant to the terms of this Chapter unless the Tribe pays to, or on account of, the Assignee so terminated the following sums, only:

a. The Tribe shall pay to any Loan Program Lender, or permitted successor or assign of a Loan Program Lender, all then unpaid sums secured by an Assignment Mortgage of Record encumbering such Assignment. For purposes of this Chapter, such holder of an Assignment Mortgage shall not be entitled to collect from the Tribe any extraordinary sum, fee, or penalty otherwise due by virtue of prepayment as a condition to releasing the lien of such Assignment Mortgage.

b. If the value of any improvements made to the Assignment, including any Dwelling thereon located, exceeds the sums due a Loan Program Lender pursuant to subsection (a) of this Section, the Tribe shall timely pay the Assignee such excess. If the value of such improvements are less than or equal to such sums due a Loan Program Lender, then the Assignee shall receive no direct compensation as a consequence of such termination.

c. If the Assignment is not encumbered by an Assignment Mortgage of Record, the Tribe shall pay the Assignee the full value of the improvements to the Assignment.

d. Any compensation as may be due directly to an Assignee pursuant to this Section shall be subject to the right of set off exercisable by the Tribe for

sums due the Tribe by such terminated Assignee.

e. For purposes of this Section, the value of any improvements made to an Assignment shall mean the fair market value of all improvements made to such Assignment as of the date Notice is given pursuant to Section 3(a) above, including any Dwelling thereon located but excluding any value of the land component of the Assignment, as determined in accordance with the valuation procedure set forth in subsection (f) of this Section.

f. The sales price shall be determined by an appraisal process as follows:

(1) At its cost, DOH shall engage two appraisers licensed in the State of Connecticut to provide written appraisals of the value of the improvements to the assignment subject to the termination process;

(2) To the maximum extent each appraiser shall determine is appropriate, comparables used in calculating value shall be derived from the values of improvements located on the Reservation. If in the exercise of any appraiser's professional judgment the use of such comparables are not warranted, the appraiser may use comparable sales information from real estate transfers occurring outside the Reservation. If in the exercise of any appraiser's professional judgment the use of comparables is not warranted, the appraiser shall use such other basis for determining value as the appraiser may deem appropriate; and

(3) The value shall be the average of the value determinations set forth in the appraisal reports of the two appraisers, provided the values so found by the appraisers do not vary more than 15%. If variance exceeds 15% DOH, at its cost shall engage a third appraiser to prepare a third appraisal report. In that event, the value shall be the average of the value determinations set forth in the two appraisal reports as finding the most nearly equivalent values and the value set forth in the most divergent appraisal report shall be disregarded.

g. Nothing contained in this Section shall preclude the Tribe from offsetting against any sum due the Assignee the amount of any obligation of such Assignee to the Tribe, whether or not such obligation has matured or is otherwise then due and payable to the Tribe. In no event shall the Tribe be entitled to so offset against any sum payable pursuant to subsection (d) of this Section.

#### **CHAPTER 4. DELEGATION TO THE MASHANTUCKET DEPARTMENT OF HOUSING (DOH)**

27 M.P.T.L. ch. 4 § 1

##### **§ 1. Application of Assignment Law**

a. The DOH is hereby authorized to oversee and administer the application of 27 M.P.T.L., Land Assignment Law, and to execute, on behalf of the Tribe, Assignment Conveyances to Eligible Tribal Members in accordance with this Law.

b. The DOH shall have primary enforcement powers under this Land Assignment Law



and it is authorized to initiate and/or perform all necessary actions under this Land Assignment Law including, but not limited to:

- (1) The acceptance of applications for Assignments;
- (2) The issuance of certifications of eligibility for Assignments;
- (3) The determination of Tribal Member priority for the issuance of Assignments;
- (4) The determination and issuance of corrective actions to address deficiencies in Assignments;
- (5) The issuance of notices of violations of the laws, regulations, and/or rules governing Assignments and Dwellings; and
- (6) The issuance of notices of intent to terminate an Assignment Conveyance, and the filing of any and all documents to request such a termination by Tribal Council.

c. The DOH, together with the Office of Legal Counsel, shall have the responsibility and authority to represent the Tribe in actions before the Tribal Court concerning 27 M.P.T.L., Land Assignment Law.

27 M.P.T.L. ch. 4 § 2

## **§ 2. Develop, Promulgate, and Enforce Regulations**

As the Tribal Council shall from time to time authorize and direct, the DOH shall develop, adopt, and promulgate such regulations as DOH determines are needed for the orderly operation of the DOH and the administration of this Land Assignment Law. DOH is expressly delegated enforcement authority with respect to the same.

## **CHAPTER 5. RECORDING**

27 M.P.T.L. ch. 5 § 1

### **§ 1. Applicability**

Any Instrument evidencing any interest in an Assignment or a Dwelling shall be recorded as provided by this Chapter.

27 M.P.T.L. ch. 5 § 2

### **§ 2. Effect of Recording**

An Instrument affecting a Dwelling and/or an Assignment in accordance with this

Assignment Law shall be notice to all persons and entities of the existence of the transaction or transfer, and of any rights, interests, or liabilities created thereby.

27 M.P.T.L. ch. 5 § 3

### **§ 3. Priority**

Any Instrument affecting any interest in an Assignment or Dwelling recorded in accordance with this Land Assignment Law shall be presumed to have priority over any instrument, lien, or claim not recorded at the time of such recording.

a. No Occupancy Agreement or Certificate of Conveyance executed by or on behalf of the Tribe prior to the enactment of this Land Assignment Law shall be rendered invalid or unenforceable for failure to Record, provided record of its execution is on file in the records of DOH.

b. Any unrecorded Instrument shall be presumed to have priority over any unrecorded Instrument executed thereafter. Any unrecorded Instrument executed by or on behalf of the Tribe shall be presumed to be dated as of the date so executed by the Tribe.

27 M.P.T.L. ch. 5 § 4

### **§ 4. Recording Process**

The Tribal Clerk shall maintain a permanent record of each transaction affecting Reservation lands, including but not limited to, any actions affecting interests in Assignments and Dwellings in accordance with the following:

a. The Tribal Clerk shall perform the recording functions under this Land Assignment Law.

b. The Tribal Clerk shall maintain, within its own system of records, a system for the recording of Instruments and, as may be directed by Tribal Council, other documentation relating to the lands comprising the Reservation.

c. The Tribal Clerk shall record Instruments only upon the production of a Certificate of Compliance at the time of recording, which Certificate of Compliance shall be recorded immediately prior to the Instrument to be recorded.

d. The Tribal Clerk shall endorse the following upon any Instrument received for recording under this Assignment Law:

(1) The date and time of receipt of the Instrument;

(2) The filing number, to be assigned by the recording agent, which shall be a unique number for each Instrument; and

(3) The name of the individual recording agent or other employee of the Tribal Clerk receiving the Instrument for recording.

e. Upon completion of the above endorsements, the Tribal Clerk shall make a true and correct copy of the Instrument, shall notarize such copy as being a true and correct copy of the original, shall maintain such copy of the Instrument in the records of the recording system, and shall return the original of the Instrument to the person that presented the same for recording.

f. The Tribal Clerk shall maintain a Log of each recorded Instrument, in which there shall be entered:

(1) The name of the grantor of each Instrument, identified as such;

(2) The name of the grantee of each Instrument, identified as such;

(3) The date and time of receipt of the Instrument by the Tribal Clerk;

(4) The filing number assigned by the Tribal Clerk;

(5) The name of the individual in the Tribal Clerk's Office receiving the Instrument;

(6) A description of the Reservation Land, Assignment, or Dwelling which is the subject of the Instrument;

(7) A description of the transaction described by the Instrument; and

(8) A notation that the Certificate of Compliance has been tendered.

g. The Tribal Clerk shall further establish and maintain an up to date Index of all Instruments recorded by reference to the identification of the Assignment or Dwelling to which it relates, both by Survey designation and by street address.

h. The Index, the Log and the Instruments or copies of the Instruments duly recorded shall be made available for inspection during the Tribal Clerk's regular business hours by Registered Persons in accordance with such reasonable rules as the Tribal Clerk may from time to time adopt. For purposes of this section, a "Registered Person" is a natural person whose name is entered upon a registry created and updated by the Office of Legal Counsel for use by the Tribal Clerk in ascertaining natural persons who have a legitimate need for accessing the Tribal Land Records. The Office of Legal Counsel shall include on such registry the following natural persons as of right:

(1) any tribal member;

(2) any employee of the Office of Legal Counsel;

(3) any person as may be designated by a member of the Tribal Council;

(4) any person as may be designated as an authorized representative of a Loan

Program Lender;

(5) not more than three persons as may be designated as authorized representatives of a title insurance company that is licensed to do business in the state of Connecticut and requires access to service one or more Loan Program Lenders; and

(6) any person who is so empowered by an order of the Tribal Court.

The Tribal Clerk shall be entitled to rely on the registry for purposes of determining who is a Registered Person. Subject to subsection (j) of this section, the Tribal Clerk shall provide Registered Persons with copies and shall upon request certify the same as true and accurate.

i. In lieu of presenting an original Instrument for recording, any person or entity may present a copy of the same upon which there is an original certification of the DOH Director stating that the copy is a true and accurate copy of the original Instrument and that the original document is lost or otherwise unavailable and the reason thereof.

j. The Tribal Clerk may from time to time establish reasonable recording fees, copying fees, and fees for the certification of any Instrument recorded under the recording system established under this Land Assignment Law.

27 M.P.T.L. ch. 5 § 5

#### § 5. Certificate of Compliance

Each Instrument submitted for Recording shall be accompanied by a Certificate of Compliance issued by the Tribe's Office of Legal Counsel or such other instrumentality of the Tribe as the Tribal Council may from time to time direct. The issuing party shall issue said Certificate upon an investigation and determination that the form and content of the Instrument to be recorded complies with the requirements of this Land Assignment Law. No Instrument may be recorded by the Tribal Clerk unless the Instrument is accompanied by a valid Certificate of Compliance.

### **CHAPTER 6. INITIAL ASSIGNMENT AREA; ADDITIONAL ASSIGNMENT AREAS**

27 M.P.T.L. ch. 6 § 1

#### **§ 1. Scope of this Chapter**

The provisions of this Chapter apply only to the Initial Assignment Area and such additional Assignment Areas, or portions of additional Assignment Areas, as are then not improved by Dwellings. The provisions of this Chapter shall not apply to any portion of an Assignment Area to the extent that at the time of its designation as an Assignment Area by Tribal Council, the same is improved by a Dwelling then subject to an Occupancy Agreement or Certificate of Conveyance. By the enactment of this Land Assignment Law, the Tribal Council

ratifies the designation of the Initial Assignment Area and the Survey of the same, and by this ratification of the Survey of the Initial Assignment Area, the size, location, and configuration of each Assignment therein located.

27 M.P.T.L. ch. 6 § 2

## **§ 2. Eligibility for Assignments**

With respect to such Assignment Areas only, and the initial Assignment of Dwellings to Tribal Members by the Tribe, DOH shall determine which Eligible Tribal Members, as that term is defined in 27 M.P.T.L. ch. 2, shall receive an Assignment in accordance with the provisions of this Chapter.

27 M.P.T.L. ch. 6 § 3

## **§ 3. Initial Qualification**

To be considered for an Assignment, the applicant must be an Eligible Tribal Member, as defined in 27 M.P.T.L. ch. 2, and make application to DOH in the manner prescribed by DOH and approved by Tribal Council.

27 M.P.T.L. ch. 6 § 4

## **§ 4. Prioritization of Assignments**

The applications for Assignment ("Applications") shall be processed and prioritized by DOH in the following manner:

- a. DOH shall be responsible for accepting and processing all Applications for Assignments.
- b. DOH shall review Applications made during the application period set by the Tribal Council (the "Application Period"). Applications not made during the Application Period shall not be considered by DOH.
- c. Only Applications made by Eligible Tribal Members shall be considered.
- d. Only Applications that set forth all the information required by DOH shall be considered.
- e. DOH shall notify any applicant within 20 calendar days of receipt of a timely Application if the Application is deficient in any way. Any applicant notified of deficiencies in his or her Application must resubmit a corrected Application prior to close of the Application Period.
- f. At the end of the Application Period, DOH shall draw by lottery the names of those Eligible Tribal Members who have complied with the subsections (b), (c) and (d) of this Section and shall establish a priority list for selection of Dwellings.

g. DOH shall, within 30 calendar days thereafter, permit selection of Dwellings within the applicable Assignment Area in the order of priority established by the lottery. The qualification of prospective Assignees and the prioritization and selection of Dwellings by the DOH shall be final and binding.

h. As the foregoing relates to the Initial Assignment Area only, the process of selecting initial prospective Assignees and initial Assignments is hereby ratified as complete and in full compliance for purposes of this Section.

27 M.P.T.L. ch. 6 § 5

#### **§ 5. Issuance of Certificates of Assignment**

Upon completion of the process described above in Section 27 M.P.T.N. ch. 6, § 4, DOH shall execute and cause to be Recorded, Certificates of Assignment identifying the Dwelling and naming each respective successful applicant as Assignee.

27 M.P.T.L. ch. 6 § 6

#### **§ 6. Construction Period Requirements**

As the judicious allocation of scarce Dwellings on the Reservation is an underlying purpose of this Assignment Law, the following requirements shall apply to Assignees receiving an Assignment:

a. An Assignee shall have one year from the date of the Recording of the Certificate of Assignment to commence construction of a residential structure in accordance with all applicable Tribal Laws.

b. Assignee shall have completed construction of such structure within two years of the date of the Recording of the Assignment. The DOH may issue extensions for up to an additional six months for completion upon a showing of good cause.

c. The failure of Assignee to install a complete cellar or foundation in accordance with Tribal Law shall be deemed conclusive evidence of a violation of subsection (a) of this Section for purposes of the application of Chapter 3 of this Land Assignment Law.

d. The failure of Assignee to timely obtain certification from the Tribe's Land Use Department that such structure complies with applicable Tribal Laws and is fit for human habitation shall create a presumption of the Assignee's violation of subsection (b) of this Section for purposes of the application of Chapter 3 of this Assignment Law.

27 M.P.T.L. ch. 6 § 7

**§ 7. Authority of DOH to Amend Survey**

DOH is hereby granted the authority to Record an amended Survey, to make minor adjustments to a Survey, and therefore the Assignments thereby evidenced, for the limited purpose of correcting errors, mistakes, inconsistencies, or omissions provided that such adjustments do not materially change the benefits conferred by a Certificate of Assignment then of Record.

27 M.P.T.L. ch. 6 § 8

**§ 8. Conversion of Certificates of Conveyance**

All rights arising under any Certificate of Conveyance duly issued pursuant to any Home Program shall be convertible by DOH into an Assignment upon declaration by the Tribal Council that the portion of the Reservation in which the Dwelling therein described is located has been made an Assignment Area pursuant to Tribal Council's adoption and approval of a Survey relative to the same. All rights arising under a Certificate of Conveyance pursuant to applicable Tribal Laws, regulations, or custom shall be deemed extinguished upon the Recording of a Certificate of Assignment by DOH to the benefit of the holder of such Certificate of Conveyance and thenceforth the provisions of this Assignment Law shall exclusively control and determine the rights of the Tribal Member in and to the Dwelling as described in both the superceded Certificate of Conveyance and in such superceding Certificate of Assignment.

27 M.P.T.L. ch. 6 § 9

**§ 9. Conversion of Rights Held under an Occupancy Agreement**

All rights arising under any Occupancy Agreement duly entered into pursuant to any Home Program shall be convertible by DOH into an Assignment upon declaration by the Tribal Council that the portion of the Reservation in which the Dwelling therein described is located has been made an Assignment Area pursuant to Tribal Council's adoption and approval of a Survey relative to the same provided that at the time of such conversion, all obligations then outstanding to the Tribe arising under the Occupancy Agreement are satisfied in full. Upon such satisfaction and the mutual release of the Occupancy Agreement by the Tribal Member and DOH, all rights arising under the same pursuant to applicable Tribal Laws, regulations, or custom shall be deemed extinguished upon the recording of a Certificate of Assignment by DOH to the benefit of the Tribal Member who is a party to the same and thenceforth the provisions of this Assignment Law shall exclusively control and determine the rights of the Tribal Member in and to the Dwelling as described in both the superceded Occupancy Agreement and in such superceding Certificate of Assignment.

**CHAPTER 7. OTHER PROVISIONS**

27 M.P.T.L. ch. 7 § 1

## **§ 1. Discovery of Items of Archeological Interest**

It is the policy of the Tribe to investigate and, to the extent determined by the Director of the Mashantucket Pequot Museum and Research Center ("MPMRC"), preserve archeological and historical resources of the Tribe located on the Reservation. Accordingly, if in the course of construction or improvements to a Dwelling, archeological or historical resources are discovered, Assignee shall immediately stop all construction activity and notify the MPMRC and DOH of such discovery.

a. Upon receipt of such notification, MPMRC shall timely cause such resources to be evaluated by a qualified archaeologist in order to assess the interest of the Tribe and to develop mitigation and/or preservation recommendations and strategies. MPMRC shall timely notify the Assignee and DOH of such recommendations and strategies.

b. The Assignee shall comply with such recommendations and strategies made by the MPMRC unless Assignee objects to the same in writing to MPMRC and DOH within 30 calendar days of such notice from MPMRC.

c. If within 30 calendar days of such objection, MPMRC, the Assignee, and DOH do not agree to mutually acceptable mitigation and/or preservation strategies to be implemented, then the Assignee may demand reimbursement of any cost and expense reasonably incurred by Assignee prior to the stoppage of construction activity on the basis that the recommendations and strategies of MPMRC impose such limitations on Assignee that the improvements then under construction are incapable of completion for the purpose intended in a commercially unreasonable manner.

d. With respect to such discoveries in the course of construction relative to a Dwelling subject to 27 M.P.T.L. ch. 6, only, the following shall apply:

(1) To the extent determined by DOH to be feasible DOH shall propose to the Tribal Council an adjustment to the Survey delineating the Dwelling to limit or eliminate the need for mitigation or preservation;

(2) If DOH determines such adjustment is not feasible, or if Assignee objects to such adjustment, or the Tribal Council fails to so adjust the Survey, then DOH shall offer the Assignee the opportunity to relinquish to the Tribe the Assignment then in effect and to issue a new Assignment relative to a different Dwelling.

(3) If the Assignment is so relinquished, whether or not a new Assignment is issued, the Tribe shall timely reimburse in full any Loan Program Lender holding an Assignment Mortgage on such Dwelling for sums advanced relating in a commercially reasonable manner to Dwelling construction and shall further reimburse Assignee for the reasonable cost of any improvements made to the Dwelling prior to the stoppage of work on improvements in accordance with this Section.

27 M.P.T.L. ch. 7 § 2



## **§ 2. Damage to a Dwelling Caused by the Tribe**

a. Cause of Action. Any Assignee who believes that his or her Dwelling has suffered damage by the actions, or the failure to act, of the Tribe in exercising its reserved rights under 27 M.P.T.L. ch. 2, § 2(a)(6) through 27 M.P.T.L. ch. 2, § 2(a)(8), inclusive, may submit a claim to DOH specifying the nature of the damage, the actual and direct monetary loss suffered by such Assignee as a result of such damage, and the actions or failures to act causing such damage. The DOH, after due examination and evaluation of such claim, shall notify the claimant Assignee within 60 calendar days from the date of filing of the claim of the amount, if any, the Tribe will pay such Assignee for the claimed damage. In evaluating such claims, the Tribe reserves the right to offset any monies owed to the Tribe by the Assignee against the amount claimed.

Any Assignee who is in disagreement with the amount offered by the Tribe may bring an action against the Tribe in Tribal Court. In no event shall the Tribe be responsible for consequential damages.

b. Grant of Jurisdiction. The Tribal Court is hereby granted jurisdiction to adjudicate those causes of action brought pursuant to this Section.

## **CHAPTER 8. GENERAL**

27 M.P.T.L. ch. 8 § 1

### **§ 1. Construction**

Except with respect to Tribal Members or as otherwise expressly provided for in 27 M.P.T.L. or in Tribal Law, 27 M.P.T.L. shall not be construed to grant or establish any rights in any Reservation resources, property, or assets that may be held for the benefit of the Tribe or any individual member of the Tribe. Nothing in 27 M.P.T.L. shall be construed as establishing any individual rights of any Tribal Member beyond those recognized by Tribal Law. Nothing in 27 M.P.T.L. shall be construed as establishing any rights of any Loan Program Lender beyond those recognized by Tribal Law. Nothing in this Assignment Law shall be construed as establishing jurisdiction in any agency or government that is not recognized by Tribal Law.

27 M.P.T.L. ch. 8 § 2

### **§ 2. Severability**

If any part of 27 M.P.T.L. is held to be invalid the remainder shall remain to be in full force and effect to the maximum extent possible.

27 M.P.T.L. ch. 8 § 3

### **§ 3. Insurance**

Any person holding an Assignment who constructs a home on the Assignment shall be required to insure the home for its replacement value.

## TITLE 28. RIGHT TO WORK LAW

28 M.P.T.L. § 1

### § 1. Findings, Purpose, and Authority

a. The Tribe finds that:

(1) It has exercised its sovereignty in enacting laws to govern employment relationships on the Reservation, and has determined that it is in the best interests of all Employees on the Reservation to have the right to choose to work and not be prohibited from working on the Reservation based upon requirements of membership in, affiliation with, or financial support of a labor organization.

(2) Employees should have the right to work and not be discriminated against due to either membership or non-membership in a labor organization.

(3) It is the public policy of the Tribe that in order to maximize individual freedom of choice in the pursuit of employment and to encourage and enhance an employment atmosphere conducive to economic growth, the right of individuals to work on the Reservation shall not be denied or hindered based upon membership in a labor organization.

(4) It has the inherent authority to exclude persons from the Reservation and to place conditions on entry, on continued presence and on conduct within the Reservation.

(5) The Tribe's position is that the National Labor Relations Act does not apply to it as a government given the significant impact its application would have on the Tribe's exercise of sovereignty, including the numerous laws adopted that currently govern employment on the Reservation. However, given the uncertain climate of the issue before the courts, even if a court were to determine that the NLRA applies to the Tribe as an employer, it would not preempt the Tribe's right to enact this law providing all Employees on the Reservation, whether working for the Tribe or not, with the right to work and not requiring any Employee to affiliate with, join, or financially support a labor organization in order to work on the Reservation.

b. The purpose of this law is to ensure for all persons on the Reservation the right to work and pursue employment without the restraints of mandatory affiliation with, membership in, or payment of dues, fees, or assessments to a labor organization.

c. The Mashantucket Pequot Tribal Council, the governing body of the Tribe, enacts this law governing employment and labor on its Reservation pursuant to the Tribe's inherent sovereign authority to govern activities on the

Reservation, whether the activities are of tribal members, non-members, Indians, or non-Indians, and whether based on consensual relationships with the Tribe or conduct which impacts and affects the health, safety, political and economic integrity of the Tribe and the Reservation community including members, Employees, vendors, patrons and others who enter the Reservation.

28 M.P.T.L. § 2

## **§ 2. Definitions**

a. "Employee" means any individual employed by an Employer.

b. "Employer" means any person, firm, association, corporation and other entity operating in or upon the Mashantucket Pequot Reservation and directly or indirectly employing one or more Employees to perform work, and includes the Tribe. This Law does not apply to any such person, firm, association, corporation or other entity which has a principal place of business located outside the Mashantucket Pequot Reservation and operates in or upon the Mashantucket Pequot Reservation pursuant to an agreement with the Tribe to perform construction-related activities.

c. "Labor organization" means any organization or agency or group of Employees or Employee committee or plan in which Employees participate that is organized or exists for the purpose of dealing with an employer or employers concerning hours of employment, wages, rates of pay, working conditions or grievances of any kind relating to employment.

d. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any subdivision, agency, arm or department thereof including but not limited to the Mashantucket Pequot Gaming Enterprise, the Pequot Pharmaceutical Network, the Mashantucket Pequot Museum & Research Center, but does not include any legal entity established and organized by the Tribe under the laws of any state with a principal place of business located outside of the Reservation.

e. "Mashantucket Pequot Reservation" means the "reservation" as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe and all other lands subject to the jurisdiction of the Tribe.

f. "Person" means any individual, labor organization, corporation, partnership, company, association or other legal entity.

g. "Union dues" means dues, fees, assessments or other charges of any kind or amount or their equivalents paid or payable, directly or indirectly, to a labor organization or its agents and includes payments to any charity or other third party in lieu of such payments to a labor organization.

28 M.P.T.L. § 3

### **§ 3. Right to Work**

a. No person shall be required, in order to obtain employment or as a condition of employment or continuation of employment on the Mashantucket Pequot Reservation, to do any of the following:

(1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(2) Become or remain a member of a labor organization or be affiliated with a labor organization; or

(3) Pay union dues as defined in this Law.

b. Any agreement, understanding or practice, written or oral, implied or expressed, between any labor organization and any Employer that requires Employees of such Employer to obtain or maintain membership in any labor organization or to pay union dues as defined in this Law or otherwise violates the rights of Employees as defined by this Law, is against the public policy of the Tribe and is hereby declared to be null and void and of no legal effect.

c. No Employer shall deduct labor organization dues, charges, fees, contributions, fines or assessments from an Employee's earnings, wages or compensation, unless the Employer has first received from the Employee a written order or consent signed by the Employee, which written order or consent shall be terminable at any time by the Employee by giving at least 30 days written notice of such desire to terminate the order or consent to the Employer.

d. No Employer shall discriminate or retaliate against any Employee on the basis of an Employee's decision to participate or refrain from participating in any labor organization, or based upon an Employee's activities related to such participation in or refusal to participate in any labor organization.

e. No Person, labor organization, or officer, agent or member thereof, or Employer, or officer or agent thereof shall threaten or intimidate, in any manner, any Person, Employer, or Employee or prospective employee or any member of an Employee's family to compel or attempt to compel such Employee to join, affiliate with, or financially support a labor organization or to refrain from doing so, or to otherwise forfeit rights guaranteed under this Law.

28 M.P.T.L. § 4

### **§ 4. Jurisdiction**

a. The Mashantucket Pequot Tribal Court shall have jurisdiction over all causes of action alleging violations of this Law.

b. The Tribe hereby expressly waives its sovereign immunity from suit for claims alleging violations of this Law against the Tribe in the Mashantucket Pequot Tribal Court. Nothing herein shall be construed as a waiver of the

sovereign immunity of the Tribe in the state or federal courts, or any other forum or context.

28 M.P.T.L. § 5

### **§ 5. Civil Remedies**

a. Any person injured as a result of any violation or threatened violation of the provisions of this Law shall be entitled to petition the Mashantucket Pequot Tribal Court for injunctive relief from or against any person who violates or threatens any violation of this Law, and may, in addition thereto, file a claim to recover any and all damages, including costs and reasonable attorney's fees, resulting from the violation or threatened violation. The remedy shall be independent of and in addition to any other penalties and remedies prescribed by applicable Law.

b. Any claim brought under this Law must be commenced by the filing of a complaint with the Tribal Court in accordance with the Mashantucket Pequot Rules of Civil Procedure and within 180 days from the date of the violation(s) or threatened violation(s) of the Law which form the basis of the complaint.

## **TITLE 29. THE NON-TRIBAL MEMBER SURVIVING SPOUSE LAW**

### **CHAPTER 1. PURPOSE, POLICY, DEFINITIONS**

29 M.P.T.L. ch. 1 § 1

#### **§ 1. Title**

The title of this Law shall be the Surviving Spouse Law of the Mashantucket (Western) Pequot Tribe (hereinafter the "Tribe").

29 M.P.T.L. ch. 1 § 2

#### **§ 2. Policy Purpose**

It is the policy of the Tribe that occupancy of Dwellings under Certificates of Conveyance and the enjoyment of the rights under an Assignment granted pursuant to 27 M.P.T.L. shall be limited, to the greatest extent practicable, to Tribal Members. One exception to this general policy is the right of a non-Tribal Member Spouse of a Tribal Member to continue to occupy a Dwelling or Assignment upon the death of such Tribal Member. The purpose of this Surviving Spouse Law is to set forth the terms and conditions under which the Surviving Spouse of a deceased Tribal Member may continue their occupancy in a Dwelling or Assignment located on the Reservation. The further purpose of this Surviving Spouse Law is to set forth the rights of such Surviving Spouse to convey or otherwise realize the value of the rights that would have been enjoyed by the deceased

Tribal Member by virtue of his or her Certificate of Conveyance or Certificate of Assignment except for his or her death.

29 M.P.T.L. ch. 1 § 3

### **§ 3. Applicability**

This Chapter applies to the rights of a deceased Tribal Member as evidenced by an Assignment pursuant to 27 M.P.T.L. or by a valid Certificate of Conveyance only. Expressly excluded are any rights of a deceased Tribal Member arising under an Occupancy Agreement. Also excluded from the application of this Chapter are the rights of a Surviving Spouse who is him or herself also an enrolled Tribal Member as such rights are governed by the Probate Laws of the Tribe. The provisions of this law do not apply to the Elder Housing area.

29 M.P.T.L. ch. 1 § 4

### **§ 4. Definitions**

In construing the provisions of 29 M.P.T.L., the following words or phrases shall have the meanings designated unless a different meaning is expressly provided, or the context clearly indicates otherwise:

a. "Children" or "Child" means any unmarried person who is under the age of 18 years and is either;

(1) A member of the Tribe; or

(2) Eligible for membership in the Tribe and is the biological child of a member of the Tribe.

b. "Cohabit" means living together as husband and wife for a period of at least three months in aggregate within any calendar year.

c. "Elder Housing Area" means that area of the Reservation set aside by the Tribe for the exclusive use and occupancy of Elder Members of the Tribe.

d. "License" means a fully executed agreement between the holder of an Assignment and a Tribal Member pursuant to which a license for a term of one year or less is granted.

e. "Occupancy Agreement" has the same meaning as provided in 25 M.P.T.L. ch. 3, Residential Foreclosure and Eviction Law.

f. "Principal Place of Residence" means a primary Dwelling occupied by a Surviving Spouse on a continuous basis for at least six months of every calendar year.

g. "Residential Real Property Interest" has the same meaning as provided in 25 M.P.T.L. ch. 3, Residential Foreclosure and Eviction Law.

h. "Security Interest" has the same meaning as provided in 25 M.P.T.L. ch. 3, Residential Foreclosure and Eviction Law.

i. "Spouse" means any person who meets the requirements of TCR 062601-03 of 04.

j. "Surviving Spouse" means the surviving non-Tribal Member spouse of a deceased Tribal Member.

k. "Tribal Member" means an enrolled member of the Mashantucket Pequot Tribal Nation.

## **CHAPTER 2. NATURE OF A SURVIVING SPOUSE'S RIGHT**

29 M.P.T.L. ch. 2 § 1

### **§ 1. Nature of a Surviving Spouse's Right**

a. A Surviving Spouse has the right to occupy the Dwelling of the deceased Tribal Member spouse for the remaining years of his or her life provided;

(1) The deceased Tribal Member spouse did not devise the Dwelling or Assignment to another Tribal Member (in the event that there are Tribal Member children residing in the Dwelling then the Surviving Spouse may continue residence until such time as said children reach the age of 18 years); and

(2) The Surviving Spouse complies with the requirements of this Surviving Spouse Law.

b. A Surviving Spouse may:

(1) Sell the Dwelling at market rates as further provided herein;

(2) Continue to occupy the Dwelling until his or her death.

(3) Fail to comply with the requirements of this Surviving Spouse Law in which case the Surviving Spouse shall be subject to an eviction action and the equity, if any, shall be distributed to the heirs of the deceased Tribal Spouse.

29 M.P.T.L. ch. 2 § 2

### **§ 2. Rights of a Surviving Spouse**

a. Right to Continued Occupancy. Upon the death of a Tribal Member Spouse, provided the Surviving Spouse is granted the Occupancy Interest to the Dwelling either by will or by Tribal Probate Law, a Surviving Spouse may continue to reside in the Dwelling as long as the Surviving Spouse:

- (1) Continues to occupy the Dwelling as his or her Principal Place of Residence;
- (2) Does not rent or otherwise encumber the Dwelling;
- (3) Does not marry a non-Tribal Member or Cohabit with an unauthorized person in the Dwelling;
- (4) Does not give birth or sire any children with a non-Tribal Member;
- (5) Abides by all the laws, rules, regulations, and policies of the Tribe;
- (6) Continues to fully discharge all obligations arising under the Assignment and/or any Security Interest on the Dwelling;
- (7) If living in a Dwelling located in the Elder Housing Area, qualifies under Tribal Law as an Elder and observes all rules, regulations, and policies applicable to the occupants of the Elder Housing Area; and
- (8) Executes any documentation that the DOH or Loan Program may reasonably require to evidence the Surviving Spouse's obligations pursuant to any Loan Program or arising hereunder.

b. In the event that the Surviving Spouse has no children then, within 3 years of the date of death of the Tribal Member Spouse, the Surviving Spouse shall sell the Dwelling to the DOH as provided in 24 M.P.T.L. ch. 6, § 7. In the event that the Surviving Spouse fails to comply with the requirements of this section the DOH may bring an eviction action in the Tribal Court and the Dwelling shall be sold at auction by the Tribal Court and the proceeds shall be distributed to the Surviving Spouse after payment of both costs of the sale and any obligation to third parties that are secured by a Security Interest to the Assignment.

### **CHAPTER 3. DEFAULT, REMEDIES, CONVEYANCE**

29 M.P.T.L. ch. 3 § 1

#### **§ 1. Default of Conditions**

In the event that the Surviving Spouse fails to abide by any of the requirements of this Surviving Spouse Law, then, upon two successive written notices, 30 days apart, sent via certified first class mail from the DOH, the Surviving Spouse shall have six months to either cure his or her alleged default or sell the Dwelling and Assignment to the DOH as provided in this Chapter, or, in the event the DOH is unwilling or unable to purchase the Dwelling, sell it on the open market to a member of the Tribe. In the event that the Surviving Spouse fails to cure the default and fails to sell the Dwelling as set forth herein then he or she shall be subject to an eviction action in Tribal Court, which may be brought by the DOH.



**§ 2. Conveyance by Surviving Spouse**

a. Sales

(1) A Surviving Spouse may sell the Dwelling and Assignment to the DOH at any time, as long as the DOH states an intent to purchase such Assignment and Dwelling.

(2) The sales price shall be determined by an appraisal process as follows:

(a) Two appraisers shall each provide an appraisal; one appraiser shall be selected by the DOH and the other shall be selected by the Surviving Spouse;

(b) Comparable sales used in the appraisals shall, to the greatest extent possible, be derived from sales of similar Dwellings located on the Reservation; and

(c) The sale price shall be the mid-point between the two appraisals.

(3) The DOH shall have 15 calendar days from the date of receipt of the second appraisal to determine whether it will purchase the property.

(4) In the event that the DOH is unable or unwilling to purchase the home, then the Surviving Spouse may sell the home to any Eligible Tribal Member at market price.

(5) The purported sale of a Dwelling and/or Assignment Lot by a Surviving Spouse to a non-Tribal Member is void.

b. Conveyance by Will

(1) A Surviving Spouse, who has acquired an Occupancy Interest in an Assignment, may devise their interest to a member of the Tribe provided that the devisee is otherwise eligible to own an written interest in an Assignment.

(2) Any provision of a will of a Surviving Spouse devising their interest to an Assignment to an ineligible person is void.

(a) In the event that the devisee is ineligible to own an interest in an Assignment then they shall have six months to sell the home to the DOH or to an Eligible Tribal Member as herein set forth or face eviction pursuant to 25 M.P.T.L. ch. 5, Residential Foreclosure and Eviction Law.

**§ 3. Designated Minor**

When the deceased holder of an Assignment has willed his/her improvements to a

person who is underage but otherwise eligible to receive an Assignment of Tribal Land under this Surviving Spouse Law, and after consultation with the DOH, the Tribal Court shall appoint a guardian to hold the assignment until the beneficiary is eligible to hold the Assignment. The guardian shall utilize the Assignment in a manner which is in the best interest of the beneficiary. Any member of the Tribe shall have the right to petition the Tribal Court to have the guardian of the beneficiary removed as guardian. The Tribal Court may remove the guardian of the beneficiary and appoint a new guardian for the beneficiary if the Tribal Court, after giving notice to the guardian and after a hearing, has determined that the guardian has not utilized the Assignment to the best interests of the beneficiary. The guardian appointed by the Court shall be responsible for maintaining the Assignment and otherwise complying with the provisions of this Surviving Spouse Law.

#### **CHAPTER 4. GENERAL**

29 M.P.T.L. ch. 4 § 1

##### **§ 1. Construction**

Nothing in this Surviving Spouse Law shall be construed to establish any non-Tribal Member rights in any Reservation resources, property, or assets that may be held for the benefit of the Tribe or any individual member of the Tribe.

Nothing in this Surviving Spouse Law shall be construed as establishing any individual rights of any Tribal Member beyond those recognized by Tribal Law. Nothing in this Surviving Spouse Law shall be construed to establish jurisdiction in any agency or government that is not recognized by Tribal Law.

29 M.P.T.L. ch. 4 § 2

##### **§ 2. Severability**

If any part of this Surviving Spouse Law is held to be invalid the remainder shall remain to be in full force and effect to the maximum extent possible.

#### **TITLE 30. CAPTIVE DOMICILE CODE**

30 M.P.T.L. § 1

##### **§ 1. Office of Captive Commissioner**

The Tribal Council shall appoint a suitable individual to serve as the Captive Insurance Commissioner of the Mashantucket Pequot Tribal Nation. The Commissioner shall serve a term of three years or until a replacement is appointed. The Tribal Council may remove such Commissioner at any time with or without cause.

**§ 2. Duties of the Commissioner**

a. The Commissioner shall see to it that all laws and regulations of the Mashantucket Pequot Tribal Nation respecting Captive Insurance Companies are faithfully carried out. The Commissioner shall exercise all powers reasonable and necessary to protect the public interest in accordance with the duties imposed by this law and any regulations pursuant thereto.

b. The Commissioner shall recommend to the Tribal Council changes which in his or her opinion should be made in the laws relating to Captive Insurance.

c. In addition to the specific regulations which have been adopted by the Tribal Council, the Commissioner shall adopt or amend regulations as reasonable and necessary to implement the provisions of this law. All proposed amendments or additions to the regulations shall be forwarded to the Secretary of the Tribal Council at least 10 business days prior to the effective date of same. If the Tribal Council does not act to amend or reject such regulations they shall become effective as of the designated date. The Tribal Council retains the power to amend this law and/or the regulations as the Tribal Council sees fit.

d. The Commissioner shall develop and follow a program of periodic review of the practices of his or her office so as to achieve effective financial surveillance and regulation of any insurance companies operating in this domicile.

e. The Commissioner shall be empowered to grant, revoke, and modify licenses for any captive insurance company seeking to conduct business in this domicile pursuant to the captive insurance company regulations.

**§ 3. Compensation**

The Captive Insurance Commissioner shall be compensated as shall be determined by the Tribal Council from time to time.

**TITLE 31. MASHANTUCKET EMPLOYMENT RIGHTS LAW**

**CHAPTER 1.**

**§ 1. Short Title**

This law shall be known as the Mashantucket Employment Rights Law.

31 M.P.T.L. ch. 1 § 2

**§ 2. Findings, Purpose and Authority**

a. The Tribe finds that:

(1) It has enacted various laws that govern aspects of employment on the Reservation; however, it does not have a centralized office to oversee the regulation of employment on the Reservation whether it concerns tribal or non-tribal employees.

(2) There is a need for a centralized employment process for all employers on the Reservation and the establishment of a Commission to hear claims under tribal employment laws.

(3) There is a need for an administrative process that utilizes the cultural preference for the resolution of disputes through a non-adversarial process such as the Peacemaker's Council. It is therefore important to the Tribe that employees and employers have an avenue to mediate and resolve disputes in this manner.

(4) It recognizes its continued commitment to create and foster a diverse employment atmosphere where differences are respected. This commitment can best be fulfilled through the establishment of the Mashantucket Pequot Employment Rights Office to oversee, coordinate and enforce tribal employment laws and assist employees and employers in understanding the requirements of those laws.

b. The purpose of this Law is:

(1) To promote responsible Tribal governance and self sufficiency of the Mashantucket Pequot Tribal Nation by creating a centralized Mashantucket Employee Rights Office to coordinate and regulate equitable employment on the Mashantucket Pequot Reservation and various other Tribal Entities.

(2) To create a structure for the Mashantucket Employee Rights Office that includes the position of Director to oversee the office, a Commission to hear and decide complaints, and a Mediation panel to bring the culture of the Tribe and its preference for non-adversarial resolution of disputes to this structure.

c. Authority

The Tribe enacts this law as an exercise of its inherent sovereign powers and the powers delegated to it by the Constitution of the Mashantucket (Western) Pequot Tribe.

31 M.P.T.L. ch. 1 § 3

### § 3. Definitions

For purposes of this Title:

a. The term "conflict of interest" means the existence of a relationship between a person in a decision-making position with another person, employer or entity that may improperly influence the person's decision making to the detriment of the Tribe and shall include the appearance of a conflict even if the person believes the relationship would not affect his or her judgment in a matter.

b. The term "Commission" shall mean the Mashantucket Employment Rights Commission as established in Chapter 2 of this law.

c. The term "Commissioner" shall mean an individual who is hired to serve and does serve as a member of the Mashantucket Employment Rights Commission.

d. The term "Employee" shall mean any individual employed by an employer with or without a contract. This includes but is not limited to part-time employees, full time employees, and regular.

e. The term "Employer" shall mean any person, company, contractor, subcontractor or other entity located or engaged in work on the Reservation, trust lands and all area within the exterior boundaries of the reservation employing two or more persons, without regard for whether the employer or its owner is Indian or Non-Indian or a member of the Mashantucket (Western) Pequot Tribe or not. The term "employer" excludes Federal, State and County governments.

f. The term "MERO" means the Mashantucket Employment Rights Office.

g. The term "order of agreement" shall mean a written explanation of the agreement contemplated by the two parties and witnessed by the mediation panel.

h. The term "Person" means both persons and artificial persons, including, but not limited to corporations, partnerships, joint ventures, lessees, contractors, subcontractors, sole proprietorships, associations, trustees, public officials, Board members, fiduciaries and a private interest or private party and their agents.

i. The term "Reservation" means the Mashantucket (Western) Pequot Reservation, as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. The term "Record" means the written documentation of all evidence (whether by way of testimony or documentary) presented to the Commission in a particular case or matter before the Commission.

k. The term "Tribal Council" shall mean the governing body of the Mashantucket (Western) Pequot Tribe as outlined in the Tribal Constitution.

l. The term "Tribal Entity" shall include all departments, businesses, boards

and entities owned and operated by or under the auspices of the government and/or any branch of the government of the Tribe.

m. The terms "Tribal Member" and "Member" shall mean any person who is duly enrolled as a member of the Mashantucket (Western) Pequot Tribe.

n. The term "Tribe" shall mean the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation.

## **CHAPTER 2.**

31 M.P.T.L. ch. 2 § 1

### **§ 1. Establishment of Mashantucket Employment Rights Office**

There is hereby established the Mashantucket Employment Rights Office charged with carrying out all tasks assigned to it by tribal law related to the regulation of employment on the Reservation. The Director of MERO shall be the head of the office as more fully established and described in Chapter 2, Section 4 of this law, and shall carry out the day to day functions and duties of the MERO. The Commission, established in Chapter 2, Section 2 of this law, shall hear all matters as provided by tribal law, while the Mediation panel established by Chapter 2, Section 5 of this law shall provide employees and employers with an opportunity to resolve disputes through a non-adversarial process.

31 M.P.T.L. ch. 2 § 2

### **§ 2. Establishment of MERO Commission**

a. There shall be a MERO Commission with five members: one tribal member, two non-tribal members; alternates include one Tribal Member and one non-tribal Member. The Commission will consist of three regular members that will sit for hearings and make a decision. If there is a conflict of interest between a party and one of the Commissioners, or a particular member of the Commission can not attend the hearing, then an alternate Commissioner will be selected by the Director based on availability. The Commissioners shall be on an as needed basis.

b. The non-tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon the recommendation of the joint action of the Judicial Committee and Administrative Support Committee after review of the qualifications of each candidate and an interview with each qualified candidate. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the non-tribal member Commissioner positions must meet the following minimum qualifications:

(1) Be licensed to practice law and be in good standing in the state of Connecticut;

(2) Have a minimum of ten (10) years of experience in labor and employment law;

(3) Have the highest moral and ethical character;

(4) Submit to and pass a background check, including a criminal background check and any required licensing; and

(5) Knowledge and experience in federal Indian law and tribal law or agreement to obtain training and education in these areas, and passage of the Tribal Bar exam.

(6) Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

c. The tribal member Commissioners shall be appointed by the majority vote of the Tribal Council only upon recommendation by the joint action of the Judicial Committee and Administrative Support Committee after the committee reviews the qualifications of each candidate and conducts interviews with each qualified candidate. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. A qualified candidate for the tribal member Commissioners position must meet the following minimum qualifications:

(1) Have a bachelor's degree;

(2) Have a minimum of 3-5 years experience in one of the following or a combination of the following areas: human resources, law, compliance or regulatory work;

(3) Have the highest moral and ethical character;

(4) Submit to and pass a background check, including a criminal background check and any required licensing;

(5) Successfully complete an interview and be selected through a majority vote of the Joint Committee of the Judicial Committee and the Administrative Support Committee;

(6) Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience;

(7) Be willing to complete any required training or continuing education requirements, including in the areas of Federal Indian law, Tribal law, Human Resource guideline, or any other related areas.

d. The Judicial Committee and Administrative Support Committee will interview and recommend candidates to the Tribal Council for appointment by the majority

vote as Commissioners. If the Tribal Council does not choose one of the Committee's qualified candidates for hire, the process goes back to the committee for additional qualified candidates to be interviewed and then recommended to Tribal Council. The Commissioners will be appointed for a three year term, and shall serve on an as needed with a competitive compensation being set by Tribal Council.

e. Any Commissioner shall be disqualified from involvement in decisions in which he or she has a conflict of interest or the Commissioner's involvement would present an appearance of a conflict of interest. It shall be the decision of the Commission as a whole to decide if one Commissioner has a conflict of interest and should be disqualified from a particular decision.

f. A Commissioner may be removed from office by a majority vote of the Tribal Council at a duly called meeting where a quorum is present; provided that there has first been a complete investigation of the matter giving rise to the removal. A Commissioner may be subject to suspension or removal from office for: (1) conduct prejudicial to the impartial and effective administration of justice which may impair the ability of the Commission to effectively hear and decide matters; (2) violation of any applicable code of ethics; (3) commission of a crime; or (4) gross neglect of duty, misfeasance or malfeasance in office.

h. If a Commissioner shall resign, become incapacitated, is banished, excluded, or dies the Commissioner's position shall be considered vacated automatically, and the Administrative Support and Judicial Committees shall seek candidates to fill the vacancy and bring their recommendation to Tribal Council.

31 M.P.T.L. ch. 2 § 3

### § 3. Powers and Duties of the Commission

The Commission shall:

a. Adopt procedures or regulations governing the activities of the Commission, including procedures for hearings before the Commission;

b. Hold hearings and make decisions on labor and employment matters within its jurisdiction as provided in tribal law, and to administer oaths to witnesses and enforce all rules, regulations, procedures and/or guidelines promulgated by the Commission;

c. Keep a written record of all proceedings before it and compile an official Record in all matters before it that shall include, at a minimum, a transcript of all testimony given before the Commission and true and accurate copies of all documentary evidence considered by the Commission in the matter;

d. Have the power to summon and examine under oath such witnesses, and direct the production of, and examine or cause to be produced or examined such documents in relation to any matter at issue as the Commission may find proper;

e. Have the power to certify official acts and have all powers necessary to enable the Commission to perform the duties imposed upon it by the provisions



of tribal law;

f. Have the power to select one of the Commissioners to act as the Chair of the Commission for administrative purposes and if necessary for the orderly conduct of hearings and matters before the Commission;

g. To grant any remedy, penalty, fine, or other relief as provided by tribal law; and

h. Any and all other duties that are deemed necessary to carry out the purpose of this MERO Law.

31 M.P.T.L. ch. 2 § 4

#### **§ 4. Establishment of the MERO Director Position**

a. There is hereby established the position of the Director of MERO who shall have primary responsibility for day-to-day administration and operation of MERO and its employees. The compensation for this position shall be competitive and set by Tribal Council and the Director shall report directly to Tribal Council.

b. The Director shall be appointed by the majority vote of the Tribal Council based only on the recommendation of the joint action of the Judicial Committee and Administrative Support Committee which shall select a candidate provided that the candidate must meet the following minimum qualifications:

(1) Be licensed to practice law and be in good standing in the state of Connecticut and have practiced in the area of labor and employment law for a minimum of 10 years, or have a either a Juris Doctorate or a Master's Degree and have a minimum of 10 years experience in government regulation, employment or administration;

(2) Demonstrate an ability to organize and manage a newly formed government office in the nature of MERO;

(3) Have familiarity with or experience in tribal employment rights or equivalent type of experience;

(4) Demonstrate excellent communication and organizational skills;

(5) Be of the highest ethical and moral character; and

(6) Submit to and pass a background check, including a criminal background check and any required licensing.

c. The Director shall have those powers deemed necessary to properly carry out the duties and functions of the MERO which include but are not limited to the following:

(1) To develop a budget for MERO for submission and approval by Tribal Council;

(2) To supervise expenditures pursuant to the approved budget, and guard

against and report any misuse or fraudulent use of the monies allocated pursuant to the budget;

(3) To develop, execute, and oversee a plan for implementation and distribution of this law and for any rules, regulations, procedures and/or guidelines established by MERO, to all employers and to all government or tribal entities receiving contracts or grants for work to be done on the Reservation;

(4) To perform any duty or requirement imposed upon the Director by any tribal law, including but not limited to any and all requirements related to Indian and tribal preferences;

(5) To adopt rules, regulations and/or procedures for the operation of the MERO and recommend the adoption of rules and regulations to the Commission for conduct of its hearings or for any other related matter;

(6) To hire personnel as required for the efficient operation of the MERO and as approved in the MERO budget. Initially, such personnel shall, at a minimum, include an administrative assistant and an investigator;

(7) To accept and review any claims, complaints, requests for information or any other matter related to the MERO office or as referred to MERO by any other tribal law;

(8) To conduct or direct personnel to conduct any necessary investigations;

(9) To assign, where appropriate, any of the above duties to MERO personnel; and

(10) To conduct surveys including those of Tribal Members, Native Americans, employers and tribal entities that work for the Tribe to ensure effectiveness and efficiency of tribal employment rights laws.

(11) To create and generate quarterly reports and statistics of MERO complaints; including but not limited to the success of the complaint, how it was resolved, and who were the parties to the complaint and bring those statistics to Tribal Council.

31 M.P.T.L. ch. 2 § 5

#### **§ 5. Establishment of Mediation Panel**

a. There is hereby established a mediation panel to help resolve disputes between employers and employees arising under the Tribe's labor and employment laws. The mediation panel shall be comprised of three members from the Tribe's Peacemaker's Council who will be designated, on a case by case basis, by the Chair of the Peacemaker's Council provided that each member of the panel meet the following qualifications:

(1) Have a bachelor's degree or equivalent work experience with the Tribe;

(2) Have the highest moral and ethical character;

(3) Submit to and pass a background check, including a criminal background check and any required licensing;

(4) Demonstrate good judgment and communication skills, and a positive work ethic demonstrated through evaluations and attendance records from work experience; and

(5) Complete training or educational programs in Indian and tribal preference in employment, non-discrimination law, tribal law, federal Indian law, and other areas as determined by the Director of MERO.

b. The Chair of the Peacemaker's Council shall establish rules and regulations to govern mediation before the panel, and for determining the composition of the mediation panel.

c. The Director shall establish rules and regulations for an employer or employee to request mediation and referral to mediation.

d. All parties to any mediation before this panel must agree to the mediation as a first step to the resolution of a dispute between the parties.

e. At the end of a mediation agreement, there shall be a written order of agreement between the parties that shall be signed by the parties and the mediation panel.

f. If an agreement can not be met at the end of the mediation process, or if there is a violation of the order of agreement that the parties signed after mediation, the process will continue to a MERO Commissioner's Hearing for resolution.

### **CHAPTER 3.**

31 M.P.T.L. ch. 3 § 1

#### **§ 1. Scope of Coverage**

a. This Law shall apply to all areas within the Reservation and shall apply to all persons, employees, employers, whether tribal or non-tribal, subject to the jurisdiction of the Tribe and Tribal law.

b. This Law shall be effective as of the date of its enactment.

31 M.P.T.L. ch. 3 § 2

#### **§ 2. Conflict with Other Laws or Policies**

To the extent that any provision of this Law conflicts with any other law or any policy or procedure issued by any person, employer or Tribal entity, this

law shall govern; except if expressly provided otherwise herein.

31 M.P.T.L. ch. 3 § 3

### **§ 3. Severability**

If any provision or part of this Law or its application to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Law and the unaffected provisions of the Law shall continue to be in full force and effect.

31 M.P.T.L. ch. 3 § 4

### **§ 4. Sovereign Immunity**

Nothing contained in this Title shall be construed to waive the sovereign immunity of the Tribe or any arm, subdivision, department, commission, office, officer, employee or agent of the Tribe, including the MERO, the MERO Commission, the MERO Mediation Panel, and the MERO Director all as established by this title.

## **TITLE 32. MASHANTUCKET PEQUOT LABOR RELATIONS LAW**

### **CHAPTER 1.**

32 M.P.T.L. ch. 1 § 1

### **§ 1. Title; Authority**

This act may be cited as the "Mashantucket Pequot Labor Relations Law". This act is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate employment and labor relations within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

32 M.P.T.L. ch. 1 § 2

### **§ 2. Findings**

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council, finds that:

a. The public policy of the Tribe is that all employees working within tribal

territory be treated fairly: that there be fair and appropriate employment practices; fair and comprehensive wages and benefits; and fair and impartial procedures for resolving employment and labor relations issues. In furtherance of this public policy, the Tribe has adopted employment laws governing tribal employment, and the Judicial and Administrative Support Committees of the Tribal Council recently reviewed the employment practices and procedures applicable to all employers on the Reservation and developed a phased approach to create the Mashantucket Employment Rights Office and related labor and employment laws. Based upon those recommendations, the Tribal Council adopted Title 31 of the Mashantucket Pequot Tribal Laws, establishing the Mashantucket Employment Rights Office, to fully regulate employment and labor relations on the Reservation and to provide administrative review and enforcement of tribal employment and labor relations laws.

b. The Tribe, as an employer, provides excellent employment to thousands of people on its Reservation through the Mashantucket Pequot Gaming Enterprise, the Mashantucket Pequot Museum & Research Center, the Pequot Pharmaceutical Network, the Child Development Center, and other departments, divisions, entities or enterprises of the Tribe. The Tribe, as a government, has guaranteed, through tribal employment and labor relations laws and policies, fair treatment to its employees without the intervention of a third party such as a labor organization.

c. The Tribe's labor relations policy is to deal directly with its employees regarding wages, hours and other terms and conditions of employment, and believes that it is in the best interests of employees and the Tribe, as an employer, to maintain that direct relationship. However, based on the recent reversal of 30 years of precedent by a federal agency and a federal court, the Tribe acknowledges that labor organizations may seek, and at least one is currently seeking, the right to represent tribal employees pursuant to federal law, commonly known as the National Labor Relations Act ("NLRA") 29 U.S.C. §§ 151-169.

d. The NLRA was adopted in 1935 to encourage the practice of collective bargaining and to protect the exercise of self-organization by employees for the purpose of negotiating the terms and conditions of their employment with employers in the private sector. The NLRA expressly exempts federal, state and local governments from its definition of "employer," recognizing, among other things, that government employees provide essential services to their communities and that labor strikes could inflict unique harms in those communities. Nonetheless, pursuant to their inherent authority, the vast majority of state governments and the federal government have adopted legislation to govern labor relations between the respective government as an employer and its employees. Generally, to protect the public interest, as well as the orderly operation and functioning of the government, such legislation limits the scope of collective bargaining, prohibits strikes by employees and creates a procedure for the resolution of labor disputes.

e. The NLRA and its extensive legislative history are silent in relation to its application to Indian tribal governments as employers. This is not surprising given the fact that the U.S. Congress had just addressed the status of Indian tribes in the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §§ 461 et seq., which protects tribal self-governance and promotes tribal economic

development through enterprises operated directly by Indian tribes. As a matter of federal policy, the IRA sought to achieve two distinct but inseparable objectives: tribal self-governance and tribal economic self-sufficiency. By promoting both, the IRA sought to "rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." H.R. Rep. No. 73-804 (1934).

f. Since 1934, the United States government has consistently strengthened its policy of protecting tribal self-government and promoting tribal economic self-sufficiency through legislation, including, but not limited to the Indian Self-Determination and Education Assistance Act of 1975, 25 U.S.C. §§ 450 et seq. ("the United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities"); the Indian Tribal Justice Act of 1993, 26 U.S.C. § 3601 ("the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government"); the Indian Financing Act of 1974, 25 U.S.C. § 1451 ("to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources"); the Tribal Self-Governance Act of 1994, 25 U.S.C. §§ 450a, 458aa et seq. ("transferring control to tribal governments...over funding and decision making for Federal programs, services, functions and activities strengthens the Federal policy of Indian self-determination"); and the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701 et seq. ("to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments").

g. Given its inherent authority over employment and labor relations on the Reservation, the tribal regulation of employment on the Reservation, and the longstanding federal policy protecting tribal self-government and promoting tribal self-sufficiency, the Tribe finds that the NLRA does not apply to the tribal government as an employer. Application of the NLRA to the tribal government as an employer would substantially impair the ability of the Tribe to exercise its sovereign authority, including undermining tribal employment laws, subjecting the tribal government to the threat of strikes, and disrupting the tribal government's ability to provide essential services to the community.

h. The Tribe has various departments, subdivisions and agencies within its government, including the Mashantucket Pequot Gaming Enterprise, an arm of the tribal government, which operates (under the Tribal Council's control and oversight) the tribal gaming operation known as Foxwoods Resort Casino. As provided by the Indian Gaming Regulatory Act, the Tribe's gaming operation funds the tribal government including various governmental services such as police, fire, utilities, education, the judicial system, environmental, health, social services and parks and recreational facilities. As an arm of the government, the tribal employees at the Gaming Enterprise are government employees and have a recognized property right in their employment through various decisions of the Mashantucket Pequot Tribal Court. See *Johnson v. Mashantucket Pequot Gaming Enterprise*, 1 MPR 15 (1996).

i. Despite the Tribe's public policy and the guarantees under tribal law set forth above, the Tribe has considered and determined that it is appropriate to provide tribal employees with a procedure under Tribal law to determine whether they wish to be represented by a labor organization for the purposes of collective bargaining as defined in this Law.

32 M.P.T.L. ch. 1 § 3

### **§ 3. Purpose**

The purpose of the Mashantucket Pequot Labor Relations Law is to provide tribal employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between the Tribe as an employer and tribal employees, and to protect the health, safety, political integrity and economic security of the Tribe.

32 M.P.T.L. ch. 1 § 4

### **§ 4. Definitions**

a. "Tribal Employer" or "Tribe" means the Mashantucket Pequot Tribe, also known as the Mashantucket Pequot Tribal Nation including any subdivision, agency, arm, department, entity or business thereof, but shall not include any entity created by the Tribe under the laws of any state and which is located principally outside of the Reservation of the Tribe.

b. "Tribal Employee" means any employee of a Tribal Employer except:

(1) Appointed or elected officials of the Tribe including but not limited to Tribal Councilors and their staff, Tribal Court Judges, the Mashantucket Pequot Tribal Gaming Commissioners, the Workers Compensation Commissioner, or officials of any other commission or regulatory body of the Tribe, or

(2) Supervisory employees, Managerial employees, or Confidential employees (as those terms of defined herein),

c. "Supervisory employees" or "supervisor" means any individual having authority, in the interest of a Tribal Employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

d. "Managerial employees" or "manager" means any individual who represents a Tribal Employer's interest and who formulates and effectuates a Tribal Employer's policies by expressing and making operative the decisions of the Tribal Employer.

e. "Confidential employees" means any individual who assists and acts in a

confidential capacity to persons who formulate, determine, and effectuate a Tribal Employer's policies with regard to confidential matters including, but not limited to, employee relations, labor relations, business plans or performance, tribal government, and other tribal interests, or those who regularly substitute for employees having such duties.

f. "MERO" means the Mashantucket Pequot Employment Rights Office established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

g. "MERO Commission" means the commission established pursuant to Title 31 of the Mashantucket Pequot Tribal Laws.

h. "Labor organization" means any lawful organization whose primary purpose is the representation of Tribal employees in collective bargaining.

i. "Exclusive representative" means a labor organization that, as a result of certification under this Law, has the right to represent Tribal employees in an appropriate bargaining unit for the purpose of collective bargaining.

j. "Certification" means the designation by the MERO of a labor organization as the exclusive representative for all Tribal employees in an appropriate bargaining unit.

k. "Appropriate bargaining unit" means a group of Tribal employees designated as such by the MERO in accordance with the provisions of this Law and particularly subsection 12(g) for the purpose of collective bargaining.

l. "Collective bargaining" is defined in Section 9 of this Law.

m. "Impasse" means failure of a Tribal Employer and an exclusive representative, after good-faith bargaining, to reach agreement in the course of negotiating a collective bargaining agreement.

n. "Lockout" means an act by a Tribal Employer which prevents its employees from going to work for the purpose of pressuring Tribal employees and/or their bargaining representative to accept the Tribal Employer's bargaining proposals.

o. "Strike" means a Tribal employee's refusal, in concerted action with other Tribal employees, to report for duty or his willful absence in whole or in part from the full, faithful and proper performance of the duties of employment for the purpose of inducing, influencing or coercing a change in the conditions, compensation, rights, privileges or obligations of Tribal employment.

p. "Tribal Court" means that Mashantucket Pequot Tribal Court as created and established by Title 1 of the Mashantucket Pequot Tribal Laws.

32 M.P.T.L. ch. 1 § 5

#### **§ 5. Rights and Duties of Tribal Employers, Tribal Employees, and Labor Organizations**

a. Tribal Employees shall have the right of free choice: to refrain from or



engage in self-organization, from forming, joining, or assisting labor organizations, from bargaining collectively through representatives of their own choosing, and from engaging in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to engage in any or all such activities.

b. When a labor organization has been designated by the MERO through the processes provided hereunder as the representative of the majority of Tribal Employees in an appropriate bargaining unit, that labor organization shall be recognized by the Tribal Employer as the exclusive bargaining agent for the Tribal Employees of such unit.

c. When a labor organization has been designated in accordance with the provisions of this Law as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, it shall have the right to act for and to negotiate agreements covering all Tribal Employees in the unit and shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership; and such labor organization shall have the duty of fair representation to the members of that unit.

d. A Tribal Employee represented by a labor organization may at any time present a grievance directly to a Tribal Employer and the Tribal Employer may address said grievance directly with the Tribal Employee without intervention of a labor organization; provided that the resolution of such grievance may not violate the terms of a collective bargaining agreement then in effect. The Tribal Employee shall notify the appropriate labor organization of the grievance and resolution thereof.

e. The Tribal Employer and such labor organization as has been designated as the exclusive bargaining representative of Tribal Employees in an appropriate bargaining unit, through appropriate officials or their representatives, shall have the duty to bargain collectively, as defined herein in Section 9 of this Law.

32 M.P.T.L. ch. 1 § 6

## **§ 6. Prohibited Practices**

a. A Tribal Employer shall not:

(1) Interfere with, restrain or coerce Tribal Employees in the exercise of their rights set forth in this Law;

(2) Dominate or interfere with the formation, existence or administration of any labor organization;

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment because of the Tribal Employee's exercise of rights under this Law, including because a Tribal Employee has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or filed a claim or charges under this Law;

(4) Refuse to bargain collectively in good faith with a labor organization that has been designated in accordance with this Law as the exclusive representative of the Tribal Employees in an appropriate bargaining unit; and

(5) Refuse to comply with a collective bargaining agreement that has been entered into by the Tribal Employer and the exclusive representative.

b. A labor organization shall not:

(1) Interfere with, restrain or coerce any Tribal Employee in the exercise of any right set forth in this Law;

(2) Restrain or Coerce a Tribal Employer in the selection of its exclusive representative for purposes of collectively bargaining or the adjustment of grievances;

(3) Discriminate against a Tribal Employee with regard to labor organization; Membership, or because of race, color, religion, creed, age, sex, national original or membership in a Native American Tribe;

(4) Force or require a Tribal Employer to recognize or bargain with a particular labor organization as the representative of Tribal Employees if another labor organization has been certified as the exclusive representative of such Tribal Employees under the provisions of this Law;

(5) Refuse to bargain collectively in good faith with a Tribal Employer, if it has been designated as the exclusive representative of Tribal Employees in an appropriate bargaining unit under the provisions of this Law;

(6) Refuse or fail to comply with a collective bargaining or other agreement with the a Tribal Employer;

(7) Attempt to influence the outcome of a Tribal government election in any manner, provided, however, that this subsection does not apply to a Tribal Employee who is a Tribal Member acting in his or her individual capacity;

(8) Picket homes or private businesses of elected Tribal officials or Tribal employees;

(9) Breach a labor organization's duty of fair representation as provided in subsection 5(c) of this Law.

32 M.P.T.L. ch. 1 § 7

#### **§ 7. Dispute Resolution for Prohibited Practices Questions**

a. Filing a Claim. When a question arises as to whether a practice prohibited by this Law has been committed, a claim may be filed with the MERO Commission for a determination of whether the prohibited practice alleged has been or is being committed. The MERO Commission shall adopt procedures for the consideration of such claims and expedite such claims as it deems necessary.

b. Substitution of a Court Appointed Special Master. Until such time as the MERO Commission is appointed and the MERO is fully staffed, or if the MERO Commission is unable to hear and determine a claim filed pursuant to subsection (a), such claim shall be filed with the Tribal Court which shall appoint an impartial special master with substantial experience in labor relations and labor law to assume the responsibilities and duties of the MERO Commission to hear and determine the claim. The Tribal Court may adopt special procedures for these claims; otherwise the Mashantucket Rules of Civil Procedure shall apply and the case shall proceed before the special master and be considered in the same manner as any other civil matter. If a special master is appointed the decision of the special master shall be adopted by the Tribal Court and become a final decision of the Tribal Court, unless the Tribal Court determines that the decision is wholly without basis in law or fact.

c. Decision; Cease and Desist Orders. If, after all evidence is considered and arguments heard, the MERO Commission (or the special master as the case may be) determines that a prohibited practice has been or is being committed, it shall state its findings of fact and conclusions of law, and shall issue and serve on the party committing the prohibited practice an order requiring it or him/her to cease and desist from such prohibited practice, and shall take such further affirmative action as will effectuate the policies of this Law including, but not limited to: (1) Withdrawal of certification of a labor organization established or assisted by any action defined in this Law as a prohibited practice; (2) reinstatement of an employee discriminated against in violation of this Law, with or without back pay; (3) ordering relief that will make an individual whole; provided that nothing herein shall authorize awarding damages for emotional distress or pain and suffering.

d. Dismissal. If, after all evidence is considered and arguments heard, the MERO Commission (or the special master as the case may be) determines that a prohibited practice has not been or is not being committed, it shall state its finding of fact and conclusions of law and shall issue an order dismissing the complaint. If it is determined that the claim was frivolous and had no basis in fact and law, the MERO Commission may order the claimant to pay the costs and reasonable attorneys' fees of the other party.

e. Appeals. Any *final* decision of the MERO Commission (or the special master as the case may be) may be appealed to the Tribal Court.

f. Sovereign Immunity. The Tribe hereby waives its sovereign immunity from suit for claims brought under this section against a Tribal Employer before the MERO Commission and the Tribal Court. Nothing contained herein shall be construed as a waiver of the Tribe's sovereign immunity from suit in the state or federal courts or in any state or federal agency or any other forum or context.

32 M.P.T.L. ch. 1 § 8

#### **§ 8. Free Speech Provision**

The expressing of any views, argument, or opinion by a Tribal Employer or a

labor organization, or the dissemination thereof, whether in verbal, written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Law, if such expression contains no threat of reprisal or promise of benefit.

32 M.P.T.L. ch. 1 § 9

### **§ 9. Collective Bargaining**

a. Duty to Bargain Collectively. To bargain collectively is the performance of the mutual obligation of a Tribal Employer and the designated representative of the Tribal Employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, except for those matters excluded from collective bargaining as provided in this Law, or the negotiation of an agreement or any question arising there under, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession or to agree to a proposal that would contradict or violate tribal law.

b. Exceptions Concerning Tribal Gaming Regulatory Authority. Nothing contained in this Law shall in any way diminish the authority and power of the Mashantucket Pequot Tribal Gaming Commission or any other agency, commission or regulatory body established by the Tribe to regulate the conduct of gaming on the Reservation and safeguard the integrity of the gaming including the prevention of illegal activity or influences affecting the gaming on the Reservation. Further, nothing contained in this Law or this section shall require a Tribal Employer to bargain concerning gaming regulatory issues including but not limited to:

(1) the enforcement of all rules, whether in laws, rules, ordinances or procedures, with respect to the gaming operation and facility, and the power to conduct investigations and hearings with respect thereto;

(2) ensuring the physical safety of gaming operation patrons and employees, and any other person while in the gaming facility;

(3) the physical safeguarding of assets transported to, within, and from the gaming facility;

(4) the prevention of illegal activity from occurring within the gaming facility or with regard to the gaming operation, including, but not limited to the maintenance of employee procedures and surveillance systems;

(5) the recording of any and all occurrences within the gaming facility that deviate from normal operating policies and procedures, which includes maintenance of a closed circuit surveillance system;

(6) the establishment of employee procedures designed to permit detection of any irregularities, theft, cheating, fraud or the like, consistent with industry practice;

- (7) the conduct of audits of the gaming operation;
- (8) the specifications, standards and procedures for each game;
- (9) the maintenance of a cashier's cage; or
- (10) minimum employee and supervisor staffing requirements related to such regulation of gaming.

c. Union Security Clauses. Nothing contained in this Law shall require a Tribal Employer to bargain concerning any union security clause, such as union shop, agency shop, and dues check-off provisions. The obligation of a Tribal Employer to bargain collectively pursuant to this law shall not be construed as authorizing the Tribal Employer and a labor organization to bargain and enter into an agreement that would be or is in conflict with the provisions of any other Law of the Tribe, including but not limited to the Tribal Right to Work Law, codified in Title 28 M.P.T.L.

d. Indian and Tribal Preference. Pursuant to existing Tribal law and policy Tribal Employers are required to give preference in employment opportunities, including but not limited to hiring, transfers, promotions, layoffs, and retention to members of the Tribe and to members of other federally recognized Indian tribes. Nothing contained in this Law shall be construed to require or permit a Tribal Employer to bargain concerning the requirements imposed upon employers pursuant to Tribal law and policy regarding Indian and tribal preference, or shall in any way affect a Tribal Employer's obligation to follow tribal law, policies or custom and traditions regarding Indian preference in employment opportunities. In the event of a conflict between the Tribal law and policy regarding Indian and tribal preference and this Law, the Tribal law and policy on Indian and tribal preference shall govern.

e. Modification or Termination of Collective Bargaining Agreement. If there is in effect a collective-bargaining contract covering Tribal Employees, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) Serves a written notice upon the other party to the contract of the proposed termination or modification 60 days prior to the expiration date thereof, or in the event such contract contains no expiration date, 60 days prior to the time it is proposed to make such termination or modification;

(2) Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;  
and

(3) Complies with Section 11 of this Law prohibiting Strikes and Lock Outs.

32 M.P.T.L. ch. 1 § 10

**§ 10. Negotiations Timetable; Dispute and Impasse Resolution**

a. Negotiations Timetable. If either a Tribal Employer or a labor organization which has been designated as the exclusive bargaining representative for an appropriate bargaining unit under this Law desires negotiations with respect to an original or successor collective bargaining agreement, such party shall serve written notice of such desire upon the other party. For successor collective bargaining agreements, such notice must be served upon the other party no earlier than 120 days prior to the expiration of the existing collective bargaining agreement and no later than 60 days prior thereto. Negotiations shall commence within 30 days of such service, unless the parties mutually agree to a different date.

b. Mediation. Upon the joint request of the parties, at any time after negotiations have begun, the Chair of the Tribe's Peacemaker's Council shall designate a Mediation Panel, pursuant to Title 31 of M.P.T.L. to assist the parties in continuing the negotiations and reaching an agreement, or the parties may agree to the designation of a single mediator selected by agreement of the parties.

c. Impasse. If the parties to negotiations do not reach an agreement within 150 days after negotiations have begun, then either party may file a petition with the MERO Commission to resolve the impasse and all issues on which the parties cannot agree. Until such time as the MERO Commission is appointed and the MERO is staffed, or if the MERO Commission is unable to hear and determine a petition filed pursuant to this sub-section, such petition shall be filed with the Tribal Court which shall appoint an arbitrator to assume the responsibilities and duties of the MERO Commission and resolve the impasse and all issues on which the parties cannot agree. If the parties can agree on the selection of an arbitrator within 15 calendar days after a petition has been filed in the Tribal Court, the Court shall appoint that arbitrator. Otherwise, if the parties cannot agree to an arbitrator, the selection shall be made using the procedures under the voluntary labor arbitration rules of the American Arbitration Association.

(1) Both parties shall submit to the arbitrator, and to each other, a proposal setting forth its position on how each of the unresolved issues shall be resolved.

(2) The arbitrator shall convene a hearing to allow the parties to provide evidence and argument to the arbitrator. The parties shall have the right to submit written briefs to the arbitrator. The arbitration record is officially closed at the later of the close of the hearing, or the arbitrator's receipt of briefs.

(3) The arbitrator's authority is limited to selecting one party or the other's complete proposal and shall issue an award addressing each of the unresolved issues based on the complete proposal selected. The arbitrator shall issue an award within 45 days after the close of the record.

(4) The costs of the arbitrator and any fees associated with the arbitration proceeding shall be shared equally by the parties.

## **§ 11. Strikes and Lockouts prohibited**

Strikes of any kind and lockouts are strictly prohibited. A labor organization shall not cause, instigate, encourage or support a Tribal Employee strike. A Tribal Employer shall not cause, instigate or engage in a lockout of its employees.

32 M.P.T.L. ch. 1 § 12

## **§ 12. Elections; Labor Organization Designation as Exclusive Representative; Appropriateness of Bargaining Unit; Representational Rights**

a. Petition for Election. Any labor organization may file a petition with the MERO stating that thirty per cent or more of the Tribal employees in an appropriate bargaining unit, provided for under this Law, desire to be exclusively represented for the purposes of collective bargaining within the unit by the petitioning organization and request the designation of said organization as their exclusive representative. A petition filed hereunder must contain either the signatures of thirty per cent of the Tribal employees in the bargaining unit proposed, or be accompanied by the submission of authorization cards from at least thirty per cent of the Tribal employees in the bargaining unit. The petition must also describe the bargaining unit including a designation of each job category or position which the labor organization states should be included in the bargaining unit.

b. Receipt of Petition for Election. Upon receipt of such a petition the MERO Commission shall review the petition, verify the labor organization's showing of interest, certify that it is in compliance with this Law, review and decide any issues or objections raised concerning the petition or the appropriateness of the bargaining unit, and conduct a secret ballot election as provided herein.

c. Hearings. The MERO Commission shall have authority to convene a hearing for the purpose of addressing any and all issues relating to the petition. At the hearing, the parties shall have the opportunity to present evidence on any and all issues relating to the petition. The parties shall have the right to submit briefs to the MERO Commission. The parties may appeal any determinations of the MERO Commission to the Tribal Court and its decision shall be final as to such issues.

d. Secret Ballot Election. When all issues, if any, relating to the petition have been resolved, the MERO Commission shall conduct a secret ballot election if it determines that a valid petition has been filed. The ballot for the special election shall contain the name of any labor organization submitting a petition in compliance with subsection (a) of this section, and contain clear language providing the Tribal employees with a choice to either select the labor organization that filed the petition as the exclusive representative for the Tribal employees within the bargaining unit or to choose not to be represented by any labor organization.

e. Election Result and Appeal. If a majority (fifty percent plus one) of the Tribal employees in the proposed bargaining unit vote in favor of certification

of a labor organization, the special master shall certify the labor organization as the exclusive bargaining representative for the appropriate bargaining unit. If a labor organization does not receive a majority vote for certification, then the labor organization shall not be certified as the exclusive representative of the bargaining unit. If either the Tribal Employer or the labor organization has a good faith reason to believe that the election was not conducted in a fair and impartial manner or that fraud affected the outcome of the election, the Tribal Employer or labor organization may file such objections with the MERO Commission. The MERO Commission shall conduct such investigation as it deems appropriate to resolve such objections. Whether to hold an evidentiary hearing on such objections shall be within the discretion of the MERO Commission. Any determination of the MERO Commission on such objections to the election may be appealed to the Tribal Court and its decision shall be final on such issues.

f. Time Limitation. No election shall be directed or held in any bargaining unit within which an election has been conducted in the 12-month period immediately preceding the proposed representation election.

g. Determination of Appropriateness of Bargaining Unit. In determining the appropriateness of a bargaining unit, the MERO Commission shall take into consideration but shall not be limited to considering the following factors:

- (1) That an appropriate bargaining unit is based on occupational groups or groups of employees who share clear and identifiable communities of interest in employment terms and conditions and related personnel matters;
- (2) The effects of over-fragmentation;
- (3) Principles of efficient administration of the tribal government; and
- (4) Any history of collective bargaining for Tribal employees.

h. Guards or Other Security Personnel. A labor organization shall not be certified as the representative of employees in a bargaining unit of guards or other security personnel if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards or other security personnel.

i. Substitution of Court-Appointed Special Master. Until such time as the MERO Commission is appointed and the MERO is staffed, or if the MERO Commission is unable to hear and determine a petition for certification election filed pursuant to this Section 12, or a petition for decertification election filed pursuant to Section 13, such petition shall be filed with the Tribal Court which shall appoint a special master to assume the responsibilities and duties of the MERO Commission. The special master designated by the Court must be an individual who has substantial, current experience in labor relations and who can serve in an impartial manner to oversee the election, designation or denial of certification process. If either the labor organization filing the petition or the Tribal Employer has reason to believe that the special master appointed cannot serve in an impartial manner, either the Tribal Employer or the labor organization may file an objection with the Tribal Court within ten days of the Tribal Court's appointment of the special master. The Tribal Court shall rule



on any such objection after conducting a hearing at which both parties have an opportunity to be heard on the issues raised. The Tribal Court shall determine whether to replace the special master selected or maintain the appointment within 15 days of the close of the hearing on the objection.

32 M.P.T.L. ch. 1 § 13

### **§ 13. Decertification of exclusive representative**

a. A Tribal employee or the labor organization itself may initiate decertification of a labor organization as the exclusive representative if thirty percent of the Tribal employees in the bargaining unit make a written request to the MERO Commission for a decertification election. If such a request is filed, the MERO Commission shall conduct the decertification election in the same manner as a certification election is conducted pursuant to this Law. A union will be decertified as the exclusive representative of an appropriate bargaining unit if a majority (fifty percent plus one) of the Tribal employees in the bargaining unit vote for decertification.

b. When there is a collective bargaining agreement in effect, a request for a decertification election shall be made to the MERO Commission no earlier than 90 days and no later than 45 days before the expiration of the collective bargaining agreement or at any time after the agreement has expired; provided, however, that if the term of a collective bargaining agreement is more than three years, a request for decertification may be made at any time after the expiration of the third year.

32 M.P.T.L. ch. 1 § 14

### **§ 14. Registration of Labor Organization**

a. Requirement to Register. Every labor organization operating within the territorial jurisdiction of the Tribe shall file a report with the Office of Legal Counsel for the Tribe, on or before 60 days after enactment of this Title and thereafter on or before December 31 of each year. The report, which shall be filed by the president of the labor organization or another duly authorized officer of the labor organization, shall contain the following information:

- (1) The name and address of the labor organization;
- (2) The names and addresses of the president, secretary, treasurer, and business agent of the labor organization;
- (3) The name and address of the national and/or international organization, if any, with which the labor organization is affiliated;
- (4) A copy of the collective bargaining agreement(s) between the labor organization and any employer within the territorial jurisdiction of the Tribe;
- (5) A copy of the current Constitution and By-laws of the labor organization,

as well as any amendments, i.e., the basic written rules governing the organization; and

(6) A copy of the Labor Organization's Annual Report.

b. Submission of New Information. The president of the labor organization shall file with the Office of Legal Counsel for the Tribe a notice of any changes to the information required above within 30 days after the changes are made and provide any additional information requested by the Office of Legal Counsel.

c. Violations. It shall be a violation of this subsection for any labor organization or any person acting on behalf of any labor organization to fail to register or to make any false statements on any reports required to be filed pursuant to this Law.

32 M.P.T.L. ch. 1 § 15

#### **§ 15. Licensing of business agents**

a. No person shall act as a business agent of a labor organization within the territorial jurisdiction of the Tribe unless that person has received a license from the MERO.

(1) Any person who seeks such a license shall pay a license fee of \$25, submit a statement signed by the president and the secretary of the labor organization which establishes the individual's authority to act as a business agent for the organization, and agree to undergo a background investigation.

(2) No person shall be issued a license to act as a business agent within the territorial jurisdiction of the Tribe if that person has been convicted of a felony, has been convicted of a misdemeanor involving moral turpitude, is currently facing charges on a felony or on a misdemeanor involving moral turpitude or, based on the background investigation, is deemed by the MERO to be of questionable moral character.

(3) If at any time after issuance of the license the MERO receives reliable information that the licensee should be deprived of his or her license based on the factors stated above, then the MERO may suspend or revoke the license. The license shall run for the calendar year for which it is issued unless sooner surrendered, suspended, or revoked.

(4) All licenses shall expire at midnight on December 31 of each year but may be renewed by the MERO on a form prescribed by the MERO for that purpose and upon payment of an annual renewal fee of \$25. However, if any license has been surrendered, suspended or revoked during the year, then the applicant must go through the requirements set forth in subsection (a)(1) above.

(5) Any person denied a license or whose license is suspended shall have the right to a hearing before the MERO Commission to challenge such action and all rules and procedures established by the MERO Commission for hearings shall apply.

b. It shall be a violation of this Article for any person to:

(1) Act as a business agent for a labor organization without having obtained a valid license;

(2) To act as a business agent of any labor organization without the authority of the labor organization to do so;

(3) To make any false statement on any reports required to be filed pursuant to this Law;

(4) To make any false statement in an application for a business agent's license.

c. If the MERO Director, after investigation, determines that any person is in violation of this section of the Law, the Director may request that the MERO Commission impose penalties which may include an order of exclusion, or, if the violation affects the Tribe's gaming operation, a referral to the Mashantucket Pequot Tribal Gaming Commission for possible exclusion from the gaming facilities as may be allowed under Title 3, Section 5, of the Mashantucket Pequot Tribal Laws. Any person adversely affected by the imposition of penalties by the MERO Commission shall have the right to a hearing before the MERO Commission to challenge the imposition of any such penalty and all rules and procedures established by the MERO Commission for hearings shall apply.

d. Until such time as the MERO Commission is appointed and the MERO is staffed, the duties and obligations of the MERO under this Section shall be performed by the Mashantucket Pequot Tribal Gaming Commission.

### **TITLE 33. MASHANTUCKET PEQUOT TRIBAL AND NATIVE AMERICAN PREFERENCE LAW**

33 M.P.T.L. § 1

#### **§ 1. Title; Authority**

This title may be cited as the "Mashantucket Pequot Tribal and Native American Preference Law". This title is adopted pursuant to the inherent authority of the Mashantucket Pequot Tribal Council, the lawful governing body of the Mashantucket Pequot Tribe, to regulate labor and employment within the Reservation. Further, the Tribe has the inherent authority to exclude persons from the Reservation and to place conditions on entry and continued presence on the Reservation, and to govern conduct within the Reservation.

33 M.P.T.L. § 2

#### **§ 2. Findings**

The Mashantucket Pequot Tribe, through the Mashantucket Pequot Tribal Council

finds that:

a. It has an Indian Preference Policy that requires preference in employment decisions for Tribal Members and Native Americans. This policy is applicable to the Tribe, its arms, subdivisions, entities and organizations and does not contain an enforcement mechanism or an administrative process to ensure compliance.

b. There are an increasing number of non-tribal employers on the Reservation and there is a need to establish the requirements of Native American and Tribal preferences for all employers, as well as establish a process for enforcing the requirements of the law.

c. There continues to be a need and desire to promote individual and tribal economic development within the Mashantucket Pequot Tribal Nation, both through Employment Opportunities and through contracting opportunities. To further the Tribe's goal to provide opportunities for professional growth and economic empowerment of its Tribal Members and Native Americans, and in recognition of the importance of cultural and traditional beliefs of Native Americans and the need for this influence in the employment environment, the Tribe recognizes that it is important to provide individuals and employers with guidance on these issues, the administrative structure to regulate this area, and a forum to address any issues that may arise concerning compliance with this Law.

d. In order to foster and advance its culture, mission, and laws, it is important to support the preservation and development of tribal families including tribal member spouses. As part of its culture and community, the Tribe recognizes that a person who is not married to a tribal member but who qualifies as a significant other, as provided under tribal custom and practice, is part of the tribal family and treated the same as a tribal spouse. Providing preference in employment opportunities to tribal members and their spouses furthers the important goal of preserving tribal families by promoting the economic well being of the tribal family and assuring that all family members can share in the benefits and responsibilities of tribal employment.

33 M.P.T.L. § 3

### **§ 3. Purpose**

The purposes of this Law are:

a. To clearly set forth the requirements for all Employers within the jurisdiction of the Tribe to provide preference in Employment Opportunities for Tribal Members and Native Americans who meet the Minimum Necessary Qualifications of the job; and

b. To designate duties and obligations of the Mashantucket Employment Rights Office regarding the implementation of the various provisions and requirements of this Law, including the investigation and resolution of any claimed violations of the law, providing guidance to both individuals who may qualify for preference and Employers, and communicating the requirements of this Law to Employers and others.

**§ 4. Definitions**

a. "Employment Opportunities" means hiring, transfer, promotion, training, and retention including in any reorganization or layoff.

b. "Employer" means any Person that employs five or more employees who, during any thirty day period, each spend, cumulatively, 40 or more hours performing work on the Mashantucket Pequot Reservation. Employer shall include the Tribe and any agency, subdivision, arm, department, instrumentality, or entity thereof located or engaged in work on the Reservation. The term Employer excludes federal, state, local or other tribal governments.

c. "MERO Commission" or "Commission" means the MERO Commission established and defined in Title 31 M.P.T.L.

d. "MERO Director" or "Director" means the Director of MERO as established and defined in Title 31 M.P.T.L.

e. "MERO" or "Office" means the Mashantucket Employment Rights Office as established and defined in Title 31 M.P.T.L.

f. "Minimum Necessary Qualifications" shall mean those job-related qualifications that are essential to the performance of the basic responsibilities of each employment position, including any essential qualifications concerning education, training and job-related experience. Demonstrated ability to perform essential and basic responsibilities shall be deemed satisfaction of necessary qualifications.

g. "Native American" means an individual enrolled in and recognized as a member by his or her tribe or tribal community; provided that the tribe or tribal community is recognized by the Mashantucket Pequot Tribe (through a Mashantucket Pequot Tribal Council Resolution), the Federal Government, by a state in the United States, or as a First Nation in Canada.

h. "Person" means both natural persons and artificial persons, including, but not limited to, entities considered Employers hereunder, corporations, partnerships, joint ventures, limited liability companies, sole proprietorships, associations, unions, trusts, trustees, and agents.

i. "Reservation" means the Mashantucket Pequot Reservation as that term is defined in 25 U.S.C. § 1752(7) together with any lands held by the United States government in trust for the Tribe or any other area subject to the Tribe's jurisdiction.

j. "Spouse" shall mean a husband or wife joined in lawful marriage, or a significant other who is now and has been residing with a member of the Mashantucket Pequot Tribe for no less than three years and has been issued an identification badge as a tribal spouse by the Tribal Clerk's Office.

k. "Tribal Member" means a duly enrolled member of the Mashantucket Pequot Tribe who is in good standing.

l. "Tribe" means the Mashantucket (Western) Pequot Tribe also known as the Mashantucket Pequot Tribal Nation and includes any arm, department, agency, subdivision, enterprise or organization within or wholly owned by the Tribe. Tribe does not include any entity created under state laws that is owned by the Tribe and operates primarily outside of the Tribe's Reservation.

33 M.P.T.L. § 5

#### **§ 5. Preference in Employment**

a. Preference; Tribe as Employer. When the Tribe is the Employer, it shall give preference in Employment Opportunities first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans; provided that the Tribal Member, Spouse of Tribal Member or Native American, as the case may be, meets the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no candidate for an Employment Opportunity meets the Minimum Necessary Qualifications, then preference shall be given first to Tribal Members, then to Spouses of Tribal Members, and then to other Native Americans, who are capable of being trained to the Minimum Necessary Qualifications of the position. The requirement for giving preference provided in this subsection 5(a) also applies to the hiring of student interns throughout the year or for after school, weekend, or summer vacation employment.

b. Preference; Non-tribal Employers. For Employers other than the Tribe, preference in Employment Opportunities shall be given to individuals who are members of a federally recognized Indian tribe and who live on or near a reservation; provided that they meet the Minimum Necessary Qualifications. Thereafter, the Employment Opportunity shall be open to any other candidate who meets the Minimum Necessary Qualifications of the position. If no individual in the foregoing situations meet the Minimum Necessary Qualifications, then preference shall be given to a member of a federally recognized Indian tribe living on or near a reservation who is capable of being trained to the Minimum Necessary Qualifications of the position, if such an individual has applied for the position.

c. Posting Requirements. Employers are required to comply with all job posting requirements which may be mandated in any rules, regulations and/or guidelines promulgated by the MERO Director. All Employers shall include and specify a Native American employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. When the Tribe is the Employer it shall also include and specify a Tribal employment preference policy statement in all job announcements and advertisements and employer personnel policies affected by this Law. A copy of all such job announcements and advertisements and employer personnel policies shall be forwarded to the MERO as soon as available, but no later than publication date.

d. Exclusion; Key Employees. The preference in Employment Opportunities

required by and set forth in this Law shall not be applicable to personnel actions regarding any key employee. For the purposes of this Law, a "key employee" includes: (1) One who is an owner of the Employer; or (2) One who is in a high-level supervisory position or who performs a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unknown to the Employer. Within a deadline established by the MERO Director, Employers shall identify and submit a list of all key employee positions to the MERO Director. The MERO Director shall notify, in writing, the Employer of the approval or disapproval of said list within a reasonable time of its receipt.

e. Collective Bargaining Agreement. Every collective bargaining agreement covering employees on the Reservation must include the Native American preference and, if the Employer is the Tribe, the Tribal Member preference requirements of this Law. To the extent that any such agreement is in effect prior to enactment of this Law, such agreement shall include the preference requirements of this Law in the next renewal or extension of the agreement.

f. Reports. Each Employer shall submit to the MERO Director on or before September 30th of each year, a report on a form prescribed by the MERO stating the number of employees hired by the Employer during the previous year and whether such employees remain employed by the Employer at the time the report is submitted. Such report shall also indicate the number of Native Americans employed by job category, number hired, number terminated and length of employment. All Employers shall also submit to the MERO Director, in a timely manner, such information (including documentation) as the MERO Director requests to enable him or her to determine whether the Employer is in compliance with this Law and any rules and regulations promulgated pursuant to this Law. If a Person subject to the provisions of this Law fails to provide the requested information, the MERO Director may impose penalties as provided under Section 10 of this Law; provided that the MERO Director sends written notice to the affected Person detailing the penalties being imposed and the reasons for such penalties and notice that the affected Person has the right to request a hearing before the MERO Commission within 14 business days of the mailing of the notice by the MERO Director. If a hearing is requested, the procedures set forth in Section 9 of this Law shall apply.

33 M.P.T.L. § 6

## **§ 6. Application Skills Bank**

a. Establish Skills Bank. The MERO Director shall establish an application skills bank to assist Employers in placing Tribal Members and Native Americans in jobs on the Reservation. The MERO Director shall communicate with Tribal Members, and to the extent possible other Native Americans, to obtain a resume or application setting forth all necessary information in order to compile a list of Tribal Members and Native Americans who may be available for employment and the skills and qualifications of each individual.

b. Annual Update. The MERO Director shall update the skills bank on an annual basis including the determination of any additional Tribal Members or Native Americans who should be included in the skills bank and to update

qualifications of each individual in the skills bank.

33 M.P.T.L. § 7

**§ 7. Preference in Awarding Contracts (RESERVED)**

33 M.P.T.L. § 8

§ 8. Certification for Tribally Owned and Native American Owned Businesses (RESERVED)

33 M.P.T.L. § 9

**§ 9. Investigations; Complaint Procedures; Hearing**

a. Investigations. Upon a written claim filed by an interested Person, or as initiated by the MERO Director, the MERO Office shall investigate alleged non-compliance with this Law. All Persons subject to this Law have a duty to cooperate with any investigation conducted by the MERO Office under this Law. Failure to cooperate, as determined by the Commission, may subject a Person to the penalties provided in Section 10 of this Law.

b. Claim. A claim filed hereunder must be made in writing on a form prescribed by the MERO Office and must be filed within 180 days after the alleged noncompliance. The MERO Office may require additional information from the claimant, including a sworn statement, and must complete its investigation within a reasonable time after the claim is made, but in no event later than 90 days following the filing of the claim. The MERO Office shall notify the Person against which a claim is made and shall give such Person an opportunity to provide information concerning the alleged non-compliance. If after conducting the investigation, the Director determines that a violation of this Law has occurred, the Director shall notify the Person found to be in violation or to have violated the Law of the sanctions and/or remedy being imposed by the MERO Office to address the non-compliance, and provide the affected party with an opportunity to request a hearing before the Commission. If the affected party does not request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice, the proposed sanction and/or remedy shall be imposed. If the MERO Director, after investigation, determines that there is no violation of this Law, the Director shall send notice to all interested parties of its decision to dismiss the claim, and shall provide notice to the claimant of the right to request a hearing before the Commission within 14 business days after the date the MERO Office mails the notice of dismissal of the claim.

c. Mediation. After investigation, if all parties agree, any matter may be referred to the MERO mediation panel for resolution as provided under Title 31 M.P.T.L. If the mediation does not produce an agreement between the parties, then each party shall have 30 days after the close of the mediation to request a hearing before the MERO Commission. Upon receipt of a request, a hearing shall be scheduled and conducted as provided in this Law.



d. Commission Hearing.

1. Notice. Upon receipt by the MERO Office of a request for a hearing under subsection 9(b), the Commission, within 30 days after the request for a hearing is filed, shall set a date for a hearing and shall give written notice of the hearing, by certified mail return receipt requested, to all interested parties including the claimant, the party against whom the allegations have been made, and the MERO Director. At a minimum, the notice shall include:

- (a) the date, time and location of the hearing;
- (b) the nature of the hearing;
- (c) the right to be present and to participate in the hearing;
- (d) the right to present witnesses and documentary evidence and to cross examine witnesses;
- (e) the right to be represented by legal counsel at the party's own expense; and
- (f) provide the parties with any rules or regulations governing the hearing.

2. Subpoena. On its own initiative or upon request of any Person notified of the hearing, the Commission may subpoena identified witnesses, documents or records.

3. Hearing Procedures. Pursuant to Title 31 of the Mashantucket Pequot Tribal Laws, the Commission has the authority to adopt rules and/or regulations governing the conduct of its hearings. Any such rules or regulations adopted shall apply to hearings conducted under this Law; provided that they provide, at a minimum, for the following:

- (a) Each party notified of the hearing shall have the right to be present at and participate in the hearing. Other persons claiming to be interested in the matter may petition the Commission to participate;
- (b) Each party shall have the right to present relevant sworn testimony and documentary evidence with all relevancy determinations being made by the Commission;
- (c) Each party shall have the right to call witnesses and to cross examine witnesses called by any other hearing participant;
- (d) The chairperson of the Commission or another Commissioner designated by the chairperson shall preside over the hearing;
- (e) Compliance with formal rules of evidence is not required, provided that the Commission shall determine the facts in an orderly and reasonable manner;
- (f) All proceedings shall be recorded and a complete transcript shall be made and maintained by the Commission;

(g) The proceedings may be adjourned, postponed, or continued at the discretion of the Commission when it determines it is advisable or necessary; and

(h) Any matter to be proven must be done so to the satisfaction of the Commission by a preponderance of the evidence, unless otherwise provided in this Law.

4. Conflict of Interest. Pursuant to Section 2(e) of Title 31 M.P.T.L., if, at any hearing before the MERO Commission, the Commission determines that a Conflict of Interest, as that term is defined in Title 31, exists involving any individual Commissioner and a participant in the hearing, the Commission shall disqualify that individual Commissioner from participation in the hearing and an alternate Commissioner shall be appointed for the hearing.

5. Commission Decision. When the Commission has heard all evidence and arguments that it deems necessary to make a decision, it shall close the hearing. The Commission shall take the matter under advisement and issue a written decision no later than 30 days after closing the hearing; provided that, if the Commission requires a review of the hearing transcript in order to render its decision, the close of the hearing shall be deemed to be the date upon which the full transcript of the hearing is received by the Commission. At a minimum, the Commission's decision shall include findings of fact and of law; a detailed description of any order, penalty and/or remedy imposed, if any; and a statement of the right to appeal to the Mashantucket Pequot Tribal Court as provided in this Law.

33 M.P.T.L. § 10

#### **§ 10. Sanctions, Penalties, or Awards**

Any one or a combination of the following may be imposed by the MERO Director, after an investigation and if a party does not request a hearing, or by the Commission after a hearing, upon a determination that a Person has failed to comply with the requirements of this Law, or any rules or regulations promulgated hereunder:

1. An order for compensatory damages to the person affected which may include but not exceed one year of lost wages, which the affected person has a duty to mitigate. If however the affected person has already been awarded such damages under any other law, lost wages shall not be allowed under this Law.

2. If it is determined that a violation of this Law was intentional or due to gross negligence, an award of attorney's fees may be made; provided that no award for such may exceed one third of a lost wage award, if there is such an award, and such award must be substantiated by contemporaneous records of hours billed and the billing rate(s) charged which must be consistent with prevailing billing rates of attorneys practicing before the Tribal Court.

3. Reinstatement or hiring of the affected Person either into the position sought or into a comparable position provided that the Person meets the Minimum Necessary Qualifications for that comparable position;

4. Require employment, promotion, transfer, retention and/or training of the Tribal Member or Native American injured by the violation.

5. If it is determined that an Employer's noncompliance with this Law was intentional then a civil monetary fine not to exceed \$250 per violation may be assessed. Each day that an Employer has been determined to be out of compliance with the requirements of this Law may be considered a separate violation.

6. An order that the Employer implement such changes in policies, procedures and/or conduct as are deemed necessary for the purpose of securing compliance with any requirement of this Law.

33 M.P.T.L. § 11

**§ 11. Appeals to Tribal Court; Waiver of Sovereign Immunity From Suit**

a. Appeal. Any Person who is aggrieved by a final decision of the MERO Commission may appeal that decision to the Mashantucket Pequot Tribal Court; provided that any such appeal must be filed within 30 days after the Commission mails written notification of its final decision to the parties. Any party filing an appeal to the Tribal Court must send written notice of the appeal to the other parties to the Commission decision being appealed and to the MERO Director. The notice of appeal must include a copy of the Commission decision being appealed. The Tribal Court is hereby granted jurisdiction over any such appeal.

b. Waiver of Sovereign Immunity. To the extent that a claim filed in the MERO Office is against the Tribe or a hearing before the Commission concerns claimed violations of this Law against the Tribe, or an appeal to the Tribal Court concerns claims against the Tribe, the Tribe hereby expressly waives its sovereign immunity from suit for such claims and in such forums for the limited purpose of resolving the dispute as provided in this Law. Nothing herein shall be construed as a waiver of the sovereign immunity of the Tribe from suit in any other forum or for any other claim, including any claim in state or federal court or in any state or federal agency, or in any other forum or context.

c. Record; Procedure. In any appeal filed under this Section, the MERO Commission shall file with the Tribal Court a copy of the Record before the Commission including all evidence whether documentary or testimony, a full transcript of the hearing before the Commission, any decision of the MERO Director, and the MERO Commission's decision. The Record shall be filed with the Tribal Court within 30 days after the appeal is filed. The procedure governing appeals under Title 8 M.P.T.L. shall generally govern an appeal under this Law; provided that the Tribal Court may grant exceptions to such procedure as it deems necessary given the circumstances and differences between this Law and Title 8. The Tribal Court shall review the final decision of the Commission using an abuse of discretion standard of review. A final decision of the Tribal Court hereunder may be appealed to the Mashantucket Pequot Court of Appeals.

**§ 12. Confidentiality**

The MERO Director shall adopt rules and/or regulations to insure that confidential or sensitive information, including sensitive business information is kept confidential by the MERO Office and its employees, and other interested parties.

**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 with some person of suitable age and discretion then residing therein 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.

## **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.

M.P.R.C.P. 15

#### **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 pretried 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 pretried 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 within 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**

At any time more than 10 days before the trial begins, 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 and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. 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 12% 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 defendant's offer, the plaintiff shall pay the defendant's cost accruing 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.

M.P.R.C.P. 90

**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, \$75;

Application or Motion to Open or Modify Final Judgment, \$50;

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

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 per recording tape in addition to the actual costs of transcription;

Attesting copies, \$2;

Certification of any document, \$10 in addition to cost of copying;

Exemplifying copies, \$25;

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.

Notwithstanding 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.

M.P.R.C.P. 91

## **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.

M.P.R.C.P. 92

## **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.

**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.

**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, negating 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.

**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 clergy person 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) Nonexpert Opinion on Handwriting. Nonexpert 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 or 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 facie 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.

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. 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. Counsel for the appellant will be entitled to open and close the argument.

c. 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 \$100 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.

**Rule 13. 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.

**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.

M.P.L.C.C. § 2, Rule 6.2

**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 contendere 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.