

Mashpee Wampanoag court issues first ever decision

Making new law

By Brandon Gee

One of the world's newest judicial systems was presented with a challenging case that resulted in the first ever decision issued by the Mashpee Wampanoag Tribal Supreme Court.

The case forced a single judge of the Tribal Supreme Court — his two colleagues had conflicts that prevented them from sitting — to decide weighty policy and constitutional issues including sovereign immunity. Even then, Judge **Robert F. Mills**, a tribe member and partner at **Wynn & Wynn** on Cape Cod, had to get both sides to agree to allow him to hear the case since plaintiff-appellee Marie A. Stone is his cousin. Oral arguments were held in a double-wide trailer; a courtroom is under construction.

Stone, a member of the Mashpee Wampanoag Indian Tribal Council, sued her fellow council members after they suspended her for two weeks without pay. Among her claims were allegations that the council deprived her of due process and committed malfeasance.

The tribal council, represented by Boston lawyer **Kevin J. O'Connor** of **Hinckley Allen**, claimed sovereign immunity at the tribal trial court level, but lost a

motion to dismiss. That decision was appealed to the Tribal Supreme Court.

In reversing the lower court decision, Mills wrote that while he would have liked to review Stone's claim that she was denied due process, the tribe's constitution "provides that sovereign immunity can only be waived by express written agreement." And while the tribe's constitution provides for "prompt judicial review of an expulsion," that right does not extend to suspensions.

"This Court is not in the business of providing a forum for redress of grievances that it has no jurisdiction over," Mills wrote.

"That is a matter left up to the legislative branch of the Tribal government. The Court is mindful that Plaintiff-Appellee is left without a forum to redress her grievances."

Mills tells Lawyers Weekly that he hopes tribal leaders will pick up on his hint.

"It was a long, painstaking decision," Mills says. "I think in the decision I made clear that the tribe needs to set up a process so people can vindicate an alleged violation of their constitutional rights [by the sovereign]."



Kevin J. O'Connor
Hinckley Allen

There's no ordinance to provide for that, so I had to find that the tribe was immune from the suit."

After the trial court decision, O'Connor says, the tribe was "rightfully concerned that anyone with a grievance will be able to sue the ... tribe, so long as they can dress their claim up as a constitutional claim."

"The other thing that's important here is that the decision does not in any way prevent the tribe from waiving sovereign immunity in a

given circumstance or passing legislation that might allow certain claims but not others," he says.

O'Connor, who has represented the tribe in previous matters, says it's "pretty cool to see them develop their body of constitutional law. ... All the things you take for granted as a practicing lawyer in an existing system, you have to revisit with a fresh eye."

The tribe's rules of civil procedure were developed with assistance from Suffolk University Law School, which also is in the process of helping the tribal court develop rules of evidence and appellate procedure.

"It's exciting," Mills says. "We get to participate in creating those and to make them more user friendly than federal and state rules."



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