



## Historic ruling for Mashpee Wampanoag tribal court

By **George Brennan**

gbrennan@capecodonline.com

September 09, 2013 2:00 AM

MASHPEE — There are no Corinthian-style columns, no Georgia marble facades and no wood-carved furnishings.

But the Mashpee Wampanoag Tribe does have a Supreme Court that meets in a double-wide trailer at tribal council headquarters and recently issued its first ruling in the history of the tribe's fledgling justice system.

Since gaining federal recognition in 2007, the Mashpee tribe has created its own government, approved a constitution, passed laws and created a court system.

The Supreme Court decision overturned a lower court ruling that allowed tribal council member Marie Stone to sue her fellow councilors after she was suspended from the council for two weeks without pay. Stone claimed she was not provided due process and there was malfeasance on the part of the councilors.

Judge Robert Mills, who is an attorney for Wynn & Wynn, heard and ruled on the case. Though the tribe has three Supreme Court justices, two of them removed themselves from the case — one because he made the lower court ruling and the other because she had made a ruling in a similar case that conflicted with the court's decision in Stone's case.

Even Mills had a potential conflict — he is a cousin of Stone's — but both sides were willing to overlook that so the case could proceed. "I was able to put it aside," he said. "I guess she had enough faith in me that I would be fair."

Following case law and the tribe's own constitution, Mills said he was unable to allow the suit to proceed because there is nothing in the tribe's constitution that allows the council to waive sovereign immunity to protect the rights of tribe members in such cases.

"With absence of any ordinance giving an employee a right to bring a grievance action to the court, the tribe is immune," he said.

It was a difficult but fair ruling based on case law, Mills said.

"The court is not in the business of providing a forum for redress of grievances that it has no jurisdiction over," Mills wrote in his official decision, according to Massachusetts Lawyers Weekly. "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 said he's hopeful the tribal council will correct that. "These rights need to be protected," he said.

Both sides had lawyers who had to join the tribe's bar, Mills said. An attorney must have some knowledge of the tribe's constitution, its ordinances and federal Indian law to be admitted to the bar, he said.

As for the setting, Mills said inside the double-wide trailer looks like other courtrooms on the Cape. When the tribe's new government building opens on Great Neck Road South, it will include a courtroom, he said.

Though he had hoped all three justices would be able to hear and rule on the first case, Mills said it was an honor to be a part of history. "It's a little exhilarating, I guess," he said. "If I catch a 28-pound (fish) tomorrow, I'll be a little more exhilarated."

**Copyright © Cape Cod Media Group, a division of Ottaway Newspapers, Inc. All Rights Reserved.**