

Walking on Common Ground – The Steps Taken to Judicial Collaboration

Hon. Robert Collins

Introduction

- When disputes concerning overlapping state court and tribal court jurisdiction occur, the courts need to determine which court has jurisdiction to proceed.
 - Increasing interaction between tribal members and non-members.
- When civil disputes arise, one of the first questions that must be answered is which court has jurisdiction to resolve the matter.
- If the state court and tribal court both have jurisdiction, which court should proceed?

Procedural History of Teague

- Jerry Teague, who was not a member of the Bad River Band of the Lake Superior Tribe of Chippewa Indians, was employed as general manager of the casino.
 - Employment contracts in 1993 and 1995.
- After his termination, he filed a complaint in Ashland County Circuit Court.
 - Sought to compel arbitration.

- More than a year after Teague filed his complaint, the Bad River Band filed its own suit in tribal court.
 - Sought a declaration on the validity of the contracts.
- The Band asked the state court to stay its proceedings until the tribal court ruled on the tribal law challenges to the contracts and all tribal remedies were exhausted.
 - State court declined to stay its proceedings.
- Teague neither responded to the tribal court complaint nor sought a stay of the tribal court proceeding.
 - The Band's tribal court motion for default judgment was ultimately granted (contracts deemed invalid as neither tribal council nor the BIA had approved the documents).
 - The Band sought full faith and credit in the state court for the tribal court judgment.
 - The state court denied the motion.

- A jury found Teague's employment contracts valid and an arbitrator awarded him more than \$390,000 in damages.
 - The Band appealed (state court should have given full faith and credit to the tribal court judgment).
- The court of appeals, in Teague I, reversed the circuit court.
 - The "prior action pending" rule did not render the tribal court judgment invalid.
- On review, the supreme court, in Teague II, reversed the court of appeals and ordered the circuit court to hold a jurisdictional allocation conference with the tribal court.
- Principles of comity required that the state and tribal courts confer and allocate jurisdiction between themselves, in order to avoid a race to judgment and the inconsistent results that may occur.
 - Wisconsin Supreme Court has no jurisdiction over tribal courts within the state and vice versa.
 - State court was ordered to invite the tribal court to a meeting.
 - Judges to decide which court should proceed to exercise its jurisdiction ("Teague Conference").

Jurisdictional Allocation Conference

- In general, comity is a doctrine of respect for the proceedings of another system of government and reflects a spirit of cooperation.
- Comity recognizes the sovereignty and sovereign interests of each governmental system and its unique features.
- The exercise of comity is discretionary.

Jurisdictional Allocation Protocols

- Ninth and Tenth Judicial Districts developed a state/tribal protocol governing the exercise of jurisdiction by Wisconsin state courts and tribal courts within the district.
 - The Tenth Judicial District's protocol is believed to be the first of its kind in the nation.
- The protocols do not apply to other tribal and circuit courts located outside of those districts.

- The Ninth Judicial District Protocol, which is based on the most recent *Teague* decision (2003), includes the following factors:
 - Where the action was first filed and the extent to which the case has proceeded in the first court.
 - The parties' and courts' expenditures of time and resources in each court and the extent to which the parties have complied with any applicable provisions of either court's scheduling order.
 - The relative burdens on the parties, including cost, access to and admissibility of evidence and matters of process, practice, and procedure, including whether the action will be decided most expeditiously in tribal or state court.
 - Whether the nature of the action implicates tribal sovereignty, including but not limited to the following:
 - The subject matter of the litigation.
 - The identities and potential immunities of the parties.
 - Whether the issues in the case require application and interpretation of a tribe's law or state law.

- Whether the case involves traditional or cultural matters of the tribe.
- Whether the location of material events giving rise to the litigation is on tribal or state land.
- The relative institutional or administrative interests of each court.
- The tribal membership status of the parties.
- The parties' choice by contract, if any, of a forum in the event of dispute.
- The parties' choice by contract, if any, of the law to be applied in the event of a dispute.
- Whether each court has jurisdiction over the dispute and the parties and has determined its own jurisdiction.
- Whether either jurisdiction has entered a final judgment that conflicts with another judgment that is entitled to recognition.

- To prevent a deadlock, the protocol provides for a mechanism to select a third judge drawn from a standing pool of four circuit court and four tribal court judges.
 - Third judge sits with the two judges and conducts a hearing de novo, at the close of which the judges deliberate and allocate jurisdiction on the basis of the factors.
- When disputes arise concerning overlapping state court and tribal court jurisdiction, the parties should convene a Teague Conference.
 - Examples:
 - Divorces where one party is a tribal member.
 - Employment disputes where one party is the tribe.
 - Commercial suits where one party is the tribe.