

Hearsay

Island justice

A Boston law firm that's making a name for itself representing members of the judiciary has obtained what appears to be final vindication for an aggrieved Virgin Islands judge.

In 2007, Todd & Weld lawyers **Julie E. Green** and **Howard Cooper** were asked to pack their briefcases and head for St. Croix to defend Superior Court Judge **Leon Kendall**.

Cooper and his firm are no strangers to such requests, having been called on in recent years to represent several Massachusetts judges, most notably Superior Court Judge **Ernest B. Murphy** in his libel suit against the Boston Herald.

The Boston lawyers were dispatched to St. Croix to defend Kendall against efforts to remove him from the bench over what was described by judicial watchdog groups as a pattern of leniency in bail and sentencing decisions.

In a case similar to the high-profile brouhaha that put Massachusetts Superior Court Judge **Kathe M. Tuttmann** in the spotlight in 2007, calls for Kendall's resignation came after he released a defendant on bail who was later accused of killing a child. When the case was scooped up by the media, several watchdog groups demanded the judge's ouster. In response, the Virgin Islands' judicial conduct commission initiated steps to have Kendall yanked from the judiciary.

Arguing that the commission violated well-established separation-of-powers principles, Green says, they filed suit in



COOPER



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federal court in St. Thomas.

"This issue has never been raised in the Virgin Islands," she says. "In fact, the commission has existed for 30 years without anyone ever questioning the basis for its authority."

As part of their constitutional claim, Cooper and Green argued that the commission consisted entirely of legislative and executive appointees and therefore did not have the authority to act as it did.

"You essentially had one branch of government sitting in review of a member of a different branch of government," Green says. "Our argument was that the separation of powers requires that judicial discipline be reserved to the judicial branch unless the constitution of the territory provides otherwise, which it does not in the Virgin Islands."

While the issue was one of first impression on St. Croix, Green says she relied in part on precedent rooted in New England. New Hampshire had a similar legislatively created judicial conduct commission, "which the New Hampshire Supreme Court struck down on identical separation-of-powers grounds. The same principles were at play here."

After convincing U.S. District Court Judge **Curtis V. Gomez** in a 2007 jury-waived trial that their position was correct, the lawyers obtained a permanent injunction.

But then the commission appealed to the 3rd U.S. Circuit of Appeals.

The good news for Green, who argued the appeal, is that while the 3rd Circuit is based out of Philadelphia, oral arguments were scheduled in the Virgin Islands. Adding to her good fortune, the court scheduled her return trip for December.

"The trial was also in December, so going back a second time in the middle of winter certainly wasn't bad timing," she says.

In affirming the trial judge's decision, the 3rd Circuit ruling was an important one for judges, Green points out.

"This case was about vindicating the principle that judges should be free to make decisions on the basis of the law and the facts presented to them without fear of political reprisal if their decisions proved to be controversial or unpopular among politically elected members of a commission," she says. "We played an important role in protecting the independence of the judiciary, and that feels good."

While the battle against the commission appears to be done with, Cooper and Green are still involved in a libel suit the judge filed against The Daily News, the Virgin Islands' main newspaper, and two of its reporters.

With discovery recently completed, a 2010 return trip is likely in the cards. Hopefully sometime in December.