



## **Kaighn Smith, Jr.** **Attorney**

**Phone:** 207.253.0559

**Fax:** 207.772.3627

**Email:** ksmith@dwmlaw.com

84 Marginal Way, Suite 600  
Portland, ME 04101-2480

**Assistant:** Jennifer Leonard **Email:** jleonard@dwmlaw.com

## **Bio**

***Kaighn “has an outstanding reputation. He is a nationally prominent practitioner in [the field of Native American law].”  
Chambers USA***

Kaighn Smith Jr. has been fighting for Tribal Nations and their enterprises in the tribal, federal, and state courts and before federal administrative agencies across the country for over 30 years. He has garnered a national reputation for his committed advocacy for tribal sovereignty, winning cases in a wide range of areas, including jurisdiction disputes, gaming matters, labor and employment relations, and land-in-trust and environmental matters. He regularly teaches federal Indian law as an adjunct professor, publishes articles in peer-reviewed law journals, and speaks at national conferences.

Kaighn’s recent cases include representing the National Congress of American Indians and ten other inter-tribal organizations before the Supreme Court as *amici curiae* in *Yellin v. Confederated Tribes of the Chehalis Reservation*, to fight for the allocation of COVID-19 relief funds to tribal governments. He represented the Penobscot Nation for 12 years in protracted federal court litigation over the Nation’s reservation hunting and fishing rights in the Penobscot River.

Kaighn is particularly well-known for his advocacy of tribal sovereignty in the area of labor and employment regulation. He is the author of the leading treatise, *Labor and Employment Law in Indian Country* (2022), jointly published with the Native American Rights Fund, the new edition of which has just been released.

## **Practice Areas**

Employment & Labor  
Environmental & Natural  
Resources  
Litigation  
Appellate  
Business & Commercial  
Litigation  
Tribal Nations Law  
Federal Indian Law  
Tribal Nations Labor &  
Employment

## **Admissions**

Keweenaw Bay Indian  
Community Tribal Court  
Little River Band of Ottawa  
Indians Tribal Court  
Mohegan Tribe Gaming  
Disputes Court  
Passamaquoddy Tribal Court  
Penobscot Nation Tribal Court  
Pokagon Band of Potawatomi  
Indians Tribal Court  
Pueblo of Laguna Tribal Court  
Pueblo of Zia Tribal Court  
Shoshone and Arapahoe Tribal  
Court  
Snoqualmie Tribal Court  
Suquamish Tribal Court  
U.S. Supreme Court  
U.S. Court of Appeals for the  
District of Columbia Circuit

Kaighn is listed in national independent peer-based attorney guides, including *Best Lawyers in America* and *Super Lawyers. Chambers USA* has awarded Kaighn its highest national ranking for his Native American Law practice, listing him among the top practitioners (Band 1) in the United States.

Kaighn is an elected member of the American Law Institute, and from 2012 to 2021 served as Associate Reporter (with Professors Matthew Fletcher and Wenona Singel) in drafting the ALI's recently approved *Restatement of the Law of American Indians*.

In 2021, Cornell Law School awarded Kaighn its Distinguished Practitioner in Residence Fellowship. While at Cornell, he designed and taught *The Law and Colonization in Indian Country* and supervised students on research and conference programming on Indigenous nations and climate change.

## Education

University of Maine School of Law, J.D., 1986

University of Sussex, M. Phil., *with honors*, 1983

University of California Berkeley, B.S., *phi beta kappa*, 1979

## Judicial Clerkships

Hon. Frank M. Coffin, U.S. Court of Appeals for the First Circuit

Hon. Louis Scolnik, Maine Supreme Judicial Court

## Representative Clients & Matters

- *Yellin v. Confederated Tribes of the Chehalis Reservation*, 141 S. Ct. 2434 (2021) (whether Alaska Native Corporations entitled to CARES Act Funds targeted for tribal governments; representing the National Congress of American Indians and ten other inter-tribal organizations)
- *Penobscot Nation and United States v. Maine Attorney General, et als*, 3 F.4th 484 (1st Cir. 2021) (hunting and fishing rights; reservation boundaries)
- *Moyant v. Petit*, 2021 ME 13, 247 A.3d 326 (securing exclusive tribal court jurisdiction over contract and tort claims)
- *Rassi v. Federal Program Integrators*, 69 F.Supp.3d 288 (D. Me. 2014) (securing tribal court exhaustion)
- *Francis v. Dana-Cummings*, 962 A.2d 944 (Me. 2008) (securing exclusive tribal court jurisdiction over tort claims)
- *Taxpayers of Michigan Against Casinos v. State of Michigan*, 732 N.W.2d 487 (Mich. 2007) (securing compact validity)

- *TOMAC v. Norton*, 433 F.3d 852 (D.C. Cir. 2006) (securing land into trust)
- *Inyo County, California, et al. v. Paiute-Shoshone Indians of the Bishop Community*, 538 U.S. 701 (2003) (amicus brief team)
- *Penobscot Nation v. Fellenner*, 164 F.3d 706 (1st Cir. 1999), cert. denied, 527 U.S. 1022 (1999) (securing exclusive tribal jurisdiction over civil rights dispute; freedom from application of state law)
- *Akins v. Penobscot Nation*, 130 F.3d 482 (1st Cir. 1997) (securing exclusive tribal jurisdiction over civil rights dispute; freedom from application of federal and state law)

## Recognition

Best Lawyers USA, Native American Law 2008-2024

New England Super Lawyers, Native American Law, Employment & Labor 2011-2022

Chambers USA, Nationwide, Native American Law

Martindale Hubbell, BV Distinguished

## Publications

### Books

*Labor and Employment Law in Indian Country* (Native American Rights Fund 2022)

### Articles

*When Congress Forgets: Breaking Through Congress's Failure to Mention Indian Tribes in Federal Employment Laws*, *The Federal Lawyer* (2021)

*Nuances and Challenges of Protecting Tribal Sovereignty, in Inside the Minds: Best Practices for Protecting Natural Resources on Tribal Lands*, Aspatores Books, Thompson Reuters (2016)

*The Next Century of Federal Indian Law: A Moderator's Perspective*, *The Federal Lawyer* (April 2011)

*Tribal Self-Determination and Judicial Restraint: The Problem of Labor and Employment Relations within the Reservation*, *Michigan State Law Review* (2008)

Ethical Obligations and Affirmative Tribal Sovereignty: Some Considerations for Tribal Attorneys, in 31st Annual Federal Bar Association Indian Law Conference – Active Sovereignty in the 21st Century Course Materials (2006)

*Federal Courts, State Power, and Indian Tribes: Confronting the Well Pledged Complaint Rule*, New Mexico Law Review (2005)

*Fighting for a Federal Forum in Indian Sovereignty Cases*, The Federal Lawyer (2002)

## **Memberships**

American Law Institute, 2007-present

Maine Bar Foundation, 2005-present

Maine Bar Journal

*Editorial Advisory Committee, 1989-2001/ Chief Editor, 1999-2001*

Edward T. Ginoux Inns of Court

*Senior Attorney, 1999-2001*

Maine State Bar Association

## **Community/Public Service**

University of Michigan School of Law, Legal Issues in Tribal Economic Development

*Adjunct Professor*

Cornell School of Law, The Law and Colonization in Indian Country

*Distinguished Practitioner in Residence Fellow*

University of Maine School of Law, American Indian Law

*Adjunct Professor*

National Ski Patrol, Sugarloaf Mountain; Stub Taylor, Pat Murphy Award (2008)

*Alpine Patroller (1998-2010)*

Portland Public Library Board of Trustees

*Member (2003-2010)*

Portland Public Library Executive Director Search Committee

*Chair (2005)*