

IN THE CHOCTAW SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

FILED

JUL 10 2017

CHOCTAW SUPREME COURT
BY: *[Signature]*
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STELLA YORK WILLIS,
Petitioner,

vs.

Cause No. SC 2017-07

TRIBAL ELECTION COMMITTEE.
Respondent

PROCEEDINGS BELOW

This matter is before the Court on a direct appeal filed pursuant to CTC § 33-10-3 by Petitioner Stella York Willis. Petitioner incumbent Willis and eight (8) other losing candidates in the Pearl River Tribal Council Election that was held on June 13, 2017, had originally timely filed on June 16, 2017, an initial complaint per § 33-10-2(1) before the Tribal Election Commission (“TEC”). Their initial complaint charged that a certain number of irregularities took place in relation to the manner in which that election process was carried out. Consequently, they maintained, the election results should be set aside and a new election called.

One of the two winning candidates in the Pearl River Tribal Council Election, Deborah P. Martin, filed a June 22, 2017, written response to Complainants’ allegations; she also pointed out a number of procedural deficiencies to the nine losing candidates’ complaint itself. Candidate Martin requested that the Tribal Election Commission dismiss the June 16, 2017, complaint.

On June 19, 2017, the same date as Candidate Martin’s response filing, Complainant Willis filed a supplementary amendment to the original complaint in the form of a “Statement of Service” to all the other candidates. The supplementing amendment was filed three (3) business days after the filing deadline requirements of CTC § 33-10-2(1). It was also signed unilaterally by Candidate Willis and not by any of the other eight (8) signatory losing candidates. The TEC found the supplementing amendment to be both legally ineffective and untimely. Consequently, the TEC did not consider Willis’ filing of the “Statement of Service” on June 19, 2017, as part of or as supplementing the original complaint.

In its June 23, 2017, ten-page *Decision on Pearl River Tribal Council Election Complaint*, the TEC found that the application of identified election code requirements to the June 16, 2017, complaint filing made clear that their complaint must be dismissed or denied for failure to comply with multiple express code requirements for election complaints. The TEC decision then went on to address the specific allegations of the complaint point-by-point to conclude that none

of their claims were valid. They dismissed the complaint and reaffirmed the Pearl River Tribal Council election.

On June 30, 2017, Petitioner Stella York Willis filed her appeal before this Court under the provisions of CTC § 33-10-1 *et. seq.* An Answer to Appeal Petition was filed by the Respondent TEC through counsel on July 3, 2017. Respondent requests summary dismissal of the appeal under § 33-10-6(3)(A), on the grounds that Petitioner has “fail[ed] to comply with Chapter” (Chapter 10 of the Election Code) for the reasons set out in the TEC Decision. Alternatively, Respondent asked for an expedited hearing. Neither this Court nor either party requested oral arguments under CTC § 33-10-6(3)(A) on Respondent’s request for dismissal for failure to comply with this Chapter. Based on our review and analysis set forth below, we do find based on the record before us that Respondent’s initial request for summary dismissal of the appeal under § 33-10-6(3)(A) is well-taken and grant same.

SCOPE AND STANDARD OF REVIEW

Scope of Review: The Judicial Review Procedures are to be found at § 33-10-6. Under subsection (2) upon the filing of an appeal petition, the TEC shall file an answer to the appeal petition(s) within five (5) business days of service of the appeal petition. Furthermore, “[t]he Tribal Election Committee shall also compile and file with the Supreme Court and serve on the Petitioner any documents and other evidence that was before the Tribal Election Committee when its decision was made, together with any submissions to, and the decisions of, the Tribal Election Committee regarding the election complaint at issue. **This submission shall constitute the record on appeal.**” (Emphasis added.)

The TEC assembled and filed a full compilation of all the materials specified above, together with its answer on July 3, 2017. The Court is satisfied all requisite submissions were before it upon which to now base its review and decision.

Standard of Review: Found at CTC § 33-10-6(5): “The standard of review of the Tribal Election Committee’s decision is clear and convincing evidence based on the same evidence that was before the Tribal Election Committee when its decision was made as shown by the record.” Furthermore, as mandated by CTC § 33-10-6(6), “The Supreme Court shall not overturn the decision of the Tribal Election Committee unless it is shown by clear and convincing evidence that the Petitioner is clearly entitled to the relief requested because the Tribal Election Committee decision was:

- (A) arbitrary and capricious;
- (B) was an abuse of discretion;
- (C) was not supported by the evidence of record;
- (D) or was contrary to Choctaw law.”

Range of relief: CTC § 33-10-6(7) limits the range of decisional actions available to the Court:

The final decision shall specify one of the following:

- (A) To affirm the decision of the Tribal Election Committee; or
- (B) To reverse the decision of the Tribal Election Committee.

The Supreme Court may also issue the appropriate order(s) necessary to carry out its final decision.

Within those parameters set forth above, the Court next turns to its review of Petitioner Willis' appeal to the Supreme Court. The Court finds that the TEC's summary dismissal of Respondent's CTC § 33-10-2 complaint was warranted at this threshold stage of review.¹

In the appeal, pro se Petitioner Willis requests "a thorough investigation of my complaint. . . . [and that] [t]his complaint is not about the number of vote[s] but the procedural violation which could constituted [sic] a question of principles on behalf of the TEC and the validity of the correctness of the result." The role of the Supreme Court in regard to hearing appeals of TEC decisions in election disputes is narrowly defined in § 33-10-6 as shown above. Under § 33-10-6(5), the Supreme Court is limited to reviewing only the evidence that was before the Tribal Election Committee when it made the decision being appealed. Further, § 33-10-6(6) defines the circumstances under which the Supreme Court can overturn a decision by the TEC. There is no legal authority for the Supreme Court to investigate anew complaints about TEC conduct.

Petitioner Willis also expressly states in her appeal a challenge to the decision of the TEC to not consider the amendment that she filed on June 19, 2017, in an effort to remedy some of the defects in the original complaint filed on June 16, 2017. Petitioner argues that the code does not prohibit amendments to complaints filed with the TEC. Further, Petitioner states that one of the claims of procedural violation by the Commission happened during the counting of votes on the day after the election.

In its response, the TEC requested summary disposition of Petitioner Willis' appeal and affirmation of the TEC decision below due to Petitioner's failure to comply with Chapter 10 of the Election Code in both the original complaint to the TEC and in the filing of the appeal with the Supreme Court.

FAILURE TO COMPLY WITH ELECTION CODE

A thorough review of Chapter 10 reveals numerous procedural requirements for election appeals to either the TEC or the Supreme Court, however the effect of the absence of those "requirements" in an appeal are not uniform in the election code. For purposes of this appeal and the request by the TEC for summary dismissal for non-compliance with Chapter 10, the Court

¹ Given that eight (8) other unsuccessful election candidates also ostensibly signed only Petitioner Willis' challenge, summary dismissal should have also been in order in regards to them as well. Since none of those other eight went further to seek this Court's review, that point has now in any case been rendered moot.

need only review the record in regard to those sections of Chapter 10 that allow or require summary dismissal for action or inaction on behalf of Petitioner/complainants.

Section 33-10-4 provides the requirements for an appeal petition to the Supreme Court, and § 33-10-4(2)² lists the specific information that is required to be included in the Statement of Reasons as to why the TEC decision should be overturned. Petitioner identified the code sections alleged to be violated: § 33-8-15, § 33-1-3, and § 33-8-9. Petitioner also identified incorrectly the requirement found in § 33-10-4(2)(B)(i) (The election in which the Complainant was a candidate) with the statement that she was “a candidate in the June 6, 2017 election.” (June 30, 2017, Appeal complaint, p. 2). Further, Petitioner Willis failed to include for each alleged code violation the following required information listed in § 33-10-4(2)(B) concerning the “statement of facts alleged to evidence violations which the Petitioner contends warrant voiding the election.”

In regard to alleged violation of “Absentee Ballot Tainted; Tribal Code 33-8-15,” Petitioner did not provide any facts to support alleged violations but only made the conclusory statements that “it was announced how many absentee ballots were in the box and the number per communities.

² Any appeal petition must be sworn and notarized and must include a copy of the decision by the Tribal Election Committee and Statement of Reasons setting out the factual and legal basis for why the Tribal Election Committee decision should be overturned. Such Statement of Reasons shall include the following information:

- (A) Petitioner’s name, address, telephone number and email address (if any);
- (B) Statement of the facts alleged to evidence violations which the Petitioner contends warrant voiding the election and shall provide with specificity:
 - (i) The election in which the Complainant was a candidate;
 - (ii) Code provision(s) that were violated;
 - (iii) Identity of the individual(s) involved in the alleged violation(s);
 - (iv) Date and time of the alleged violation(s);
 - (v) Location of the alleged violation(s);
 - (vi) Estimated number of votes affected by the alleged violation(s), and;
 - (vii) Name and telephone number of any witnesses to the alleged violation(s).

This is in violation of the Tribal Code Section 33-8-15. There is no way it could be determined what communities had absentee or not unless the outer envelope was opened." Additionally, Petitioner did not provide the following specific information required under § 33-10-4(2)(B): (iii) Identity of the individual(s) involved in the alleged violation(s); (iv) Date and time of the alleged violation(s); (v) Location of the alleged violation(s); (vi) Estimated number of votes affected by the alleged violation(s), and; (vii) Name and telephone number of any witnesses to the alleged violation(s).

In regard to alleged violations of the "Polling Place: 33-1-3," and § 33-8-9 Petitioner did not include all the specific information required under § 33-10-4(2)(B) Statement of Facts: (iii) Identity of the individual(s) involved in the alleged violation(s); (iv) Date and time of the alleged violation(s); (vi) Estimated number of votes affected by the alleged violation(s), and; (vii) Name and telephone number of any witnesses to the alleged violation(s).

Although Petitioner's appeal complaint failed to include the above listed requirements, § 33-10-4(4) states that any requirements listed in § 33-10-4 that are not included in the appeal complaint merely "subject[s] [the appeal] to dismissal by the Supreme Court, on its own motion or on motion of any party" – dismissal of appeal is not required.

Therefore, this Court may dismiss Petitioner's appeal upon the request of the Respondent TEC, but before granting TEC's request we will continue the review of the record for procedural deficiencies of the June 16, 2017, complaint that was before the TEC.

Section 33-10-2 spells out the requirements and timelines for a candidate to file a complaint to challenge an election result as well as actions required, if any, to be taken by the TEC. Under § 33-10-2(1) three days are allowed from the date of the election being challenged for a candidate to file a complaint. The June 16, 2017, complaint filed by nine candidates, including petitioner, was timely filed within the 3-day time period of the June 13, 2017, election. Petitioner alleges in her appeal and is correct that § 33-10-2 is silent on whether or not an amendment to the complaint is allowed. However, the Court does note that § 33-10-2(1) expressly states that any complaint filed after the 3-day time period from the challenged election "will forever bar any candidate from appealing the election result."

Section 33-10-2(2)(C) provides for a candidate to include additional supporting information with the complaint, but requires that "[t]he Complainant must include with the complaint a statement affirming that he or she will provide copies to all other candidates in that race by identifying the candidate(s) by name and the address(es) where the copies will be mailed or delivered within two (2) business days of filing with the TEC." This part gives notice to the complainant and requires the TEC to act if this requirement is not met -- "[f]ailure to comply with this requirement will result in the complaint being summarily dismissed."

A review of the June 16, 2017, complaint filed by nine of the non-prevailing candidates, including Stella Willis, failed to include the statement of service required under 33-10-2(2)(C) affirming that the complainants (all nine candidates) "will provide copies to all other candidates

in that race by identifying the candidate(s) by name and the address(es) where the copies will be mailed or delivered within two (2) business days of filing with the TEC.”

The decision by the TEC reads:

The June 16, 2017 complaint does not contain the affirmation required by § 33-10-2(2)(C) that the complainants "will provide copies [of the complaint] to all other candidates in [the Pearl River Community Tribal Council] race by identifying the candidate(s) by name and the address(es) where the copies will be mailed or delivered within two (2) business days of filing with the TEC." Under § 33-10-1(2)(C) [sic] "[F]ailure to comply with this requirement will result in the complaint being summarily dismissed." (Emphasis added). **As a result, this complaint must be and is hereby summarily dismissed on this ground alone.**

Emphasis added.

Appellant Willis seemed to recognize and attempted to unilaterally cure this defect by an out-of-time June 19, 2017, amended complaint filing which the TEC rejected for non-timeliness and for its unilateral submission sans the other eight losing candidate complainants. Further, the June 22, 2017, response from Deborah Martin to the TEC regarding the Willis complaint filed on June 16, 2017, states in paragraph one that she, Deborah Martin, "did not receive from Stella Y. Willis a copy of the Complaint and all other documents."

This Court finds that the omission of the statement of service required by § 33-10-2(2)(C) by the nine complainants in the original complaint filing of June 16, 2017, is uncurable outside of the original three-day window allowed in § 33-10-2(1) for appealing an election with the TEC and therefore, the TEC rightly rejected the June 19, 2017, amended complaint.

Although not required by the review of this appeal and consideration of the request for summary dismissal, the Court chooses to further explain why the seemingly draconian action of summary dismissal was and is most appropriate in this case.

The Official Election Results for the Pearl River Community Tribal Council election held on June 13, 2017, to select and fill the community's two council positions disclose the winning candidates and their vote numbers as follows:

Barry McMillan	367 votes
Deborah Martin	365 votes

By contrast, petitioner Stella York Willis garnered 147 votes. As to her and the other named eight signatories to the original complaint to the TEC under § 33-10-2, their names and respective vote numbers are listed as follows:

Kevin Farve	42 votes
Kyle John	41 votes
Vickie Rangel	69 votes

Mavis Steve	32 votes
Austin Tubby	26 votes
Robert Paul Tubby, Sr.	24 votes
Raymond Willis, Jr.	78 votes
William Daniels Isaac	57 votes
Stella York Willis	147 votes

These numbers do not include the other twenty of the twenty-nine qualifying candidates. Those other twenty candidates chose not to challenge the conduct of the election, the election results, or the qualifications of any of their rival candidates. The aggregate votes of the non-challenging non-winning candidates came up to 819 in number, which when combined with the two winning candidates' 732 votes totaled 1,551.

Most importantly the Court notes that the Petitioner effectively conceded that “[t]his complaint is not about the number of vote[s] but the procedural violation[s].” (June 30, 2017, Appeal complaint, p.2). The complainants in the June 16, 2017, TEC complaint failed to allege the number of votes potentially affected by the challenged actions in the election appeal to the TEC and whether that number could have had an effect on determining the winning candidates in the June 13, 2017, election. It is clear from the language of § 33-10-2(5) that the TEC’s actions following review are limited: “The following guidelines shall be utilized by the Tribal Election Committee when considering complaints submitted: No official tribal election shall be voided by order of the Tribal Election Committee in response to a complaint unless the Complainant clearly demonstrates by a preponderance of the evidence that: (i) a violation(s) of the Code occurred, and; (ii) said violation(s) resulted in a strong likelihood of affecting the outcome of the election.”

The TEC rightly concluded that “...given the large gap between the votes cast for the two winning candidates as compared to the votes cast for the complainants (367 and 365 vs. 147 for candidate Willis—the others being much lower), complainants have not identified any plausible factual scenario by which the claims alleged (even if valid) could conceivably have altered this election outcome by moving one or more of them into the top two positions.”

Further, the Court determines it important to note that Petitioner Willis’ challenge to Deborah Martin’s qualification is not within the scope of the Supreme Court review of TEC decisions as expressly stated in § 33-10-1 (1) that states “[i]f a candidate believes that a violation(s) of this Code has occurred in the election in which they are a candidate, he or she (the “Complainant”) may file an appeal in accordance with the election appeal procedure outlined in this Chapter. Candidate qualifications are not subject to this Chapter. Challenges to a candidate’s qualifications must be made under § 33-6-7(7) of this Code.”

Section 33-6-7(7) states:

If a registered voter believes that a certified candidate is not qualified, he or she may file a complaint in accordance with the appeal procedure outlined below:

(A) the complaint must be placed in writing and submitted to the Tribal Election Committee within two (2) business days **from the date of the certification of the candidates**. The complainant should retain a copy of any complaints submitted.

(B) the Tribal Election Committee must investigate each complaint submitted and issue a written statement of findings to the complainant within two (2) business days of receipt of each complaint. **The decision of the Tribal Election Committee shall be final and not subject to further review.**

Emphasis added.

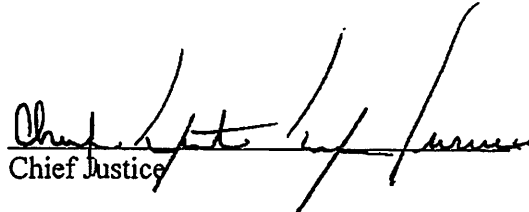
As shown by the language of Chapter 10, the Supreme Court has no legal authority to review any decisions by the TEC in regard to challenges that are made to candidate qualifications.

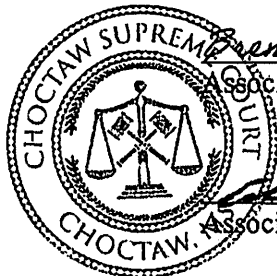
CONCLUSION

On the basis of the foregoing reasons, this Court summarily dismisses the appeal of Stella Willis and need only affirm the TEC decision and analysis as it pertains to the fact that the complaint filed on June 16, 2017 was fatally flawed by the absence of the complainants' statement of service as required under § 33-10-2(2)(C).

Under CTC § 33-10-6(9) the decision of the Choctaw Supreme is final and not subject to further review. Consequently, Barry McMillan and Deborah Martin are to be officially certified as the two winning candidates in the Pearl River Tribal Council Election that was held June 13, 2017. As such, they are eligible for and are to be sworn in to office at the regular quarterly Meeting of the Tribal Council Investiture Proceedings to be held July 11, 2017.

So Ordered, this the 10th day of July, 2017.


Chief Justice


Panda Toinseta Pipestem
Associate Justice
[Signature]
Associate Justice

CERTIFICATE OF SERVICE

I do hereby certify that I have this, the 10th day of July, 2017 caused to be forwarded


by the United States Mail and Hand Delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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