

IN THE POARCH BAND OF CREEK INDIANS TRIBAL SUPREME COURT

IN THE MATTER OF: Ethics Report and §
Complaint for declaratory relief and disposition §
Appellant, §
§
vs. §
§
Steven Ledkins, §
Appellee. §

Case No. SC-21-03

FILED

Time 12:36 pm
JUL 25 2022

Poarch Creek Indians
Tribal Court

Appeal from Poarch Creek Indians Ethics Board

(EC-21-06)

Fletcher, C.J., for the Court

Order Dismissing Appeal for Lack of Jurisdiction

Factual and Statutory Background

On September 16, 2021, an individual filed an Ethics Report with the Ethics Officer in accordance with Section 28-1-11(a) of the Ethics Code.¹ The Ethics Officer, in compliance with § 28-1-11(d), began to investigate the Report within seven days. Under § 28-1-11(e), the Ethics Officer had 30 days to either file a Complaint under § 28-1-13(a) or “dismiss the complaint” with reasons explained in writing. On October 25, 2021, within the 30-day investigatory period, the Ethics Officer concluded their investigation and filed two Complaints under § 28-1-13(a). The first complaint was brought against Ron Marshall and the second was brought against Steven Ledkins.²

¹ The record shows the individual filed a report a day earlier, but then re-filed an amended report that is the subject of this matter.

² Supreme Court docket number SC-21-02 concerns Marshall and docket number SC-21-03 concerns Ledkins. The matters are hereby consolidated.

The Ethics Board dismissed the Complaints on October 28, 2021. The Ethics Board issued a summary order of dismissal citing and quoting § 28-1-11(f), which provides that the Ethics Officer may not file an Ethics Complaint more than one year after the date of the alleged violation.³ The Ethics Report and the Ethics Complaint concerned events that occurred on September 17, 2020, more than a year before the Ethics Officer filed the Ethics Complaint.

Analysis

We hold that this Court does not possess jurisdiction over this appeal for two independent reasons. First, we hold that the Court does not possess original jurisdiction over the appeal. Second, we hold that the Ethics Board did not possess jurisdiction over the Ethics Complaint due to the passage of time, depriving the entire tribal judiciary of jurisdiction over the appeal.

First, the Court does not possess original jurisdiction over the Ethics Officer's appeal. The tribal code provides in relevant part:

The Tribal Supreme Court shall: (1) Preside over all cases appealed from Tribal Court and shall render decisions in said appeals; (2) Exercise original jurisdiction in the issue and determine writs of *quo warranto* and mandamus in relation to matters in which no other Court has jurisdiction

PBCI Code § 3-4-3. As a student of American constitutional law would know, since at least *Marbury v. Madison*, the original jurisdiction of an appellate court is usually considered out of the normal course. For the most part, appellate courts exercise appellate jurisdiction, which is where the court hears cases on appeal from a lower court. Section 3-4-3(1) describes exactly that; for the

³ On January 14, 2022, the Ethics Board filed an Amended Order of Dismissal with the tribal court after these appeals were filed. The Amended Order of Dismissal is effectively an appellate brief. The Supreme Court accepts the filing, but counsels the Ethics Board, which is not a party to this case (though perhaps should be) to file a motion for leave to file pleadings of this sort in future matters.

most part, this Court hears appeals, not cases brought directly to us. Other tribal courts with similar jurisdictional codes have reached the same conclusions about their original jurisdiction laws. The Navajo Supreme Court, for example, narrowly construed its jurisdictional code, which provided for original jurisdiction over “original extraordinary writs.” *Budget and Finance Committee of Navajo Tribal Council v. Navajo Nation Office of Hearings and Appeals*, 6 Am. Tribal Law 717, 720 (2006).⁴ The Absentee Shawnee Supreme Court reached a similar conclusion even where the tribal constitution granted to that court discretion to accept original jurisdiction as it saw fit. *Edwards v. Ellis*, 2 Okla. Trib. 397, 383-84 (1992).⁵ We are of the view that our original jurisdiction may only be exercised in cases where the Tribal Council has expressly authorized our jurisdiction and where no other court created by the Council possesses jurisdiction.

Even so, the Ethics Officer points to the end of subsection (2) and argues that the Supreme Court possesses original jurisdiction in “matters in which no other Court has jurisdiction.” The Ethics Officer argues that since there appears to be no express code provision authorizing judicial review of the Ethics Board’s summary dismissal of the Ethics Complaint, no other court therefore has jurisdiction. Appeal of Ethics Board Order of Dismissal at 4. And, the Ethics Officer reasons, if no other court has jurisdiction, the Supreme Court may assume original jurisdiction over that claim. *Id.* The Tribal Council, as *amicus curiae*, asks us to focus on an earlier portion of subsection (2) that allows for original jurisdiction to “determine writs of *quo warranto* and *mandamus*” where no other court has jurisdiction. Amicus Curiae Brief of Poarch Band of Creek Indians Tribal Council at 4. Neither party addresses the first part of subsection (2) that provides for original

⁴ The Navajo code provided: “The Supreme Court shall have jurisdiction to hear appeals from final judgments and other final orders of the District Courts of the Navajo Nation and such other final administrative orders as provided by law. The Supreme Court shall also have jurisdiction over original extraordinary writs. The Supreme Court shall be the Court of last resort.” 7 Navajo Tribal Code § 302.

⁵ The Absentee Shawnee Constitution provided, “The Supreme Court shall have original jurisdiction in such cases as may be provided by law, and shall have jurisdiction in all cases.” Art. IV, § 3(a).

jurisdiction “in the issue,” which “issue” we cannot ascertain. Could it be this issue? Given the ambiguity in this provision, are not sure who has the better of this textual argument. However, the Council points out that if we adopted the Ethics Officer’s reading of the provision, this Court would have jurisdiction over a wide swath of cases over which “no other Court has jurisdiction.” Amicus Curiae Brief, *supra*, at 4. If that is so, then “Section 3-4-3(a)(2) [would be] a broad grant of jurisdiction over every conceivable legal matter not explicitly delegated to another court. . . .” *Id.* This runs afoul of our understanding of our limited original jurisdiction under § 3-4-3.

We understand the Ethics Officer’s frustration with the lack of jurisdiction to hear this appeal. However, the Ethics Code makes clear that the tribal judiciary has no jurisdiction over Ethics Board decisions favoring the respondent to an Ethics Complaint. Section 28-1-15(i)(1) on appeals provides that “[t]he *respondent* may seek judicial review in the Tribal Court. . . .” (Emphasis added.) Any notice of appeal shall be served on the Ethics Officer, § 28-1-15(i)(2), implying that the Ethics Officer is the respondent in any appeal to tribal court. The tribal court must affirm the decision of the Ethics Board unless the *respondent* proves that the decision was invalid. § 28-1-15(i)(7). Finally, § 28-1-15(g) provides that an Ethics Board’s decision against a respondent to an Ethics Complaint is “final.” There is no express provision in this very detailed code allowing for an appeal to the judiciary when the Ethics Board rules against the Ethics Officer.

Second, the Ethics Officer’s complaint is time-barred. Section 28-1-11(f) provides, “No complaint shall be filed by the Ethics Officer if more than one (1) year has passed since the alleged violation occurred.” Here, the alleged violation occurred on September 17, 2020. The Ethics Officer filed an Ethics Complaint with the Ethics Board on October 25, 2020, more than 13 months after the alleged violation occurred. The Ethics Board, lacking jurisdiction to move forward, dismissed the Complaint on October 28, 2020. We agree with that decision.

The Ethics Officer protests that the purposes of the Ethics Code would be thwarted by this interpretation of § 28-1-11(f). The Ethics Officer points out that the Code places the Ethics Officer in a quandary where, as here, a person files an Ethics Report close to the end of the one-year limitations period. The Ethics Officer has a week to begin an investigation, § 28-1-11(d), and a month to file an Ethics Complaint, § 28-1-11(e). Even where, as here, the Ethics Officer complies with the Code's time frames, there will be cases where the Ethics Officer cannot file an Ethics Complaint within the one-year limitations period. That appears to be the case, but we cannot override clear statutory language such as this to extend a jurisdictional limitations period.

The Ethics Officer also argues that the Ethics Board has no authority to dismiss an Ethics Complaint, that instead the Ethics Code provides that only the Ethics Officer may dismiss a complaint. The Ethics Officer points to § 28-1-11(e)(2), which allows the Ethics Officer to dismiss Ethics Reports prior to the filing of an Ethics Complaint with the Ethics Board. There is no parallel provision in §§ 28-1-13 or 28-1-15 for the Ethics Board to dismiss an Ethics Complaint. We disagree with the Ethics Officer here as well. The code is clear that the Ethics Officer shall not file an Ethics Complaint more than a year after the date of the alleged violation. Here, while we certainly do not ascribe bad faith to the actions of the Ethics Officer, filing an Ethics Complaint more than a year later violated the clear prohibition on doing so. The Ethics Board chose to dismiss the Complaint. Perhaps the Ethics Board could have declined to act on the Complaint or taken some other action, but the Board did not possess authority to act on a Complaint filed too late. We do not and cannot find the Board in error here.

The appeal of the Ethics Officer must be dismissed for lack of jurisdiction.

Dated: July 25, 2022

/s/ Matthew L. M. Fletcher
MATTHEW L. M. FLETCHER
Tribal Supreme Court Chief Justice