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3 **IN THE HUALAPAI NATION COURT OF APPEALS**
4 **HUALAPAI RESERVATION, ARIZONA**

5 WAYLON HONGA,

6 Appellant,

7 v.

8 HUALAPAI ELECTION BOARD,

9 Appellee.

App. Court Case No.: 2012-AP-013
Trial Court Case No.: 2012-CV-047

DECISION AND ORDER

10
11 **Before Justice Carole Goldberg (Presiding), Justice Robert N. Clinton, and Chief Justice**
12 **Wes Williams, Jr.**

13
14 Appellant Waylon Honga ("Honga") is appealing the Tribal Court's dismissal of his
15 petition challenging a tribal recall election that removed him from the Tribal Council. The Tribal
16 Court dismissed the petition because it was not filed within the ten-day time limit established in
17 Article VIII, section 13 of the Hualapai Constitution. Based on our interpretation of the Hualapai
18 Constitution, the Hualapai Election Ordinance, and the Hualapai Law and Order Code, we agree
19 with the Tribal Court that the petition was untimely, and we affirm.

20 **I. FACTUAL AND PROCEDURAL BACKGROUND**

21 It is undisputed that the recall election involving Honga was held and certified by the
22 Hualapai Election Board on Thursday, June 21, 2012. Honga filed his petition with the Tribal
23 Court on Friday, July 6, 2012. On July 25, 2012, Appellee Hualapai Election Board ("Board")
24 moved to dismiss the challenge, arguing that it was untimely, citing Article VIII, section 13 of
25 the Hualapai Constitution: "Any tribal member may challenge election results by filing a suit in
26 Tribal Court within ten (10) days after the Election Board certifies the election results."
27 According to the Board, in the absence of any provision of the Hualapai Constitution or the
28 Hualapai Election Ordinance defining the term "day," the ten-day period should be read as
referring to calendar days, in which case the petition was filed five days too late. Honga argued
in response that the term "day" should be interpreted to mean business days, because the
Hualapai Law and Order Code, section 3.3, provides that for time limits of ten days or less, only
business days should be counted. Under that interpretation, Honga argued, his filing on July 6,
2012 was timely, because four weekend days and a national holiday were included in those
fifteen days. In an order dated August 3, 2012, the Tribal Court found that the ten-day time
period in Article VIII, section 13 refers to calendar days, not business days, and therefore
Honga's challenge, filed fifteen calendar days after the election was certified, was filed too late.
The Tribal Court further ordered, "that the parties appeal this decision to seek clarification in the

1 computation of time, ie, whether the Court has adopted the Federal Rules of Civil Procedure time
2 computation in Rule 6 [referring to business days] or the Arizona Rules of Civil Procedure [Rule
3 6, using business days for time periods less than eleven days]; in conjunction to Section 3.3 of
4 the Tribes [sic] Law and Order Code. The parties shall file the appeal within 14 days of the date
5 of this order."

6 This Court finds nothing in Hualapai law that would authorize the Tribal Court to order
7 parties to appeal its decision. We presume, however, that Honga, who brought the initial petition
8 challenging his recall election, was motivated to appeal the dismissal independent of the Tribal
9 Court's order. On August 16, 2012, Honga filed a pleading titled "Notice of Appeal with
10 Supporting Brief (Expedited Ruling Requested)." In an order dated August 17, 2012, Chief
11 Justice Wes Williams, Jr. of this Court established an expedited briefing schedule, and further
12 indicated that it would decide if oral arguments are necessary after the submittals of briefs. This
13 Court has received briefs from both Honga and the Board, and has concluded that the issues are
14 sufficiently straightforward that oral argument is not required.

11 II. DISCUSSION

12 Although the Hualapai Constitution includes numerous time limits referring to "days,"¹
13 including the ten-day time period for filing suits challenging election results, nowhere does the
14 Constitution define the word "day." Under Article VIII, section 15 of the Constitution, the Tribal
15 Council is authorized "to prescribe ordinances governing the casting and canvassing of ballots,
16 and other necessary details of election procedures." Invoking that authority, the Hualapai Tribal
17 Council enacted an Election Ordinance in 1992, and amended that Ordinance in 2000. Although
18 this Election Ordinance repeats the Constitution's ten-day time limit for suing to challenge
19 election results (see Article XIV, section 1), and also includes many other time limits referring to
20 "days," that Ordinance also does not contain any definition of "day."

21 In the absence of any guidance from the Hualapai Constitution or the Election Ordinance,
22 Honga argues that this Court should import the treatment of "days" found in the Hualapai Law
23 and Order Code. According to section 3.3 of the Law and Order Code, titled "Time:
24 Computation," "In computing any time period established by this Code, ... [u]nless otherwise
25 specified, only Business Days shall apply in computing any time period of 10 days or fewer
26 days; for any time period greater than 10 days, calendar days shall be used." Honga contends
27 that it would be unfair and inconsistent to hold election challengers to a shorter time period --
28 devoid of extensions for weekends and holidays -- than individuals involved in matters governed
by the Law and Order Code. To support his position, Honga also invokes section 3.1(A) of the
Hualapai Law and Order Code, which gives highest priority in applying written law to the Tribal
Constitution, and second priority to "Codes, ordinances and resolutions of the Tribe, including
this Law and Order Code...." Honga also points to section 3.1(B), which prohibits the Tribal
Court from applying federal or state law "unless specifically incorporated into Tribal law" or

¹ See, e.g., Article IV, section 13(a): "If a Council member should die, resign, or be removed or
recalled from office, the Tribal Council shall declare the position vacant. The Tribal Council
shall fill a vacancy by special election unless less than ninety (90) days remain in the term...."
Another example is Article VIII, section 11: "The Election Board shall certify all election results
within three (3) days of the date of the election."

1 "required by federal law." He reasons that the Tribal Court should have looked to the Hualapai
2 Law and Order Code rather than to federal or Arizona rules of procedure to determine whether
3 the time period for election challenges was to be computed using business days or calendar days.
4 Further, he argues that this Court has already used the Law and Order Code's rule for computing
time limits in another election case, demonstrating that this Court agrees with his analysis.

5 If this Court had in fact already resolved the question of the meaning of "days" for
6 purposes of the ten-day time period for election challenges, and had applied the rule of business
7 days rather than calendar days, there would be considerable force to Honga's position. However,
8 this Court has not done so. The opinion Honga relies on is *In re: Patricia (Imus) Cesspooch, aka*
9 *Wilfred Whatoname v. Hualapai Election Board*, 2010-AP-007 (November 4, 2010). In that
10 case, the jurisdictional/timing question involved filing an appeal in the Court of Appeals to the
11 grant of a writ of mandamus in the Tribal Court – not the time limit for suing in Tribal Court to
challenge the election itself. In the *Cesspooch* case the writ had been brought to stop a future
election, not to challenge election results under Hualapai Constitution, Article VIII, section 13.
Consequently, in *Cesspooch* we were interpreting the requirements of the Law and Order Code
for filing an appeal of a writ, not the requirements of the Election Ordinance for filing an election
challenge. The issue in Honga's case is thus one of first impression for this Court.

12 The Board offers several arguments in favor of its preferred interpretation of the word
13 "days" in Article VIII, section 13 of the Hualapai Constitution as meaning calendar days -- the
14 ordinary dictionary definition of the term -- regardless of the length of the time period. First, the
15 Board notes that section 3.3 of the Law and Order Code, which uses business days for time
16 periods of ten days or less, begins by limiting its application to "any time period established by
17 this Code." As Honga's election challenge was brought pursuant to the Hualapai Constitution
18 and the Hualapai Election Ordinance, rather than the Law and Order Code, the Board contends
19 that section 3.3 is inapplicable. Furthermore, the Board points out that several time limits
20 established in the Constitution and Election Ordinance affecting elections mention multiple,
21 interdependent periods of time, some of them ten days or under and some of them greater than
22 ten days. For example, under Article VIII, section 13, an election challenge must be filed within
23 ten days of the date the Election Board has certified the election, and the Tribal Court must hear
24 and decide the case within thirty days after certification. If the Law and Order Code's method of
25 time computation is applied to such provisions, then the period of time for filing the challenge
(using business days) will reduce the period of time available for the Tribal Court to resolve the
challenge (using calendar days). Finally, invoking policy considerations, the Board contends
that calendar days should be used for all time periods relating to elections because prompt
resolution of election disputes is essential to the political stability of the Tribe, a goal sought in
both the Hualapai Constitution and Election Ordinance. The Board points to a decision of the
Arizona Supreme Court, *Bedard v. Gonzales*, 120 Ariz. 19, 583 P.2d 906 (1978), in which that
court declined to apply the "business days" rule of the Arizona Rules of Civil Procedure to a time
period established under the Arizona election laws, citing the need for stability and finality in
elections.

26 In its order in this case, the Tribal Court ordered the party to seek clarification, via an
27 appeal, of "whether the Court has adopted" a Federal Rule of Civil Procedure specifying calendar
28 days or a state of Arizona Rule of Civil Procedure allowing use of business days for time periods
less than eleven days, "in conjunction to" Hualapai Law and Order Code section 3.3, which
specifies choice of law for the Hualapai judiciary. This Court of Appeals wants to emphasize

1 that it is obliged to follow neither federal nor Arizona law in interpreting the time period for
2 election challenges established in the Hualapai Constitution and Election Ordinance. According
3 to section 3.1(D) of the Hualapai Law and Order Code, if a matter is not governed by written
4 Hualapai law, applicable federal law, or Tribal Common Law, "the Tribal Court may be guided
5 by common law as developed by other Tribal, federal or state courts." This Court is free to
6 accept such guidance or not, based on the persuasive value of the foreign law and its
7 applicability in a Hualapai context.

8 In the present case, this Court sees no reason to "adopt" the law of any other jurisdiction.
9 The proper interpretation of the word "days" in Article VIII, section 13 of the Hualapai
10 Constitution can be derived entirely from Hualapai sources. We infer from the fact that a special
11 time computation rule appears in the Law and Order Code, but not in the Constitution or Election
12 Ordinance, that the drafters of the latter two preferred to rely on the natural, dictionary definition
13 of the word "day." That inference is reinforced by the specific language in section 3.3 limiting
14 its special time computation rule to time periods "established by this code," meaning the Law
15 and Order Code only. We also agree with the Board's argument that the interdependence of
16 shorter and longer time periods in individual sections of the Hualapai Constitution and Election
17 Ordinance requires use of a common computation method, namely calendar days, for all.
18 Otherwise, the longer time periods will be compromised. Finally, we are persuaded that the
19 provisions of the Hualapai Constitution and Election Ordinance regulating elections and
20 challenges to elections are designed to foster stability and finality by mandating relatively short,
21 predictable periods for taking various actions. For example, the Election Board must certify
22 election results within three days of the date of the election (Article VIII, section 11), and special
23 runoff elections following tie votes are to be held after five days but no more than forty-five days
24 after certification of election results (*Id.*). Utilizing calendar days as a measure for computing all
25 time periods, regardless of length, will advance the goal of swift, certain resolution of election
26 contests.


27 Thus, we conclude that for purposes of Article VIII, section 13 of the Hualapai
28 Constitution, as well as Article XIV, section 1 of the Hualapai Election Ordinance, the word
"days" refers to calendar days. We note that interpreting the time limit for challenging elections
to mean calendar days does not create unfairness if the last day of the time period falls on a
weekend or holiday when the Tribal Court is closed. We have already interpreted section 3.3 of
the Law and Order Code to mean that for purposes of any time limit, including those greater than
ten days, if the day when the action is to be taken is a day when the Tribal Court is not open, the
time limit can be satisfied by filing on the next day when it is open. *Robert Bravo, Jr., v.*
Waylong Honga & Victor Ingram, 2012-AP-004 (May 29, 2012). This same ruling should apply
to time limits established in the Hualapai Constitution and Election Ordinance. Even if we
applied that ruling to the present case, however, Honga's challenge was brought too late if
calendar rather than business days are to be counted. The first day the Tribal Court was open
after the passage of ten calendar days would have been Monday, July 2 -- four days before
Honga filed his petition.

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III. CONCLUSION

Based on the foregoing, the Tribal Court's order dismissing Honga's petition as untimely is hereby AFFIRMED.

IT IS SO ORDERED



CAROLE GOLDBERG
JUSTICE OF THE
HUALAPAI COURT OF APPEALS

Dated: October 24, 2012.

HUALAPAI TRIBAL APPELLATE COURT
HUALAPAI RESERVATION OF ARIZONA

APP. DIV. CASE NO.: 2012-AP-013
TRIAL COURT CASE NO.: 2012-CV-047

Waylon Honga, Appellant –vs- Hualapai Election Board, Appellee

I, Muriel Coochwyteewa hereby certify that I have provided a copy of an Order to:
Waylon Honga PO BOX 116 Peach Springs this 30th day of October, 2012 at the time of 9:00
a.m.

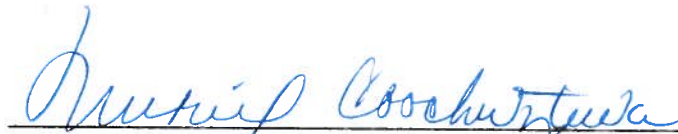

By: Hualapai Tribal Court, Chief Court Clerk

HUALAPAI TRIBAL APPELLATE COURT
HUALAPAI RESERVATION OF ARIZONA

APP. DIV. CASE NO.: 2012-AP-013
TRIAL COURT CASE NO.: 2012-CV-047

Waylon Honga, Appellant –vs- Hualapai Election Board, Appellee

I, Muriel Coochwyteewa hereby certify that I have provided a copy of an Order to:
Hualapai Election Board PO BOX 179 Peach Springs and Legal Counsel, Martin Clare 101 N 1st
Ave Suite 2500 Phoenix AZ 85003 this 30th day of October, 2012 at the time of 9:00 a.m.


By: Hualapai Tribal Court, Chief Court Clerk