

administration so allowed will have a priority for payment greater than that for any creditor claims allowed. Upon receipt of such order, the Superintendent must immediately initiate payment of such sums from the estate account, or if such funds are insufficient, then out of funds as they are received in such account prior to closure of the estate, with the proviso that such costs must be paid in full with a later allocation against the interest of a party, if the OHA deciding official has so ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the OHA deciding official has rendered his or her decision, the OHA deciding official may upon his or her own motion or upon motion of any party in interest schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the OHA deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event the records must clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the hearing, the OHA deciding official will make up the official record containing:

- (1) A copy of the posted public notice of hearing showing the posting certifications;
- (2) A copy of each notice served on interested parties with proof of mailing;
- (3) The record of the evidence received at the hearing, including any transcript made of the testimony;
- (4) Claims filed against the estate;
- (5) Will and codicils, if any;
- (6) Inventories and valuations of the estate;
- (7) Pleadings and briefs filed;
- (8) Special or interim orders;
- (9) Data for heirship finding and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the OHA deciding official.

(b) The OHA deciding official must lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing must be retained in the office of the OHA deciding official issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office must contain a statement indicating no transcript was prepared.

DECISIONS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.240 Decision of the OHA deciding official and notice thereof.

(a) The OHA deciding official must decide the issues of fact and law involved in the proceedings and must incorporate the following in his or her decision:

- (1) In all cases, the names, birth dates, relationships to the decedent, and shares of heirs with citations to the law of descent and distribution in accordance with which the decision is made; or the fact that the decedent died leaving no legal heirs.
- (2) In testate cases, (i) approval or disapproval of the will with construction of its provisions, (ii) the names and relationship to the testator of all beneficiaries and a description of the property which each is to receive;
- (3) Allowance or disallowance of claims against the estate;
- (4) Whether heirs or devisees are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision.
- (5) A determination of any rights of dower, curtesy or homestead which

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may constitute a burden upon the interest of the heirs.

(b) When the OHA deciding official issues a decision, he or she must issue a notice thereof to all parties who have or claim any interest in the estate and must mail a copy of said notice, together with a copy of the decision to the Superintendent and to each party in interest simultaneously. The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in §4.241.

§4.241 Rehearing.

(a) Any person aggrieved by the decision of the OHA deciding official may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the OHA deciding official a written petition for rehearing. Such petition must be under oath and must state specifically and concisely the grounds upon which it is based. If the petition is based on newly-discovered evidence, it must be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be. It must also state justifiable reasons for the failure to discover and present that evidence, tendered as new, at the hearings held prior to the issuance of the decision. The OHA deciding official, upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the OHA deciding official.

(b) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the OHA deciding official will issue an order denying the petition and must set forth therein his or her reasons therefor. The OHA deciding official must furnish copies of such order to the petitioner, the Superintendent, and the parties in interest.

(c) If the petition appears to show merit, the OHA deciding official must cause copies of the petition and supporting papers to be served on those persons whose interest in the estate

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might be adversely affected by the granting of the petition. The OHA deciding official must allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition. The OHA deciding official will then reconsider, with or without hearing as he or she may determine, the issues raised in the petition; he or she may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(d) Upon entry of a final order the OHA deciding official must lodge the complete record relating to the petition with the title plant designated under §4.236(b), and furnish a duplicate record thereof to the Superintendent.

(e) Successive petitions for rehearing are not permitted, and except for the issuance of necessary orders nunc pro tunc to correct clerical errors in the decision, the jurisdiction of the OHA deciding official terminates upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein will be construed as a bar to the remand of a case by the Board for further hearing or rehearing after appeal.

(f) At the time the final decision is entered following the filing of a petition for rehearing, the OHA deciding official must direct a notice of such action with a copy of the decision to the Superintendent and to the parties in interest and must mail the same by regular mail to the said parties at their addresses of record.

(g) No distribution may be made under such order for a period of 60 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as herein provided.

§4.242 Reopening.

(a) Within a period of 3 years from the date of a final decision issued by an OHA deciding official or by the Board but not thereafter except as provided in §§4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the