



INTERIOR BOARD OF INDIAN APPEALS

Estate of Thor Kalben Lande

37 IBIA 6 (10/10/2001)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF THOR KALBEN LANDE : Order Dismissing Appeal
:
: Docket No. IBIA 01-119
:
: October 10, 2001

Appellant Kip Lande seeks review of a July 27, 2000, order denying rehearing issued in the estate of Decedent Thor Kalben Lande, IP SL 028F 98, by Administrative Law Judge Nicholas T. Kuzmack. In his notice of appeal, Appellant alleged that he did not become aware of the entry of Judge Kuzmack's order until March 17, 2001, when his attorney, Robert E. LaFountain, received a copy of the order.

By order dated May 22, 2001, the Board gave opposing parties an opportunity to discuss whether Appellant's notice of appeal was timely. The Board has received comments on the timeliness of the notice of appeal from Vickie Lande MacCarty and Nancy Witt (MacCarty) and Appellant.

Appellant alleges that his notice of appeal is timely because neither he nor his attorney were properly notified of the entry of Judge Kuzmack's order denying rehearing. The Judge sent his order denying rehearing to Appellant and attorney Brent R. Cromley.

Appellant asserts that his copy of the order denying rehearing was sent to an address that had not been correct for a number of years.

The probate record shows that Appellant's copy of the order was returned to the Judge's office. Appellant, however, does not even suggest that he provided Judge Kuzmack with his correct address.

It is a litigant's responsibility to keep a tribunal before which he has a matter pending informed of his correct and current address. This general rule is embodied in the regulations of the Department of the Interior at 43 C.F.R. § 4.22(d):

Record address. Every person who files a document for the record in connection with any proceeding before the Office of Hearings and Appeals shall

at the time of his initial filing in the matter state his address. Thereafter he must promptly inform the office in which the matter is pending of any change in address, giving the docket or other appropriate numbers of all matters in which he has made such a filing. The successors of such person shall likewise promptly inform such office of their interest in the matters and state their addresses. If a person fails to furnish a record address as required herein, he will not be entitled to notice in connection with the proceedings.

Under the circumstances here, the Board finds that Judge Kuzmack properly sent Appellant's copy of the order denying rehearing to Appellant's last known address. Appellant must bear the responsibility for the fact that the address was no longer correct.

Judge Kuzmack also sent the order to attorney Cromley. The probate record shows that Cromley represented Appellant before Judge Kuzmack. MacCarty argues that Cromley never withdrew as counsel for Appellant and that attorney LaFountain never entered an appearance. Appellant has not explicitly disputed these assertions. Instead, he contends that his November 1, 1999, petition for rehearing was filed by LaFountain, who was listed on that document as his attorney.

The following information appears in the upper left hand corner of Appellant's petition for rehearing: "ROBERT E. LAFOUNTAIN [Address and telephone number] Attorney for Kip Lande." The document itself, however, is not signed by LaFountain, but rather is signed by Appellant, whose signature is notarized.

As any attorney should be aware, it is the attorney's responsibility properly to enter his or her appearance or to seek permission to withdraw as counsel for a party. Although a tribunal may do so in some cases, it is not the tribunal's responsibility to scrutinize each filing made by a party and sua sponte raise questions concerning the party's intentions as to representation or to alter its service records. Neither is it the tribunal's responsibility to serve multiple attorneys for one party.

In this case, Appellant's petition for rehearing did not constitute notice that he was substituting LaFountain for Cromley as his attorney. Nothing in that filing informed the Judge that Appellant was changing attorneys. In addition, Appellant does not contend that either attorney otherwise properly notified the Judge of a substitution of counsel. Under these circumstances, the Board declines to hold that Judge Kuzmack erred in serving his order denying rehearing on Cromley, as Appellant's attorney of record, or erred in not serving LaFountain.

Because of these findings, the Board concludes that Appellant's notice of appeal is not timely.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Kuzmack's July 27, 2000, order denying rehearing is dismissed as untimely.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge