



INTERIOR BOARD OF INDIAN APPEALS

Estate of Myrna Patricia Owen White

39 IBIA 227 (01/22/2004)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

ESTATE OF MYRNA PATRICIA OWEN : Order Docketing and Dismissing
WHITE : Appeal and Referring Petition
: for Reopening to the Hearings
: Division
:
: Docket No. IBIA 04-31
:
: January 22, 2004

The Board of Indian Appeals (Board) has received a filing from Patricia L. Withorne. Withorne apparently seeks to reopen the estate of her biological mother, Myrna Patricia Owen White (Decedent), IP TC 227 R 91. A decision in Decedent's estate was issued by Administrative Law Judge Vernon J. Rausch on January 6, 1992. The Rapid City field office of the Office of Hearings and Appeals (OHA) has provided the Board with a copy of Judge Rausch's decision. For purposes of this order, the Board treats Withorne's filing as a petition to reopen Decedent's estate. For the reason discussed below, the Board docketed the petition but dismisses it as premature, and refers the matter to OHA's Hearings Division for appropriate consideration.

The Board does not have jurisdiction to reopen closed probate cases. Instead, its responsibility is to review appeals from decisions as to whether or not closed estates should be reopened. See 43 C.F.R. § 4.320(a); Estate of Emma Coffee/Spotted Bear/Smells, 31 IBIA 253 (1997), and cases cited there. Petitions to reopen probate cases which have been closed for more than three years, as has Decedent's, are governed by 43 C.F.R. § 4.242(h), which provides that any petition must be filed with the OHA deciding official. 43 C.F.R. § 4.201 defines OHA deciding officials as administrative law judges or Indian probate judges. Based on present jurisdictional alignments among OHA's field offices, it appears that any petition to reopen White's estate would be handled by OHA's Rapid City office. The Rapid City office has informed the Board that it has not received a petition to reopen Decedent's estate. Under the circumstances, consideration of this matter by the Board is premature.

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 petition for reopening is docketed but dismissed

