



INTERIOR BOARD OF INDIAN APPEALS

Estate of Irene C. Poolaw

40 IBIA 99 (09/09/2004)

Related Board cases:

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United States Department of the Interior

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ESTATE OF IRENE C. POOLAW : Order Docketing and Dismissing Appeal
:
: IBIA No. 04-107
:
: September 9, 2004

Appellant Donald R. Poolaw, pro se, sought review of a May 5, 2004, denial of a petition for reopening entered in the Estate of Irene C. Poolaw, No. IP OK 306 P 00-2, by Administrative Law Judge Richard L. Reeh (ALJ). For the reasons discussed below, the Board of Indian Appeals (Board) docketed this appeal, but dismisses it.

On June 22, 2004, the Board issued a pre-docketing notice and order for Appellant to show cause on or before August 6, 2004, why this appeal should not be dismissed for lack of standing. The Board noted that this is an appeal from the denial of a petition to seek reopening. Under Department regulations in 43 C.F.R. § 4.242(a), the only persons with standing to seek reopening within 3 years of a final decision are those who “had no actual notice of the original proceedings and who [were] not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted.” As noted in the Estate of Albin (Alvin) Shemamy, 13 IBIA 258, 260 (1985), this rule was adopted in order to put an end to litigation concerning the trust estate of a deceased Indian.

In the present case, the ALJ indicated that Appellant “is a family member who participated in the initial probate proceedings.” Order Docketing and Dismissing Petition to Reopen, at 2. Thus, it appeared to the Board that Appellant may not only have had actual notice of the hearing to probate Irene C. Poolaw’s estate, but he may, in fact, have been present at the hearing and may have given testimony. As noted in Estate of Little Snake (John Smith), 24 IBIA 121, 124 (1993), “[a] person who attended a probate hearing is clearly one who had actual notice of the proceedings.” See Estate of Elmer James Whipple, 16 IBIA 225, 227 (1988); Estate of Richard Lip, 15 IBIA 97, 100 (1987). In addition, according to the ALJ, Appellant may have been an adult at the time of the hearing.

The Board advised Appellant that if he failed to respond to the show cause order or to demonstrate standing, his appeal would be dismissed. The Board received no response from Appellant.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board docketed this appeal, but dismisses it for failure to prosecute.

// original signed
Colette J. Winston
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge