



INTERIOR BOARD OF INDIAN APPEALS

Estate of Bertha Mae Tabbytite

54 IBIA 229 (01/20/2012)

Related Board case:
54 IBIA 86

Board, which is not part of the Probate Hearings Division, is not listed as one of the parties to which Appellant sent copies of any certificates of service or compliance. *See* Amended Certificate of Service of Notice of Appeal & Statement of Issue on Appeal.⁴

The Board repeatedly instructed Appellant that she needed to complete service of her appeal on all interested parties, and to inform *the Board* that she had done so.⁵ Instead, Appellant addressed correspondence to the wrong office within the Office of Hearings and Appeals. Even after the Board's second order to complete service, which clearly put Appellant on notice that the Board had failed to receive any notification of compliance from her and which provided her with an additional opportunity to comply, Appellant failed to contact the Board to ensure the Board's receipt of any correspondence that Appellant believed she had sent to the Board. Indeed, in yet a *third* order regarding briefing, the Board noted that Appellant's appeal appeared suitable for summary dismissal based on her noncompliance with the two previous orders to complete service.⁶ Still Appellant failed to submit evidence of compliance to the Board or to contact the Board to inquire into the matter.

In light of these facts, the Board is not convinced that Appellant was not at fault or that she otherwise has shown that extraordinary circumstances exist to warrant granting reconsideration and reopening her appeal. *See* 43 C.F.R. § 4.315(a) ("Reconsideration of a decision of the Board will be granted only in extraordinary circumstances."); *Estate of Wilda*

⁴ In contrast, we note that the certificate of service for Appellant's notice of appeal clearly distinguishes between the Board and the Probate Hearings Division as separate offices and separate recipients of service.

⁵ *See* Pre-Docketing Notice, Order Consolidating Appeals, Order for Tabbytite to Complete Service, Order Granting in Part Vitale's Motion for Extension, and Order Concerning Availability of Record, May 12, 2011; Notice of Docketing, Second Order for Tabbytite to Complete Service, Order Setting Briefing Schedule, and Order Concerning Restriction on Maudean Tabbytite's IIM Account, July 28, 2011.

Prior to the Board's dismissal of Appellant's appeal, her appeal was consolidated with an appeal by the Law Offices of Vincent Vitale, P.C., from the same Reopening Order. Vitale's appeal was assigned Docket No. IBIA 11-094 and remains pending.

⁶ *See* Order Granting Vitale's Motion for Extension for Opening Brief at 1-2 n.1, Aug. 25, 2011 (noting Appellant's noncompliance with order to serve and that her appeal appears suitable for summary dismissal).

Ethel Ward, 45 IBIA 195, 196 (2007) (request for reconsideration denied because the appellant failed to provide evidence showing compliance with the Board's service order).

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 denies reconsideration of 54 IBIA 86.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debora G. Luther
Administrative Judge