



INTERIOR BOARD OF INDIAN APPEALS

Estate of Leonard Martin Old Rock

39 IBIA 1 (02/11/2003)

Related Board cases:

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## United States Department of the Interior

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

ESTATE OF LEONARD MARTIN : Order Docketing and Dismissing  
OLD ROCK : Petition for Reopening and  
: Referring Matter to Indian  
: Probate Judge  
:  
: Docket No. IBIA 03-51  
:  
: February 11, 2003

On February 6, 2003, the Board of Indian Appeals (Board) received a letter petition for reopening from Appellant Micki Diserly. Appellant seeks to reopen the estate of Decedent Leonard Martin Old Rock.

Petitions for reopening are governed by regulations in 43 Code of Federal Regulations (C.F.R.) § 4.242. Section 4.242, along with other probate regulations in 43 C.F.R. Part 4, Subpart D, was recently revised to conform with probate regulations published by the Bureau of Indian Affairs (BIA) in 25 C.F.R. Part 15. No major substantive changes were included in this revision.

Prior to the recent revision, 43 C.F.R. § 4.242 clearly provided that petitions for reopening were to be filed with the appropriate Administrative Law Judge. Section 4.242 now provides that petitions for reopening are to be filed with the “Deciding Official.” 43 C.F.R. § 4.201 includes definitions for both “BIA Deciding Official” and “OHA (Office of Hearings and Appeals) Deciding Official.” In the context of this case, “Deciding Official,” as it is used in 43 C.F.R. § 4.242 now refers to the OHA Administrative Law Judge, OHA Indian Probate Judge, or BIA Attorney Decision-Maker who entered the original decision in an estate. For estates which have been closed for a period of time, there may have been changes in personnel or in responsibilities for deciding probate cases. These changes may result in confusion about the proper official with whom to file a petition for reopening.

Here, at the same time Appellant filed this petition for reopening, she also filed an appeal from a decision in the estate of Wilma Old Rock. The Board has learned that Indian Probate Judge George D. Tah-bone issued an order denying rehearing in the estate of Wilma Old Rock on December 16, 2002. That order states in pertinent part:

[Appellant's] petition seems to protest the finding in [the estate of Leonard Martin Old Rock] that he was married to [individual's name omitted], or that the law was improperly applied, which causes his estate to pass to [that individual]. \* \* \* If [Appellant] feels that she was misinformed about her rights and has information that would show a manifest injustice, in fact or law, has been committed in the estate of \* \* \* Leonard Old Rock, the court invites her to submit a Petition for Reopening in that estate in accordance with 43 C.F.R. § 4.242.

Dec. 16, 2002, Order at 2.

It appears likely that Appellant submitted her present petition for reopening in response to this invitation.

The Board does not have information before it indicating which Deciding Official issued the initial decision in the estate of Leonard Martin Old Rock. However, it has been informed by Administrative Law Judge Robert Holt that Decedent was a Fort Peck enrollee. Therefore, his estate would normally fall under the jurisdiction of Judge Holt, who is located in Billings, Montana. This estate will be referred to Judge Holt for initial consideration. If Judge Holt determines that he is not the appropriate person to handle this case, he retains full authority to transfer the matter to the appropriate official.

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 for lack of jurisdiction. Because of the possible confusion over the proper official with whom the petition was to be filed, the Board requests that Judge Holt--or other Deciding Official to whom he may refer this case--treat the petition as having been filed on January 29, 2003, the date of postmark of the letter to the Board.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge