



INTERIOR BOARD OF INDIAN APPEALS

Estate of Patricia McKenzie

47 IBIA 172 (08/13/2008)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF PATRICIA MCKENZIE ) Order Docketing and Dismissing  
) Appeal and Referring Matter to  
) Indian Probate Judge  
)  
) Docket No. IBIA 08-120  
)  
) August 13, 2008

On August 8, 2008, the Board of Indian Appeals (Board) received a Notice of Appeal from Maggie Halvorson, Arden Halvorson, Ervin Halvorson, Jr., and Justin Halvorson (Appellants), seeking review of a June 30, 2008, Decision issued by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Patricia McKenzie, deceased Three Affiliated Tribes Indian, Probate No. P-0000-49057-IP. We docket this appeal but dismiss it as premature because, as instructed by the IPJ, Appellants must first seek rehearing before the IPJ if they wish to have the Decision reviewed. If Appellants are aggrieved by an order on rehearing, they may then appeal that order to the Board. The Board refers Appellants' notice of appeal to the Indian Probate Judge for consideration, as appropriate.

The IPJ's "Notice to All Persons Having an Interest in the Subject Matter of this Proceeding" (Notice) that accompanied his Decision correctly informed the parties of their right to seek rehearing from the Decision by filing a petition for rehearing with the IPJ within 60 days.<sup>1</sup> The Notice also summarized the regulatory requirements for a petition for rehearing. *Cf.* 43 C.F.R. § 4.241. Instead of complying with the Notice, Appellants filed a notice of appeal to the Board seeking review of the Decision. The jurisdiction of the Board in probate matters is limited to appeals from orders on petitions for rehearing, petitions for reopening probate proceedings, and tribal purchases of interests in decedents' trust estates. *See* 43 C.F.R. § 4.320(a). Because the Decision is not such an order, the Board does not have jurisdiction over this appeal. *See Estate of Joseph Goggles*, 46 IBIA 158, *recon. denied*, 46 IBIA 258 (2008).

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<sup>1</sup> The Decision and Notice were issued on June 30, 2008, and therefore the deadline for filing a petition for rehearing is August 29, 2008.

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 as premature. Appellants' notice of appeal is referred to the IPJ for consideration, as appropriate.<sup>2</sup>

I concur:

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// original signed  
Steven K. Linscheid  
Chief Administrative Judge

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// original signed  
Debora G. Luther  
Administrative Judge

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<sup>2</sup> The Board's referral of their notice of appeal to the IPJ should not be construed by Appellants as a determination regarding the sufficiency of their notice of appeal as a petition for rehearing. As the IPJ's Notice states, a petition for rehearing must be filed in accordance with the provisions of 43 C.F.R. § 4.241.