



INTERIOR BOARD OF INDIAN APPEALS

Estate of Cecil Little Eagle, Sr.

50 IBIA 165 (08/31/2009)



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 CECIL LITTLE EAGLE,)	Order Docketing and Dismissing Appeal
SR.)	
)	
)	
)	Docket No. IBIA 09-125
)	
)	
)	
)	August 31, 2009

On July 27, 2009, the Board of Indian Appeals (Board) received a facsimile (fax) transmission from the Rapid City, South Dakota Office of Hearings and Appeals (OHA), which included a notice of appeal from Ardys Salinas (Appellant). On behalf of herself and three of her siblings, Appellant seeks review of an Order Denying Rehearing, entered on June 22, 2009, by Indian Probate Judge (IPJ) M.J. Stancampiano in the estate of Appellant's father, Cecil Little Eagle (Decedent), deceased Cheyenne River Sioux Indian, Probate No. P000062752IP. The IPJ's order denied a petition for rehearing filed by Dorla Jane Sadler, a lay advocate, seeking DNA testing of Keith Little Eagle and Yvonne Feather, and requesting distribution of Decedent's estate pursuant to the terms of a July 23, 1986, will that the IPJ disapproved as invalid. Thus, the Order Denying Rehearing let stand a November 18, 2008, Decision. We docket this appeal but dismiss it as untimely because the IPJ provided accurate instructions for filing an appeal with the Board, and this appeal was not filed with the Board within the 30-day deadline following the IPJ's Order Denying Reopening.

Under the Department of the Interior's probate regulations, 73 Fed. Reg. 67,256, 67,288 (Nov. 13, 2008) (eff. Dec. 15, 2008), *to be codified at* 43 C.F.R. § 4.321(a), an appeal from a probate judge's decision denying rehearing must be filed with the Board within 30 days after the decision was mailed with accurate appeal instructions. Any appeal that is not filed by the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). In the present case, the IPJ's Order Denying Rehearing was accompanied by a notice that contained accurate appeal instructions, including the deadline for filing an appeal and the Board's address. The notice included a

certification that the order and notice were mailed on June 22, 2009. Therefore, the time for filing an appeal expired on July 22, 2009.

Appellant did not send her appeal to the Board, but faxed it instead to the IPJ's office in Rapid City, South Dakota. That office then faxed Appellant's appeal to the Board, where it was received on July 27, 2009. The hard copy of Appellant's fax, mailed to the Board by the Rapid City office, was received by the Board on July 31, 2009. Even if the Board could accept faxed notices of appeal,¹ the appeal was not filed with the Board within the 30-day deadline, *see* 43 C.F.R. § 4.310(a) (date of filing is the date of mailing or date of personal delivery), and "[w]e will dismiss any appeal not filed by this deadline," *see* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. § 4.321(a). An appellant who fails to follow accurate appeal instructions bears the risk that the appeal will not be timely filed. *See Castillo v. Pacific Regional Director*, 43 IBIA 9, 10 (2006), and cases cited therein.

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 untimely.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven K. Linscheid
Chief Administrative Judge

¹ An appellant must file their notice of appeal by delivering or mailing the *original* notice of appeal to the Board. *See* 73 Fed. Reg. at 67,288, *to be codified at* 43 C.F.R. §§ 4.321 and 4.323(a); *see also id.* § 4.310(a) (effective date of filing documents).