



INTERIOR BOARD OF INDIAN APPEALS

Estate of John Kenneth Flood

51 IBIA 225 (04/09/2010)



## 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 JOHN KENNETH )  
FLOOD ) Order Docketing and  
) Dismissing Appeal  
)  
) Docket No. IBIA 10-068  
)  
) April 9, 2010

On March 15, 2010, the Board of Indian Appeals (Board) received a notice of appeal from David Flood (Appellant), through Tracy Guerrero, exercising power of attorney. Appellant seeks review of an Order Denying Rehearing entered on February 9, 2010, by Indian Probate Judge (IPJ) M.J. Stancampiano, in the estate of John Kenneth Flood (Decedent), Probate No. P000040750IP.<sup>1</sup> The Notice accompanying the Order Denying Rehearing correctly advised interested parties that any appeals must be filed with the Board within 30 days from the date of the order, gave the Board's correct address, and advised parties that an appeal not timely filed would be dismissed for lack of jurisdiction. Because Appellant's notice of appeal was filed on March 15, 2010, which is after the 30-day deadline expired, we dismiss this appeal for lack of jurisdiction.

Under the Department of the Interior's probate regulations, 43 C.F.R. § 4.321(a), an appeal from a probate judge's decision must be filed with the Board within 30 days after the date on which the decision was mailed with accurate appeal instructions. An appeal that is not filed within the 30-day deadline will be dismissed. *Id.*; *Estate of Daniel Temartz Sampson*, 49 IBIA 207, 208 (2009). The date of filing an appeal with the Board is the date the appeal is mailed (i.e., sent by U.S. mail) or the date of personal delivery (e.g., if sent by

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<sup>1</sup> Appellant claims that his father, Rodney Flood, was Decedent's son. The IPJ concluded, based on a preponderance of the evidence, that Rodney was neither the biological nor adopted son of Decedent. *See* Order Denying Rehearing at 2; Decision, Aug. 25, 2009, at 2. Appellant appears to contend that he has not been provided copies of two affidavits upon which the IPJ relied, although the Order Denying Rehearing states that they were attached to that order. If Appellant was not provided with copies, he may submit a request to the Great Plains Land Title and Records Office of the Bureau of Indian Affairs in Aberdeen, South Dakota.

private courier service). 43 C.F.R. § 4.310(a)(1); *Estate of Mabel Ellen Roberts*, 50 IBIA 134, 135 (2009).

In the present case, Appellant sent his notice of appeal using United Parcel Service, and it was delivered to the Board on March 15, 2010. Because it was sent and delivered by private courier service, the date of delivery is the date of filing, which was more than 30 days after the February 9, 2010, Order Denying Rehearing was mailed, as shown by the certification on the notice accompanying the IPJ's Order Denying Rehearing. The notice contained accurate appeal instructions, including the deadline for filing an appeal and the Board's correct address, and it was sent to Appellant in care of Tracy Guerrero at the same address that was used by Guerrero for filing the notice of appeal with the Board. Because Appellant's notice of appeal was filed after the 30-day deadline expired, it is untimely and must be dismissed.

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 docket this appeal but dismisses it as untimely.<sup>2</sup>

I concur:

          // original signed            
Steven K. Linscheid  
Chief Administrative Judge

          // original signed            
Debora G. Luther  
Administrative Judge

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<sup>2</sup> Appellant's notice of appeal indicates that he is in the process of attempting to obtain additional evidence to support his assertion that Decedent was Rodney's father. Even if the appeal had been timely, an appeal to the Board is not the appropriate venue for keeping a probate proceeding open while an appellant seeks to obtain additional evidence. We express no opinion whether Appellant might be able to satisfy the standard for reopening a closed probate, in the event he were to obtain evidence that he would contend is sufficient to prove Decedent's paternity and to satisfy the standard for reopening contained in 43 C.F.R. § 3.242.