



INTERIOR BOARD OF INDIAN APPEALS

Estate of Florestine Eschbach

59 IBIA 74 (08/12/2014)



# United States Department of the Interior

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

ESTATE OF FLORESTINE	)	Order Docketing and Dismissing
ESCHBACH	)	Appeal
	)	
	)	Docket No. IBIA 14-110
	)	
	)	August 12, 2014

Morgana LieBerg (Appellant) appealed from an Order Denying Reopening entered on May 19, 2014, by Indian Probate Judge (IPJ) Albert C. Jones in the estate of Appellant’s mother, Florestine Eschbach (Decedent).<sup>1</sup> Appellant sent her appeal to the Department of the Interior’s Probate Hearings Division office in Billings, Montana, which transmitted the appeal to the Board of Indian Appeals (Board). We docket but dismiss this appeal as untimely because it was not filed with the Board within the 30-day period allowed for filing an appeal following the Order Denying Reopening.

In response to the Board’s June 27, 2014, order for Appellant to show cause why her appeal should not be dismissed as untimely,<sup>2</sup> Appellant states that “[i]t was untimely because I did not understand the instructions and mailed it to the wrong place.”

An appeal from a probate judge’s decision must be filed *with the Board* within 30 days from the date the decision was mailed with accurate appeal instructions. 43 C.F.R. § 4.321. The effective date of filing a notice of appeal with the Board is the date of mailing

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<sup>1</sup> Decedent was a Turtle Mountain Chippewa Indian. The probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000003079IP. In the Order Determining Heirs and Decree of Distribution issued on March 31, 2006, IPJ P. Diane Johnson determined that Decedent died intestate (i.e., without a will) and ordered that Decedent’s trust real property located in the State of North Dakota and the State of Montana shall pass, in unrestricted status, to Decedent’s non-Indian spouse pursuant to the law of intestate succession in the respective state where the land is located. In this appeal, Appellant asserts, *inter alia*, that Decedent was divorced at the time of death and that Appellant and Appellant’s siblings, nieces, and nephews are entitled to Decedent’s estate.

<sup>2</sup> See Pre-Docketing Notice, Order for Appellant to Serve Interested Parties, and Order for Appellant to Show Cause at 2-3.

(if sent by U.S. mail) or the date of personal delivery (if not mailed). *Id.* § 4.310(a)(1); *see Confederated Tribes and Bands of the Yakama Nation v. Northwest Regional Director*, 56 IBIA 176, 181-82 (2013). The Board does not have authority to grant an extension for filing a notice of appeal, 43 C.F.R. § 4.310(d)(1), and untimely appeals must be dismissed, *id.* § 4.321(a). “[A]n appellant who fails to follow accurate appeal instructions bears the risk that the appeal will be untimely.” *Estate of Franklin Porter*, 52 IBIA 243, 244 (2010).

The Order Denying Reopening included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on May 19, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on June 18, 2014. Appellant did not mail her appeal to the Board, but instead sent it to the IPJ, who transmitted it to the Board. The Board received the appeal on June 20, 2014. Because the appeal was filed with the Board after the 30-day deadline expired, it must be dismissed as untimely and for lack of jurisdiction.

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 but dismisses this appeal.

I concur:

          // original signed            
Thomas A. Blaser  
Administrative Judge

          //original signed            
Steven K. Linscheid  
Chief Administrative Judge