



INTERIOR BOARD OF INDIAN APPEALS

Estate of Agnes Irene Kitner

59 IBIA 145 (09/17/2014)



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 AGNES IRENE KITNER)	Order Docketing and Dismissing
)	Appeal
)	
)	Docket No. IBIA 14-112
)	
)	September 17, 2014

Janet Marie Kitner Dudek (Appellant) appealed from an Order Reopening Case to Correct Distribution (Reopening Order) entered on May 20, 2014, by Indian Probate Judge (IPJ) Janet Yazzie in the estate of Appellant’s mother, Agnes Irene Kitner (Decedent).¹ Appellant sent her notice of appeal to the Department of the Interior’s Probate Hearings Division office in Albuquerque, New Mexico (PHD), which transmitted the appeal to the Board of Indian Appeals (Board).

Because it appeared that Appellant’s appeal was untimely, the Board ordered Appellant to show cause why her appeal should not be dismissed.² Appellant responds that she mailed her appeal from the Reopening Order to the address “stated on the letter head and not the address displayed further in the letter,” and that PHD should have immediately forwarded the appeal to the Board by facsimile or by electronic mail (email).³

¹ Decedent, who was also known as Agnes Irene James, was an Athabascan. The Probate number assigned to Decedent’s case in the Department of the Interior’s probate tracking system, ProTrac, is No. P000020873IP.

The Reopening Order vacated and replaced the Order Determining Heirs (Decision) entered by IPJ M.J. Stancampiano on May 19, 2010, which accepted a directed disclaimer executed by Robert Kitner, Decedent’s surviving spouse and heir, in favor of Appellant, pursuant to 43 C.F.R. §§ 30.181 and 30.188(a). The Reopening Order applied Alaska law to the disclaimer and determined that Decedent’s estate passes in equal shares to Appellant and her brother, Kenneth Dale Kitner. In her appeal, Appellant sought reversal of the Reopening Order and reinstatement of the Decision.

² Pre-Docketing Notice, Order for Appellant to Serve Interested Parties, and Order for Appellant to Show Cause, July 10, 2014, at 2-3.

³ Appellant also mailed her response to the Board’s order to PHD, which transmitted it to the Board.

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 (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's regulations do not authorize filing a notice of appeal by facsimile or by email. 43 C.F.R. § 4.323(a); *Estate of Lincoln A. White Shirt, Jr.*, 58 IBIA 131, 132 n.4 (2013). Moreover, 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). "It is well-established that an 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) (dismissing as untimely an appeal sent to the probate judge, who forwarded it to the Board, and to which it was delivered after the appeal deadline had expired).

The Reopening Order included accurate appeal instructions and included a certification that it was mailed to the listed interested parties (including Appellant) on May 20, 2014. Calculated from that mailing date, the deadline for filing an appeal with the Board expired on June 19, 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 July 2, 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