



INTERIOR BOARD OF INDIAN APPEALS

Estate of Simpson Nokusille

5 IBIA 178 (09/24/1976)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF SIMPSON NOKUSILLE

IBIA 76-33

Decided September 24, 1976

Appeal from denial of petitions for rehearing.

Affirmed.

1. Indian Probate: Rehearing: Pleading, Timely Filing

The Administrative Law Judge did not commit error in denying a rehearing to parties who failed to file a timely request for rehearing, even though the petitions were filed only one day late.

2. Indian Probate: Attorneys at Law: Generally--Indian Probate: Rehearing: Pleading, Timely Filing

Administrative Law Judges bear an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that the Administrative Law Judge has done all which could reasonably be expected in assisting the aggrieved parties pursue their claims.

APPEARANCES: Kizzie Nokusille, appellant; Claude V. Sumner, Esq. , for Marie Barefoot Coley, interested party; Louis F. Nokusille, appellee.

### OPINION BY BOARD MEMBER HORTON

On January 7, 1976, Kizzie Nokusille, sister of the testator, Simpson Nokusille, deceased Caddo-Seminole unallotted, and Marie

Barefoot Coley, who claims to be a daughter of the testator, filed separate petitions for rehearing of the November 7, 1975, Order Approving Will and Decreeing Distribution of the decedent's trust property entered by Administrative Law Judge Jack M. Short.

By order dated January 16, 1976, Judge Short denied each of the above petitions because they were filed one day late. The merits of the petitions, which mainly allege that the primary beneficiary, Louis Nokusille, unduly influenced the testator, were not examined.

Kizzie Nokusille filed an appeal from Judge Short's January 16, 1976, order which was docketed by the Board on April 8, 1976. Marie Barefoot Coley, through counsel, submitted a brief in support of the appellant on June 9, 1976; Ms. Coley's brief also states that a supplemental hearing should be held because she had no notice of the original hearing.

[1] It is the Board's holding in this appeal that the Administrative Law Judge did not commit error in denying a rehearing to parties who failed to file a timely request for a rehearing. The record reflects that Kizzie Nokusille and Marie Barefoot Coley were delivered copies of the notice accompanying the order of November 7, 1975, which plainly states: "This decision becomes final sixty (60) days from the date of mailing of this Notice unless within such period a written petition for rehearing shall have been filed with the Superintendent by an aggrieved party in accordance with the provisions of 43 CFR 4.241." Appellant's petition for rehearing and the petition of Marie Barefoot Coley were filed on the 61st day. Section 4.241(b) of 43 CFR specifically provides that "if the petition [for rehearing] is not filed within the time prescribed \* \* \*, the Administrative Law Judge shall issue an order denying the petition \* \* \*."

In the case of Estate of Lucy Hope Deepwater, 1 IBIA 201 (December 1971), the appellant filed his petition for rehearing only one day late, but the hearing examiner waived the late filing and denied the petition on its merits. On appeal, this Board wrote the following syllabus to its opinion:

Where a petition for rehearing was not filed in the appropriate office of the Department of the Interior until the 61st day after the entry of the original order, the hearing examiner lacked authority to extend the time for filing thereof and had no jurisdiction to determine the substantive issues raised in the petition on their merits.

The rationale for rigidly observing time requirements for filing petitions for review is addressed in the Deepwater opinion as follows:

Admittedly, the effects of strict enforcement of limitations is sometimes harsh. However, the efficacy of such rules is based thereon. If, for example, the time could be extended one day at the discretion of the hearing examiner, why not for another day? The logic and justification for extending from the 61st day to the 62nd comes more readily than for extension from the 60th to the 61st, and so on. Nothing would be gained by construing limitations to be guidelines, rather than bars, and by granting examiners discretion to extend limitation periods. At some point a cut-off date for filing has to be established and uniformly enforced so that cases come to a conclusion and property rights become stabilized. [At Fn. 4.]

[2] Among appellant's grounds for appeal it is alleged that Judge Short's denial of a rehearing fails to consider that the legal heirs of the decedent were without counsel during the heirship proceedings. We observed in the case, Estate of Peahner (Mabel) (Mable) Mahseet, 5 IBIA 27, decided February 23, 1976, that there is no requirement that the Secretary of the Interior furnish counsel to parties in Indian probate proceedings conducted in accordance with 43 CFR 4.200 et seq. We also stated that while the absence of eligible private counsel from an Indian probate hearing, standing alone, does not present justification for requiring a rehearing, the Administrative Law Judge bears an additional responsibility when parties voluntarily proceed with probate proceedings without counsel. Here the record shows that on November 13 and again on December 2, 1975, Judge Short responded to correspondence from the appellant, Kizzie Nokusille, regarding a petition for rehearing with explicit instructions on how and when one must be filed. In addition, on August 12, 1975, Judge Short responded to an inquiry dated August 7, 1975, from Charles E. Grounds, an attorney for Marie Barefoot Coley, in which he explained the status of the case, expressed surprise at Ms. Coley's absence from the hearing (the record indicates that a notice of the probate hearing was mailed to Ms. Coley on May 16, 1975), cited authority for the probate procedure, and requested a reply. None was received. Under the foregoing circumstances, the Board concludes that the Administrative Law Judge has done all which could reasonably be expected in assisting the aggrieved parties pursue their claims.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.1, the January 16, 1976, Order Denying Petitions for Rehearing entered by Administrative Law Judge Jack M. Short be, and the same is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed

Wm. Philip Horton  
Member of the Board

I concur:

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//original signed

Alexander H. Wilson  
Administrative Judge