

**Office of the Secretary, Interior**

**§ 4.200**

**§ 4.127 Dismissals.**

(a) *Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with the disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the board may, in its discretion, dismiss such an appeal from the docket without prejudice to its reinstatement when the cause of suspension has been removed. Unless either party or the Board acts within 3 years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed to have been made with prejudice.

(b) *Dismissal for failure to prosecute or defend.* Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If no cause is shown, the Board may take appropriate action.

**§ 4.128 Remands from courts.**

Whenever any matter is remanded to the Board from any court for further proceedings, each of the parties, shall, within 20 days of such remand, submit a report to the Board, recommending procedures to be followed in order to comply with the court's order. The Board will review the reports and issue the appropriate special orders.

**APPENDIX I TO SUBPART C OF PART 4—  
SUGGESTED FORM OF NOTICE OF APPEAL**

Interior Board of Contract Appeals, 801  
North Quincy Street, Arlington, VA 22203  
(Date) \_\_\_\_\_  
(Name of Contractor) \_\_\_\_\_  
(Address) \_\_\_\_\_  
Contract No. \_\_\_\_\_  
(Invitation No.) \_\_\_\_\_  
Specifications No. \_\_\_\_\_  
(Name and Location of Project) \_\_\_\_\_  
(Name of Bureau or Office) \_\_\_\_\_

The undersigned contractor appeals to the Board of Contract Appeals from decision or findings of fact dated \_\_\_\_\_, by:  
(Name of Contracting Officer) \_\_\_\_\_

The decision or findings of fact is erroneous because: (State specific facts and circumstances and the contractual provisions involved.)  
(Signature) \_\_\_\_\_  
(Title) \_\_\_\_\_

[46 FR 57499, Nov. 24, 1981, as amended at 67 FR 4368, Jan. 30, 2002]

**Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals**

**AUTHORITY:** Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301; 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b, 410, 100 Stat. 61, as amended by 101 Stat. 886 and 101 Stat. 1433, 25 U.S.C. 331 note.

**CROSS REFERENCE:** See 25 CFR part 15 for rules setting forth the responsibilities and practices of the Bureau of Indian Affairs in the probate of Indian estates. See subpart A of this part for the authority, jurisdiction, and membership of the Board of Indian Appeals within the Office of Hearings and Appeals. For general rules applicable to proceeding before the Hearings Division, Board of Indian Appeals, and other Appeals Boards of the Office of Hearings and Appeals, see subpart B of this part.

**DETERMINATIONS OF HEIRS AND APPROVAL OF WILLS, EXCEPT AS TO MEMBERS OF THE FIVE CIVILIZED TRIBES AND OSAGE INDIANS; TRIBAL PURCHASES OF INTERESTS UNDER SPECIAL STATUTES**

**SCOPE OF REGULATIONS; DEFINITIONS; GENERAL AUTHORITY OF OHA DECIDING OFFICIALS**

**SOURCE:** 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

**§ 4.200 Scope of regulations.**

Included in §§ 4.200 through 4.202 are general rules applicable to all proceedings in subpart D of this part. Included in §§ 4.203 through 4.282 and §§ 4.310 through 4.323 are procedural rules applicable to the settlement of trust estates of deceased Indians who

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die possessed of trust property; however, these rules do not apply to the restricted property of deceased Indians of the Five Civilized Tribes, deceased Osage Indians, and members of any tribe organized under 25 U.S.C. 476, to the extent that the constitution, by-laws or charter of each tribe may be inconsistent with this subpart. Included within §§ 4.300 through 4.308 are supplemental procedural rules applicable to determinations as to tribal purchase of certain property interests of decedents under special laws applicable to particular tribes. Included within §§ 4.330 through 4.340 are procedural rules applicable to appeals to the Board of Indian Appeals from administrative actions or decisions issued by the Bureau of Indian Affairs as set forth in § 4.330. Except as limited by the provisions herein, the rules in subparts A and B of this part apply to these proceedings.

#### § 4.201 Definitions.

As used in this subpart:

*Agency* means the agency office or any other designated office in BIA having jurisdiction over trust or restricted property and money. This term also means any office of a tribe which has contracted or compacted the BIA probate function under 25 U.S.C. 450f or 458cc.

*Attorney decision maker* means an attorney with BIA who reviews a probate package, determines heirs, approves wills and beneficiaries of the will, determines creditors' claims, and issues a written decision to the extent authorized by 25 CFR part 15.

*Beneficiary* means any individual who receives trust or restricted property or money in a decedent's will.

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*BIA deciding official* means the official with the delegated authority to make a decision on a probate matter pursuant to 25 CFR part 15, and may include a BIA regional director, agency superintendent, field representative, or attorney decision maker.

*Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary, authorized by the Secretary to hear, consider, and determine finally for the Depart-

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ment appeals taken by aggrieved parties from actions by OHA deciding officials on petitions for rehearing or reopening, and allowance of attorney fees, and from actions of BIA officials as provided in § 4.1(b)(2).

*Child* or *children* includes an adopted child or children.

*Commissioner* includes the Deputy Commissioner of Indian Affairs and his or her authorized representatives.

*Day* means a calendar day, unless otherwise stated.

*Decedent* means a person who is deceased.

*Department* means the Department of the Interior.

*Estate* means the trust cash assets and restricted or trust property owned by the decedent at the time of his or her death.

*Heir* means any individual who receives trust or restricted property or money from a decedent in an intestate proceeding.

*IIM account* means funds held in an individual Indian monies account by OTFM or a tribe performing this function under a contract or compact.

*Intestate* means the decedent died without a will.

*Minor* means an individual who has not reached the age of majority as defined by the applicable tribal or state law.

*OHA deciding official* means an employee of the Office of Hearings and Appeals with the authority to make a decision on a probate matter pursuant to this subpart. The OHA deciding official may be either an administrative law judge appointed pursuant to the Administrative Procedure Act, 5 U.S.C. 3105, or an Indian probate judge.

*OTFM* means the Office of Trust Funds Management within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

*Party in interest* means any presumptive or actual heir, any beneficiary under a will, any party asserting a claim against a deceased Indian's estate, and any Tribe having a statutory option to purchase interests of a decedent.

*Probate* means the legal process by which applicable tribal law, state law,