

#### § 4.234

attesting witnesses, or of any of them. The provisions of § 4.232 are applicable with respect to remaining issues.

#### § 4.234 Witnesses, interpreters, and fees.

Parties in interest who desire a witness to testify or an interpreter to serve at a hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper. The OHA deciding official may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts. In hardship situations, the OHA deciding official may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment he or she must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally. Costs of administration so allowed will have a priority for payment greater than that for any creditor claims allowed. Upon receipt of such order, the Superintendent must immediately initiate payment of such sums from the estate account, or if such funds are insufficient, then out of funds as they are received in such account prior to closure of the estate, with the proviso that such costs must be paid in full with a later allocation against the interest of a party, if the OHA deciding official has so ordered.

#### § 4.235 Supplemental hearings.

After the matter has been submitted but prior to the time the OHA deciding official has rendered his or her decision, the OHA deciding official may upon his or her own motion or upon motion of any party in interest schedule a supplemental hearing if he or she deems it necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all parties in interest in the manner provided in § 4.211. Where the need for such supplemental hearing becomes apparent during any hearing, the OHA deciding official may announce the time and place for such supplemental

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hearing to all those present and no further notice need be given. In that event the records must clearly show who was present at the time of the announcement.

#### § 4.236 Record.

(a) After the completion of the hearing, the OHA deciding official will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship finding and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the OHA deciding official.

(b) The OHA deciding official must lodge the original record with the designated Land Titles and Records Office in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record may also be furnished to the Superintendents of other affected agencies. In those cases in which a hearing transcript has not been prepared, the verbatim recording of the hearing must be retained in the office of the OHA deciding official issuing the decision until the time allowed for rehearing or appeal has expired. In cases in which a transcript is not prepared, the original record returned to the Land Titles and Records Office must contain a statement indicating no transcript was prepared.

#### DECISIONS

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