

to Federal courts, and the waiver or decision against waiver of the failure to make timely service of process or notice.

§ 16.7 Performance of Federal functions by successor State courts.

All authority to perform functions relating to Indians of the Five Civilized Tribes which by express provisions of Federal statute had been conferred upon probate or county courts of Oklahoma before such county courts were abolished on January 12, 1969, has since that date been vested in the successor district courts of that State, and all rights of litigants continue undiminished in the successor forum, including the right to appeal from adverse decisions rendered therein to the successor appellate court.

(Interprets or applies Okla. Op. Atty. Gen. No. 68-381 (Dec. 20, 1968))

§ 16.8 Summary distribution of small liquid estates.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes contains no restricted land but consists of a restricted interest in funds not exceeding \$500 on deposit to the credit of the decedent, the Field Solicitor shall, in the absence of any final decree determining the heirs or legatees of the decedent, prepare and furnish to the Bureau a finding and order of distribution, based on affidavit or other proof of death and heirship or bequest, setting forth the facts of death and heirship or bequest and the amount payable from the estate to each person determined to be an heir or legatee of the decedent. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or legatee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall distribute the funds in the estate of the decedent in accordance

with such final action, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

§ 16.9 Escheat of estates of decedents.

Where information, furnished by the Bureau pursuant to § 16.4 or otherwise obtained, reveals that the estate of a deceased Indian of the Five Civilized Tribes, who has been dead 5 or more years after having died intestate without heirs, consists of restricted interests in lands or rents or profits therefrom, the Field Solicitor shall, in the absence of any final decree determining that the decedent died without heirs or devisees, prepare and furnish to the Bureau a finding and order of escheat, based on affidavit or other proof of intestate death without heirs, setting forth the restricted interests in lands or rents or profits therefrom which have by escheat vested in the tribe which allotted the lands. The Field Solicitor shall mail to each person considered a possible claimant to any portion of the estate, as an heir or devisee or otherwise, a copy of the order with a notice that the order shall become final 30 days after the date of mailing thereof unless within that period the officer by whom the order was signed shall have received a written request for reconsideration of the order. After final action on any order has been taken by the Field Solicitor, the Bureau shall cause a certified copy thereof to be filed in the land records of each county within which are located any escheated lands described therein and shall cause the tribe to be credited with any funds in said estate which arose from rents or profits from such lands, unless a timely appeal therefrom has been filed in accordance with part 2 of this title.

PART 17—ACTION ON WILLS OF OSAGE INDIANS

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10530, Dec. 24, 1957, unless otherwise noted.

§ 17.1 Definitions.

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) *Secretary* means the Secretary of the Interior.

(b) *Commissioner* means the Commissioner of Indian Affairs.

(c) *Superintendent* means the superintendent of the Osage Indian Agency.

(d) *Special attorney* means the special attorney for Osage Indians, or other legal officer designated by the Commissioner.

§ 17.2 Attorneys.

Interested parties may appear in person or by attorneys at law. Attorneys must file written authority to appear for their clients in the proceedings.

§ 17.3 Pleadings, notice and hearings.

(a) The petition for approval of the will of a deceased Osage Indian may be set down for hearing at a date not less than 30 days from the date the petition is filed. Hearings shall be conducted only after notice of the time and place of such hearings shall have been given by mail. The notice shall be mailed not less than 10 days preceding the date of the hearing and shall state that the special attorney will, at the time and place specified therein, take testimony to determine whether the will of the deceased Osage Indian shall be approved or disapproved. The notice shall list the presumptive heirs of the decedent and the beneficiaries under such will, and shall notify the attesting witnesses to be present and testify. It shall state that all persons interested in the estate of the decedent may be present at the hearing. The notice shall further state that the special attorney may, in his discretion, continue the hearing to another time or place to be announced at the original hearing.

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(b) Any interested party desiring to contest approval of the will may, not less than 5 days before the date set for hearing, file written objections in triplicate, showing that a copy thereof was served upon attorneys for the proponent and other attorneys of record in the case. Such contestant shall clearly state the interest he takes under the will and, if a presumptive heir, the interest he would take under the Oklahoma law. The contestant shall further state specifically the ground on which his contest is based.

§ 17.4 Service on interested parties.

A copy of the notice of hearing shall be served by mail, at his last known place of residence, on each presumptive heir; each beneficiary under the will offered for consideration; and each attesting witness thereto. Such notice must be mailed not less than 10 days preceding the date set for the hearing.

§ 17.5 Minors represented at hearings.

Minor heirs at law, who by the terms of the will are devised a lesser interest in the estate than they would take by descent, of whose interests are challenged, shall, with the approval of the special attorney, be represented at the hearing by guardians ad litem. Such minors 14 years of age or over may indicate in writing their choice of guardians ad litem. If no such choice has been indicated on the date of the hearing, the special attorney shall make the selection and appointment.

§ 17.6 Examination of witness.

All testimony taken at the hearing shall be reduced to writing. Any interested party may cross-examine any witness. Attorneys and others will be required to adhere to the rules of evidence of the State of Oklahoma. If, in addition to oral testimony, affidavits or dispositions are introduced, they must be read, and any opposing claimant may require the presence of the affiant, if practicable, either at that or a subsequent hearing, and opportunity shall be given for cross-examination or for having counter interrogatories answered.

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§ 17.7 Limiting number of witnesses.

When the evidence seems clear and conclusive, the special attorney may, in his discretion, limit the number of witnesses to be examined formally upon any matter.

§ 17.8 Supplemental hearing.

When it appears that a supplemental hearing is necessary to secure material evidence, such a hearing may be conducted after notice has been given to those persons on whom notice of the original hearing was served and to such other persons as the testimony taken at the original hearing indicates may have a possible interest in the estate.

§ 17.9 Briefs.

When there are two or more parties with conflicting interests, the party upon whom the burden of proof may fall may be allowed a reasonable time, not to exceed 30 days following the conclusion of the hearing, in which to file a brief or other statement of his contentions, showing service on opposing counsel or litigant. The latter shall then be allowed not to exceed 20 days in which to file an answer brief or statement, and his opponent shall have 10 days thereafter to file a reply brief or statement. Upon proper showing the special attorney may grant extensions of time. Each brief or statement shall be filed in duplicate.

§ 17.10 Record.

After the hearing or hearings on the will have been terminated the special attorney shall make up the record and transmit it with his recommendation to the superintendent. The record shall contain:

- (a) Copy of notices mailed to the attesting witnesses and the interested parties.
- (b) Proof of mailing of notices.
- (c) The evidence received at the hearing or hearings.
- (d) The original of the will or wills considered at the hearings.
- (e) A copy of all the pleadings.

The record, except the original will, shall be a part of the permanent files of the Osage Agency.

§ 17.11 Inspection of wills and approval as to form during testator's lifetime.

When a will has been executed and filed with the superintendent during the lifetime of the testator, the will shall be considered by the special attorney who may endorse on such will "approved as to form." A will shall be held in absolute confidence and its contents shall not be divulged prior to the death of the testator.

§ 17.12 Approval.

After hearings have been concluded in conformity with this part the superintendent shall approve or disapprove the wills of deceased Osage Indians.

§ 17.13 Government employees as beneficiaries.

In considering the will of a deceased Osage Indian the superintendent may disapprove any will which names as a beneficiary thereunder a government employee who is not related to the testator by blood, or otherwise the natural object of the testator's bounty.

§ 17.14 Appeals.

(a) Notwithstanding the provisions in part 2 of this chapter concerning appeals generally from administrative actions, any appeal from the action of the superintendent of approving or disapproving a will shall be taken to the Secretary. Upon the superintendent's final action of approval or disapproval of a will, he shall immediately notify by mail all attorneys appearing in the case, together with interested parties who are not represented by attorneys, of his decision and of their right to file an appeal.

(b) Any party desiring to appeal from the action of the superintendent shall, within 15 days after the date of the mailing of notice of the decision file with the superintendent a notice in writing of his intention to appeal to the Secretary, and shall, within 30 days after the mailing date of such notice by the superintendent, perfect his appeal to the Secretary by service of the appeal upon the superintendent who will transmit the entire record to the Secretary. If no notice of intention to appeal is given within 15 days, the superintendent's decision will be final.

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(c) Upon the filing of notice with the superintendent of intention to appeal or the perfecting of an appeal by service upon the superintendent, at the same time similar notice and service shall be effected by the party taking an appeal upon opposing counsel or litigants, and a statement included in the appeal that this has been done. A party taking an appeal may, within the same 30-day period allowed for perfecting an appeal, file a brief or other written

statement of his contentions, showing also service of that brief upon opposing counsel or litigants. Opposing counsel or litigants shall have 30 days from the date of the service of appellant's brief upon them in which to file an answer brief, copies of which also shall be served upon the appellant or opposing counsel and litigants. Except by special permission, no other briefs will be allowed on appeal.

[26 FR 10930, Nov. 22, 1961]

SUBCHAPTER D—HUMAN SERVICES

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