

§ 30.123

(2) If the judge finds that the report and recommended decision are not supported by the evidence of record, the judge may do any of the following:

(i) Remand the case to the master for further proceedings consistent with instructions in the remand order;

(ii) Make new findings of fact based on the evidence in the record, make conclusions of law, and enter a decision; or

(iii) Hear the case de novo, make findings of fact and conclusions of law, and enter a decision.

(3) The judge may find that the master's findings of fact are supported by the evidence in the record but the conclusions of law or the recommended decision is not consistent with applicable law. In this case, the judge will issue an order adopting the findings of fact, making conclusions of law, and entering a decision.

§ 30.123 Will the judge determine matters of status and nationality?

(a) The judge in a probate proceeding will determine:

(1) The status of eligible heirs or devisees as Indians;

(2) If relevant, the nationality or citizenship of eligible heirs or devisees; and

(3) Whether any of the Indian heirs or devisees with U.S. citizenship are individuals for whom the supervision and trusteeship of the United States has been terminated.

(b) A judge may make determinations under this section in a current probate proceeding or in a completed probate case after a reopening without regard to a time limit.

§ 30.124 When may a judge make a finding of death?

(a) A judge may make a finding that an heir, devisee, or person for whom a probate case has been opened is deceased, by reason of extended unexplained absence or other pertinent circumstances. The judge must include the date of death in the finding. The judge will make a finding of death only on:

(1) A determination from a court of competent jurisdiction; or

(2) Clear and convincing evidence.

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(b) In any proceeding to determine whether a person is deceased, the following rebuttable presumptions apply:

(1) The absent person is presumed to be alive if credible evidence establishes that the absent person has had contact with any person or entity during the 6-year period preceding the hearing; and

(2) The absent person is presumed to be deceased if clear and convincing evidence establishes that no person or entity with whom the absent person previously had regular contact has had any contact with the absent person during the 6 years preceding the hearing.

§ 30.125 May a judge reopen a probate case to correct errors and omissions?

(a) On the written request of an interested party, or on the basis of the judge's own order, at any time, a judge has the authority to reopen a probate case to:

(1) Determine the correct identity of the original allottee, or any heir or devisee;

(2) Determine whether different persons received the same allotment;

(3) Decide whether trust patents covering allotments of land were issued incorrectly or to a non-existent person; or

(4) Determine whether more than one allotment of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) The judge will notify interested parties if a probate case is reopened and will conduct appropriate proceedings under this part.

§ 30.126 What happens if property was omitted from the inventory of the estate?

This section applies when, after issuance of a decision and order, it is found that trust or restricted property or an interest therein belonging to a decedent was not included in the inventory.

(a) A judge can issue an order modifying the inventory to include the omitted property for distribution under the original decision. The judge must furnish copies of any modification