

§ 16.9

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

Sec.

- 17.1 Definitions.
- 17.2 Attorneys.
- 17.3 Pleadings, notice and hearings.
- 17.4 Service on interested parties.

25 CFR Ch. I (4–1–06 Edition)

- 17.5 Minors represented at hearings.
- 17.6 Examination of witness.
- 17.7 Limiting number of witnesses.
- 17.8 Supplemental hearing.
- 17.9 Briefs.
- 17.10 Record.
- 17.11 Inspection of wills and approval as to form during testator's lifetime.
- 17.12 Approval.
- 17.13 Government employees as beneficiaries.
- 17.14 Appeals.

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§ 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.

(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 at-testing 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.

§ 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 at-testing 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.