

**Subpart D—Recusal of a Judge or ADM****§ 30.130 How does a judge or ADM recuse himself or herself from a probate case?**

If a judge or ADM must recuse himself or herself from a probate case under § 4.27(c) of this title, the judge or ADM must immediately file a certificate of recusal in the file of the case and notify the Chief ALJ, all interested parties, any counsel in the case, and the affected BIA agencies. The judge or ADM is not required to state the reason for recusal.

**§ 30.131 How will the case proceed after the judge's or ADM's recusal?**

Within 30 days of the filing of the certificate of recusal, the Chief ALJ will appoint another judge or ADM to hear the case, and will notify the parties identified in § 30.130 of the appointment.

**§ 30.132 May I appeal the judge's or ADM's recusal decision?**

(a) If you have filed a motion seeking disqualification of a judge or ADM under § 4.27(c)(2) of this title and the judge or ADM denies the motion, you may seek immediate review of the denial by filing a request with the Chief ALJ under § 4.27(c)(3) of this title.

(b) If a judge or ADM recuses himself from a probate case, you may not seek review of the recusal.

**Subpart E—Claims****§ 30.140 Where and when may I file a claim against the probate estate?**

You may file a claim against the trust estate of an Indian with BIA or, after the agency transfers the probate file to OHA, with OHA.

(a) In a formal probate proceeding, you must file your claim before the conclusion of the first hearing. Claims that are not filed by the conclusion of the first hearing are barred.

(b) In a summary probate proceeding, if you are a devisee or eligible heir, you must file your claim with OHA within 30 days after the mailing of the notice of summary probate proceeding. Claims of creditors who are not devisees or eligible heirs will not be consid-

ered in a summary probate proceeding unless they were filed with the agency before it transferred the probate file to OHA.

**§ 30.141 How must I file a claim against a probate estate?**

You must file your claim under 25 CFR 15.302 through 15.305.

**§ 30.142 Will a judge authorize payment of a claim from the trust estate if the decedent's non-trust estate was or is available?**

The judge will not authorize payment of a claim from trust or restricted property if the judge determines that the decedent's non-trust estate was or is available to pay the claim. This provision does not apply to a claim that is secured by trust or restricted property.

**§ 30.143 Are there any categories of claims that will not be allowed?**

(a) Claims for care will not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(b) A claim will not be allowed if it:

(1) Has existed for such a period as to be barred by the applicable statute of limitations at date of decedent's death;

(2) Is a tort claim that has not been reduced to judgment in a court of competent jurisdiction;

(3) Is unliquidated; or

(4) Is from a government entity and relates to payments for:

(i) General assistance, welfare, unemployment compensation or similar benefits; or

(ii) Social Security Administration supplemental security income or old-age, disability, or survivor benefits.

**§ 30.144 May the judge authorize payment of the costs of administering the estate?**

On motion of the superintendent or an interested party, the judge may authorize payment of the costs of administering the estate as they arise and before the allowance of any claims against the estate.

**§ 30.145 When can a judge reduce or disallow a claim?**

The judge has discretion to decide whether part or all of an otherwise

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valid claim is unreasonable, and if so, to reduce the claim to a reasonable amount or disallow the claim in its entirety. If a claim is reduced, the judge will order payment only of the reduced amount.

### § 30.146 What property is subject to claims?

Except as prohibited by law, all intangible trust personalty of a decedent on hand or accrued at the date of death may be used for the payment of claims, including:

- (a) IIM account balances;
- (b) Bonds;
- (c) Unpaid judgments; and
- (d) Accounts receivable.

### § 30.147 What happens if there is not enough trust personalty to pay all the claims?

If, as of the date of death, there was not enough trust personalty to pay all allowed claims, the judge may order them paid on a pro rata basis. The unpaid balance of any claims will not be enforceable against the estate after the estate is closed.

### § 30.148 Will interest or penalties charged after the date of death be paid?

Interest or penalties charged against claims after the date of death will not be paid.

## Subpart F—Consolidation and Settlement Agreements

### § 30.150 What action will the judge take if the interested parties agree to settle matters among themselves?

(a) A judge may approve a settlement agreement among interested parties resolving any issue in the probate proceeding if the judge finds that:

- (1) All parties to the agreement are advised as to all material facts;
- (2) All parties to the agreement understand the effect of the agreement on their rights; and
- (3) It is in the best interest of the parties to settle.

(b) In considering the proposed settlement agreement, the judge may consider evidence of the respective values of specific items of property and all encumbrances.

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(c) If the judge approves the settlement agreement under paragraph (a) of this section, the judge will issue an order approving the settlement agreement and distributing the estate in accordance with the agreement.

### § 30.151 May the devisees or eligible heirs in a probate proceeding consolidate their interests?

The devisees or eligible heirs may consolidate interests under 25 U.S.C. 2206(e) in trust property already owned by the heirs or under 25 U.S.C. 2206(j)(9) in property from the inventory of the decedent's estate, or both.

(a) A judge may approve a written agreement among devisees or eligible heirs in a probate case to consolidate the interests of a decedent's devisees or eligible heirs.

(1) To accomplish a consolidation, the agreement may include conveyances among decedent's devisees or eligible heirs of:

- (i) Interests in trust or restricted land in the decedent's trust inventory; and
- (ii) Interests of the devisees or eligible heirs in trust or restricted land which are not part of the decedent's trust inventory.

(2) The parties must offer evidence sufficient to satisfy the judge of the percentage of ownership held and offered by a party.

(3) If the decedent's devisees or eligible heirs enter into an agreement, the parties to the agreement are not required to comply with the Secretary's rules and requirements otherwise applicable to conveyances by deed.

(b) If the judge approves an agreement, the judge will issue an order distributing the estate in accordance with the agreement.

(c) In order to approve an agreement, the judge must find that:

- (1) The agreement to consolidate is voluntary;
- (2) All parties to the agreement know the material facts;
- (3) All parties to the agreement understand the effect of the agreement on their rights; and
- (4) The agreement accomplishes consolidation.