

Navigating the Probate Process – OHA Perspective

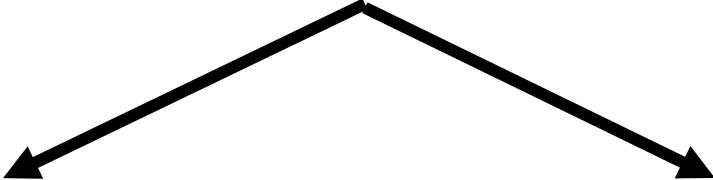
Chief Administrative Law Judge John R. Payne

Supervisory Indian Probate Judge Mary Thorstenson

Supervisory Paralegal Specialist Christine Kelly



U.S. Department of the Interior



Assistant Secretary – Indian Affairs



Director, Bureau of Indian Affairs (BIA)



BIA Regional Offices



BIA Agencies

Assistant Secretary for Policy, Management and Budget



Director, Office of Hearings and Appeals (OHA)



OHA Boards and Hearings Divisions



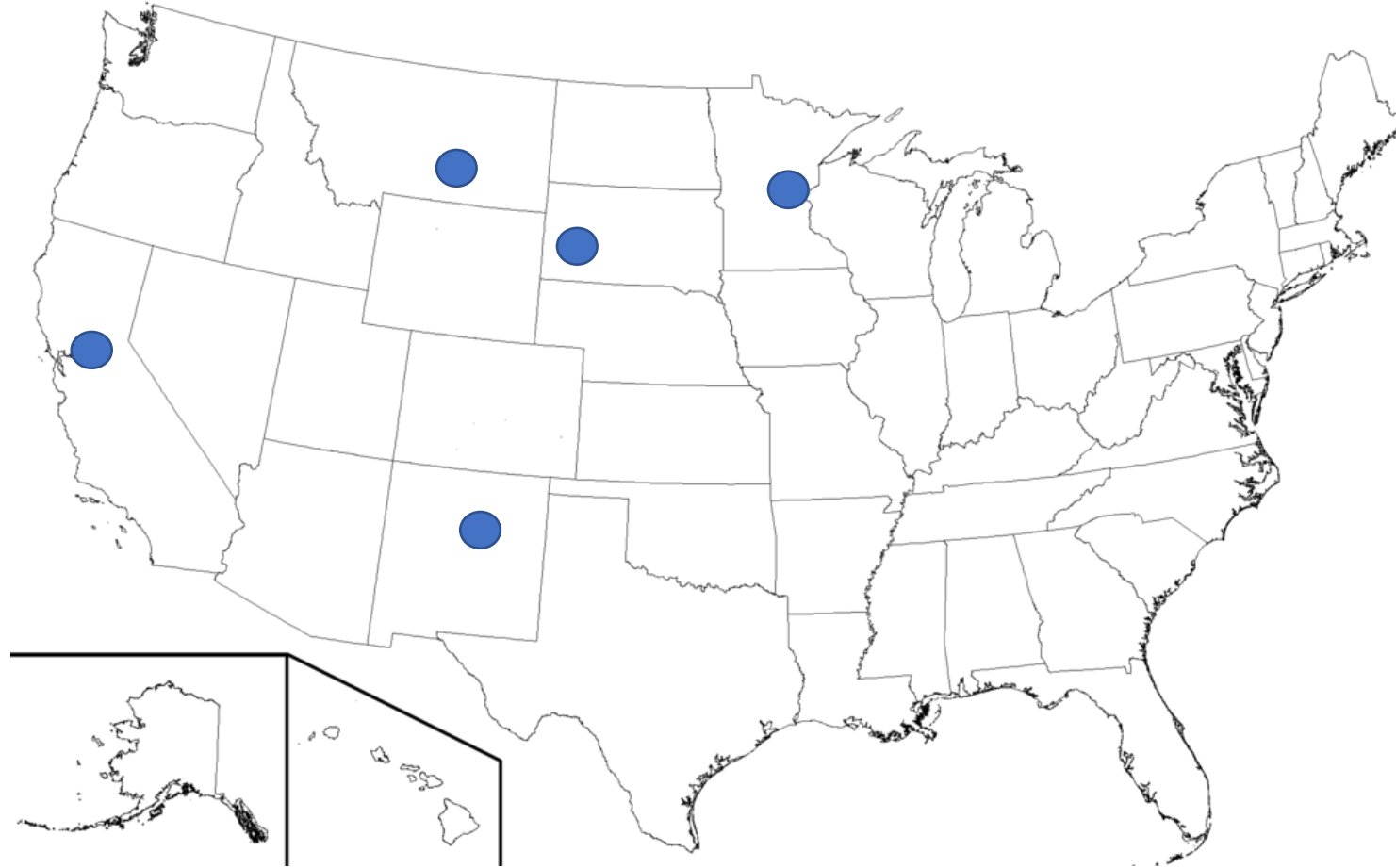
Probate Hearings Division

Probate Hearings Division

- 5 Offices – Albuquerque, Billings, Rapid City, Sacramento, Twin Cities
- 7 Judges, 5 more to start next week
 - Now must be appointed by Secretary of the Interior
- 40 + other employee positions
 - Attorneys, Paralegals, Legal Assistants

Probate Hearings Division

Circle = Current Field Office



PROBATE ADJUDICATION

- OHA
- BIA
- BTFA

Individual Indian with Trust or Restricted Property Dies

OHA Judge conducts hearing and supplemental if necessary

OHA Judge Issues Decision to Interested Parties, BIA, BTFA

BIA prepares the Probate File, IDs potential heirs, locates documentation

OHA mails and BIA posts hearing notices

OHA returns Administrative Record to BIA and closes case

OHA receives the Probate File from BIA

OHA & BIA work to update any missing or outdated information

BIA distributes Trust Real Property
BTFA distributes Trust Personalty (Funds)



Parsing AIPRA Will Language

- 2206(b)(1)(A) – Defines who can receive land in trust status by will (e.g. any lineal descendant, anyone who meets AIPRA definition of “Indian”)
- 2206(b)(2)(A) – If not in trust, land can be devised **only** as a life estate or in fee to a **natural person**
- Several obstacles to devising land in fee
- No limits on devises of funds

Considerations for Will Drafting

- No private trusts (trust on trust)
- Holographic wills (must meet witness requirements)
- Custody of original – copies vs. original
 - Where is original kept (file with tribal court or state court?)
- Witness requirements
 - Notary not enough
 - Must be disinterested
- Self-proved
- Specific codes or statutes

Will drafting, cont.

- Permanent Improvements
- Post-death income
- Problems with vague wills and descriptions
- Attempts to partition
 - Can't partition undivided shares
 - Must be specific description

Draft Regulations, 86 Fed. Reg. 1037 (1/7/21)

- Submit written comments by **March 8, 2021**
- Tribal consultation session will be held on **February 9, 2021, at 2 p.m. Eastern Time**
- Public hearing will be held on **February 11, 2021, at 2 p.m. Eastern Time**
- **FOR FURTHER INFORMATION CONTACT:** Elizabeth K. Appel, Director, Office of Regulatory Affairs & Collaborative Action—Indian Affairs, *Elizabeth.appel@bia.gov*, (202) 273–4680.