ESTATE OF SEYMOUR SENATOR	:	Order Docketing Appeal and
	:	Affirming Decision
	:	
	:	Docket No. IBIA 92-197
	:	
	:	September 14, 1992

This is an appeal from an order denying rehearing issued on May 26, 1992, by Administrative Law Judge Keith L. Burrowes in the estate of Seymour Senator (decedent). IP SA 113N 91. The appellant is Johanna Senator, the sister of decedent. She files this appeal pro se.

In an order determining heirs issued on February 28, 1992, Judge Burrowes determined that decedent died intestate and that his heirs were his two surviving children, Seymour Senator, Jr., and Arlene Senator. The Judge explicitly held that a document alleged by appellant to be decedent's will did not constitute a will for purposes of Departmental probate proceedings. He reaffirmed that holding in his May 26, 1992, order denying rehearing.

In addition to her notice of appeal, appellant has filed several other documents with the Board. It is abundantly clear from her filings that her challenge to Judge Burrowes' decision is based upon her claim that the disputed document is a will. A will, if such exists, is the only vehicle by which appellant could claim an interest in decedent's estate.

The Board has reviewed appellant's filings and the probate record in this matter, including the purported will. It finds that there is no way in which appellant can prevail in this appeal. The document upon which appellant bases her claim is a handwritten document bearing the initials "S.J.S." It was apparently written by decedent. However, it was neither signed nor witnessed. Departmental regulations governing wills for purposes of Departmental probate proceedings require that a will be signed and witnessed. Specifically, 43 CFR 4.260(a) provides: "An Indian of the age of 18 years or over and of testamentary capacity, who has any right, title or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses."

Appellant contends, that, because the Yakima Tribal Court has recognized the document, the Department should also recognize it. She submits a November 27, 1991, order of the tribal court which appears to recognize the

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document, although it does not specifically state that the document is a will. The order clearly indicates that the tribal court disclaims jurisdiction over the probate of trust or restricted property.

Although appellant apparently would like to see decedent's trust estate probated under Yakima law instead of Federal law, this is simply not possible. 1/ Congress has vested the Secretary of the Interior with authority to approve Indian wills which devise trust or restricted property. 25 U.S.C. § 373 (1988). Pursuant to that authority, the Secretary has promulgated regulations, including 25 CFR 4.260(a), quoted above. The Federal statute and regulation control here. See, e.g., Estate of Baz Nip Pah, 22 IBIA 72, 74 (1992). The document relied on by appellant cannot be recognized as a will in Departmental probate proceedings.

Under these circumstances, the Board sees no point in further delaying final resolution of this matter. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and Judge Burrowes' May 26, 1992, order denying rehearing is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

1/ Section 106 of the Indian Land Consolidation Act, 25 U.S.C. § 2205 (1988), provides that, "[n]otwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction."

Thus, a mechanism exists for a tribe to make its own laws applicable in Departmental probate proceedings. Absent enactment and approval of such a code, however, Federal statutes and regulations control.

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