ESTATE OF CHARLES C. JACKSON	: Order Docketing and Dismissing Appeal : : Docket No. IBIA 98-1 : : October 2, 1997

On October 1, 1997, the Board of Indian Appeals (Board) received two documents from Wanda Jackson Holum, LaLovi Jackson, and Inman Casey Jackson (Appellants), through counsel, Lynn M. Clark, Esq., Portland, Oregon. The documents are a Petition for Rehearing and a Notice of Appeal. Both documents seek review of an Order Determining Heirs in the Estate of Charles C. Jackson, IP BI 205A 96. The Order was issued on July 31, 1997, by Administrative Law Judge (ALJ, Judge) Harvey C. Sweitzer.

In a cover letter, Appellants' counsel states:

> I was advised by Mildred in the Probate Office for the Northern Idaho Agency to file a Notice of Appeal directly with [the Board]. My reading of the statutes and CFRs covering this proceeding, however, indicate that a Petition for Re-Hearing should first be filed with the Superintendent of the Northern Idaho Agency. If the Petition for Re-Hearing is all that is required or permissible at this time, then I will re-file my Notice of Appeal after a decision on the Petition for Re-Hearing. In any event, considering the timing of this filing, I thought it best to err on the side of caution and file both the forms set forth in Federal Procedural Forms Lawyers Edition and the Notice of Appeal as directed by the Northern Idaho Agency.

The certificate of service shows that copies of the documents filed with the Board were served on the Superintendent, Northern Idaho Agency, and on Judge Sweitzer.

It is indeed the case that a Notice of Appeal is to be filed directly with the Board. However, before appealing to the Board, persons contesting an ALJ's determination of heirs must first seek rehearing by the ALJ. See 43 C.F.R. §§ 4.241(a) and 4.320; Estate of Albert William Cobe, 28 IBIA 282 (1995). Under 43 C.F.R. § 4.241(a), a petition for rehearing must be filed with the Superintendent of the appropriate Bureau of Indian Affairs (BIA) agency. This information was set out in the Notice transmitting the Judge's Order to the parties. Copies of both the Order and the Notice were provided to the Board by Judge Sweitzer. The Notice states:

> This decision becomes final sixty (60) days from the date of mailing of this notice unless within such time period a written

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petition for rehearing shall have been filed with the superintendent by an aggrieved party in accordance with the provisions of 43 C.F.R. 4.241.

If the BIA employee with whom counsel spoke also said that a petition for rehearing was to be filed with the Board, that statement was incorrect but cannot serve to amend or supersede the regulations. However, it is possible that Appellants properly filed their Petition for Rehearing with the Superintendent, and merely filed another copy with the Board out of an abundance of caution. In any case, an appeal to the Board is premature at this time.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Sweitzer's July 31, 1997, Order Determining Heirs is docketed, but dismissed as premature. The documents filed with the Board are transmitted to Judge Sweitzer, who is responsible for addressing the Petition for Rehearing.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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