



U.S. Department of the Interior
Office of Inspector General

AUDIT REPORT

**INDIAN PROBATE PROCESS
AT THE MINNESOTA AGENCY,
MINNEAPOLIS AREA OFFICE,
BUREAU OF INDIAN AFFAIRS**

**REPORT NO. 98-I-672
SEPTEMBER 1998**



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL,
Washington, D.C. 20240

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AUDIT REPORT

Memorandum

To: Assistant Secretary for Indian Affairs

From: Robert J. Williams *Robert J. Williams*
Assistant Inspector **General for Audits**

Subject: Audit Report on the Indian Probate Process at the Minnesota Agency,
Minneapolis Area Office, Bureau of Indian Affairs (No. 98-I-672)

INTRODUCTION

This report presents the results of our review of the Indian probate process¹ at the Minnesota Agency, which is under the jurisdiction of the Minneapolis Area Office of the Bureau of Indian Affairs. The objective of the audit was to determine whether the Agency was preparing and filing probate data with the administrative law judge in accordance with Federal regulations. Based on our survey, we expanded our objective to also determine whether the Agency was preparing summary distributions for estates valued at less than \$1,000, which the agency superintendent is authorized by Federal regulations to resolve through informal hearings.

BACKGROUND

The U.S. Government holds property in trust for Indians.² In 1887, the Congress enacted the General Allotment Act, which authorized the division of tribal lands into parcels for allotment to individual Indians. Section 5 of the Act specified that title to allotments was to be held in trust by the United States for 25 years. The Congress subsequently extended this

¹Probate is the legal process by which wills are approved and heirs are determined after an individual dies. If there is not a valid will, the individual is considered to have died intestate, and the probate process determines the intestate individual's heirs. If there is a will, the probate process determines the legality and validity of the will.

²According to the Code of Federal Regulations (43 CFR 4.201), trust property is real or personal property, the title to which is held by the United States for the benefit of Indians.

period into perpetuity. In addition, the Congress enacted probate laws which provided that when individual Indians died, their probate interests would descend to their heirs.

The Congress has placed primary responsibility for managing and protecting trust assets with the Secretary of the Interior, who has delegated authority for the management of trust lands to the Bureau of Indian Affairs, Department of the Interior. Under the Code of Federal Regulations (43 CFR 4.210), the Bureau is to begin the probate process when it is notified of the death of an Indian who owns trust property. If the trust property consists of either land or personal property valued in excess of \$1,000, such as individual Indian money accounts,³ the Bureau is responsible for collecting and transmitting probate data on the decedent to the administrative law judges in the Department's Office of Hearings and Appeals, which has jurisdiction over probate cases. The administrative law judges conduct the probate hearings and issue orders distributing the assets. Once the Bureau submits the necessary probate data to an administrative law judge, the Bureau generally does not participate further until the wills have been approved or the heirs of intestate decedents have been determined unless the administrative law judge requests the staff to attend or testify at the probate hearings. At that time, the Bureau is responsible for distributing the assets as ordered by the judge. If the trust personal property is valued at less than \$1,000 and there is no land, the agency superintendent is responsible for preparing a summary distribution to distribute the assets.

In March 1990, the Bureau developed a probate backlog reduction initiative designed to eliminate its backlog of probate cases.⁴ The Bureau identified a backlog of 4,285 cases as of the beginning of fiscal year 1991. In addition, the Bureau estimated that an additional 2,100 deaths would be discovered in the process of resolving the 4,285 cases.⁵ Stating that the backlog was caused by an insufficient number of probate staff, other program priorities, and special efforts to develop and update the databases for the Bureau's land records, the Bureau requested additional appropriations to reduce or eliminate the backlog. Between 1991 and 1996, the Congress appropriated \$5 million to reduce the backlog. However, despite the probate initiative, the Bureau estimated that the Bureauwide backlog had increased to about 5,653 cases as of April 1997, of which 461 cases were applicable to the six bands of the Minnesota Chippewa Tribe, under the jurisdiction of the Minnesota Agency (see Table 1). The Bureau estimated that an additional \$4.5 million would be required to eliminate the identified backlog of 5,653 cases, which included 1,619 cases that either were identified during the probate initiative or were subsequent deaths associated with the resolution of these cases.

³The Code of Federal Regulations (25 CFR 115.1) states, "The term 'individual Indian money accounts' means those accounts under the control of the Secretary of the Interior or his authorized representative belonging to individuals."

⁴For the purposes of this report, backlog is all cases of reported deaths for which probate data had not been submitted to the administrative law judge within the required 90 days.

⁵The resolution of old probate cases had the potential to increase the backlog because one or more of the heirs to the estate being probated may have died.

Table 1. Bureau of Indian Affairs Probate Backlog

Description	Bureau Total	Minneapolis	
		Area Office	Minnesota Agency
Probate Backlog as of 10/1/90 ^a	4,285	1,160	555
Probate Backlog as of 4/7/97			
Remaining 1 O/O 1/90	1,619	422	325
Since 10/01/90	4,034	186	136
Total as of 4/7/97	5,653	608	461 ^b

^aThese totals represent the number of probate cases reported by the Bureau during the probate initiative. The Bureau defined its backlog as those cases for which probate data had not been submitted to the administrative law judge within the 90-day requirement as of October 1, 1990.

^b The Agency's September 8, 1997, Probate Backlog Report indicated that the backlog had increased to 491 cases.

SCOPE OF AUDIT

We conducted our audit at the Bureau's Central Office, Minneapolis Area Office, and the Minnesota Agency (see the Appendix). To accomplish our objective, we reviewed and analyzed death reports and probate data submitted by the Agency to the administrative law judge for deaths reported during fiscal years 1995 and 1996. We also reviewed laws and Departmental regulations and policies governing the probate process and evaluated cash-only estates, including individual Indian money estate accounts, to determine whether probate files had been set up for estates in excess of \$1,000. In addition, we interviewed (1) personnel at the Bureau offices visited, including probate staff, who were responsible for collecting and transmitting all probate data to the administrative law judge and (2) an administrative law judge from the Office of Hearings and Appeals in Saint Paul, Minnesota, concerning the adequacy and timeliness of the data submitted by Bureau personnel. We did not review the hearing process, which is administered by the administrative law judges, or nontrust property owned by individual Indians, which is not subject to probate by the Department.

Our audit was made in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that were considered necessary under the circumstances. As part of our audit, we reviewed the Department of the Interior's Annual Statement and Report, which is required by the Federal Managers' Financial Integrity Act, for fiscal year 1995 and determined that none of the Department's reported weaknesses were related to the objective

of this audit. We also reviewed the Department's Accountability Report for fiscal year 1996, which includes information required by the Act, and the Bureau of Indian Affairs annual assurance statement and determined that there were no reported weaknesses related to the objective of our audit. As part of our audit, we reviewed the Bureau's 1993 Bureauwide "Probate" Management Control Review, in which the Bureau identified 13 internal control weaknesses involving noncompliance with established procedures for processing Indian probates. During our review, we noted that 3 of the 13 identified weaknesses were within the scope of our audit and still existed: the date that the agency was notified of a death was not documented, decedent reports were not distributed to the administrative law judges within the required first 7 days of each month, and probate data were not submitted to the administrative law judges within the required 90 days of notice of death. We evaluated the Bureau's system of internal controls related to the probate process to the extent that we considered necessary. The internal control weaknesses identified are discussed in the Results of Audit section of this report. Our recommendations, if implemented, should improve the internal controls in these areas.

PRIOR AUDIT COVERAGE

During the past 5 years, the Office of Inspector General has issued one audit report that identified weaknesses in the Bureau's probate process similar to those identified in this report. As part of our review of the Bureau's probate process, we issued, on July 29, 1998, the report "Indian Probate Process at the Yakama and Puget Sound Agencies, Portland Area Office, Bureau of Indian Affairs" (No. 98-I-587). The report stated that the agencies were not reporting all deaths and were not submitting required probate data to the administrative law judge in accordance with Federal regulations for Indians whose deaths were reported to the agencies during fiscal years 1995 and 1996. In addition, the report stated that the agency superintendents at both agencies were not preparing and processing summary distributions for estates valued at less than \$1,000, which the superintendents are authorized to resolve through informal hearings. Three of the recommendations made in the report are applicable to conditions identified at the Minnesota Agency: (1) plans should be developed for submitting the required probate data to the administrative law judge, (2) sufficient staff should be assigned to process probates, and (3) procedures should be developed for more proactively identifying deceased Indians.

RESULTS OF AUDIT

The Minnesota Agency did not promptly report all Indian deaths and did not timely submit all the required probate data to the administrative law judge for Indians whose deaths were reported to the Agency during fiscal years 1995 and 1996. The Code of Federal Regulations (43 CFR 4.2 10) requires agency superintendents to (1) prepare and provide to the appropriate administrative law judge, within the first 7 days of each month, a list of all Indians who have died and whose names have not been previously reported and (2) file with the appropriate administrative law judge, within 90 days of receipt of a notice of death of an Indian who died owning trust real property or trust personal property valued at \$1,000 or more, all data shown

in the records pertaining to the property and families of the deceased! However, we found that the required information was not submitted because Agency officials instructed employees to emphasize probates involving land and did not assign a sufficient number of staff to collect and submit probate data. As a result of the Agency not forwarding the probate data to the administrative law judge in a timely manner, probate hearings were delayed and estate assets and subsequent income associated with inherited lands were not distributed to the heirs in a timely manner. Specifically, for Indians whose deaths were reported to the Agency during fiscal years 1995 and 1996, we identified individual Indian money accounts of about \$42,000 that could not be distributed because probate data had not been submitted to the administrative law judge.

Reporting of Deaths

We were not able to determine whether the Minnesota Agency reported all deaths to the administrative law judge within the first 7 days of the month after notification, as required, because the Agency did not document the dates that it was notified of the deaths. Probate employees stated that they were not aware of the requirement that all deaths were to be reported within 7 days of the month following receipt of notification. In addition, probate employees said that Agency Realty Branch officials told them to report only decedents who died owning trust real property and to postpone including those deaths on reports until they had received the death certificates. As a result, based on our review of available documentation, we determined that the Agency did not report to the administrative law judge 139 of 333 Indian deaths reported to the Agency during fiscal years 1995 and 1996.

In addition, there was little assurance that the Agency was notified of all deaths of Indians under its jurisdiction. Of 333 deaths reported to the Agency during fiscal years 1995 and 1996, only 173⁷ were deaths that occurred during that period, or an average of 87 deaths per year. However, based on the estimated annual mortality rate of 0.6 percent for Indians' and the 1996 tribal population of about 28,000 for which the Agency had probate responsibility, we estimated that the mortality rate of 0.31 percent (87 divided by 28,000) reported to the Minnesota Agency was significantly below the forecasted rate of 0.6 percent. Consequently,

(⁷According to the Code of Federal Regulations (43 CFR 4.210), the data submitted to the administrative law judges include, but are not limited to, a copy of the death certificate or other evidence of the death; data for heirship findings, such as information on marriages, separations, and divorces; names and addresses of probable heirs and a determination as to whether their relationship is by marriage, blood, or adoption; and the names, relationships, and last known addresses of beneficiaries and witnesses when a will or purported will is involved.

⁸The 173 deaths that occurred during fiscal years 1995 and 1996 consist of 139 deaths not reported to the administrative law judge and 34 deaths reported to the administrative law judge.

⁹According to the Bureau's "Probate" Management Control Review for fiscal year 1993, the average mortality rate for Indians is estimated at about 1 percent per year. However, the Bureau, in its May 19, 1998, response to the draft of our report "Indian Probate Process at the Yakama and Puget Sound Agencies, Portland Area Office, Bureau of Indian Affairs" (No. 98-I-587), included updated 1991-1993 Indian Health Service mortality rate information, which stated that the age-adjusted mortality rate for Indians had decreased to 0.6 percent.

we believe that the Agency probate staff needs to take more proactive measures to identify deceased Indians. One additional measure would be to routinely review information already available in other systems at the Agency, such as the individual Indian money estate account listing. This listing could provide information to the Agency on Indian deaths that may not have been reported to the Minnesota Chippewa Tribe or the Agency Realty Branch.

Agency probate employees have taken some proactive measures to identify deceased Indians. For example, one probate employee obtained a listing of individual Indian money accounts for Indians who were born before 1910. Although at the time of our review this employee had not determined whether the account holders were deceased, we believe that Agency officials should instruct probate employees to follow up on this effort because there are more than 1,300 such accounts, totaling about \$1.4 million, on the listing. Another employee began researching Inheritance and Heirship cards⁹ to identify Indians whose deaths required probate. Based on this research, the Agency identified Indians of whose deaths it previously had not been aware. Largely as a result of this research, the Agency's reported probate backlog increased from 195 cases as of September 30, 1996, to 461 cases as of April 7, 1997.

Although we believe that some of the Agency staff is taking action to identify deceased Indians, we believe that a more systematic method of identifying and reporting deaths as they occur is necessary if the Agency is to process probates in a timely manner. In that regard, we believe that Agency officials should instruct probate employees to comply with the regulations and to report all deaths to the administrative law judge within the 7-day requirement. We also believe that the information from these lists should be compiled in a historical database of Tribal members' deaths. The information should also form the basis for a process, or decision tree, through which probate employees could determine and document whether a death (1) requires probate based on whether the decedent owned trust real property, owned personal property in excess of \$1,000, or died with a will; (2) requires a summary distribution; or (3) does not require either a full probate or a summary distribution.

Submission of Probate Data

The Minnesota Agency did not submit to the administrative law judge, within the required 90 days, probate data for all deaths reported to the Agency in fiscal years 1995 and 1996. Of the 333 deaths reported to the Agency in fiscal years 1995 and 1996, 225 deaths, or 67 percent, required probate. Of the 225 deaths requiring probate, 163 cases were submitted to the administrative law judge: 4 cases met the 90-day requirement, and 113 cases did not meet the requirement. We could not determine whether the remaining 46 cases met the requirement because the Agency did not document the dates the deaths were reported to the Agency. Because the Agency did not submit 62 cases (225 cases less 163 cases) to the administrative law judge, land and individual Indian money accounts totaling \$42,000 could not be distributed to the heirs of these estates.

⁹Inheritance and Heirship cards are Bureau records that contain information on family history and land ownership.

Agency officials told us that they did not have sufficient staff and funding to process probates within the required 90 days because the Agency's probate positions had been affected by reductions in force in October and December 1995. During the reductions in force, the five experienced full-time probate employees were replaced with four employees who had little or no experience in processing probates. The Agency did not have five probate clerks to process probates until February 1996. These five probate employees received training provided by the administrative law judge in September 1996 and were still processing probates as of September 1997. We believe that the impact of the reductions in force is reflected in the decrease, based on Agency records, in the number of probates sent to the administrative law judge as follows:

Fiscal Year	Probates Processed
1994	228
1995	142
1996	59
1997	115

While we agree that the reductions in force adversely affected the processing of probate cases, we believe that the Minnesota Agency did not submit probate data within the required 90 days primarily because the agency superintendent did not assign a sufficient number of staff to collect and submit probate data for the current probate work load. At the time of our review, the Minnesota Agency had five employees assigned full time to processing probates. Agency officials stated that one of the five employees processed current cases and that the other four employees worked exclusively on backlogged cases. However, based on discussions with probate employees and on reviews of the Agency's monthly activity reports, we found that the employee assigned to process the current cases was assigned other duties in addition to her probate responsibilities, even though her job description was identical to that of the probate clerks assigned to process the backlog. This employee estimated that she spent only 10 to 30 percent of her time processing probates, with the remainder of her time spent performing other duties such as processing time and attendance reports, travel vouchers, payroll, mail, and correspondence. This resulted in most current cases being left unprocessed and adding to the backlog. This employee, one of the probate clerks who was terminated during the reduction in force, was rehired in February 1996 and assigned to process current probates. However, Agency records indicate that during the remainder of fiscal year 1996, the employee submitted only five probate cases to the administrative law judge, of which only two were for deaths that occurred during fiscal year 1996. (Both cases were submitted within 90 days.) The remaining probate cases resulting from deaths that occurred during fiscal year 1996 were added to the backlog, on September 30, 1996, and were scheduled for processing by backlog probate clerks using money that was designated for the probate backlog.

In the 1990 initiative, the Bureau estimated that it would take, on the average, approximately 1 week to process one probate. Using this Bureau estimate, we determined that one

employee could process about 40 probate cases per year.¹⁰ Based on the 40-case-per-year estimate and the Agency's probate work load, we concluded that one full-time probate employee was not sufficient to process the work load normally anticipated in a year, even without a backlog. That is, one probate employee could not have processed and transmitted to the administrative law judge the 1995-1996 average annual work load of 113 new cases within the required 90 days, even if the employee had not been assigned other duties and responsibilities. Processing an annual work load of 113 identified cases would require two to three full-time employees based on 40 cases being processed per year.

Further, as noted in the "Reporting of Deaths" section of this report, we estimated that deaths at the Minnesota Agency were significantly underreported based on the Bureau's estimated annual mortality rate of 0.6 percent. Applying this 0.6 percent rate to the approximately 28,000 tribal members for whom the Agency has probate jurisdiction, the expected number of deaths in fiscal year 1996 would have been 168. Using the 40-case-per-year estimate and the 67 percent ratio of deaths requiring probate to total deaths that occurred during fiscal years 1995 and 1996, we determined that between two and three employees would be required to process the current anticipated annual work load on a timely basis. In addition, with the Agency's reported backlog of 46 1 probate cases as of April 7, 1997, between 11 and 12 staff years would be required to process just these cases. Accordingly, while the Agency has assigned four full-time probate staff to resolve the backlog, we believe that additional staff are needed to help ensure that current (nonbacklog) probates are submitted to the administrative law judge and that heirs receive their inheritances in a timely manner. For example:

- Probate data had not been submitted for one decedent who died in March 1970, although the Agency was notified of his death by July 1971. The decedent owned land and had an individual Indian money account of \$11,000, but neither was distributed to the decedent's daughter, who died in 1994 without receiving the inheritance. The Agency also had not probated the daughter's death or established a probate case file. In addition, the grandson of the decedent who died in March 1970 had requested information of the Agency in 1993 regarding the status of his grandfather's estate and in 1994 regarding his mother's estate and offered to provide information to the Agency concerning these estates. However, at the time of our review, we found that the Agency had not sought the information offered by the grandson.

- The Agency had not resolved the probate of a decedent whose death was reported to the Agency in 1935. Probate data were not submitted to the administrative law judge until 1986. After a 1986 hearing revealed discrepancies in the family history, the judge returned the case to the Agency for additional information. However, at the time of our review, the Agency had not resubmitted the case to the administrative law judge.

¹⁰The 40-case estimate was based on a work year of about 200 days to account for sickness, leave, holidays, and training.

The administrative law judge who holds hearings for the Minnesota Agency indicated that while the probate data submitted by the Agency were adequate, they were not submitted in a timely manner. He stated that the Agency needed additional staff to process probates, that the Agency had many older cases, and that he was currently working on cases for decedents who had died from 5 to 25 years ago. He also stated that the older cases were more time consuming to process for the Bureau's probate staff, as well as for him and his staff, because the older cases have more heirs and that, as more time passes, it becomes increasingly difficult to locate the heirs.

We believe that the Minneapolis Area Director and the Minnesota Agency superintendent should ensure that sufficient numbers of and adequately trained staff are assigned to probates to enable the Agency to eliminate its backlog and comply with the 90-day requirement for the submission of probate data to the administrative law judge. In addition, the Agency should discontinue the practice of assigning other duties to the probate employees who process the current probate work load because this prevents the timely submittal of probate cases to the administrative law judge.

In the June 22, 1998, response (Appendix 3) to the draft report from the Assistant Secretary for Indian Affairs, the Bureau said that this section of the report "exemplifies the dilemma of most of our Agency offices in trying to fulfill multiple important responsibilities with limited resources." Regarding the shifting of realty personnel from one vital function to another, the Bureau stated, "Since redeployment of current staff simply results in another important job going undone, it is necessary to increase the overall level of agency staffing." In that regard, the Bureau stated that its pending budget request "includes a requested increase of \$3 million for additional probate staff."

Recommendations

We recommend that the Assistant Secretary for Indian Affairs require the Minneapolis Area Office and Minnesota Agency to:

1. Develop plans, which include staffing requirements, target dates, and titles of officials responsible, for transmitting the required probate data, including data on cash estates valued in excess of \$1,000, to the administrative law judge.
2. Develop a historical database of the deaths of the tribal members for which the Agency has probate jurisdiction and use the database as the basis for a decision tree. This process should document whether the reported death requires probate because the decedent owned land, had personal property in excess of \$1,000, or left a will; requires a summary distribution because the decedent did not own land and had personal property valued at \$1,000 or less; or does not require either probate or a summary distribution.
3. Assign sufficient staff to eliminate the backlog and to process probate cases as deaths are reported to the Agency.

4. Develop procedures for more proactively identifying Indians who have died to include a systematic review of the individual Indian money estate account listings.

5. Discontinue the practice of assigning other duties to the probate employee who is responsible for processing the current probate work load.

Bureau of Indian Affairs Response and Office of Inspector General Reply

In the June 22, 1998, response (Appendix 2) to the draft report from the Assistant Secretary for Indian Affairs, the Bureau concurred with all five recommendations. Based on the response and on information contained in the Department of the Interior's "Trust Management Improvement Project, High Level Implementation Plan," dated July 1998, provided by the Bureau on August 6, 1998, we consider Recommendation 2 resolved and implemented and Recommendations 1, 3, and 5 resolved but not implemented. Accordingly, the unimplemented recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation. Also, based on the response and the "Implementation Plan," additional information is requested for Recommendation 4 (see Appendix 3).

In its response to Recommendation 4, the Bureau stated that our report acknowledged the proactive measures taken by the Minnesota Agency to identify deceased Indians, but the Bureau did not state whether the Agency adopted the recommended procedure of systematically reviewing the individual Indian money estate account listings as an additional measure to identify deceased Indians. Therefore, we request that the Bureau provide this information.

Regarding Recommendation 5, the Bureau stated that it considered the recommendation resolved and implemented based on the Minnesota Agency's statement that probate backlog clerks will no longer be assigned collateral duties. However, we consider Recommendation 5 resolved but not implemented based on the statement in the "Implementation Plan" (pages 22 and 23) in which the Bureau requests funding to "permanently staff BIA [Bureau of Indian Affairs] field offices with a minimum of one additional staff person to work on the current estates" and because the Bureau's response did not specify that the clerk who is processing the current probate work load will be relieved of collateral duties.

Additional Comments on Audit Report

The Bureau also provided comments on the report, which we considered and incorporated into our final report as appropriate. The specific comments and our responses are as follows:

Results of Audit. The Bureau stated:

While we [the Bureau] do not dispute the fact that the 90-day deadline is frequently missed, it does not necessarily follow that this alone led to the

subsequent delays in probate hearings and asset distribution. As of March 30, 1998, the Office of Hearings and Appeals reported that it had 4,068 pending probate cases, of which 651 had been pending for 18 months or more. As the audit did not review the OHA [Office of Hearings and Appeals] processes, it is just as likely that the timely submission of probate data would simply have served to increase the backlog at OHA while having little or no impact on the timing of the ultimate distribution of assets. This section should be revised to reflect the fact that the Bureau backlog is simply one part of a significant Departmental backlog in completing all aspects of probate work.

Notwithstanding the backlog situation at the Office of Hearings and Appeals, we believe that the Bureau should comply with the Code of Federal Regulations (43 CFR 4.210), which states, "Within 90 days of receipt of notice of death of an Indian who died owning trust property, the Superintendent having jurisdiction thereof shall commence the probate of the trust estate by filing with the appropriate administrative law judge all data shown in the records relative to the family of the deceased and his property." In addition, we disagree that "it is just as likely that the timely submission of probate data would simply have served to increase the backlog at OHA [Office of Hearings and Appeals] while having little or no impact on the timing of the ultimate distribution of assets." The Bureau cited the total number of pending probates at the Office of Hearings and Appeals as of March 30, 1998, but it did not specify the number of probate cases pending for the Minnesota Agency in fiscal years 1995 and 1996, which were the location and years covered by our review. In that regard, we found that as of September 30, 1996, only 81 probate cases for the Minnesota Agency were pending at the Office of Hearings and Appeals, of which only 12 were 18 or more months old. As of September 30, 1996, the Agency's reported backlog was 195 cases. Thus, at the time of our review, most of the unprobated cases were at the Agency awaiting submission to the administrative law judge rather than at the Office of Hearings and Appeals pending hearings. Any delays in the Bureau's submissions of probate data to the administrative law judge cause further delays at the Office of Hearings and Appeals because without the heirship data and family history, the judge is precluded from holding hearings and issuing orders for distributing the assets.

Reporting of Deaths. The Bureau disagreed with our use of the 1 percent mortality rate, the rate used in the Bureau's 1993 management control review of probates. Instead, the Bureau stated that we should use the Indian Health Service's "age-adjusted" mortality rate of 0.6 percent. We used the 1 percent mortality rate in the draft report because it was the rate the Bureau used. However, based on the Bureau's response, we have revised our report to reflect the Indian health Service's "age-adjusted" mortality rate of 0.6 percent to estimate the number of deaths that occurred.

The Bureau also stated that we applied the percentage factor "to determine how many deaths should have been reported and probate data subsequently filed with OHA [Office of Hearings and Appeals] ." However, we did not apply the 1 percent mortality rate to determine how many deaths should have been reported to the administrative law judge or to determine the

number of probate cases to be submitted to the administrative law judge. As stated in the report (page 5), our determination that the Agency did not report 139 of 333 deaths to the administrative law judge was based on the number of deaths reported to the Agency and other documentation we reviewed at the Agency. Furthermore, of the deaths that should have been reported to the administrative law judge, we determined the number of cases that required probate based on whether the actual decedents owned either trust real property or trust personal property valued at \$1,000 or more. We used the 1 percent morality rate only to demonstrate that the .3 1 percent mortality rate reported to the Minnesota Agency appeared low and to estimate the number of deaths which may be reported to the Agency to provide a basis for projecting the number of staff needed to process anticipated work load.

The Bureau further stated:

[T]he Department's role in probate proceedings is limited to those Indians who died owning allotted lands or who had funds in the custody of the Department of the Interior. Some agencies report all deaths; others do not. We have confirmed with staff from the Solicitor's Office that the Bureau is not required to report deaths of those Indians for whom no funds or land is held in trust status.

We disagree that only deaths of Indians owning trust property have to be reported because the Code of Federal Regulations (43 CFR 4.2 10) states that "within the first 7 days of each month, each Superintendent shall prepare and furnish to the appropriate administrative law judge a list of the names of all Indians who have died and whose names have not been previously reported." The Bureau did not provide a written opinion from the Office of the Solicitor supporting its position that the Bureau does not have to comply with the Code's requirements. In addition, the administrative law judge in the Office of Hearings and Appeals in Sacramento, California, stated that agencies should report all deaths because the reports are circulated to other agencies, as well as to the Bureau's land title records offices, which may be aware of trust properties of decedents under the jurisdiction of other agencies. We believe that the Bureau's statement that "some agencies report all deaths, others do not" demonstrates that all agencies are not in compliance with the Code of Federal Regulations. In addition, the Bureau's guidelines and procedures set forth in the draft supplement to the Bureau Manual, dated July 2, 1992, state:

Upon receiving notice of death, the Superintendent having administrative jurisdiction over the decedent's tribe shall immediately notify the Land Title Records Office, and within the first seven days of the following month, notify the administrative law Judge of such fact as required by 43 CFR 4.210(a).

If these requirements are no longer valid, they should be formally modified.

Submission of Probate Data. The Bureau stated that our report should note that "during the reductions in force, the five experienced probate employees were replaced with four employees who had little or no experience in processing probates" and that the last

sentence of the first paragraph on page 7 “should also be changed to reference **four** new probate employees rather than five.”

We disagree with the Bureau’s statement because documentation provided by the Agency indicated that as of February 1996, the Agency had five probate clerks. These same five probate clerks, employed to process probates as stated in their job descriptions, were assigned to process probates at the time of our review in September 1997. We also located documentation which indicated that all five clerks were scheduled for training provided by the administrative law judge in September 1996. We have revised our report to clarify the change in probate staff experience.

The Bureau stated that our report should be “significantly expanded as it exemplifies the dilemma of most of our Agency offices in trying to fulfill multiple important responsibilities with limited resources.” The Bureau also stated:

While a number of audits cite a common finding of inadequate numbers of trained staff, we [the Bureau] can recall no audit that has been issued in the last decade which identifies any program or administrative office in the Bureau of Indian Affairs which is over staffed. Since redeployment of current staff simply results in another important job going undone, it is necessary to increase the overall level of agency staffing. The pending budget request for the Bureau of Indian Affairs includes a requested increase of \$3 million for additional probate staff.

We agree that recent audit reports, such as the “Wapato Irrigation Project, Bureau of Indian Affairs” (No. 95-I-1402) and the “Indian Probate Process at the Yakama and Puget Sound Agencies, Portland Area Office, Bureau of Indian Affairs” (No 98-I-587), have indicated that there is insufficient realty staff at the agencies reviewed to perform all realty-related trust responsibilities in a timely manner. In this report, we identified insufficient staffing and collateral duties as factors contributing to the untimely processing of probates. We did not intend to imply that other activities are not important. However, the timely processing of probates is necessary to ensure that lease revenues and other income are distributed to the appropriate landowners or to the rightful heirs of deceased landowners. Accordingly, we have revised the report to include the Bureau’s comments regarding staffing.

Other Matters

During our review, we also identified other matters that need to be addressed at the Minnesota Agency in the areas of summary distributions and the processing of probates for which the Leech Lake and Mille Lacs Bands were responsible.

Summary Distributions. The Minnesota Agency did not process summary distributions in fiscal years 1995 and 1996. As a result, the assets from small estates were not distributed to heirs in a timely manner. The Code of Federal Regulations (43 CFR 4.27 1) requires agency superintendents to assemble the apparent heirs of Indians who have died

intestate with only trust personal property or cash valued at less than \$1,000 and to have an informal hearing to determine the proper distribution of assets. Agency realty officials said that the summary distributions were not processed because probate employees were emphasizing the processing of probates involving land. For fiscal years 1995 and 1996, we identified seven summary distributions, totaling about \$3,400, that the Agency should have processed. While the summary distributions will not add to the Agency's backlog of probate cases to be submitted to the administrative law judge, the distributions will increase the work loads of Agency probate staff because heirship data such as family history and beneficiary information must be assembled in each case.

Processing Probates for Self-Governance Tribes. We found that the Agency processed 14 estates that were the responsibility of the Mille Lacs Band of the Minnesota Chippewa Tribe. In addition, we identified 32 other estates on the Agency's September 1997 probate backlog inventory for which the Mille Lacs and the Leech Lake Bands are responsible under their self-governance compacts." Under annual funding agreements negotiated pursuant to the compacts, the Mille Lacs Band was responsible for processing its own probates since fiscal year 1991 and the Leech Lake Band was responsible since fiscal year 1996. However, we found that the 14 estates were processed by Agency probate employees because Agency officials had not told probate employees that these estates were covered by self-governance compact funding agreements. As a result, the Agency spent between \$14,000 and \$21,000¹² to process the 14 cases. In addition, the Bureau's processing of probates for which the two bands are responsible delays the processing of probates for the other Chippewa bands whose probates are the responsibility of the Agency. Further, unless corrective action is taken, the Agency will incur between \$32,000 and \$48,000 to process the 32 cases included in its backlog inventory, which are the responsibility of the two bands.

On March 2, 1998, subsequent to the completion of our fieldwork, the Minnesota Agency superintendent informed us that he had taken the following actions to resolve this matter:

- Notified the Mille Lacs and Leech Lake Bands that they were responsible for performing the probate function.
- Transmitted to the bands listings of all of the probates for which the bands are responsible for processing.
- Made available a workstation within the Agency Realty Branch for use by the bands to gather information and documentation.

"Title III of Public Law 93-638, as amended, authorizes the Secretary of the Interior to enter into a compact with Indian organizations which allows the organizations "to plan, conduct, consolidate, and administer programs, services, and functions of the Department of the Interior that are otherwise available to Indian tribes and Indians."

¹²These amounts are based on an Agency-estimated processing cost of \$1,000 to \$1,500 per case.

- Removed the probates for which the bands have processing responsibility from the Agency's probate inventory list.

- Provided training on probate processing to both Agency Realty Branch staff and band staff.

We did not make any recommendations to address these areas because the Agency has taken sufficient corrective actions. However, we believe that the Agency should continue to monitor these areas to prevent recurrences of the situations described.

In accordance with the Departmental Manual (360 DM 5.3), please provide us with your written comments to this report by October 16, 1998. The response should provide the information requested in Appendix 3.

The legislation, as amended, creating the Office of Inspector General requires semiannual reporting to the Congress on all audit reports issued, actions taken to implement audit recommendations, and identification of each significant recommendation on which corrective action has not been taken.

We appreciate the assistance of personnel of the Minnesota Agency and the Minneapolis Area Office in the conduct of our audit.

OFFICES VISITED

OFFICE	LOCATION
Central Office	Washington, DC.
Minneapolis Area Office	Minneapolis, Minnesota
Minnesota Agency Office	Cass Lake, Minnesota
Sacramento Area Office	Sacramento, California
Department of the Interior Office of Hearings and Appeals	St. Paul, Minnesota



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, D.C. 20240

JUN 22 1998

Memorandum

To: Assistant Inspector General for Audits

From: Assistant Secretary - Indian Affairs *Karin Joyce*

Subject: Draft Audit Report on the Indian Probate Process at the Minnesota Agency, Minneapolis Area Office, Bureau of Indian Affairs" (Assignment No. W-IN-BIA-002-97)

The subject audit addresses the processing of probates by the Bureau of Indian Affairs' Minnesota Agency. This is the second audit report on the Bureau's probate activities. For Indians whose deaths were reported during fiscal years 1995 and 1996, the audit found that the Minnesota Agency did not timely submit all the required probate data to the administrative law judge.

Elimination of probate backlogs has been identified as a key component of the Departmental efforts to improve Trust Asset Management. In August 1997, the Secretary directed the development of a "high level implementation plan" to guide trust improvement efforts. That plan has been drafted and circulated for comments. While we are providing responses to the OIG audits on probate activities at selected locations, the Bureau's actions will be guided by the approved plan.

In writing the final report, we request that the following comments be considered:

INTRODUCTION

The first footnote should be revised to read ". determines the intestate individual's heirs.." and not ". determines the individual's intestate heirs." The word "intestate" refers to the deceased individual, not to the heirs.

BACKGROUND

The draft states that "Congress has delegated primary authority and responsibility for managing and protecting trust property to the Bureau of Indian Affairs. ." It would be more accurate to state that "Congress has placed primary responsibility for managing and protecting trust assets with the Secretary of the Interior who has delegated authority for the management of trust lands to the Bureau of Indian Affairs."

In the second paragraph, the audit states, “Once the Bureau submits the necessary probate data to an administrative law judge, the Bureau does not participate further until the wills have been approved or the heirs of intestate decedents have been determined.” In fact, when called, probate clerks attend the hearings scheduled by the administrative law judge (ALJ) to provide affidavits or testimony at the hearings.

SCOPE OF AUDIT

The draft indicates that laws and “Bureau” regulations were reviewed which govern the probate process. The substantive regulations governing probate are those of the Office of Hearings and Appeals (OHA).

RESULTS OF AUDIT

A statement is included that “probate hearings were delayed, and estate assets and subsequent income associated with inherited lands were not distributed to the heirs in a timely manner” as a result of the Agencies’ inability to comply with the 90-day requirement for the submission of probate data to administrative law judges. While we do not dispute the fact that the 90-day deadline is frequently missed, it does not necessarily follow that this alone led to the subsequent delays in probate hearings and asset distribution. As of March 30, 1998, the Office of Hearings and Appeals reported that it had 4,068 pending probate cases, of which 651 had been pending for 18 months or more. As the audit did not review the OHA processes, it is just as likely that the timely submission of probate data would simply have served to increase the backlog at OHA while having little or no impact on the timing of the ultimate distribution of assets. This section should be revised to reflect the fact that the Bureau backlog is simply one part of a significant Departmental backlog in completing all aspects of probate work.

REPORTING OF DEATHS

In conducting its 1993 internal control review of probate processes, the Bureau used an estimated mortality rate of 1,000 deaths per 100,000 people. The audit uses this one percent rate to project the number of unreported deaths. We have several concerns with this methodology. According to the Indian Health Service, the age-adjusted mortality rate within their service area (which is essentially the same as the Bureau service area) has declined from 1,007.4 per 100,000 in 1972-74 to 594.1 per 100,000 in 1991-93. Therefore, if the audit is going to estimate the number of deaths that occurred, it would be more accurate to apply a rate of six-tenths of one percent rather than one percent.

The audit also applies the percentage factor against the number of all enrolled members of a tribe to determine how many deaths should have been reported and probate data subsequently filed with OHA. We do not believe that this is a reliable indicator of estimated workload. While the **regulations** state that Superintendents shall furnish the appropriate administrative law judge with the “names of all Indians who have died,” a review of the applicable statutes (Title 25 U.S.C. §§371-380), makes it clear that the Department’s role in probate proceedings is limited to those Indians who died owning allotted lands or who had funds in the custody of the Department of the Interior. Some agencies

report all deaths; others do not. We have confirmed with staff from the Solicitor's Office that the Bureau is not required to report deaths of those Indians for whom no funds or land is held in trust status. Based on 1990 Census Data, one-third of the Indian population was younger than 15 years, and, unfortunately, the death rate among Indian children far exceeds national averages. For example, the Indian infant mortality rate is 10.8, which is 27 percent higher than the U.S. All Races rate of 8.5. While these infant deaths are included in the overall death rate, their deaths rarely create probate workload. The supporting data for these revisions was provided in our response to the draft audit on probate activities at Yakima and Puget Sound Agencies (W-IN-BIA-00 1-97) and is not included with this response.

The report indicates that the Tribal population served by the Minnesota Agency is about 28,000. Since not all tribal members own trust land or have trust income, one way to estimate the potential probate universe would be to use the information contained in the "Owner" and "People" subsystems of the Integrated Records Management System. These subsystems include all individuals owning an interest in trust and restricted lands as well as those individuals eligible for per capita distributions. The Agency reports that there are currently 12,082 individual land owners. Another possible basis for the estimate would be the number of Individual Indian Money accounts at the agency! The annual workload could then be estimated by applying the mortality rate against the number of entries in the People subsystem or the number of IIM accounts rather than against the total tribal population.

While we understand the need to estimate the number of deaths for the purposes of the audit, we believe the estimate of probable deaths and resultant workload should be revised to reflect the current mortality rates and properly qualified to reflect the other matters noted in this response.

SUBMISSION OF PROBATE DATA

In the last paragraph at the bottom of page 6, it should be noted that during the reductions in force, the five experienced probate employees were replaced with four employees who had little or no experience in processing probates. The last sentence of the first paragraph on page 7 should also be changed to reference **four** new probate employees rather than five.

We believe that this section of the report should be significantly expanded as it exemplifies the dilemma of most of our Agency offices in trying to fulfill multiple important responsibilities with limited resources. While a number of audits cite a common finding of inadequate numbers of trained staff, we can recall no audit that has been issued in the last decade which identifies any program or administrative office in the Bureau of Indian Affairs which is over staffed. Since redeployment of current staff simply results in another important job going undone, it is necessary to increase the overall level of agency staffing. The pending budget request for the Bureau of Indian Affairs includes a requested increase of \$3 million for additional probate staff.

¹ Even these numbers will tend to overstate the universe. Based on information compiled by the Office of the Special Trustee, of the 290,000 total IIM accounts, at least 600 IIM accounts contain tribal, rather than individual funds; 16,800 duplicate accounts exist; 6,100 "special deposit" accounts have been established; and 29,600 accounts contain less than one dollar.

On pages 7 and 8, and in recommendation number 5, the report states that the Agency should discontinue the practice of assigning other duties to the probate employees because this prevents the timely submission of probate cases to the administrative law judge. As noted in Attachment 2, the employee cited in the report is paid from Real Estate Services, not from Probate Backlog funding. Each agency organizational component is required to maintain time and attendance, records, process mail, and perform other administrative functions.

RECOMMENDATIONS

The report recommends that the Assistant Secretary for Indian Affairs require appropriate area and agency officials to:

1. Develop plans, which include priorities, staffing requirements, target dates, and titles of officials responsible for transmitting the required probate data on cash estates valued in excess of \$1,000 to the administrative law judge.
2. Develop a historical database of the deaths of tribal members for which the Agency has probate jurisdiction and use the database as the basis for a decision tree. This process should document whether the reported death requires probate because the decedent owned land, had personal property in excess of \$1,000 or left a will; requires a summary distribution because the decedent did not own land and had personal property valued at \$1,000 or less; or does not require either probate or a summary distribution.
3. Assign sufficient staff to eliminate the backlog and to process probate cases as deaths occur and are reported to the Agency.
4. Develop procedures for more proactively identifying Indians who have died to include a systematic review of the individual Indian money estate account listings.
5. Discontinue the practice of assigning other duties to the probate employee who is responsible for processing the current probate work load.

RESPONSE

We concur with all of the recommendations.

Recommendations 1 and 3: As noted previously, timely processing of probates has been identified as a key component in the Department's efforts to improve the management of Indian trust assets. The portion of the Trust Management Improvement Project draft relating to probate activity is provided as Attachment 1. Comments on the draft plan were due on May 15, 1998, and the plan will be finalized by the Office of the Special Trustee for American Indians and submitted to the Secretary. The Secretary has established a three-year time frame in which all activities identified in the plan are to be fully implemented.

As the scope of the Project effort is Bureau-wide, rather than limited to those locations which were

reviewed during the audit process, we cannot, at this time, establish specific target dates and responsible officials for the activities at the Minnesota Agency. Those responsible for overall implementation of probate improvements are identified in the draft plan. While the audits of probate activities were conducted at the Portland and Minneapolis Areas, under the Trust Management Improvement Project, attention will first be focused in the Phoenix and Billings Areas, because Phoenix has been selected as the pilot site for the Trust Funds Accounting System and Billings will be the pilot site for the Trust Asset and Accounting Management System.

Recommendations 2 and 4: The report acknowledged that proactive measures have been taken at the Minnesota Agency to identify deceased Indians. The Agency has developed a database of Indian deaths and in January 1998 they began reporting deaths to the ALJ as soon as they are informed without waiting for proof of death as they had in the past. They have also continued the cooperative efforts with the Minnesota Chippewa Tribe and other bands served by the Agency. During the process of moving to a new building, Agency staff found additional probate-related records in their vault and have provided copies to the Tribe. Likewise, the Tribe has provided copies of records that the BIA was missing. These recommendations have been successfully implemented.

Recommendation 5: The report states that an employee at the Minnesota Agency did not work full time on probates as her duties also included processing time and attendance reports, travel vouchers, payroll, mail, and correspondence.

The Agency has informed the Area Director by memorandum (Attachment 2) that probate backlog clerks are no longer assigned collateral duties. This recommendation is implemented.

Attachments

[NOTE: ATTACHMENTS NOT INCLUDED BY THE OFFICE OF INSPECTOR GENERAL]

bcc: Minneapolis Area Director
Director, Office of Trust Responsibilities
Minnesota Agency Superintendent

STATUS OF AUDIT REPORT RECOMMENDATIONS

Finding/ Recommendation Reference	Status	Action Required
1, 3, and 5	Resolved; not implemented.	No further response to the Office of Inspector General is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.
2	Implemented.	No further action is required.
4	Management concurs; additional information needed	Provide clarification that the procedures to identify deceased Indians include a systematic review of the individual Indian money estate account listings.

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