

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	1:96CV01285 (TFH)
)	Before the Special Master
SALLY JEWELL, Secretary of the Interior, <i>et al.</i> ,)	
)	
Defendants.)	
)	

Special Master Order # 9

Pending before the Special Master is Plaintiffs’ Motion to Clarify Guidelines for Estate Distributions [Dkt. 4130]. Upon consideration of that motion, the Special Master hereby orders the Claims Administrator to disburse Settlement Funds based upon the distribution procedures outlined below.

I. Disclaimer of trust property

Where an heir’s complete disclaimer of all property is present in a Department of the Interior Bureau of Indian Affairs Office of Hearings and Appeals (“OHA”) probate order, the Claims Administrator is to honor that complete disclaimer of property. Where, however, an heir has renounced only an inheritance of trust land, but has not renounced any interest in a decedent’s Individual Indian Money (“IIM”) Account or has reserved a life estate in the decedent’s trust property, the disclaimer should not alter the distribution of Cobell settlement funds because the heir has reserved the rights to some personalty. In these situations, the Claims Administrator should distribute as though no disclaimer had been issued.

II. State intestacy requirement of fixed amount distribution

Certain state intestacy laws provide that a surviving spouse is eligible to receive a fixed portion of a decedent's estate prior to the distribution of the remaining estate to all eligible heirs. [See, e.g., S.D. Codified Laws Ann. § 29A-2-102(2); Minn. Stat. Ann. §524.2-102; AK Stat. § 13.11.011; Wis. Stat. Ann. § 852.01(1)(a)(2)(b); N.J.S. 3 B: 5-3(2)(c)(2); Idaho Code § 15-2-102(3)]. In making distributions to heirs based on probate decisions from such jurisdictions, the Claims Administrator is to distribute Cobell settlement funds to all heirs, assuming the fixed portion for the surviving spouse has been met, unless any heir demonstrates prior to distribution that, at the time of probate, an estate was worth less than the amount fixed under state law. If an heir does so demonstrate, then the Claims Administrator shall ensure that the surviving spouse receives an amount which, when combined with any previously obtained inheritance, equals the statutorily required fixed amount. The Claims Administrator shall then distribute any remaining funds (beyond the fixed amount) to all heirs based upon the applicable state intestacy law.

III. Mathematical error in distribution of decedent's assets

When a federal, state or tribal probate order contains a mathematical error or a federal order misapplies the American Indian Probate Reform Act ("AIPRA"), Pub. L. No. 108-374, 118 Stat. 1773 (codified as amended in scattered sections of 25 U.S.C.) the Claims Administrator may do the following:

- a. When a federal, state or tribal probate order contains a mathematical error, the Claims Administrator may apply the correct calculation.
- b. When the Claims Administrator is using a federal probate order for purposes of distribution and that order misapplies AIPRA, the Claims Administrator may correctly apply AIPRA based on the heirs listed in the decedent's probate order.

IV. Pre-AIPRA multiple state distributions

For estates pre-dating AIPRA (June 20, 2006), as to which property was distributed according to procedures from multiple jurisdictions, the Claims Administrator is to distribute the Cobell funds under the terms of the intestacy procedure of the state of the decedent's domicile at the time of death.

V. Order to set aside estate without administration or other non-probate order

The states of Nevada and Alabama permit a court to sequester funds from a decedent's estate for the benefit of the decedent's minor children or dependents even when an estate has not been probated. (*See, e.g.*, Nev. Rev. Stat. § 146.070; AL Code § 43-2-692). In the case of estates to which such procedures were applied and documentation of such is provided to the Claims Administrator, the Claims Administrator is to distribute the Cobell settlement funds to the court or other entity holding the estate's sequestered funds for further distribution to heirs.

VI. Probate order applying pour over will provision

For estates as to which there is an applicable probate order approving a will in which the non-trust residue of the estate is to be distributed to a testamentary trust, the Claims Administrator is to distribute the Cobell settlement funds according to the terms of the approved will to the trustee of the beneficiary trust.

VII. Court order approving will but will itself not provided

For estates as to which there is a court order approving a will but the actual will has not been provided to the Claims Administrator or is otherwise unavailable, the Claims Administrator is to distribute settlement funds based on the terms set forth in the court order approving the will.

VIII. Pre-AIPRA Osage headrights

For estates as to which there is a federal probate order which distributes only Osage headrights, and no personalty, IIM account money, or trust real property, where the decedent died testate, the Claims Administrator is to distribute funds according to the will relied upon by the federal probate order, and where intestate, according to the intestacy procedure cited by the probate order.

IX. Escheatment to Tribes

For distribution of settlement funds of Class Members who passed away after the effective date of AIPRA , the Claims Administrator shall disregard any provision of any federal probate order requiring escheatment of trust property to a tribe.

X. The same distribution procedure for all heirs of an estate

The Claims Administrator shall utilize only one court approved distribution procedure for all heirs of a single estate absent approval of the Special Master.

XI. Residue distributed to a charitable organization or other corporate entity

For estates as to which there is an applicable probate order approving a will in which the residue of the estate is to be distributed to a charitable organization or other entity, the Claims Administrator is to distribute the Cobell settlement funds according to the terms of the approved will.

XII. Deviation from authorized procedures to protect distributions

If the Claims Administrator, in its discretion, develops concerns over the adequacy or sufficiency of a distribution to heirs of a deceased Class Member under existing authorized procedures, it is to refer the matter to the Special Master who may then permit the Claims Administrator to distribute the settlement funds utilizing another authorized procedure.

XIII. Distributions based on documents on hand

The Claims Administrator shall be entitled to make distributions based on documents it has on hand at the time of its review pursuant to any court approved distribution procedure and is not required to wait until further documentation becomes available.

This is the 17th day of July, 2015.

/s/ Hon. Richard A. Levie (Ret.)
Hon. Richard A. Levie (Ret.)
Special Master