



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

FEB 15 2001

Memorandum

To: Acting Assistant Secretary – Indian Affairs
Deputy Commissioner for Indian Affairs
Special Trustee for American Indians

From: Timothy S. Elliott, Acting Deputy Solicitor *Tim Elliott*

Subject: Communications with the Special Master in Cobell v. Norton Litigation

This memorandum is to advise you of a recent instruction the Special Master has asked us to provide in the Cobell v. Norton litigation regarding communication between him and Department of the Interior personnel. This memorandum supersedes the Solicitor's memorandum of December 8, 2000. The Cobell litigation is a class action, filed in 1996. It is pending in the United States District Court for the District of Columbia and involves individual Indian trust funds. If you would like more information on the case, please contact Sabrina McCarthy, Assistant Solicitor, at (202) 219-2139.

On February 8, 2001, the Special Master issued an Order instructing the Bureau of Indian Affairs, the Office of the Special Trustee, and the Office of Trust Records to distribute a memorandum informing all employees that they may communicate directly with the Special Master concerning any IIM records-related matter in complete confidence without fear of reprisal. Further, the Order indicates that all investigations into OTR functions will be conducted under oath in the presence of counsel for plaintiffs and defendant. A court reporter will transcribe the proceedings. A copy of the Order is attached.

Of course, because we all have a duty to both the Court and the United States, all employees are encouraged to notify their supervisors and/or the Solicitor's Office immediately with any information relating to the protection and preservation of IIM records. As always, employees who do not wish to discuss such matters with a supervisor or the Solicitor's Office may use the Fraud, Waste and Abuse Hotline (800) 424-5081 anonymously. Please distribute this memorandum with attached Order from the Special Master and be sure that your staffs are aware of this procedure. I appreciate your cooperation. If you have any questions, please contact Sabrina McCarthy, Assistant Solicitor, at 202-219-2139.

Attachment

cc: Phillip A. Brooks, Esq.
Department of Justice

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

ELOUISE PEPION COBELL)
 et al.,)
 Plaintiffs,)

v.)

GALE NORTON, Secretary of the)
 Interior, et al.,)
 Defendants.)

No. 1:96CV01285 RCL
(Alan Balaran, Special Master)

ORDER

By Recommendation and Report of the Special Master Regarding Document Preservation and Protection dated August 5, 1999, the Special Master recommended that the Court adopt, among other things, certain proposed orders charging the Department of the Interior (DOI) with maintaining custody of and preserving IIM records and related documents. The Special Master specifically noted that “[s]trict compliance with these Proposed Orders coupled with vigilant oversight will ensure that documents vital to the interests of IIM beneficiaries are safeguarded.” On August 12, 1999, the Court adopted the Special Master’s recommendation and authorized the Special Master to oversee defendants’ IIM records retention and protection practices.

At the core of DOI’s record retention program lies the Office of Trust Records (OTR), an organization charged with the responsibility of “incorporat[ing] the Secretary’s Trust Principles and the OST [Office of the Special Trustee] Trust Asset Management Policies into the management of trust records, improv[ing] Records Management within the BIA and help[ing] [to] instill integrity and consistency for trust records.” DOI Departmental Manual, Part 110, Chapter 29.2. To that end, OTR “develops and implements policies, programs, systems, and services to support the Department’s (DOI) Indian records management programs for related

bureaus, Indian Tribes, and individual Indians; and the Indian trust litigation and settlement effort.” Id.

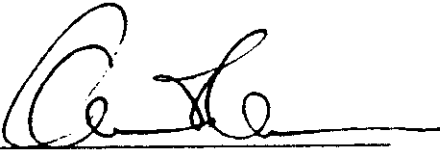
For the Special Master to maintain the vigilant oversight necessary to perform the responsibilities delineated in the Court’s August 12, 1999 Order, it is imperative that the Special Master is able to elicit information from OTR to ensure that OTR is faithfully discharging its trust-records responsibilities. It is equally necessary that BIA/OST/OTR employees are able to directly contact the Special Master and report on matters relating to trust documents without fear of retaliation. To promote these objectives, it is hereby

ORDERED that the Bureau of Indian Affairs, the Office the Special Trustee and the Office of Trust Records distribute an appropriate memorandum informing all employees that they may communicate directly with the Office of the Special Master concerning any IIM records-related matter in complete confidence and without fear of reprisal; it is further

ORDERED that all investigations into OTR functions will be conducted under oath, with a court reporter transcribing the proceedings and in the presence of counsel for plaintiffs and defendants – each of whom will be afforded the opportunity to participate.

SO ORDERED.

DATE: 2/8/01



Alan Balaran
SPECIAL MASTER