IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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NANCY M. MAYER-WHITTINGTON
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ELOUISE PEPION COBELL, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

INTERIOR DEFENDANTS' STATEMENT REGARDING
PLAINTIFFS' COMMENT ON THE SEVENTH REPORT OF THE COURT MONITOR

On May 16, 2002, the plaintiffs filed "Plaintiffs' Comment On The Seventh Report Of The Court Monitor" ("Plaintiffs' Comment"). It is riddled with reckless accusations of, among other things, "malfeasance," "misconduct," "abuse of authority," "misrepresentations," "lies," "fraud," "bad faith," "obstruct[ion]," "obfuscat[ion]," and "unethical behavior." See Plaintiffs' Comment passim. Plantiffs describe the Secretary of the Interior ("Secretary") as "incompetent and inept," and allege that the Secretary is "play[ing] politics and undermin[ing] the integrity of this litigation," is "obsessed with silencing all criticism," is "unfit to manage the Individual Indian Trust," and is "wholly incapable of implementing meaningful trust reform." Id. at 1, 4. They claim that the Department of the Interior ("Interior") defendants and their counsel have "abuse[d] [] authority in the pursuit of untoward and illegitimate ends," id. at 2, have "viciously attacked" the Special Master, id., and that counsel has "maliciously attacked" the Court Monitor, id., and made "slanderous accusations" about his Seventh Report in a "bald-faced attempt to browbeat the Court Monitor into silence," id. at 3. They accuse Interior defendants and their counsel of "using all their authority and resources in an effort to undermine the integrity of this

litigation, even if they have to wage a war to discredit truth-telling Interior employees and even judicial officers." Id. at 3. They allege that "the attorney misconduct and unethical behavior detailed in [the Seventh Report of the Court Monitor] – and demonstrated repeatedly throughout the six years of this litigation – warrants a referral to the Disciplinary Panel of the United States District Court for the District of Columbia . . . for sanction." Id. at 4.

The Interior defendants and their counsel are not willing to ignore plaintiffs' extreme incendiary rhetoric or their transparent efforts to disqualify any attorney who dares to provide a defense to their allegations. While plaintiffs are "free to believe whatever they choose to believe," they "are not free to indiscriminately bludgeon the professional reputations of [Interior defendants and their counsel] out of frustration, or in angry overreaction, or on mere suspicion alone." Nault's Auto. Sales, Inc. v. American Honda Motor Co., 148 F.R.D. 25, 36 (D.N.H. 1993); see also In re Johnson 236 B.R. 510, 523 (D.D.C. 1999) ("When making . . . scandalous and highly insulting allegations, counsel should be aware that, without credible evidence, the allegations seem childish at best. At worst these allegations strain the court's patience, waste the court's resources and smack of the improper purposes that both [Bankruptcy] Rule 9011 and Rule 11 are supposed to prevent."). The plaintiffs' "deluge of *ad hominem* assaults and insupportable accusations," Nault's Auto. Sales, 148 F.R.D. at 36, have no place in documents submitted to the Court.

Neither the Plaintiffs' Comment nor the Seventh Report of the Court Monitor provides a factual basis for these sweeping allegations of wrongdoing. The Interior defendants filed a

Response to the Seventh Report of the Court Monitor that addresses the serious, fundamental problems with the Seventh Report, and will not repeat themselves here. However, challenging mistaken allegations of misconduct is neither "a bald-faced attempt to browbeat the Court Monitor into silence," Plaintiffs' Comment at 3, nor a "malicious[] attack[] [on] the Court Monitor," id. at 2. And defending against unfounded allegations (whether made by the plaintiffs or the Court Monitor) is not a "transparent and desperate effort to obstruct, stall and obfuscate." Id. at 3. Plaintiffs' suggestion that "the attorney misconduct and unethical behavior detailed in the [Seventh Report of the Court Monitor]" warrants a referral to the Disciplinary Panel of the United States District Court for the District of Columbia, id. at 4, appears to be part of an ongoing strategy to disqualify any attorney who dares to provide such a defense. As explained in the Interior Defendants' Response To The Seventh Report Of The Court Monitor, the Court Monitor's intimations of impropriety on the part of government counsel were wholly unwarranted.

The D.C. Bar Voluntary Standards for Civility in Professional Conduct ("Civility Standards") state:

> In carrying out our professional responsibilities, we will treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, and court personnel, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written.
>
> . . . .
>
> We will not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process nor will we abuse other such participants in the legal process. Except within the bounds of fair argument in pleadings or

> in formal proceedings, we will abstain from disparaging personal remarks or acrimony toward such participants and treat adverse witnesses and parties with fair consideration.
>
> . . . .
>
> We will not bring the profession into disrepute by making unfounded accusations of impropriety or making ad hominem attacks on counsel, and, absent good cause, we will not attribute bad motives or improper conduct to other counsel.

Civility Standards ¶¶ 1, 3, 5. Although the Civility Standards are voluntary, this Court's Local Rules expressly endorse them, see, e.g., Local Civil Rule 83.8(b)(6)(v) (requiring applicants for admission to the bar of the District Court to certify familiarity with Civility Standards); Local Civil Rule 83.9 (requiring each member of the bar of the District Court to certify familiarity with Civility Standards upon renewing membership every three years), and this Court has recognized that "these standards provide useful and appropriate guidance to lawyers when questions are raised about professional conduct." Alexander v. FBI, No. CIV. 96-2123(RCL), 1999 WL 314170 *1 (D.D.C. May 17, 1999) (directing all counsel planning to attend redeposition of witness to certify in advance "that they have carefully read the D.C. Bar Voluntary Standards for Civility in Professional Conduct"); see also Blumenthal v. Drudge, 186 F.R.D. 236, 239-40 (D.D.C. 1999) ("Lawyers are not to reflect in their conduct, attitude or demeanor their clients' ill feelings toward other parties and may not 'even if called upon by a client to do so, engage in offensive conduct directed towards other participants in the legal process,' or 'bring the profession into disrepute by . . . making ad hominem attacks. . . .'" (quoting Civility Standards)). The Plaintiffs' Comment falls far short of these standards.

Accordingly, Interior defendants file this Statement to object on the record to the reckless and sweeping allegations of wrongdoing – and the intemperate, insulting, and inflammatory rhetoric – found in Plaintiffs' Comment.

Dated: May 30, 2002

Respectfully submitted,

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on May 30, 2002 I served the Foregoing *Interior Defendants' Statement Regarding Plaintiffs' Comment on the Seventh Report of the Court Monitor*, by facsimile in accordance with their written request of October 31, 2001 upon:

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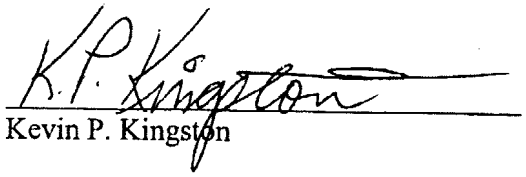

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