IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL et al.,	)	
Plaintiffs,	)	No. 1:96CV01285
v.	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

INTERIOR DEFENDANTS' MOTION FOR ADJUSTMENT OF THE JUNE 2002 COMPENSATION REQUEST OF THE COURT MONITOR

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") respectfully move for the adjustment of the Court Monitor's compensation request, which seeks the sum of $34,202.33 for his professional fees and expenses from June 1 through June 30.

Interior Defendants respectfully submit that adjustment to the compensation request is necessary because it is not reasonable or proper for the following reasons: (1) the request fails to provide sufficiently detailed information about the work performed; and (2) charges on the invoice reflect activities beyond the scope of the Court Monitor's appointment orders. Interior Defendants further object to the compensation request because its lack of specificity precludes them from being able to fully assess or object to the Court Monitor's fees.

Therefore, Interior Defendants respectfully move this Court to direct the Court Monitor to revise his June 2002 invoice to include sufficiently detailed information about his work and to remove any charges for activities beyond the scope of his appointment orders. In addition, Interior Defendants request an opportunity to review and object to the Court Monitor's revised

June 2002 invoice. Counsel for Interior Defendants conferred with counsel for Plaintiffs about this motion, and counsel for Plaintiffs stated that Plaintiffs oppose this motion.

Dated: July 17, 2002

Respectfully submitted,

ROBERT D. McCALLUM, JR.
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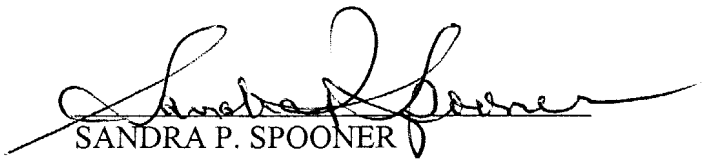
STUART E. SCHIFFER
Deputy Assistant Attorney General
J. CHRISTOPHER KOHN
Director



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v.	)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

INTERIOR DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR ADJUSTMENT OF THE JUNE 2002 COMPENSATION REQUEST OF THE COURT MONITOR

This Court issued an Order, dated July 2, 2002, directing the Department of the Interior to pay the Court Monitor the sum of $34,202.33 to compensate him for his professional fees and expenses from June 1 through June 30. In the Order, the Court noted that it reviewed the compensation request and found it to be reasonable. However, the Court also provided that "[a]ny requests for adjustments to this compensation request must be received by this Court within ten days from the date of this Order." Order, July 2, 2002 at 1.

The Secretary of the Interior and the Assistant Secretary - Indian Affairs ("Interior Defendants") respectfully move this Court for adjustment of the Court Monitor's compensation request on the following grounds: (1) it is not reasonable or proper because it fails to provide sufficiently detailed information about the work performed and instead provides vague descriptions which neglect to explain the subject matter addressed by such work; and (2) it is not reasonable or proper because certain charges reflect activities beyond the scope of the Court Monitor's appointment orders. Interior Defendants further object to the compensation request

because its vague descriptions constrain the Interior Defendants' ability to fully assess or object to the Court Monitor's fees.

Thus, the Interior Defendants respectfully request that this Court direct the Court Monitor to revise his invoice to include sufficiently detailed information about his work and to remove charges for activities beyond the scope of his appointment orders. In addition, the Interior Defendants seek an opportunity to review and object to the Court Monitor's revised June 2002 invoice.

ARGUMENT

I. The Compensation Request Is Not Reasonable Or Proper Because It Fails To Provide Sufficiently Detailed Information About The Work Performed And Such Vague Descriptions Constrain Interior Defendants' Ability To Adequately Assess Or Object To The Court Monitor's Fees.

The Court Monitor's compensation request fails to provide sufficiently detailed information about the work he has performed and, therefore, is improper and unreasonable. In commenting upon the United States Supreme Court's grant of fees and expenses to a Special Master, Justice Blackmun noted that:

> fees and expenses charged by a Special Master, when allowed by this Court, represent our assurance to the parties that the charges are reasonable and proper. A party's consent to the allowance of fees and expenses does not absolve this Court of its duty to make that determination.

Kansas v. Colorado, 498 U.S. 933, 934 (1990) (Justice Blackmun commenting on the Court's order granting motion of Special Master for interim fees and expenses, but reserving his formal dissent). Similarly, in Texas v. New Mexico, 475 U.S. 1004 (1986), Chief Justice Burger, joined by Justice Blackmun and Justice Rehnquist, dissented from the Court's grant of interim fees and

expenses to a Special Master on the ground that the information provided in support of the fee request was lacking, stating:

> I am unwilling to act without being provided with at least as much information as private clients routinely receive from their privately retained counsel . . . I would defer action on the application for interim fees until adequate information is provided. Without such data, this Court cannot protect the legitimate public interests implicated.

Id. at 1005[1] (finding that the Special Master omitted any information concerning the experience levels of the four attorneys working with him and information regarding the specific hourly rates of the Special Master and each of the four attorneys).

Analogously, with respect to attorney fee applications, this Circuit requires that such applications contain sufficiently detailed information about the hours logged and the work performed, as "it is insufficient to provide the District Court with very broad summaries." National Ass'n of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1327 (D.C. Cir. 1982) (per curiam). Although the fee application need not present the "exact number of minutes spent nor the precise activity to which each hour was devoted nor the specific attainments of each attorney," "the application must be sufficiently detailed to permit the District Court to make an independent determination whether or not the hours claimed are justified." Id. (advising that "[t]he better practice is to prepare detailed summaries based on contemporaneous time records") (quoting in part Copeland v. Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980)).

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[1] Chief Justice Burger, quoting from his dissent in Louisiana v. Mississippi, 466 U.S. 921 (1984), reiterated that "[a] Special Master of this Court is a surrogate of the Court and in that sense the service performed is an important public duty of high order in much the same way as is serving in the Judiciary. I do not suggest that Special Masters should serve without compensation, as for example, Senior Federal Judges have done for a number of years in such cases, but I believe the public service aspect of the appointment is a factor that is not to be wholly ignored in determining the reasonableness of fees charged in a case like this." Texas, 475 U.S. at 1005 (dissent).

The Court Monitor's June 2002 invoice fails to satisfy this standard because it provides only vague descriptions of his activities which prohibit any appraisal of the reasonableness of the requested fees. For example, throughout the invoice, the Court Monitor itemizes fees in very broad and vague terms, including: "Review documents," "Review pleadings," "Review correspondence," "Prepare for DOI officials interviews," "Prepare for and meet with DOI officials," "Prepare for and meet with Court," "Telcon with third parties and DOI officials," "Prepare for DOI interviews," "Telcon with DOI officials," "Review documents and draft summary report," "Prepare for and meet with third parties," "Telcons with third parties," "Telcon with Court official," "Draft summary report for Court," "Review trial transcripts," "Redraft summary report for Court," "Review documents and court opinions," "Review documents, opinions, and pleadings," "Draft memorandum," "Redraft memorandum," "Review court file," and "Prepare memorandum to Court." See Letter and Invoice from Joseph S. Kieffer to Hon. Royce C. Lamberth, dated July 2, 2002, attached to Order, July 2, 2002 ("Kieffer Invoice") at 1-6. These ambiguous descriptions lack any notation of the subject matter under the Court Monitor's consideration or the areas or aspects of trust reform under his review.

Moreover, Interior Defendants cannot not fully assess or object to the reasonableness of the Court Monitor's charges for these activities from such vague descriptions as: review documents, review pleadings, review trial transcripts, review correspondence, telcon with DOI officials, and review court file. See Kieffer Invoice at 1-6. The invoice fails to identify the topics, subject matters, or aspects of trust reform being monitored by the Court Monitor and the participants in such discussions and meetings. For example, the invoice includes charges for "Telcons with third parties" and "prepar[ing] for and meet[ing] with third parties." See id.

(entries dated June 7, 10, 11, 17, 19). Such descriptions are not only inadequate to permit a determination of the reasonableness of the fees, but suggest that the charges are not within the scope of the Court Monitor's appointment orders because contact with "third parties" cannot be construed as "monitor[ing] and review[ing] . . . [D]efendants' trust reform activities." Order, April 15, 2002 at 2; see Section II, infra. Detailed descriptions of the Court Monitor's work are necessary to ensure that the work performed is properly within the scope of the Court Monitor's authority, especially in light of Interior Defendants' recent claim that the Court Monitor is intruding improperly into Executive Branch functions (thereby exceeding both constitutional and statutory constraints on his jurisdiction). See Defs.' Mot. To Revoke The Appointment Of Joseph S. Kieffer, III, And To Clarify The Role And Authority Of A Court Monitor, filed June 14, 2002.

The Court Monitor's June invoice stands in stark contrast to the invoices submitted by the Special Master, Alan L. Balaran. See Order, May 3, 2002 at 1 (ordering the defendants to pay the Law Office of Alan Balaran the sum of $55,770.25 no later than May 31, 2002); April 2002 Report of the Special Master (Attachment 6 - May 1, 2002, Invoice #2 for $55,770.25); Order, July 2, 2002 at 1 (ordering the defendants pay the Law Office of Alan Balaran the sum of $43,438.65 no later than July 31, 2002); June 2002 Report of the Special Master (Attachment 3 - July 1, 2002 Invoice #7 for $43,438.65). Throughout these invoices, the subject matters and issues under the Special Master's review are consistently described, including the topics discussed in meetings and correspondence and subject matters being addressed through documents reviews and interviews. See, e.g., June 2002 Report of the Special Master, Attachment 3 ("Draft letter to J. Warshawsky (DOJ) regarding CIO interviews," "Draft letter to

Peter Miller (DOJ) regarding production of Ruffin/Rushing e-mails related to OIRM security," "Conference with Cason et al. regarding status of IT systems and pending requests; Records; draft memo to file," "Conference with Rob Frazier/IBM reviewing pending requests; outstanding assessments and reports," "Review CSEAT report and documentation contained in other reports in preparation for K. Lyons-Burke Deposition," "Conference with J. Christie and T. Wadnum regarding programmatic changes for Records Program; draft report," "Conference with records management specialists; records researchers both individually and collectively regarding problems impacting trust records and OTR programs; draft memo to file listing issues," "Conference with OSM employees regarding potential IIM data on systems," "Review Contempt and Trial Transcripts in preparation for depositions of senior OST officials," "Review Pleadings regarding Plaintiffs' Motion to Compel Seventh Formal Request for Production," "Review Plaintiffs' Consolidated Emergency Motion for TRO and PI," "Draft Report regarding OTR Training.").

Thus, not only do the descriptions of the work performed by the Court Monitor fail to include sufficient detail to provide an assurance that the fees charged are reasonable and properly within the scope of his appointment orders, the lack of specificity precludes the Interior Defendants from adequately reviewing or objecting to such fees. Accordingly, the Court Monitor should be directed to revise his June 2002 invoice to provide sufficient detail regarding his work and the Interior Defendants should be provided an opportunity to review and object to his revised June 2002 invoice.

II. The Compensation Request Is Not Reasonable Or Proper Because The Court Monitor Includes Charges For Activities That Are Beyond The Scope Of His Appointment Orders.

To the extent that it is possible to ascertain the activities of the Court Monitor from his June 2002 invoice, it appears that it includes charges for activities beyond the scope of his appointment orders. A party should not be required to pay for activities which are not within the order of reference of a special master or court monitor. See, e.g., Reed v. Cleveland Bd. of Educ., 607 F.2d 737, 748 (6th Cir. 1979) (concluding that defendants should not be required to pay for 322.5 hours charged by a consultant to the court and the special master because these hours were spent on activities which were not included in the statement of his appointment).[2]

In this matter, the initial appointment order of the Court Monitor directs that "Mr. Kieffer shall be compensated at a rate of not less than $250.00/hour for his services and shall be reimbursed for all expenses incurred in connection with his appointment." See Order, April 16, 2001 at ¶ 6. This provision regarding the Court Monitor's compensation was not modified by the Court's subsequent appointment order. See Order, April 15, 2002. The scope of the Court Monitor's appointment is to "monitor and review all of the Interior [D]efendants' trust reform activities and file written reports of his findings with the Court," and the reports are to "include a summary of the defendants' trust reform progress and any other matter Mr. Kieffer deems pertinent to trust reform." Id.; see also Order, April 16, 2001 at ¶ 2.

The June 2002 invoice improperly includes charges for activities that are not within the scope of the Court Monitor's appointment orders. Speaking engagements are not within the

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[2] In Reed, the court found that the authority to appoint "expert advisors or consultants to the special master and the court" derived from Federal Rule of Civil Procedure 53 or from the inherent power of the court. 607 F.2d at 746.

Court Monitor's role to "monitor and review all of the Interior defendants' trust reform activities and file written reports of his findings with the Court." Order, April 15, 2002 at 2. The invoice includes a charge for "prepar[ing] remarks for Special Trustee's Advisory Committee meeting." This charge should be removed from the Court Monitor's invoice. See Kieffer Invoice (entry dated June 23: "Prepare remarks for Special Trustee's Advisory Committee meeting"- $125).

Further, as noted in Section I, supra, the invoice includes charges for "Telcons with third parties" and "prepar[ing] for and meet[ing] with third parties." See Kieffer Invoice (entries dated June 7, 10, 11, 17, 19). These charges are not properly within the scope of the Court Monitor's appointment orders because contact with "third parties" cannot be construed as "monitor[ing] and review[ing] . . . [D]efendants' trust reform activities." See Order, April 15, 2002 at 2. Therefore, these charges should also be removed from the June 2002 invoice.

CONCLUSION

For the aforementioned reasons, the Interior Defendants respectfully request that this Court adjust the Court Monitor's June 2002 compensation request by directing him to revise it to include sufficiently detailed information about his work and to delete all charges for activities beyond the scope of his appointment orders. Further, Interior Defendants request an opportunity

to review and object to the Court Monitor's revised June 2002 invoice because the current invoice is vague and constrains Interior Defendants' ability to fully review or object to it.

Dated: July 17, 2002

Respectfully submitted,

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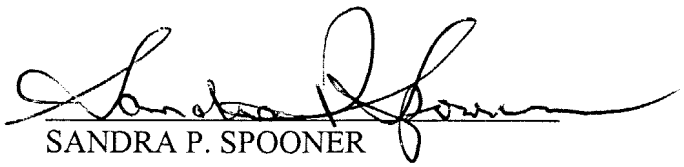

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GALE A. NORTON, Secretary of the Interior, et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Upon consideration of the Interior Defendants' Motion For Adjustment Of The Court Monitor's June 2002 Compensation Request, Plaintiffs' responses thereto, and the entire record in this case, it is hereby ORDERED that Interior Defendants' motion is GRANTED; and

IT IS ORDERED that the Court Monitor shall revise Invoice #14 (June 1 - June 30, 2002) to provide sufficiently detailed information about the work performed and remove all items and charges for activities beyond the scope of his appointment orders; and

IT IS ORDERED that the Court Monitor shall provide the Interior Defendants with a copy of his revised June 2002 invoice; and

IT IS ORDERED that the Interior Defendants will have ten (10) days from receipt of the Court Monitor's revised invoice to submit any objections to such invoice.

SO ORDERED this _____ day of _____, 2002.

_____
ROYCE C. LAMBERTH
United States District Judge

cc:

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that, on July 17, 2002 I served the Foregoing *Interior Defendants' Motion for Adjustment of the June 2002 Compensation Request of the Court Monitor* and *Interior Defendants' Memorandum in Support of Motton for Adjustment of the June 2002 Compensation Request of the Court Monitor*, by facsimile in accordance with their written request of October 31, 2001 upon:

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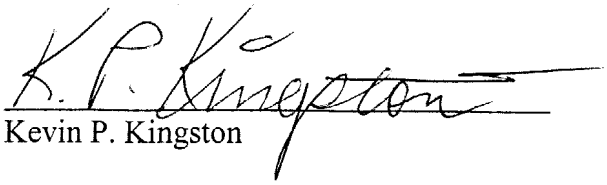

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