

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,

Plaintiffs,

v.

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

Defendants.

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) No. 1:96CV01285
) (Judge Lamberth)
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DEFENDANTS' REQUEST FOR EMERGENCY STATUS CONFERENCE

Defendants respectfully request an emergency status conference on the record. Such a conference is necessary as soon as possible to clarify the scope of the Court's September 29, 2004 Order. Officials at the Department of the Interior have attempted to determine the effect of the Order on the agency's operations and have issued the attached Notice to Interior employees in an attempt to ensure compliance with the Order. See Exhibit 1. However, Defendants require guidance from the Court to ensure that their interpretation of the Order is correct. Accordingly, Defendants request that the Court schedule an emergency status conference to be held on the record at the Court's earliest convenience.

Dated: September 30, 2004

Respectfully submitted,

ROBERT D. McCALLUM, JR.

Associate Attorney General

PETER D. KEISLER

Assistant Attorney General

STUART E. SCHIFFER

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J. CHRISTOPHER KOHN

Director

/s/ Sandra P. Spooner
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NOTICE

To: Agents, Representatives, Employees, Officers and Counsel of the U.S. Department of the Interior Involved with Indian Trust Matters

Re: Communications with Class Members in *Cobell v. Norton*

Attached is an order issued September 29, 2004 by Judge Lamberth in the *Cobell* case concerning communications by Interior agents, representatives, employees, officers and counsel with members of the *Cobell* class. Please read this Notice and the Order carefully and govern yourselves accordingly. **It is imperative that you immediately cease making any communications prohibited by the Order until you receive further instructions.** Failure to do so could place you and/or the Secretary and the Assistant Secretary for Indian Affairs in contempt of court.

The Order states, in part, as follows:

ORDERED that During the pendency of the instant litigation, the parties to the litigation, their agents, representatives, employees, officials, and counsel shall not communicate, through the United States mail or any other mode of communication, with any member of the plaintiff class in this litigation regarding the sale, exchange, transfer, or conversion of any Indian trust land unless such communication is conspicuously marked with a notice that has been previously submitted to and approved by this Court.

ORDERED that henceforth, communications between the Interior defendants, their agents, representatives, employees, officers and counsel and members of the plaintiff class may proceed only if a Court-approved version of the above-

described notice is conspicuously displayed on such communications and then only between the Interior defendants, their agents, representatives, officers and counsel and plaintiffs' counsel unless the class member with whom communication has been sought has waived his or her right to consult class counsel, in which case communication may proceed between the Interior defendants, their agents, representatives, employees, officers, and counsel and the individual class member.

Until further notice, **do not communicate** with any class members regarding the following:

1. "the sale, exchange, transfer, or conversion of any Indian trust land;"
2. encumbrances, leasing, lease sales, permitting, rights-of-way, and timber sales of or on individually-owned Indian trust land;
3. the investment of trust funds in IIM accounts;
4. estate planning, will drafting and the probate of or relating to Indian trust assets;
5. the surveying or appraisal of trust assets;
6. title to trust lands;
7. ownership of trust funds or lands; and
8. physical improvements or alterations of trust assets.

We plan to work with the Court and the plaintiffs to seek further clarification of this Order. This dialogue may result in additional instructions that modify this topical list

presented above. As further information regarding this Order becomes available, we will inform you.

Until further notice, the persons with whom the above-described communications are prohibited should be considered to include present or former holders of IIM accounts. However, communications with Interior employees in the course of their employment, even if they are class members, are not prohibited.

Although the Order provides that communications can occur once appropriate notice and waiver procedures are established, please be aware that such procedures have not yet been established and therefore all communications described in this Notice are prohibited. The Department will inform you if and when the required notice is approved by the Court and will instruct you at that time how individual class members may waive their right to consult with class counsel, if they so choose. In the meantime, as noted above, you must not make any prohibited communications to a present or former holder of an IIM account. If you have questions about this Notice, please contact either Rachel Spector ((202) 208-6029) or Kaniah Konkoly-Thege ((202) 208-5134).

Please direct class members to contact their class counsel to discuss these matters:

Dennis Gingold – (202) 824-1448
Keith Harper – (202) 785-4166
Elliot Levitas – (202) 508-5815

CERTIFICATE OF SERVICE

I hereby certify that, on September 30, 2004, the foregoing *Defendants' Request for Emergency Status Conference* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
Blackfeet Tribe
P.O. Box 850
Browning, MT 59417
Fax (406) 338-7530

/s/ Marcia K. McCarthy
Marcia K. McCarthy