

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5063

September Term, 2003

96cv01285

Filed On: September 9, 2003

[771153]

Elouise Pepion Cobell, et al.,
Appellees

v.

Gale A. Norton, as the Secretary of the Interior, et al.,
Appellants

Joseph S. Kieffer, III, Monitor and Alan Lee Balaran,
Appellees

Consolidated with 03-5084, 03-5097

BEFORE: Edwards, Sentelle, and Tatel, Circuit Judges

ORDER

Upon consideration of the federal appellants' motion for voluntary dismissal of Nos. 03-5063 and 03-5097, the response thereto, the reply, the federal appellants' conditional motion for extension of time in which to file their opening brief, the opposition thereto, appellant Norton's motion for enlargement of the word limits for her opening and reply briefs, styled as a motion "to vacate procedural order," and the opposition thereto, it is

ORDERED that the federal appellants' motion for voluntary dismissal of Nos. 03-5063 and 03-5097 be granted. In moving for voluntary dismissal of these appeals, the federal appellants have waived any right to pursue their currently pending challenges to the district court's application of the fiduciary exception to the attorney-client privilege and the work product doctrine. Accordingly, we dismiss these appeals with prejudice as to the pending claims. Pursuant to D.C. Circuit Rule 39, appellees, the plaintiffs below, may submit a bill of costs for any costs they may have incurred. It is

FURTHER ORDERED that the federal appellants' conditional motion for extension of time in which to file their opening brief be dismissed as moot. It is

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FURTHER ORDERED, on the court's own motion, that the briefing and argument schedule established in the court's order filed July 15, 2003 be vacated, and that appellant Norton show cause within 30 days of the date of this order why No. 03-5084 should not be dismissed in light of the fact that the Department of the Interior's interests are fully represented by the federal appellants. The response to the order to show cause shall not exceed 10 pages. Failure to comply with this order will result in dismissal of No. 03-5084 for lack of prosecution. See D.C. Cir. Rule 38. Appellees may file a reply not exceeding 10 pages within 14 days after the filing of the response. It is

FURTHER ORDERED that consideration of appellant Norton's motion for enlargement of the word limits for her opening and reply briefs be deferred pending further order of the court.

The Clerk is directed to send a copy of this order to appellant Norton both by certified mail, return receipt requested, and by first class mail.

Pursuant to D.C. Circuit Rule 36, this disposition of Nos. 03-5063 and 03-5097 will not be published. The Clerk is directed to withhold issuance of the mandate in Nos. 03-5063 and 03-5097 pending disposition of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Scott H. Atchue
Deputy Clerk/LD