



United States Department of the Interior
OFFICE OF THE SOLICITOR
Washington, D.C. 20240

MAY 10 2019

Memorandum

To: All Deputy Solicitors, Associate Solicitors, Regional Solicitors, and Field Solicitors

From: Principal Deputy Solicitor, Exercising the Authority of the Solicitor Pursuant to Secretary's Order 3345 Amendment No. 25

Subject: Promoting Transparency and Accountability in Attorney's Fees and Costs

In September 2018, the Deputy Secretary issued Secretary's Order 3368, Promoting Transparency and Accountability in Consent Decrees and Settlement Agreements. Secretary's Order 3368 was "intended to promote transparency and accountability in consent decrees and settlement agreements entered into on behalf of the Department of the Interior." To that end, it directed the Office of the Solicitor to take a number of steps to inform the American people, including, but not limited to:

- Working with the Office of the Chief Information Officer (OCIO) to establish a publicly accessible "Litigation" webpage;
- Compiling a list of judicial and administrative settlement agreements and consent decrees that continue to govern Departmental actions;
- Directly notifying States or Tribes when Complaints or Petitions that have a substantial or direct effect on the State or Tribe is received;
- Working with the OCIO to publicly post information about new Complaints or Petitions that are received;
- Publishing notice in the *Federal Register* seeking comment on proposed judicial and administrative settlements and consent decrees that commit the Department to seek a particular appropriation or budget authorization from Congress, formally reprogram appropriated funds, or place an obligation on the Department that extends beyond five years;
- Providing a summary of any public comments received to the Department of Justice along with a formal recommendation or opinion regarding a proposed settlement agreement or consent decree; and

- Working with the OCIO to post a brief summary and the text of any judicial or administrative settlement agreement or consent decree executed by or on behalf of the Department, its Bureaus and Offices, and persons acting on its behalf.

Secretary's Order 3368 went on to exempt certain categories of settlements and consent decrees, and provide a waiver process to account for unanticipated circumstances.

Over time, concerns have additionally been raised about the use of taxpayer dollars to pay for attorney's fees and costs incurred litigating against the Department and its constituent parts. Secretary's Order 3368 addresses some of these concerns by prohibiting the Department from recommending that the Department of Justice enter into any settlement agreement or consent decree that requires the Department to pay attorney's fees and costs unless the plaintiffs or petitioners have established a strong likelihood of obtaining such fees under the law.

Consistent with the goals of Secretary's Order 3368, this memorandum seeks to apply the principles of transparency to the payment of attorney's fees and costs, including those paid from the Judgment Fund as well as those paid pursuant to the Equal Access to Justice Act that do not require a reprogramming of existing funding. Specifically, through this memorandum, I direct the Associate Solicitor for Administration to work with the OCIO and the Office of Communications to create within 30 days, update, and maintain a section of the Office of the Solicitor Litigation webpage entitled "Attorney's Fees" that specifically includes the following information:

- The case name and citation (including a link to the complaint or amended complaint) to all litigation in which attorney's fees and costs are paid from any source, including money paid pursuant to the Equal Access to Justice Act or from the Judgment Fund;
- The total amount of attorney's fees and costs paid (including all payments of interim costs and fees); and
- The name of the party(ies) to whom payment is made.

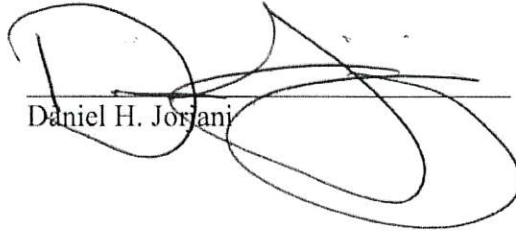
Associate Solicitors, Regional Solicitors and Field Solicitors are responsible for ensuring that their staff promptly provide this information in the appropriate format to the Division of Administration for posting on the website.

Consistent with section 4(c) of Secretary's Order 3368, the directives described above shall not apply to attorney's fees paid pursuant to personnel matters, tort claims, or contract disputes, including, but not limited to, bid protests or to de minimis fees or cost payments of less than \$10,000.

This memorandum is intended to improve the management of the Office of the Solicitor. It is not intended to and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person. To the extent that there is any inconsistency between

the provisions of this memorandum and any Federal laws or regulations, the laws or regulations will control.

This new memorandum is intended to take effect immediately and apply on a prospective basis. It shall remain in effect until its provisions are amended, suspended, or revoked.



Daniel H. Jorjani