

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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RAYMING CHANG, et al.,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
et al.,)
Defendants.)
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Civ. Action No. 02-2010 (EGS) (JMF)

O R D E R

Defendant District of Columbia (the "District") has filed objections to the July 29, 2010 Order of Special Master John M. Facciola (the "July 29 Order"). See Doc. No. 662, July 29, 2010 Order of Special Master Facciola; Doc. No. 665, District of Columbia's Objections to the July 29 Order. In its objections, the District requests two forms of relief: first, that the Special Master's July 29 Order be "amended or stricken", and second, that this Court amend its May 5, 2010 Order Appointing Special Master to require that: (1) sworn testimony proceedings and evidentiary proceedings before the Special Master be closed; (2) all witnesses offering sworn testimony be subject to cross-examination; and (3) the information disclosed to the public be limited to "administrative matters" until the Special Master's final report and recommendations are submitted. Def.'s Objections at 11. Upon careful consideration of the District's

requests, the response and reply thereto, and for the following reasons, the District's requests are **DENIED**.

As a threshold matter, it is unclear whether the District's request for relief regarding the July 29 Order is addressed to this Court or to the Special Master. In view of the multiple proceedings in this case before this Court and before Magistrate Judge Facciola, both in his capacity as magistrate judge and in his capacity as special master, it is incumbent upon each and every party to clearly identify the judicial officer to whom a request is presented. In the future, the parties shall state the name of the appropriate judicial officer in the caption of all pleadings.

To the extent that the District's request to strike or amend the July 29 Order is before this Court, the request is **DENIED**. In his July 29 Order, the Special Master scheduled a hearing for August 16, 2010, the first hearing in his capacity as special master. He also directed the attendance of several individuals at the hearing so that he may (1) clarify whether the District will be representing the individuals from whom he intends to take testimony and (2) ensure that witnesses are advised of the possibility of criminal referral. Doc. No. 662.

Federal Rule of Civil Procedure 53(f)(5) governs the scope of review of a special master's procedural orders. It provides, in relevant part, "[t]he Court may set aside a master's ruling on

a procedural matter only for an abuse of discretion.” Fed. R. Civ. P. 53(f)(5). The District has articulated no basis whatsoever for this Court to conclude that Special Master Facciola has abused his discretion. This Court’s Order appointing the Special Master, issued pursuant to Rule 53(a), provides Special Master Facciola with “the full panoply of powers and authority provided for under Federal Rule of Civil Procedure 53, including, but not limited to: 1) holding evidentiary proceedings; . . . [and] 3) compelling, taking and recording evidence and sworn testimony. . . .” Doc. No. 608, Order Appointing Special Master at 2. The Order places no restrictions on the Special Master’s discretion as to how to perform these tasks, and the District has provided the Court with absolutely no reason or legal authority to conclude that he has abused the wide range of discretion he has been granted.

In its pleadings, the District argues that the July 29 Order “is not just a procedural order” because it “has substantive ramifications upon the fact-finding mission of the investigation[.]” Def.’s Reply at 1. This argument is utterly frivolous. The fact that an order has ramifications upon substantive matters, of course, has no bearing on whether the order itself is a procedural one. Indeed, the District concedes

as much throughout its objections and reply. The District emphasizes that it does *not* object to the “underlying, sensible goals of th[e July 29] order[.]” Def.’s Objections at 2. Rather, the District objects to the “tone and focus” of the Order, and raises concerns about “the precise way th[e] hearing would be conducted[.]” Def.’s Objections at 8. In other words, the District does not quarrel with the substance of what the Special Master is trying to do; it quarrels with the procedure by which he has chosen to do it. Finding no flaw in the procedure the Special Master has chosen, the Court **DENIES** the District’s request.

The District’s second request for relief attempts to achieve the same result as its first, but on a broader scale: it seeks to limit the Special Master’s discretion to determine how he will conduct his entire investigation. As noted above, the District requests that this Court amend its Order Appointing Special Master to prohibit him from: (1) holding open evidentiary hearings; (2) receiving sworn testimony absent the use of specific procedures; and (3) releasing almost any information until he issues his final report and recommendations. Def.’s Objections at 11. Once again, the District’s request is **DENIED**.

This Court appointed the Special Master to perform duties consented to by the parties. Doc. No. 608, at 1, 3; see also Fed. R. Civ. P. 53(a). Those duties are to:

[I]nvestigate, examine, and report on the potential destruction of evidence regarding:

- A. the International Monetary Fund ("IMF") September 27, 2002 JOCC Running Resume;
- B. the IMF September 27, 2002 Recordings of Radio Runs; and
- C. the IMF September 27, 2002 Video Recordings.

Doc. No. 608 at 2-3.

In order for him to perform those duties, the Court authorized the Special Master to avail himself of the full panoply of tools available to masters pursuant to Rule 53 of the Federal Rules of Civil Procedure. Among those tools is the ability to hold evidentiary proceedings and to compel, take, and record evidence. See Fed. R. Civ. P. 53(c)(1)(c); Doc. No. 608 at 2. Once again, the District has provided absolutely no support for its argument that this Court should restrict the authority of the Special Master to use those tools. Indeed, the District has failed to cite to a single legal authority to support its position. The District's arguments appear to boil down to a deep resistance to the Special Master's proceedings being made public prior to the issuance of his final report, which he is required to file under Rule 53(e). While the Court is sensitive to the District's concerns, decisions on how the Special Master's investigation will be conducted are not the District's, or any other party's, to make. The Court declines the District's invitation to curtail the Special Master's

discretion to conduct his investigation. Accordingly, the District's request is **DENIED**.

IT IS SO ORDERED.

SIGNED: EMMET G. SULLIVAN
UNITED STATES DISTRICT JUDGE
August 13, 2010