



U.S. Department of Justice

*United States Attorney
Southern District of Florida*

West Palm Beach, FL 33401

Facsimile:

September 18, 2008

VIA ELECTRONIC MAIL

Ethics Counsel
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399-2300

CONFIDENTIAL¹

Re: Request for Written Staff Opinion

Dear Sir or Madam:

I am an Assistant United States Attorney and a member in good standing of the Florida Bar. I am writing to request a written staff opinion on an issue related to contact with unrepresented parties.

As part of my employment, I have investigated and presented for prosecution a case involving the sexual abuse of several young women who were teenagers at the time of the abuse. There is a federal statute, 18 U.S.C. § 2255, that provides a civil cause of action for victims of the federal crimes that I investigated, which sets a minimum of \$150,000 in damages.

At the request of counsel for the putative defendant, the U.S. Attorney's Office entered into pre-indictment plea negotiations that resulted in the signing of a Non-Prosecution Agreement ("Agreement"). The Agreement called for the putative defendant to plead guilty to state criminal offenses that would result in the defendant's designation as a sex offender. The Agreement also sought to place the victims in the same position where they would have been if the defendant had been convicted of the federal offenses. Accordingly, the Agreement required the defendant to agree to waive challenges to liability and damages related to claims brought pursuant to 18 U.S.C. § 2255. In light of the large

¹In addition to the general rules regarding confidentiality, this letter relates to a confidential Non-Prosecution Agreement, and, accordingly, I would ask that the information contained herein remain confidential.

number of young, vulnerable, and unsophisticated victims, the U.S. Attorney's Office also included agreement terms requiring the defendant to pay for the services of an independent attorney-representative, whose services would be offered (without obligation) to the victims free of charge. The U.S. Attorney's Office asked the former Chief United States District Judge to serve *pro bono* as a Special Master for the selection of the attorney-representative. The Special Master selected Robert Josefsberg and his firm, Podhurst Orseck, to serve as the attorney-representative.

Under federal law, I have several obligations related to victims, including an obligation to confer with them and advise them of resolution of their matters. *See, e.g.*, 18 U.S.C. § 3771. Accordingly, I have prepared a letter informing the victims of how the matter was resolved, including the appointment of Mr. Josefsberg. The letter advises the victims that Mr. Josefsberg will be in contact with them shortly and invites the victims to contact Mr. Josefsberg directly if they so choose. A copy of the letter, with some identifying information redacted, is attached. This letter was reviewed by attorneys for the defendant before it was sent.

During the pendency of the investigation, some of the victims retained civil attorneys to represent them in civil suits against the defendant. For those victims whom I knew to be represented, I sent a modified version of the letter to the attorney, rather than to the victim, and asked the attorney to convey the substance of the letter to the victim. In that letter, the discussion of contact with Mr. Josefsberg made clear that Mr. Josefsberg's contact would be with the attorney only, not directly with the victim. A copy of the letter for those victims already represented by counsel also is attached.

I understand that you do not opine on past events, and some of these letters already have been distributed, but several victims have yet to be notified, and I need guidance on how to proceed.

Unbeknownst to me, one victim had obtained counsel prior to receiving my letter. I have received a letter from that attorney asserting that my contact with the victims violates Florida Bar Rule 4-7.4. I have reviewed the rule and do not understand how it would apply to me because: (1) I am not soliciting employment from a prospective client; (2) I am not seeking pecuniary gain; (3) none of the victims has expressed a desire not to receive communications from me; (4) the letter does not involve coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; (5) the letter is not false, fraudulent, misleading, or deceptive; and (6) there is nothing about the mental or physical

ETHICS COUNSEL
FLORIDA BAR
SEPTEMBER 18, 2008
PAGE 3

states of the victims that leads me to believe that they cannot review and understand the information that is included in the letter.

Can you provide me with a written opinion on this issue so that I may revise the letters that have not yet been distributed if you deem it necessary?

I understand that the same attorney has made contact with Mr. Josefsberg, also accusing him of violating the same rule. Since the benefit to these victims will be lost if Mr. Josefsberg cannot advise them in detail of their rights under the Agreement, I understand that his firm will be contacting your Office for similar guidance.


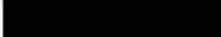
Please let me know if you need any additional information, and thank you for your kind assistance with this matter.

Sincerely,

R. Alexander Acosta
United States Attorney

By:


Assistant United States Attorney

cc: , AUSA and Professional Responsibility Officer
, AUSA