

# PodhurstOrseck

TRIAL & APPELLATE LAWYERS

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Ramon A. Rasco  
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Robert Orseck (1934-1978)

Walter H. Beckham, Jr.  
Karen Podhurst Dern  
Of Counsel

September 22, 2008

VIA U.S. MAIL AND VIA E-MAIL

CONFIDENTIAL<sup>1</sup>

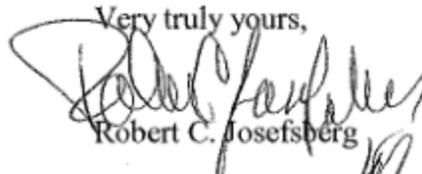
Ethics Counsel  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Re: Request for Written Staff Opinion

Dear Sir or Madam:

Attached as Exhibit "A" is a copy of a letter we recently received from Jeffrey Hermann. Apparently he sent a similar letter to Assistant United States Attorney [REDACTED]. Attached as Exhibit "B" is a copy of AUSA [REDACTED] letter to you. Her request, and your opinion, will effect how we proceed with this matter. Rather than repeating, or paraphrasing AUSA [REDACTED] letter, we are writing to advise you that we agree with her summary of the relevant facts, and we too request your guidance. If you need any additional information, please contact me at my office, or on my cell phone at (305) 632-9230.

Very truly yours,



Robert C. Josefsberg

Enclosures

cc:

[REDACTED]  
Roy Black, Esq., Counsel to the Putative Defendant  
Michael Tein, Esq., Counsel to the Putative Defendant

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

# HERMAN & MERMELSTEIN PA

ATTORNEYS AT LAW

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September 16, 2008

**Via Fax and Regular Mail**

Robert Josefsberg, Esq.  
Podhurst Orseck P A  
25 W Flagler St Ste 800  
Miami, Florida 331301720

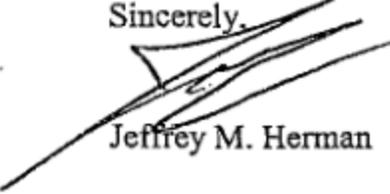
Re: *Jeffrey Epstein*

Dear Mr. Josefsberg:

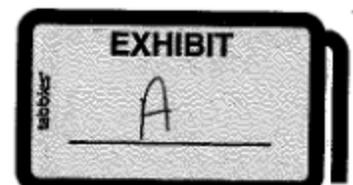
We are in receipt of letters dated September 2, 2008 from Assistant U.S. Attorney A. Marie Villafañá that were sent to sexual assault victims of Jeffrey Epstein. That letter advises victims that you will be contacting them regarding civil claims against Epstein. Please be advised that we strenuously object to these letters and the contemplated unsolicited contacts with victims. Please be further advised that we represent the following victims in claims against Jeffrey Epstein, and direct that you make no contact with any of them, except through our office [REDACTED]

We further believe that Mr. Epstein's plan for you to represent victims, and for the Assistant U.S. Attorney to assist you in soliciting them, is in violation of the Florida Bar Rules, particularly Rule 4-7.4. We urge you not to participate in these activities.

Sincerely,

  
Jeffrey M. Herman

JMH/lr





**U.S. Department of Justice**

*United States Attorney  
Southern District of Florida*

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*500 South Australian Ave., Suite 400  
West Palm Beach, FL 33401  
(561) 820-8711  
Facsimile: (561) 820-8777*

September 18, 2008

VIA ELECTRONIC MAIL

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

**CONFIDENTIAL**<sup>1</sup>

Re: Request for Written Staff Opinion

Dear Sir or Madam:

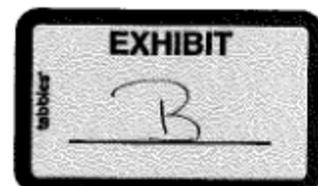
I am an Assistant United States Attorney and a member in good standing of the Florida Bar. I am writing to request a written staff opinion on an issue related to contact with unrepresented parties.

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

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<sup>1</sup>In 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  
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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:

[REDACTED]

[REDACTED]

Assistant United States Attorney

cc:

[REDACTED]



U.S. Department of Justice

United States Attorney  
Southern District of Florida

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500 South Australian Ave., Suite 400  
West Palm Beach, FL 33401  
(561) 820-8711  
Facsimile: (561) 820-8777

[DATE]

[Victim name and address]

Re: **[Defendant]/[Victim]: NOTIFICATION OF IDENTIFIED  
VICTIM**

Dear Ms. [Victim]:

By virtue of this letter, the United States Attorney's Office for the Southern District of Florida provides you with the following notice because you are an identified victim of a federal offense.

On June 30, 2008, [Defendant] entered a plea of guilty to violations of Florida Statutes Sections [insert case information] and was sentenced to a term of twelve months' imprisonment to be followed by an additional six months' imprisonment, followed by twelve months of Community Control 1, with conditions of community confinement imposed by the Court.

In light of the entry of the guilty plea and sentence, the United States has agreed to defer federal prosecution in favor of this state plea and sentence, subject to certain conditions, including the following:

1. An independent Special Master was assigned the task of selecting an attorney representative to represent the victims, including you, in connection with civil actions between the victims and [Defendant.] The Special Master selected Robert Josefsberg, Esq. of the firm Podhurst Orseck, P.A., a highly-respected and experienced attorney. You are not obligated to use Mr. Josefsberg as your civil attorney, but, as explained in greater detail below, Mr. Josefsberg's services will be provided at no cost to you because [Defendant] is obligated to pay the costs and fees of the attorney-representative. Also, [Defendant] and his attorneys can only contact you via Mr. Josefsberg, assuming that you would like Mr. Josefsberg to serve as your attorney.

2. If you elect to file suit against [Defendant] pursuant to Title 18, United States Code, Section 2255, [Defendant] will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and [Defendant] waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between you and [Defendant], so long as you elect to proceed exclusively under 18 U.S.C. § 2255, and you waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, [Defendant's] agreement with the United States, his waivers and failure to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
3. As stated above, [Defendant] has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate [Defendant] to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, you and Mr. Josefsberg elect to file a contested lawsuit pursuant to 18 U.S.C. § 2255 or you elect to pursue any other contested remedy, the obligation to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in Section 2255, shall cease.

Mr. Josefsberg will be contacting you within the next two weeks to explain these terms. If you would like to contact Mr. Josefsberg directly, he can be reached at [REDACTED]

If you have already selected other counsel to represent you, or if you do so in the future, and you decide to file a claim against [Defendant], [Defendant's] attorney, [attorney name], asks that you have your attorney contact him at [firm name and address].

In addition, there has been litigation between the United States and two other victims regarding the disclosure of the entire agreement between the United States and [defendant]. Mr. Josefsberg can provide further guidance on this issue, or if you select another attorney to represent you, that attorney can review the Court's order in the matter of *In re Jane Does 1 and 2*, United States District Court for the Southern District of Florida Court File No. 08-

[VICTIM'S NAME]  
NOTIFICATION OF IDENTIFIED VICTIM  
[DATE]  
PAGE 3 OF 3

80736-CIV-MARRA.

Please understand that neither the U.S. Attorney's Office nor the Federal Bureau of Investigation can take part in or otherwise assist in civil litigation. Thank you for all of your assistance during the course of the federal and state investigations and please accept the heartfelt regards of myself and Special Agents [REDACTED] for your health and well-being.

Sincerely,

R. Alexander Acosta  
United States Attorney

By:

[REDACTED]  
Assistant United States Attorney

cc: Robert Josefsberg, Esq.  
[Defendant's attorney]



U.S. Department of Justice

*United States Attorney  
Southern District of Florida*

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*500 South Australian Ave., Suite 400  
West Palm Beach, FL 33401  
(561) 820-8711  
Facsimile: (561) 820-8777*

[Date]

VIA UNITED STATES MAIL

[Name and address of victim's attorney]

Re: **[Defendant]/[Victim]: NOTIFICATION OF IDENTIFIED  
VICTIM**

Dear Mr. [Attorney]:

By virtue of this letter, the United States Attorney's Office for the Southern District of Florida asks that you provide the following notice to your client, [victim], who has been identified as a victim of a federal offense.

On June 30, 2008, [defendant] entered a plea of guilty to violations of Florida Statutes Sections [case information] and was sentenced to a term of twelve months' imprisonment to be followed by an additional six months' imprisonment, followed by twelve months of Community Control 1, with conditions of community confinement imposed by the Court.

In light of the entry of the guilty plea and sentence, the United States has agreed to defer federal prosecution in favor of this state plea and sentence, subject to certain conditions, including the following:

1. An independent Special Master was assigned the task of selecting an attorney representative to represent the victims in connection with civil litigation between the victims and [defendant]. The Special Master selected Robert Josefsberg, Esq. of the firm Podhurst Orseck, P.A., a highly-respected and experienced attorney. [The victim] is not obligated to use Mr. Josefsberg as her civil attorney, but, as explained in greater detail below, Mr. Josefsberg's services will be provided at no cost to [the victim] because [defendant] is obligated to pay the costs and fees of the attorney-representative. Also, [defendant] and his attorneys

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can only contact [the victim] via Mr. Josefsberg, assuming that she would like Mr. Josefsberg to serve as her attorney.

2. If [the victim] elects to file suit against [the defendant] pursuant to Title 18, United States Code, Section 2255, [defendant] will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and [defendant] waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between [the victim] and [defendant], so long as [the victim] elects to proceed exclusively under 18 U.S.C. § 2255, and she waives any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, [defendant's] agreement with the United States, his waivers and failure to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
3. As stated above, [defendant] has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate [defendant] to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, [the victim] and Mr. Josefsberg elect to file a contested lawsuit pursuant to 18 U.S.C. § 2255 or she elects to pursue any other contested remedy, the obligation to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in Section 2255, shall cease.

Mr. Josefsberg will be contacting you within the next two weeks to explain these terms and to determine if he may contact [the victim] directly. If you would like to contact Mr. Josefsberg directly, he can be reached at [REDACTED]

If [the victim] has selected other counsel to represent her, or if she does so in the future, and she decides to pursue a claim against [the defendant,] his attorney, [name] asks that he be contacted at [firm name and address].

In addition, there has been litigation between the United States and two other victims regarding the disclosure of the entire agreement between the United States and [defendant]. Mr. Josefsberg can provide further guidance on this issue, or if [the victim] selects another

[NAME OF VICTIM'S ATTORNEY]  
AMENDED NOTIFICATION OF IDENTIFIED VICTIM [NAME]  
[DATE]  
PAGE 3 OF 3

attorney to represent her, that attorney can review the Court's order in the matter of *In re Jane Does 1 and 2*, S.D. Fl. Court File No. 08-80736-CIV-MARRA.

As I stated in my earlier notification, please understand that neither the U.S. Attorney's Office nor the Federal Bureau of Investigation can take part in or otherwise assist in civil litigation, but we again thank you and your client for all of her assistance during the course of this investigation.

R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY

By:

  
ASSISTANT U.S. ATTORNEY

cc: Robert Josefsberg, Esq.  
[Defendant's attorney's name]