UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 07-10289-MLW
	)	
DARWIN JONES,	)	
Defendant	)	

ORDER

WOLF, D.J. February 1, 2009

Attached is a January 22, 2010 letter to the court from Mary Patrice Brown, Acting Counsel of the Department of Justice Office of Professional Responsibility, which was sent in response to the court's December 22, 2009 letter. See Dec. 31, 2009 Order.

UNITED STATES DISTRICT JUDGE

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U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, NW, Room 3525
Washington, D.C. 20530

JAN 22 2010

The Honorable Chief Judge Mark L. Wolf
United States District Court for the
District of Massachusetts
John Joseph Moakley United States Court House
Suite 2300
One Courthouse Way
Boston, MA 02210-3002

Dear Chief Judge Wolf:

Thank you for your letter of December 22, 2009, in which you discussed arguments raised by private counsel on behalf of Jeffrey Auerhahn in *In the Matter of Jeffrey Auerhahn*, MBD Action No. 09-10206-JLT. Private counsel argued, *inter alia*, that the U.S. District Court for the District of Massachusetts is collaterally estopped from "subject[ing] Auerhahn to a duplicative investigation and double discipline" because you had "affirmatively adopted the OPR process" to investigate Auerhahn's alleged misconduct. Jeffrey Auerhahn's Memorandum in Support of his Motion to Dismiss Petition for and Order to Show Cause, 11/25/09, at 2, 1. In your letter to me, you asked "whether or not it is the position of the Department that if a judge is told that OPR is conducting an investigation of possible prosecutorial misconduct and does not promptly impose sanctions, institute contempt proceedings, or initiate disciplinary action, that judge and/or the Court are precluded from doing so later." That is not the position of the Department of Justice.

OPR's investigations are independent of any action that is being or may be undertaken by the courts or by state bar authorities. Factual and legal arguments advanced by private counsel on behalf of a Department of Justice employee, in the employee's personal capacity, represent that employee's personal position, not the position of the Department of Justice, even if the Department pays for the private counsel's legal services. That principle applies to the filings made on behalf of Jeffrey Auerhahn, in his personal capacity, in *In the Matter of Jeffrey Auerhahn.*

I share your interest in ensuring that Department attorneys conduct themselves in accord with the highest ethical standards, and trust this letter has addressed your concerns.

Sincerely,

Mary Patrice Brown
Acting Counsel