

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 08-80736-Civ-Marra/Johnson

JANE DOES #1 and #2

I.

UNITED STATES

**JANE DOE #1 AND JANE DOE #2'S STATUS REPORT AND RESPONSE TO
COURT'S ORDER TO SHOW LACK OF PROSECUTION**

Jane Doe #1 and Jane Doe #2 ("the victims"), through counsel, file the response to Court's order to file a status report and show cause regarding prosecution of the case (doc. #40).

BACKGROUND

As the Court is aware, it entered an order administratively closing this case on September 9, 2010 (doc. #38). That order recited that fact that Jane Doe #1 and Jane Doe #2 had recently settled their civil cases *with Jeffrey Epstein* as the basis for closure. On September 13, 2010, the victims promptly filed a notice that, while they had settled their case with Jeffrey Epstein, they had reached no settlement *with the U.S. Attorney's Office* and intended to make filings in this case shortly (doc. #39). The victims requested administrative reopening of the case and, if the Court deemed it advisable, a prompt scheduling conference with the U.S. Attorney's Office regarding the case. The victims also advised that they had only recently received important correspondence between the U.S. Attorney's Office and the Epstein proving that there had been an orchestrated decision to deny them their rights.

On October 8, 2010, the Court entered an order directing the victims to file a status report and show cause why the case should not be dismissed for want of prosecution.

STATUS REPORT

As the Court is aware from the victims' filing on September 13, 2010 (doc. #39), the victims have now received important evidence that allows them to file a comprehensive motion explaining the factual background underlying the denials of their rights under the Crime Victims Rights Act and the legal reasons for concluding that their rights under the Act have been violated. The victims prepared a full motion to that effect – accompanied by a detailed factual and legal memorandum. They planned to file the motion and memorandum simultaneously with this pleading. The motion looks something like a summary judgment motion, although the exact procedures for CVRA cases are unclear.

In an effort to narrow and resolve disputes in this case, the victims then provided an advance copy of their factual and legal pleadings to the U.S. Attorney's Office, along with a request that the U.S. Attorney's Office stipulate to as many facts as possible. The U.S. Attorney's Office then asked the victims to delay filing their pleading for a period up to and including two weeks from today to permit further discussions about the facts and about possible settlement of the disputes. The U.S. Attorney's Office represented that, from their perspective, if the victims were to file their pleadings today it would make it more difficult to reach a resolution of the case.

In view of this request from the U.S. Attorney's Office, the victims have accordingly agreed to delay filing their comprehensive motion for a period of two weeks. In exchange, the U.S. Attorney's Office has agreed to stipulate that it has not been prejudiced by the passage of time involved in resolving this case and that it will not be prejudiced by an additional two weeks before the victims file their motion.

The victims wish to make clear that they stand ready to file their comprehensive motion for a finding of violations of their rights in two weeks, on November 10, 2010. They are also prepared to make that filing in whatever form the Court might direct as the most appropriate to resolve this case quickly.

It should be noted that the victims' motion will ask for an evidentiary hearing if the facts are disputed by the U.S. Attorney's Office. Before filing the motion, the victims had also sent a copy of the facts to the U.S. Attorney's Office in an effort to obtain their agreement to them and to expedite the case. (As the Court is aware from the victims' earlier filing, the victims attempted to negotiate a stipulated set of facts with the U.S. Attorney's Office, only to be rebuffed by the U.S. Attorney's Office. *See* doc. #17 (U.S. Attorney giving "notice" that only two facts are relevant to this case and declining to provide information on other facts in the case); doc. #19 (victims response); doc. #22 (U.S. Attorney's reply).) The parties jointly advise the Court that they believe that two weeks of discussions may narrow the issues on which the victims would request an evidentiary hearing. The U.S. Attorney's Office, at this time, opposes any evidentiary hearing.

If no resolution of the case is achieved in the next two weeks, the victims would propose the following schedule for bringing this case to a conclusion:

November 10, 2010 – Victims file comprehensive motion.
November 24, 2010 -- U.S. Attorney's Office files response to the victims' motion.
December 3, 2010 – Victims' file Reply to Response.
Evidentiary Hearing (if facts contested) – early December, at a time convenient to the Court.
January 1, 2011 – Court issues ruling on whether victims' rights were violated.
If the Court enters a finding that the victims' rights were violated, then
January 14, 2011 – Victims brief on the appropriate remedy for a violation;
January 28, 2011 -- U.S. Attorney's Office (and any other interested person) files response to victims' remedy brief.
February 4, 2011 – Victims reply on remedy issues.
Hearing if necessary – mid-February, at a time convenient to the Court.

This proposed schedule would allow Jane Doe #1 and Jane Doe #2 to have their case fully resolved on the merits within the next few months. The victims would have no objection to the Court accelerating the schedule. The U.S. Attorney's Office agrees that this schedule is appropriate to resolve the victims' motion, although it may have additional motions and arguments it wishes to file as well.

THE CASE SHOULD NOT BE DISMISSED FOR LACK OF PROSECUTION

Jane Doe #1 and Jane Doe #2 should not have their case dismissed for lack of prosecution for the simple reason that they have not failed to prosecute it. To the contrary, as recounted more fully in the statement of facts contained in their contemporaneously filed motion for a finding of violation of their rights, they have been attempting to secure information that would help prove their case. The victims hereby expressly incorporate that statement of facts, and supporting evidence (particularly the Declaration from Bradley J. Edwards, Esq.,) as part of this pleading.

Although the victims rely on all of the information contained in the statement of facts, in the interest of a brief summary the victims would note that they have been diligently attempting to secure correspondence between Epstein and the U.S. Attorney's Office regarding the non-prosecution agreement reached in this case. After the U.S. Attorney's Office declined to provide the information, the victims sought to secure that information as part of their civil lawsuits against Epstein. This was because of a reasonable legal judgment that the victims' counsel that it was in their best interest to pursue the civil lawsuit against Epstein had a faster pace. Because of protracted litigation from Epstein's battery of lawyers, the victims did not secure any of the correspondence they sought until June 30, 2010. Even then, they secured only part of that correspondence – litigation to secure the rest of that correspondence continues to this day. *See*

Declaration of Bradley J. Edwards, Esq., Attachment to Jane Doe #1 and Jane Doe #2's Motion for Finding of Violations of the Crime Victims' Rights Act.

The victims have also never been asked by the U.S. Attorney's Office to accelerate the resolution of this case. During the last year, the victims' counsel have been in contact with the U.S. Attorney's Office on numerous matters related to Jeffrey Epstein. At no time did the U.S. Attorney's Office ask the victims to begin moving more quickly to resolve this case. As noted above, the U.S. Attorney's Office agrees it has not been prejudiced by the passage of time that has taken place in the case so far.

The victims would also note that the Court has never advised them of a deadline for moving forward with their CVRA case. The victims also knew that the Court was aware of the intense and protracted litigation what was proceeding with Epstein in the various civil cases against him. It seemed reasonable to the victim to resolve those cases first and then turn to the CVRA case – and the victims assumed that the Court was also proceeding on this approach, as the victims never received any inquiry from the Court about their CVRA case until the September 2010 order “administratively” closing the case. Within 5 days of receiving that communication from the Court, the victims promptly advised the Court of their intent to continue moving forward with the case and suggesting a scheduling conference if the Court deemed it advisable.

The victims have now proposed a specific schedule that will bring this matter to a final conclusion in the next few months. There is no reason to dismiss the case precipitously now on the eve of a final resolution.

The Eleventh Circuit has repeatedly noted that dismissal with prejudice is an “extreme sanction” and “is plainly improper unless and until the district court finds a clear record of delay

or willful conduct and that lesser sanctions are inadequate to correct such conduct.” *Betty K Agencies, Ltd. v. M/MONADA*, 432 F.3d 1333, 1338-39 (11th Cir.2005). In this case, there is no clear record of delay or willful conduct. To the contrary, there is a pattern of the victims diligently attempting to secure evidence (i.e., the correspondence) vital to their case in the face of determined opposition from both the United States and a billionaire sex offender represented by a battery of attorneys. The Eleventh Circuit has held that simple negligence in meeting a court-imposed deadline is not sufficient to warrant dismissal. *See McKelvey v. AT & T Techs., Inc.*, 789 F.2d 1518, 1520 (11th Cir.1986) (per curiam). Here, there is not even negligence, as the victims have not failed to meet any deadline that the Court has set and today stand ready to bring the case to an expeditious conclusion on the schedule they propose. On September 13, 2010, the victims also suggested to the Court that a scheduling conference would be one way to proceed in this case – a suggestion that they continue to offer to the Court.

CONCLUSION

The Court should establish the schedule proposed by the victims and bring this case to a conclusion on the merits as the victims propose.

DATED: October 27, 2010

Respectfully Submitted,

s/ Bradley J. Edwards

Bradley J. Edwards



P.L.

Paul G. Cassell
Pro Hac Vice



Attorneys for Jane Doe #1 and Jane Doe #2

CERTIFICATE OF SERVICE

— [REDACTED]

Epstein through current counsel.