

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY,
FLORIDA

JEFFREY EPSTEIN,
Plaintiff,

Complex Litigation, Fla. R. Civ. Pro. 1201
Case No. 50 2009 CA 040800XXXXMBAG

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS,
individually, and L.M., individually,
Defendants.

DRAFT
4/26/11

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S AMENDED MOTION
FOR A PROTECTIVE ORDER TO PRECLUDE OPPOSING COUNSEL AND
DEFENDANT/COUNTER-PLAINTIFF FROM MAKING EXTRAJUDICIAL
STATEMENTS AND COMMENTARY TO THE MEDIA AND PRESS,
WITH INCORPORATED LEGAL AUTHORITIES**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.280(c) of the Florida Rules of Civil Procedure, files this Amended Motion for a Protective Order to Preclude Opposing Counsel and Defendant/Counter-Plaintiff From Making Extrajudicial Statements and Commentary to the Media and Press as set forth below, and states:

1. In an article posted on www.palmbeachdailynews.com on October 15, 2010, entitled "Claim: Epstein Filed Lawsuit to 'Intimidate' Attorney Edwards Prosecuting Sex Abuse Cases," Jack Scarola, Esq., counsel for the Defendant/Counter-Plaintiff, Bradley J. Edwards, was quoted as stating: 1) "The sole motivation for these claims against Mr. Edwards is an attempt to intimidate him so as to abandon the justified prosecution of his claims against Mr. Epstein"; and 2) "This constitutes a very substantial cloud over Mr. Edwards' head." (Exhibit 1).

2. In an article appearing on www.palmbeachdailynews.com, posted February 28, 2011, and updated March 1, 2011, entitled “Jeffrey Epstein Introduced Woman to Prince Andrew, She Tells London ‘Daily Mail’,” Mr. Edwards is quoted as saying: “I feel terrible for Virginia and all of the other girls that were sexually abused, but I was not surprised at all by the story.” Edwards also said. “I represented several girls that, similar to Virginia, were very young and vulnerable and were badly abused by Epstein. These girls will never completely heal from what they went through. What is most troublesome though is that these serious crimes went virtually unpunished. I currently represent several victims that want Epstein prosecuted for the crimes he committed against them, which is why we filed a claim under the Crime Victim’s Rights Act in an effort to overturn the illegal plea deal and get true justice for these victims.” (Exhibit 2).

3. On March 8, 2011, the BARD Marketing firm issued a press release on behalf of Mr. Edwards’ current law firm, Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., which stated that Edwards “successfully represented” ten women between 12 and 15 years old “by *proving* that Epstein and his international sex trafficking criminal enterprise exploited them and hundreds of other underage girls.” (Exhibit 3) (emphasis added). The press release quotes Mr. Edwards as stating *inter alia* that “we took on powerful people and sought to level the playing field to protect victims” and that the media attention will hopefully “inspire victims to report these crimes.” (*Id.*). The foregoing press release appears on the website www.pathtojustice.com, the website of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.

4. On March 11, 2011, the British publication “The Telegraph” published an article entitled “Convicted Paedophile Jeffrey Epstein is Facing a New Criminal Investigation and is

Involved in a Civil Suit with a Lawyer.” (Exhibit 4). The source for much of that article’s information is Mr. Scarola, who is quoted to have said the following (*Id.*):

- a. “We would be very keen to speak with Prince Andrew, given his relationship with Jeffrey Epstein.”
- b. “We want to obtain additional details on the scope of Mr. Epstein’s alleged sexual abuse of children — when, where, how frequently and the extent to which it involved the transport of children inside and outside the United States for sex.”
- c. “We have reason to believe that Prince Andrew has been in the company of Mr. Epstein while Mr. Epstein has been in the company of under-aged children.”

5. On March 11, 2011 the Palm Beach Daily News published an article entitled “Jeffrey Epstein Address Book ‘Holy Grail’ of Famous Names.” (Exhibit 5). This article refers to the fact that “[t]he British press has been having a field day digging up new details about Epstein’s friendship with Prince Andrew.” (*Id.*).

6. Two days later, another British publication, “The Observer,” reported: “Edwards’ lawyer, Jack Scarola, said last week that his team intended to try and get a statement from the prince [Andrew] about what he may or may not have seen while attending parties with Epstein.” (Exhibit 6).

7. An article published in the “Independent” on March 13, 2011 reported that Mr. Scarola said: “We are in the process of scheduling a further deposition of Mr. Epstein at which we intend to question him regarding the details of his child abuse, including all circumstances in which he may have been involved in procuring sexual favours from minors for his high-profile friends.” (Exhibit 7).

8. Also appearing on the Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. website is a press release dated March 17, 2011 and entitled “Victims of Sexual Abuse Demand Justice.” (Exhibit 8). The press release states that “Edwards *proved* that Epstein and his international sex trafficking criminal enterprise exploited them and hundreds of other underage girls.” (*Id.*) (emphasis added).

9. Also linked to the website www.pathtojustice.com are press releases regarding: 1) “Edwards Prevails on Key Rulings in Epstein Case” (May, 2010); and 2) “London Papers Quote Edwards in Recent Jeffrey Epstein / Prince Andrew Scandal” (March, 2011). (Composite Exhibit 9).

10. At a hearing before this Court on March 31, 2011, Mr. Scarola repeatedly labeled Mr. Epstein a “pedophile.” (Exhibit 10).

11. Mr. Edwards and his attorneys should not be permitted to wage a media campaign against Mr. Epstein, taint the jury pool, and pre-try their case in the court of world opinion. Accordingly, all statements and comments by Mr. Scarola and Mr. Edwards to the press and media regarding Mr. Epstein’s alleged sexual abuse of underage women -- other than what appears in the public record -- should be barred by the Court.

12. Undeniably, this Court has the discretion to control and prohibit such extrajudicial commentary and pretrial publicity in order to insure that Mr. Epstein receives a fair trial. *See Sheppard v. Maxwell*, 384 U.S. 333, 348, 86 S. Ct. 1507, 16 L. Ed. 2d 600 (1966); *State ex. rel. Miami Herald Publishing Co. v. McIntosh*, 340 So. 2d 904, 910 (Fla. 1976); *Sentinel Comm’n Co. v. Watson*, 615 So. 2d 768, 769 (Fla. 5th DCA 1993). The limitations imposed by a court on communications between lawyers and/or litigants and the media are permissible for good cause shown in order to assure a fair trial. *See McIntosh*, 340 So. 2d at 910; *Florida Freedom*

Newspapers, Inc. v. McCrary, 520 So. 2d 32, 35 (Fla. 1988) (there is no constitutional impediment to a court prohibiting counsel from making prejudicial statements that are intended for publication).

13. The Florida Supreme Court in *McIntosh*, 340 So. 2d at 910, recognized that restrictions on extrajudicial comment are within the power of the trial judge:

Limitation placed on lawyers, litigants and officials directly affected by court proceedings may be made at the court's discretion.... Muzzling lawyers who may wish to make public statements ... has long been recognized as within the court's inherent power to control professional conduct.

The Florida Supreme Court later stated: "Prohibition on comment is an acceptable alternative to prior restraint." *McCrary*, 520 So. 2d at 35-36 (order prohibiting public comment on evidence and charges against two defendants by members of state attorney's office and sheriff's office was proper preventive measure where prejudicial publicity threatened to impair the right to a fair trial).

14. Communications by Mr. Scarola and Mr. Edwards, as attorneys and officers of the court, with the media and press are also limited by the requirements of Rule 4-3.6 of the Rules Regulating The Florida Bar Rule 4-3.6, entitled "Trial Publicity":

(a) Prejudicial Extrajudicial Statements Prohibited. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

(b) Statements of Third Parties. A lawyer shall not counsel or assist another person to make such a statement. Counsel shall exercise reasonable care to prevent investigators, employees, or other persons

assisting in or associated with a case from making extrajudicial statements that are prohibited under this rule.”

15. Florida Bar Rule 4-3.6 incorporates the “substantial likelihood of material prejudice” standard that the United States Supreme Court found to be a “constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the state’s interest in fair trials.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075, 111 S. Ct. 2720, 2745, 115 L. Ed. 2d 888 (1991).

16. The foregoing authorities make perfectly clear that in appropriate cases extrajudicial statements can and should be prohibited. *See also Rodriguez v. Feinstein*, 734 So. 2d 1162, 1164-65 (Fla. 3d DCA 1999) (proper for a court to determine on a case-by-case basis whether good cause is shown to impose limitations on communications between counsel and the media). This is an exceedingly appropriate case for prohibiting extrajudicial statements because the ongoing media blitz by Mr. Edwards and Mr. Scarola is substantially likely to prejudice the pending litigation. Indeed, their extrajudicial commentary is unquestionably intended to -- and will -- poison the jury pool against Mr. Epstein. Indeed, their carefully-crafted media campaign against Mr. Epstein is designed to incite the public and muddy the water.¹

17. There is no merit to any argument by Mr. Scarola and/or Mr. Edwards that their statements to the media were justified because they were merely responding to statements to the

¹ In a letter of March 18, 2011, in an effort to conserve this Court’s time and resources, undersigned counsel requested that Mr. Scarola enter into a written agreement guaranteeing that Mr. Scarola, Mr. Edwards, and their respective agents and employees will not engage in any extrajudicial commentary concerning Mr. Epstein’s alleged sexual abuse of or involvement with minor females. The undersigned’s efforts have not, unfortunately, been successful. An e-mail response to the above March 18, 2011 letter was received on March 21, 2011 rejecting the request.

media by an “Australian victim;” that they informed the public of a threat to public safety; and they encouraged other victims to come forward. These purported justifications are frivolous.

18. Instead of simply responding “no comment,” defense counsel capitalized on the opportunity to speak extensively to the press regarding matters which can only serve to inflame a potential jury pool and thereby prejudice Mr. Epstein. They were intended to, and did, make sensational tabloid headlines. Moreover, at least one extrajudicial statement was made *prior* to the media frenzy surrounding Ms. Roberts.

19. The extrajudicial statements of Mr. Scarola are not intended to serve the public good, but, rather, to put pressure on Mr. Epstein by implicating his alleged acquaintances. This is precisely the sort of pretrial publicity that Florida Bar Rule 4-3.6 is designed to preclude.

20. Mr. Edwards’ and Mr. Scarola’s repeated attempts to poison the well are exacerbated by the publication of *patently false* statements by Mr. Edwards’ present law firm. Press releases issued on behalf of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., by its public relations firm include categorically *false* statements that Mr. Edwards “**proved** that Epstein and his international sex trafficking criminal enterprise exploited” “ten women . . . between 12 and 15 years of age” and “hundreds of other underage girls.” (Exhibit 8) (emphasis added). Mr. Edwards has not *proven* anything of the sort. The foregoing statements are blatant misrepresentations that must be stopped.

21. The media attacks on Mr. Epstein fueled by Mr. Scarola and/or Mr. Edwards have far-reaching ramifications, and create an “imminent and detrimental” effect on the subject litigation. The technological advancements of the 21st century result in the immediate dissemination of comments by counsel to the press. Most, if not all, of the cases cited by Defendants predate the “World Wide Web.” In this day and age of the internet, on-line

newspapers, blogs and search-engines like Google and Yahoo, a search of Plaintiff Epstein's name on the Internet will instantaneously reveal any and all pretrial publicity regarding Epstein and all matters relating to these proceedings. These search results will include the most recent as well as older postings. Unlike the days of old when newspapers were the primary source of information and their content was largely forgotten and not readily accessible once thrown in the garbage can, the information on the Internet is always available and easily revisited. Whatever appears now in the press and Internet will continue to generate comment in the press and Internet until the time of trial.

22. In view of prejudicial media frenzy fueled by Mr. Scarola and Mr. Edwards, Mr. Epstein requests the entry of a narrowly - drawn limitation barring them from making extrajudicial statements concerning Mr. Epstein's alleged sexual abuse of, or involvement with, underage women other than what appears in the public record. Specifically, Plaintiff proposes the entry of an Order incorporating the following provisions:

1. No person covered by this order shall make any statement to members of any television, radio, newspaper, magazine, internet (including, but not limited to, bloggers), or other media organization about this case, other than matters of public record, that could interfere with a fair trial or otherwise prejudice the parties or the administration of justice;
2. Nothing set forth in paragraph 1 shall prohibit the parties in this action or their counsel
 - (a) Stating, without elaboration or any kind of characterization whatsoever:
 - (i) the general nature of an allegation or defense made in this case;
 - (ii) information contained in the public record of this case;
 - (iii) scheduling information;

- (iv) any decision made or order issued by the court which is a matter of public record.
- (b) Explaining, without any elaboration or any kind of characterization whatsoever, the contents or substance of any motion or step in the proceedings, to the extent such motion or step is a matter of public record in this case and any ruling made thereon to the extent that such ruling is a matter of public record.

23. In addition, Mr. Scarola should be prohibited from labeling Mr. Epstein in open court as a “pedophile,” as he has done. (*See* Exhibit 10). By using the epithet in open court, it becomes part of the public record and fodder for the media. Pursuant to Fla. R. Evid. 404, Mr. Scarola could not use such an epithet during the trial or introduce evidence to support the disparaging characterizations

24. The extrajudicial statements by Mr. Scarola and Mr. Edwards throw roadblocks in the “path to justice” and should not be permitted.

WHEREFORE, Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, respectfully requests that the Court grant his Amended Motion for a Protective Order to Preclude Opposing Counsel and Defendant/Counter-Plaintiff from Making Extrajudicial Statements and Commentary to the Media and Press, and grant such other and further relief as is deemed necessary and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail
and U.S. Mail this ____ day of May, 2011 to:

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