

From: "Martin Weinberg" <[REDACTED]>
To: "Jeffrey Epstein" <jeevacation@gmail.com>
Cc: "[REDACTED]" <[REDACTED]>
Subject: Re: CMA-Amicus Curiae - ATTORNEY-CLIENT PRIVILEGE
Date: Sat, 25 Apr 2009 21:26:26 +0000

I think your risks decrease with the extent to which you have met your obligations, the most severe being the jail sentence; the chances of getting a court to reject Govt claim 2255 essential to holistic NPA and your claim the 2255 was unconstitutional AND severable go up with time...

----- Original Message -----

From: [Jeffrey Epstein](#)
To: [Martin Weinberg](#)
Cc: [Rita Budnyk](#); [REDACTED]; [Robert D. Critton Jr.](#); [Goldberger, Jack](#)
Sent: Saturday, April 25, 2009 4:44 PM
Subject: Re: CMA-Amicus Curiae - ATTORNEY-CLIENT PRIVILEGE

reminder ,, in this instance i am being forced as part of a criminal agreement to agree to 2255,, it is clearly part of a " punishment agreement"..

On Sat, Apr 25, 2009 at 3:28 PM, Martin Weinberg <[REDACTED]> wrote:

yes, thanks

the existing law is as I expected regarding the lack of need for a prior criminal conviction - but because the law on the interface of 2255/criminal code is both in its infancy and evolving we should give some consideration (perhaps, given that the CMA filing is a reply brief whereas a response to Jane Doe 101 whether as a stand alone motion to dismiss or as a response to amici in the Jane Doe 101 litigation but I leave the civil procedural issues to you and Bob and Jack) to contending that either a prior conviction or, absent a conviction, proof to a higher standard than preponderance (beyond a reasonable doubt) is warranted given that Congress has not limited the remedy to the civil norm of provable damages (whether compensatory or punitive) but has manufactured a lump sum recovery similar to a criminal fine or punishment and that the "penal-type" consequence should warrant (in the absence of prior criminal proceeding proof of a Title 18 violation of one of 2255s predicates) that a criminal law standard be required (otherwise the plaintiff can bring traditional state law claims for battery, etc without the inflated \$150,000 (or \$50,000) damage recovery (particularly if the Court is considering a unit of liability to be per occurrence, or worse, per violation of any predicate even if during the same occurrence)

----- Original Message -----
From: "Rita Budnyk" <[REDACTED]>
To: "Martin Weinberg" <[REDACTED]>; "Robert D. Critton Jr." <[REDACTED]>
Cc: "Jeffrey Epstein" <jeevacation@gmail.com>; "Jack Goldberger" <[REDACTED]>
Sent: Saturday, April 25, 2009 3:00 PM
Subject: RE: CMA-Amicus Curiae

Take a look at *Smith v. Husband*, 376 F.Supp.2d 603 (E.D. Va. 2005), and *Doe v. Liberatore*, 378 F.Supp.2d (M.D. Pa. 2007). No prior criminal conviction needed to bring a 2255 cause of action; burden of proof is "by preponderance of the evidence." To state that the 2255 issues are extremely complex is an understatement. As we are well aware - this is a developing area of law. Many of the issue at front in CMA are of first impression.

I am currently working on the ex post facto/retroactive argument in both a criminal and civil context as thus far I can find no case law definitively ruling whether the minimum damage amount is meant as a criminal penalty or punishment. As previously state, the House Bill Reports and legislative history use the terms "punishment" and "penalties." 2255 is entitled "Civil remedy for personal injuries." I am well aware of the

case law stating that labels are not dispositive on the issue.

Would you like the constitutional arguments as I finish a draft of each one (as opposed to waiting until the entire reply to CMA's response is complete)? I will be doing a motion to exceed the 10 page reply limitation.

Thank you,

Rita Budnyk

From: Martin Weinberg [mailto: [REDACTED]]
Sent: Fri 4/24/2009 3:05 PM
To: Robert D. Critton Jr.; Rita Budnyk
Cc: Jeffrey Epstein; Jack Goldberger; Darren Indyke; Alan M. Dershowitz
Subject: Re: CMA-Amicus Curiae

Bob and Rita

I don't know whether your research has provided answers to any of the following issues that were "instigated" by the Jane Doe 101 filing:

- 1) Whether 2255 was intended to be exclusively a remedy for private persons brought as a corollary to a federal criminal prosecution (like restitution) - or whether instead it is a stand alone civil cause of action that was intended by Congress (or approved by courts) to provide federal jurisdiction to civil parties extrinsic to any federal investigation or prosecution?
- 2) Whether the underlying predicate must have resulted in an antecedent criminal conviction prior to any civil remedy?
- 3) Whether 2255's placement in Title 18 increases the ordinary civil burdens of proof to require that the underlying predicate be proven beyond a reasonable doubt?

Marty

----- Original Message ----- From: Robert D. Critton Jr. <mailto: [REDACTED]>
To: Rita Budnyk <mailto: [REDACTED]> ; Martin Weinberg <mailto: [REDACTED]>
Cc: Jeffrey Epstein <mailto: jeevacation@gmail.com> ; Jack Goldberger <mailto: [REDACTED]>
; Darren Indyke <mailto: [REDACTED]> ; Alan M. Dershowitz <mailto: [REDACTED]>
Sent: Friday, April 24, 2009 12:03 PM
Subject: RE: CMA-Amicus Curiae

Marty and alan, what do you think, looking for thoughts here , a number of procedural issues and legal as well-our reply in cma is not do for another 7-10 days, rec'd an extension.

Robert D. Critton, Jr.

Burman Critton Luttier & Coleman, P.A.

515 N. Flagler Drive, Suite 400

West Palm Beach, FL 33401



From: Rita Budnyk
Sent: Friday, April 24, 2009 11:53 AM
To: Robert D. Critton Jr.
Subject: CMA-Amicus Curiae

WORK PRODUCT PRIVILEGED

Regarding Jane Doe 101's motion amicus brief in CMA on the 2255 issues raised in our motion to dismiss and CMA's response, my initial thought is why should Jane Doe 101 get to use another lawsuit to assert her position when she already has filed an action which attempts to assert seven separate 2255 claims. Like CMA, Jane Doe 101 does not identify in her complaint what version of 2255 she is relying - it's safe to assume it will be the current version and \$150,000 presumed minimum.

I would also move to dismiss the Jane Doe 101 multiple claims raising the same arguments as in CMA. At the outset, I would also put the court on notice that the same issues are before the court in the CMA action and they need to be considered and decided in a manner not inconsistent with each other.

Let me know what you think regarding how to respond to Jane Doe 101's request to file an amicus brief in the CMA case? Do we oppose a filing or go ahead and let them file so that the issue is ultimately decided in the CMA case? The other plaintiffs may follow in wanting to file an amicus brief in the CMA case as well.

I appreciate your thoughts on how to proceed on this.

Rita Budnyk