

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
www.flsb.uscourts.gov

IN RE: CASE NO.: 09-34791-RBR
ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11
Debtor.

**MOTION FOR PROTECTIVE ORDER TO EXCLUDE THE PRODUCTION FROM
TRUSTEE STETTIN OF PRIVILEGED DOCUMENTS AND TESTIMONY TO
JEFFREY EPSTEIN**

Movant, L.M., moves this Court pursuant to 11 U.S.C. §105(a), Federal Rules of Bankruptcy Procedure Rule 7026 (which expressly incorporates Fed.R.Civ. P. 26(c)), and L.R. 7026-1 to request that the Court enter a protective order excluding the Trustee's production of any documents to Jeffrey Epstein because all requested documents are subject to a claim of attorney-client privilege and/or attorney work product, and in support thereof, states as follows:

I. Introduction

1. Jeffrey Epstein, through his counsel, seeks to pull the wool over the eyes of this honorable Court. Epstein asks this Court to usurp the properly exercised jurisdiction of the Circuit Court over a subpoena *duces tecum* issued by the state court in connection with an action pending before the state court.

2. Movant, L.M., respectfully requests that this honorable Court enter a protective order, consistent with the document production methodology already ordered by the Court [D.E. 672], deny Epstein's motion to compel, and prevent the Trustee's production to Epstein of any documents or ESI sought through his state court subpoena since such production consists entirely of documents and ESI which are subject to proper claims of attorney-client communications

privilege and/or attorney work product.

II. Background

3. Movant, L.M. is a party plaintiff in a civil lawsuit¹ against party defendant Jeffrey Epstein in which she alleges that Epstein sexually exploited, abused, and/or assaulted her when she was a minors. The parties recently reached a confidential settlement of this lawsuit on the eve of trial.

4. Movant's counsel, Brad Edwards was employed by RRA. During this time Attorney Edwards securely and confidentially maintained hard-copies of certain file materials and maintained substantial parts of client case files and investigative files in the Qtask application and other software systems maintained by RRA.²

5. This Court has entered other Orders in this case to preserve the privileges of RRA's former clients. See Order Granting Motion for Protective Order, D.E. 672.

6. Epstein filed a lawsuit against Scott W. Rothstein, L.M.'s counsel Brad Edwards, and L.M. individually.³ Epstein has sought to prove up his meritless claims against Attorney Edwards and L.M., in part, by invoking his Fifth Amendment privilege in deposition in this case seventy-seven times.⁴

7. On Date, Epstein's counsel had a subpoena *duces tecum* issued from the Circuit Court in

¹ *L.M. v. Epstein*, Case #08-CA-28051, 15th Judicial Circuit in and for Palm Beach County, Florida. Attorney Brad Edwards is plaintiff's counsel in this lawsuit. Epstein was also a party defendant in dozens of other civil lawsuits prosecuted by other woman who allege that Epstein sexually exploited, abused, and/or assaulted them when they were minors.

² See Motion for Protective Order to Exclude Production of Privileged Documents and Testimony from Qtask, Inc. [D.E. 355].

³ *Epstein v. Rothstein, et al.*, Case #09-CA-040800-MBAG, 15th Judicial Circuit in and for Palm Beach County, Florida.

⁴ Dep. Jeffrey Epstein, *Epstein v. Rothstein, et al.*, March 17, 2010, p. 6 – 128.

Epstein v. Rothstein, et al. seeking production from Trustee Herbert Stettin of Attorney Edwards case files and investigative files which relate to L.M. and his other legitimate clients who possessed *bona fide* claims or potential claims against Epstein.

8. On Date, L.M., through counsel, filed objections to the subpoena in the Circuit Court.

9. Likewise, L.M. filed a motion for protective order in the Circuit Court where the subject subpoena had been issued.

10. In addition, the Trustee filed a motion for protective order in the Circuit Court.

11. Thereafter, the Circuit Court entered an agreed order on these motions for protective order protecting privileged and work product materials from production to Epstein.

12. Now, Epstein has come to the Bankruptcy Court to pursue the discovery of privileged and attorney work product materials which the Circuit Court would not allow. See Epstein's Motion to Compel, DE 807.

III. Memorandum of Law

A. Discovery Issues Related to the State Court Issued Subpoena Are Not Properly Before the Bankruptcy Court

Despite Epstein's stated position to the contrary, neither 28 U.S.C. §§ 152 or 1334 confer jurisdiction on this honorable Court to adjudicate a discovery matter arising purely under state law claims filed in state court which are not before the Bankruptcy Court. Epstein seeks to perform an end run around the Circuit Court's proper exercise of its jurisdiction to adjudicate matters pending before it, including subpoenas issued from that court. Moreover, the honorable Circuit Court has already ruled on a motion for protective order on the subject state court issued subpoena *duces tecum*. Accordingly, for reasons of comity, this honorable Court should deny Epstein's motion to compel.

B. The Discovery Sought is Privileged and/or Attorney Work Product and Beyond the Permissible Scope of Discovery

Privileges are invoked by the client who possesses the privilege or by the attorney on behalf of the client.

i. Scope of Permissible Discovery

Rule 26(b) excludes privileged matters from the scope of permissible discovery. Epstein seeks the production of documents from clients' privileged case files and investigative files. These documents are beyond the scope of discovery permitted by Rule 26(b).

ii. Protective Orders

Rule 26(c) states that a court may protect a party or person from whom discovery is sought, based on "good cause shown:"

A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

Fed.R.Civ.P. 26(c)

Epstein seeks the production from the Trustee of privileged, confidential, and attorney work product materials from the case files and investigative files of L.M. and other clients who possess claims against Epstein. The requested documents, relating to the *bona fide* cases of clients are not relevant or calculated to lead to the discovery of admissible evidence in the instant bankruptcy action or any adversary proceeding presently before this Court. Therefore, the requested documents are beyond the scope of permissible discovery. The requested materials are not discoverable under the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, the Bankruptcy Rules of Civil Procedure or any other possibly applicable system of rules. Moreover, the document production methodology established by order of this Court was not intended to be a conduit of privileged and work product of RRA's former clients to the clients' litigation adversaries. Epstein's counsel distorts and misrepresents the purpose of the document production methodology by arguing that it was created to facilitate such improper discovery.

Epstein's counsel further attempts to skirt the issue of privilege by failing to meaningfully identify the nature of the requested materials, other than describing "emails" and documents "other than emails". The materials requested by Epstein, essentially case files, client files, and investigative files are patently and obviously privileged. Epstein's counsel offers no argument, cognizable under any set of possibly applicable rules, to demonstrate entitlement to these privileged and work product materials.

WHEREFORE, based on the foregoing, Epstein is not permitted to obtain production of

documents and ESI from the Trustee which comprise the privileged, confidential, or attorney work product portions of case files or investigative files, and Movant requests that the Court deny Epstein's motion to compel, grant the foregoing motion for protective order, and enter a protective order excluding the production of any documents or ESI by the Trustee which relate to any cases or matter of L.M. or other clients and granting any other relief the Court deems appropriate to protect the clients of Farmer Jaffe Weissing.

I HEREBY CERTIFY that, pursuant to L.R. 9073-1(D), Movant's counsel has contacted Epstein's counsel in a good faith attempt to resolve the matter without a hearing and I further certify that a true and correct copy of the foregoing was served on electronically to the examinee, the debtor, the attorney for the debtor, the trustee, all CM/ECF subscribers, and by email or U.S. Mail on those parties listed on the attached service list this **19th** day of **July**, 2010.

I HEREBY CERTIFY that I am admitted to the Bar of the United State District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(A).

FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301
(954)524-2820 Telephone
(954)524-2822 Facsimile

By: /s/Seth Lehrman

Seth Lehrman FLBN 132896
seth@pathtojustice.com

SERVICE LIST
CASE NO.: 09-34791-BKC-RBR

Marianella Morales, Esquire (VIA EMAIL)
Authorized Agent For Joining Creditors
Avenida Francisco de Miranda
Torre Provincial "A"
Piso 8
Caracas, Venezuela

John H. Genovese, Esq. (VIA CM/ECF)
Robert F. Elgidely, Esq.
Theresa M.B. Van Vliet, Esq.
Genovese Joblove & Battista, PA
Bank Of America Tower at International
Place
100 S.E. 2nd Street
Suite 4400
Miami, Florida 33131
Phone: (305) 349-2300
Fax (305) 349-2310

Kendall Coffey, Esq. (VIA EMAIL)
Coffey Burlington,
Office in the Grove
Penthouse
2699 South Bayshore Drive
Miami, Florida 33133
kcoffey@coffeyburlington.com

Hon. Herbert M. Stettin (VIA EMAIL)
One Biscayne Tower
Suite 3700
Two South Biscayne Boulevard
Miami, Florida 33131

John G. Bianco, Esq. (VIA CM/ECF)
John M. Mulli, Esquire
Tripp Scott
110 Southeast Sixth Street
Fifteenth Floor
Fort Lauderdale, Fl. 33301
jgb@trippscott.com

Alison W. Lehr (VIA EMAIL)
Assistant United States Attorney
99 N.E. 4th Street
7th Floor
Miami, Florida 33132
Phone: (305) 961-9176
Fax: (305) 536-7599
Alison.Lehr@usdoj.gov

Stuart A. Rosenfeldt, Esq. (VIA EMAIL)
Rothstein Rosenfeldt Adler, PA
401 East Las Olas Boulevard
Suite 1650
Fort Lauderdale, Florida 33301
srosenfeldt@rra-law.com

Jeffrey R. Sonn, Esq. (VIA EMAIL)
Sonn & Erez, PLC
Broward Financial Center
500 E. Broward Boulevard
Suite 1600
Fort Lauderdale, Florida 33394
Phone: (954) 763-4700
Fax (954) 763-1866
jsonn@sonnerez.com

Office of the US Trustee (VIA CM/ECF)
51 Southwest First Avenue
Suite 1204
Miami, Florida 33130

Thomas Tew, Esq. (VIA EMAIL)
Lynn Maynard Gollin, Esq.
Tew-Cardenas, LLP
Four Seasons Tower
15th Floor
1441 Brickell Avenue
Miami, Florida 33131-3407
tt@tewlaw.com
lmg@tewlaw.com

Conrad & Scherer, LLP (VIA EMAIL)
633 South Federal Highway
Fort Lauderdale, FL 33301
Tel: 954-462-5500
bs@conradscherer.com
JSilver@conradscherer.com

Michael D. Seese, Esq. (VIA EMAIL)
Hinshaw & Culbertson, LLP
1 E Broward Blvd Ste 1010
Ft Lauderdale, Florida 33301
Tel: 954.4677900
Fax: 954.4671024
mseese@hinshawlaw.com

Internal Revenue Service
Centralized Insolvency Operations
P.O. Box 21126
Philadelphia, PA 19114
(Via U.S. Mail)

Internal Revenue Service
Special Procedures - Insolvency
7850 SW 6th Court
Plantation, FL 33324
Tel.: (954) 423-7300
Fax.: (305) 982-5406
(Via U.S. Mail)

Special Asst. U.S. Attorney
P.O. Box 9, Stop 8000
51 SW 1st Avenue, #1114
Miami, FL 33130
Fax: (305) 530-7139
(Via U.S. Mail)

Grant J. Smith, Esq. (VIA EMAIL)
Rothstein Rosenfeldt Adler, P.A.
401 East Las Olas Blvd
Suite 1650
Fort Lauderdale, FL 33301
gsmith@rra-law.com

United Healthcare
Dept. CH 10151
Palatine, IL 60055
(Via US Mail)

Special Asst. U.S. Attorney
IRS District Counsel
1000 S. Pine Island Rd., Ste 340
Plantation, FL 33324-3906
(Via U.S. Mail)

The Honorable Eric H. Holder, Jr.
Attorney General of the U.S.
950 Pennsylvania Avenue, NW Room 4400
Washington, DC 20530-0001
(Via U.S. Mail)

Honorable Jeffrey H. Sloman,
Acting U.S. Attorney
99 NE 4th Street
Miami, FL 33132
(Via U.S. Mail)

Daniel Mink
Ovadia Levy
c/o Renato Watches, Inc
14051 NW 14th Street
Sunrise, Florida 33323
(Via U.S. Mail)

William George Salim, Jr. **(VIA CM/ECF)**
Moskowitz Mandell & Salim
800 Corporate Dr Ste 510
Fort Lauderdale, Florida 33334
wsalim@mmslaw.com
Tel: 954.491-2000
Fax: 954.4912051

USI (VIA EMAIL)
Attn: Anthony Gruppo
200 West Cypress Creek Road
Suite 500
Fort Lauderdale, FL 33309
Tel: 954-607-4000
Anthony.gruppo@usi.biz

Marc Nurik, Esq. (VIA EMAIL)
Rothstein Rosenfeldt Adler, P.A.
401 East Las Olas Blvd
Suite 1650
Fort Lauderdale, FL 33301
mnurik@rra-law.com

BAST AMRON LLP (VIA CM/ECF)
SunTrust International Center
One Southeast Third Avenue
Suite 1440
Miami, Florida 33131
Telephone: (305) 379-7904
Facsimile: (305) 379-7905
bamron@bastamron.com
jbast@bastamron.com

Mark Bloom, Esq. (VIA EMAIL)
Greenberg Traurig, LLP
1221 Brickell Avenue
Miami, FL 33131
T 305.579.0500
F 305.579.0717
bloomm@gtlaw.com

Robert D. Critton, Esq. (VIA EMAIL)
Burman, Critton, Luttier & Coleman
303 Banyan Blvd., Suite 400
West Palm Beach, FL 33401
rcrit@bclclaw.com

Roth & Scholl (VIA EMAIL)
Attn: Jeffrey C. Roth, Esq.
Attorneys For Creditor Blue
Capital Us East Coast Properties, L.P.
866 South Dixie Highway
Coral Gables, FL 33146
Telephone: (305) 662-4141
jeff@rothandscholl.com

Rogers, Morris & Ziegler, LLP (VIA EMAIL)
1401 East Broward Blvd
Suite 300

Fort Lauderdale, FL 33301
Tel: (954) 462-1431
Fax: (954) 763-2692
mfbooth@rmzlaw.com

Arthur C. Neiwirth, Esq. (VIA CM/ECF)
One E. Broward Blvd., Suite 1400
Ft. Lauderdale, FL 33301
Tel: (954) 523-7008
Fax: (954) 523-7009
aneiwirth@qpwbllaw.com

The Florida Bar (VIA EMAIL)
Adria E. Quintela, Esq.
Alan Anthony Pascal, Esq.
Lake Shore Plaza II
1300 Concord Terrace, Suite 130
Sunrise, FL 33323
aquintel@flabar.org
apascal@flabar.org

Micheal w. Moskowitz, Esq. (VIA E-MAIL)
800 Corporate Drive, Suite 500
Ft. Lauderdale, FL 33234
mmoskowitz@mmsllaw.com

Francis L. Carter, Esq. (VIA E-MAIL)
Katz Barron Squitiero Faust
2699 S. Bayshore Drive, 7th Floor
Miami, Florida 33133
Tel: 305-856-2444
Fax: 305-285-9227
flc@katzbarron.com

Bradley S. Shraiberg, Esq. (VIA EMAIL)
2385 NW Executive Drive
Suite 300
Boca Raton, Florida 33431
Tel: 561-443-0800
Fax: 561-998-0047
bshraiberg@sfl-pa.com

Henry S. Wulf, Esq. (VIA EMAIL)
CARLTON FIELDS, P.A.
525 Okeechobee Blvd., Suite 1200
West Palm Beach, Florida 33401
Telephone: (561) 659-7070
Facsimile: (561) 659-7368
E-Mail: hwulf@carltonfields.com

EMESS Capital, LLC (VIA EMAIL)
c/o Bruce A. Katzen, Esq.
201 S. Biscayne Blvd., 17th Floor
Miami, Florida 33131
Telephone: (305) 379-9000
Facsimile: (305) 379-3428
E-Mail: bkatzen@klugerkaplan.com

Ronald Neiwirth, Esq. (VIA EMAIL)
Joseph L. Ackerman, Jr., Esq.
Fowler White & Burnett, P.A.
777 S. Flagler Dr., Ste 901
W. Palm Beach, FL 334016170
Email: jla@fowler-white.com
rneiwirth@fowler-white.com

Ira Sochet, Trustee (VIA EMAIL)
Revocable Intervivos Trust of Ira Sochet
c/o Phil Hudson, Esq.
200 South Biscayne Blvd, Suite 3600
Miami, Florida 33130
Telephone: (305) 374-3330
Facsimile: (305) 374-4744
E-Mail: pmhudson@arnstein.com

Coquina Investments (VIA EMAIL)
c/o Patricia A. Redmond, Esq.
150 West Flagler Street, Suite 2200
Miami, Florida 33130
Telephone: (305) 789-3553
Facsimile: (305) 789-3395
E-Mail: predmond@stearnsweaver.com