

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

Appellate Case No.:  
LT Case No: 502009CA040800XXXXMB AG

JEFFREY EPSTEIN,

Petitioner/Plaintiff,

v.

SCOTT ROTHSTEIN, individually, and  
BRADLEY J. EDWARDS, individually,

Respondents/Defendants.

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**PETITION FOR WRIT OF CERTIORARI**

On Review of a Non-Final Order of the Circuit Court of the  
Fifteenth Judicial Circuit in and for Palm Beach County, Florida

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Appellate Counsel for Petitioner



## INTRODUCTION

In this Petition for a Writ of Certiorari, Petitioner Jeffrey Epstein, the plaintiff/counter-defendant below, challenges the circuit court's Order entered March 8, 2018<sup>1</sup> by the Honorable Donald Hafele, granting Respondent Bradley J. Edwards' Motion for Separate Trials.<sup>2</sup>

By separate motion, Petitioner moves to consolidate this petition with his pending Emergency Petition for Writ of Mandamus filed March 8, 2018, (Case No. 4D-18-0762) arising out of the same hearing and interrelated rulings. Trial was set to commence on March 13, 2018; however, on March 9, 2018, this Court granted Petitioner's request for emergency treatment of his mandamus petition and Emergency Motion for Review of Order Denying Stay, and stayed proceedings in the circuit court until further order of this Court.

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<sup>1</sup> The circuit court's oral ruling begins on page 72 of the March 8, 2018, hearing transcript. *See App. 19*. Petitioner will supplement the Appendix with a written Order as soon as it is entered by the circuit court.

<sup>2</sup> At the March 8, 2018 hearing, University of Utah Law Professor, Paul G. Cassell, Esq., appeared pro hac vice below for non-parties L.M., E.W. and Jane Doe, on a limited confidentiality issue not before this Court. On behalf of non-parties, L.M., E.W. and Jane Doe, Mr. Cassell filed an Unopposed Emergency Motion to Intervene to Protect Confidentiality of Privileged and Otherwise Protected Materials and to Seek Other Appropriate Remedies (D.E. 1234), an Emergency Motion to Join Edwards' Motion to Strike and for Related Relief (D.E. 1233), and an Unopposed Emergency Motion to Temporarily Seal Epstein's Notice of Unredacted Materials (D.E. 1232). As the non-parties have intervened below on a limited and unrelated issue, they are not captioned parties on this (or the emergency mandamus) petition.

## **BASIS FOR INVOKING JURISDICTION**

This Court has original jurisdiction to issue writs of certiorari under Article V, section 4(b)(3) of the Florida Constitution, and under Rule 9.030(b)(3) of the Florida Rules of Appellate Procedure.

Ordering bifurcation where claims are inextricably woven warrants certiorari relief. *See, e.g., Maris Distrib. Co. v. Anheuser–Busch, Inc.*, 710 So. 2d 1022, 1024 (Fla. 1st DCA 1998) (quashing order severing breach of contract cause of action from other counts which arose in the context of the contract, as facts underlying all counts were interrelated).

## **BACKGROUND**<sup>3</sup>

This unique and complex case arose from the 2009 implosion of the Fort Lauderdale law firm Rothstein, Rosenfeldt & Adler, where defendant/counter-plaintiff Bradley Edwards worked and held himself out as a partner. The principal of the firm, defendant Scott Rothstein, was disbarred and is now serving a 50-year prison sentence for admittedly running a \$1.2 billion Ponzi scheme by convincing investors he had negotiated multi-million settlements in high-profile cases.

Three of Edwards' clients at the time alleged tort claims against Epstein, which Epstein ultimately settled. Based on publicly available information about

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<sup>3</sup> All background information is derived from the complaints and Joint Pretrial Stipulation, included in the Appendix.

the Rothstein firm and the Ponzi scheme, and Edwards' excessive and unorthodox litigation practices while holding himself out as a partner of the Rothstein firm, Epstein filed suit against Rothstein and Edwards. Amongst Epstein's allegations was that Edwards and Rothstein had conspired to use Edwards' clients' cases against Epstein to fuel the Ponzi scheme. Only 17 days after Epstein filed suit, Edwards countersued based on Epstein's original complaint. After several iterations of his counterclaim, Edwards ultimately alleged a count for malicious prosecution. In his malicious prosecution counterclaim, Edwards alleged that Epstein had no probable cause for filing *this lawsuit* against him.

Epstein ultimately filed a Second Amended Complaint against Edwards and Rothstein, alleging abuse of process against Edwards and conspiracy to commit abuse of process against Rothstein. Although Epstein later dismissed Edwards from the suit without prejudice, his claim against Rothstein and Edwards' counterclaim against Epstein are alive and well and have traveled together since the inception of this lawsuit.

Edwards' counterclaim is based on the alleged "anxiety" and "emotional distress" he suffered as a result of Epstein's filing and continuation of *this lawsuit*. At the March 8, 2018 hearing, Judge Hafele himself recognized *no less than six times* that Edwards' counterclaim for malicious prosecution against Epstein had its

**genesis** in the civil proceeding initiated by Epstein. Given the lawsuit's undeniable origination, the claim and counterclaim are inextricably intertwined, and severing them in order to proceed with a March trial date constitutes a departure from the essential requirements of law, resulting in irreparable harm. Judge Hafele's severance order must therefore be quashed.

### **STATEMENT OF THE CASE AND FACTS**

On December 7, 2009, Epstein filed his initial Complaint in this action against Scott Rothstein, Bradley Edwards and L.M.<sup>4</sup> Epstein alleged the following counts against Rothstein:

- a. (1) Violation of § 772,101 – Florida Civil Remedies for Criminal Practices Act
- b. (2) Violation of § 895.01 – Florida's RICO Act
- c. (3) Abuse of Process
- d. (4) Fraud
- e. (5) Conspiracy to Commit Fraud

**(App. 1).**

On December 21, 2009, just 17 days after Epstein instituted the civil proceeding, Edwards filed a Counterclaim for abuse of process against Epstein.

**(App. 2).** Thereafter, Edwards amended his Counterclaim several times, ultimately alleging a count for malicious prosecution against Epstein. **(App. 3).**

On January 21, 2010, a Clerk's Default was entered against Rothstein as to

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<sup>4</sup> L.M. was dismissed from this case on August 9, 2010. **(App. 5).**

all claims in the December 7, 2009 Complaint. (**App. 4**). Rothstein retained counsel, Mark Nurik, who moved to set aside the default, but an order was never entered on that motion. Mr. Nurik has not withdrawn from this case and has been on the service list since 2010.

On April 12, 2011, Epstein filed an Amended Complaint against Rothstein. The Amended Complaint asserted a single count against Defendant Rothstein for Abuse of Process. The remaining counts against Rothstein in the initial Complaint (Florida Civil Remedies for Criminal Practices Act, Florida's RICO Act, Fraud, and Conspiracy to Commit Fraud), were abandoned. (**App. 6**).

On August 22, 2011, Epstein filed a Second Amended Complaint (which was corrected on August 24, 2011 for a scrivener's error), bringing a claim for abuse of process against Edwards, and a claim for conspiracy to commit abuse of process against Rothstein. (**App. 7 and 8**). Rothstein never answered the Second Amended Complaint, and a default has not been entered against him on the Second Amended Complaint.

On August 16, 2012, Epstein dismissed his claims without prejudice against Edwards. (**App. 9**).

On May 24, 2017, following remand from the appellate courts, Edwards noticed this entire matter for trial. In his Motion to Set Case for Trial, Edwards

requested this Court “to set the above-styled cause for trial by jury,” and expressly stated: “This long delayed matter is now ripe for resolution.” (**App. 10**). The trial was initially set for December 2017, and then reset to March 13, 2018. (**App. 11 and 12**).

Importantly, on December 22, 2017, the parties entered into a Joint Pretrial Stipulation, listing the Stipulated Facts and Statement of Issues of Fact for Determination at Trial. (**App. 13**). Pursuant to the stipulation, the first issue to be tried is the “Case Against Rothstein”. Second, is Edwards’ malicious prosecution counterclaim. (**App. 13** at C. 1.).

On March 1, 2018, less than two weeks before trial, Edwards filed his Motion for Separate Trials or, in the Alternative to Adjust the Order of Proof. (**App. 14**). In that motion, for the first time in 8+ years of litigation, Edwards argued that separate trials are necessary to avoid prejudice, confusion and inconvenience *to Edwards*. The next day, apparently just realizing that the matter was not yet ripe, Edwards filed a “Supplement” to his Motion for Separate Trials (**App. 15**). In his Supplement, Edwards advised for the first time that no default on the Second Amended Complaint had been entered in Epstein’s case against Rothstein. In other words, at the time Edwards filed his motion to set case for trial,

the case was not at issue, and thus, the scheduled trial may not proceed based on Florida Rule of Civil Procedure 1.440.<sup>5</sup> (**App. 15**).

Upon receiving Edwards' Supplement to his Motion for Separate Trials, Epstein's counsel immediately researched the Rule 1.440 issue raised by Edwards. The research revealed that despite Edwards' request to set the cause for trial, the "action" was not "at issue" at the time Edwards made his request – May 24, 2017 – because there was no default against Rothstein on the operative complaint. Florida law is clear: "strict compliance with rule 1.440 is mandatory." *Bennett v. Cont'l Chemicals, Inc.*, 492 So. 2d 724, 727 (Fla. 1st DCA 1986) (emphasis added).<sup>6</sup>

At the earliest opportunity on the next business day, Monday, March 5, 2018, Epstein filed his to motion to remove the case from trial docket in order to comply with the mandate of Rule 1.440 and opposed Edwards' Motion for

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<sup>5</sup> Pursuant to the clear language of the rule, if the action involves a main claim or counterclaim which has neither been answered nor defaulted, then the entire action (excluding only crossclaims) is not at issue. *See* Fla. R. Civ. P. 1.440.

<sup>6</sup> *Accord Teelucksingh v. Teelucksingh*, 21 So. 3d 37, 37 (Fla. 2d DCA 2009). *See also Melbourne HMA, LLC v. Schoof*, 190 So. 3d 169, 170 (Fla. 5th DCA 2016) ("Strict compliance with rule 1.440 is required and failure to adhere to it is reversible error."); *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 131 (Fla. 2d DCA 2015) ("[A] party is absolutely entitled to strict conformance with the terms of rule 1.440, including its mandated fifty-day hiatus between the service of the last pleading and the trial date."); *Genuine Parts Co. v. Parsons*, 917 So. 2d 419 (Fla. 4th DCA 2006) (granting mandamus to enforce Rule 1.440(c), which prohibits the setting of a trial less than thirty days after service of a notice for trial).

Separate Trials. (**App. 16**).<sup>7</sup> The circuit court denied Epstein’s motion to remove case from trial docket on March 8, 2018 (**App. 18**). At the same hearing, the circuit court, perhaps in an attempt to cure the “at issue” defect of noncompliance with Rule 1.440, granted Edwards’ motion for separate trials. (**App. 19**). This ruling was in clear contradiction to the parties’ agreement in the signed pretrial stipulation that the cases would be tried together.

Epstein immediately filed an Emergency Petition for Writ of Mandamus addressing the Rule 1.440 issue, which is pending in this Court (Case No. 4D18-0762). This Emergency Petition for Writ of Certiorari follows the circuit court’s severance order. Although separate orders, the rulings and issues were argued together and are interrelated.

### **ARGUMENT**

“[A] party seeking review through a petition for writ of certiorari must demonstrate: (1) a material injury in the proceedings that cannot be corrected on appeal (sometimes referred to as irreparable harm); and (2) a departure from the essential requirements of the law.” *Nader v. Fla. Dep’t of Highway Safety &*

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<sup>7</sup> Epstein simultaneously filed his Motion for Default Against Defendant Rothstein on the Second Amended Complaint. (**App. 17**). Pursuant to Rule 1.440, the “action” will be at issue 20 days after the circuit court grants Epstein’s motion for default. Thereafter, any party can notice the case for trial and trial shall be set no less than 30 days from service of the notice for trial.

*Motor Vehicles*, 87 So. 3d 712, 721 (Fla. 2012) (citation, quotations, and brackets omitted).

**I. THE CIRCUIT COURT’S SEVERANCE ORDER IS A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.**

The circuit court departed from the essential requirements of the law when it severed Edwards’ counterclaim against Epstein from Epstein’s originating and intertwined claim against Rothstein. As even the circuit court recognized, *at least six times* at the March 8, 2018 hearing, this civil proceeding initiated by Epstein was the **genesis** for Edwards’ counterclaim:

And while it has its **genesis** in the original action filed by Epstein against Rothstein, Edwards and L.M., the fact that simply because it has its **genesis** there, . . . . [Tr. 26:8-12]<sup>8</sup>

Epstein’s claim brought against Rothstein, the only connection that is even arguable, is that, in fact, the Edwards’ case had its **genesis** in the fact that Epstein originally brought the claim against Rothstein, Edwards and L.M., . . . . [Tr. 26: 18-23]

. . .albeit having its **genesis** in the original Epstein action . . . . [Tr. 27:8-9]

... and what’s happened now with Mr. Edwards, in terms of the separate action that he has brought, albeit, again, having the **genesis** of the original claim, that has been dropped. [Tr. 38:24 - 39:1-3]

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<sup>8</sup> See 3/8/18 Hearing Transcript at App. 19.

It had the **genesis** in Epstein versus Rothstein, Edwards and L.M. case so as to permit Edwards to bring the claim against Rothstein. . . . [Tr. 76:8-11]

... albeit having its **genesis**, as all malicious prosecution claims do, in that prior action, . . . . [Tr. 77:1-3]

**Edwards Has Waived Bifurcation, and the Parties Stipulated to a Consolidated Trial**

Severance would be a departure from the essential requirements of law because Edwards stipulated to a consolidated trial. Most compelling, Edwards has waived bifurcation based upon the court-ordered Joint Pretrial Stipulation. As Judge Ciklin artfully and accurately described it, “The Pretrial Stipulation is a powerful blueprint that fully enables a well-run and fair trial.” *Palm Beach Polo Holdings, Inc. v. Broward Marine, Inc.*, 174 So. 3d 1037, 1039 (Fla. 4th DCA 2015). It is “the trump card upon which all parties to any litigation can virtually always rely.” *Id.* at 1038.

While the decision to bifurcate is within the trial court’s discretion,<sup>9</sup> “[p]retrial stipulations prescribing the issues on which a case is to be tried **are binding upon the parties and the court, and should be strictly enforced.**” *Broche v. Cohn*, 987 So. 2d 124, 127 (Fla. 4th DCA 2008) (emphasis added; citations omitted). “Further, it is the policy of the law to encourage and uphold

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<sup>9</sup> *Roseman v. Town Square Ass’n, Inc.*, 810 So. 2d 516, 520 (Fla. 4th DCA 2001).

stipulations in order to minimize litigation and expedite the resolution of disputes.”

*Id.* (citation and internal quotation marks omitted).

Here, Edwards stipulated to one trial of the claim and counterclaim in the parties’ Joint Pretrial Stipulation. Pursuant to the Stipulation—which was signed by counsel for both parties—the two issues to be tried are as follows (and in the following order):

**1. Case Against Rothstein.** What, if any, damages were sustained by Epstein and proximately caused by Rothstein.” (Edwards does not agree *with this language* for the reason that *the issue as stated* fails to tie causation to Rothstein’s operation of the Ponzi scheme. It is Edwards’ position that *failure to limit the issue* in this way as to Rothstein has the potential of confusing the jury in determining whether Epstein had any probable cause to claim damages against Edwards arising out of the same circumstances.)

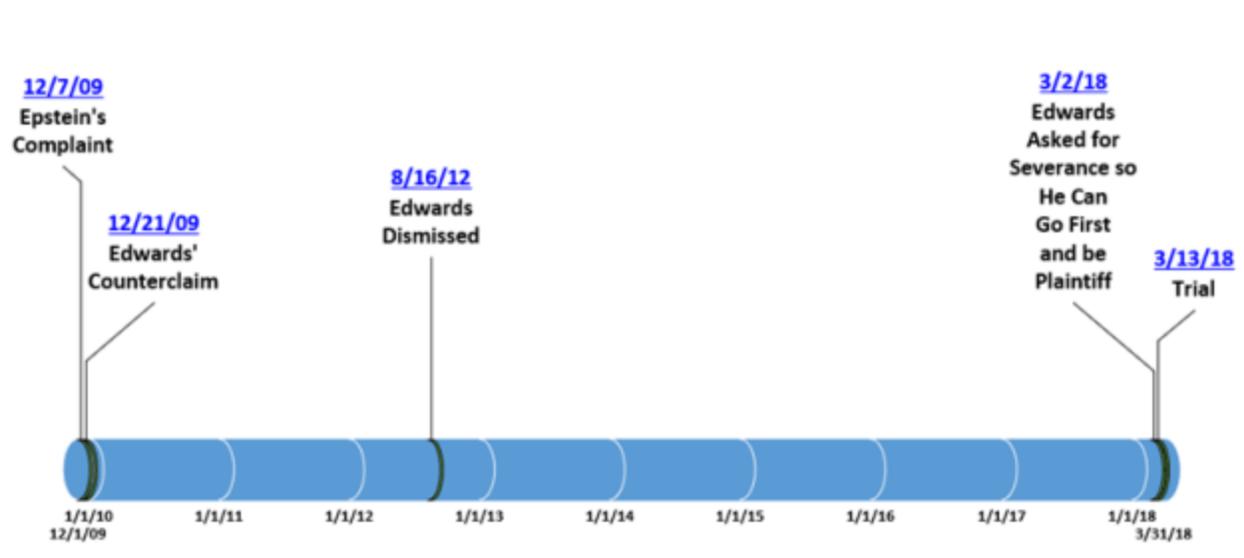
**2. Malicious Prosecution Counterclaim.** . . .

(**App. 13** at C. 1.) (italicized emphasis added). The parties therefore stipulated to a consolidated trial, and Edwards has waived bifurcation.

The parenthetical in Issue No. 1 reflects just how intertwined the claims are. It further reflects that Edwards agrees to the issue being tried, but does not agree to the “issue *as stated.*” As Epstein’s counsel argued at the March 8 hearing: “[Edwards] agrees to this issue. He doesn’t like the way I framed it. That’s the difference. . . . That is not him saying I reserve the right to not go forward with this

claim.” (App. 19 at pp. 46-47).

In addition to Edwards’ waiver by express stipulation, severance also would be a departure from the essential requirements of law because Edwards waited until the Eleventh Hour to request separate trials, and thus, waived his severance argument. Just a glance at the timeline below demonstrates the belatedness of his request:



Notably, before his eleventh-hour filing, Edwards failed to raise the severance issue at any of the recent special set hearings, or in any of the dozens of motions filed in the last few months. He could have raised the issue at the October 3, 2017 summary judgment hearing, at the November 6, 2017, hearing when a brief continuance was granted, or at any of the three substantive special set hearings in November and December, not to mention the many uniform motion calendar

hearings in the past several months. But not once did Edwards utter a peep about bifurcation.

**Bifurcation Would Result in Needless Litigation and a Waste of Judicial Resources**

Florida Rule of Civil Procedure 1.270(b), states:

The court **in furtherance of convenience or to avoid prejudice** may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

(Emphasis added).

“Although the matter of separation of the issues to be tried rests in the trial court’s discretion, a single trial generally tends to lessen the delay, expense and inconvenience to all concerned, and the courts have emphasized that **separate trial should not be ordered unless such disposition is clearly necessary, and then only in the furtherance of justice.**” *Maris Distrib. Co. v. Anheuser-Busch, Inc.*, 710 So. 2d 1022, 1024 (Fla. 1st DCA 1998) (emphasis added; citation and internal quotation marks omitted). For example, “It is improper to sever a counterclaim . . . from the plaintiff’s claim, when the facts underlying the claims of the respective parties are inextricably interwoven.” *Id. See also Yost v. Am. Nat. Bank*, 570 So. 2d 350, 352-53 (Fla. 1st DCA 1990) (“Where the evidence to be submitted on

plaintiff's cause of action is the same as, or is interrelated with, the evidence on the counterclaim, it is appropriate to try the claims together.”).

To conduct two trials in this case is not convenient or necessary; nor would it further justice. Instead, it would be a waste or duplication of judicial resources, including taxpayer dollars and double jury pools. As reflected throughout the pretrial stipulation, Epstein's claim against Rothstein and Edwards' counterclaim against Epstein are inextricably interwoven—the facts underlying the two counts are interrelated and involve many of the same witnesses. As such, “bifurcation will not simplify the trial; instead, it will cause inconvenience and prejudice to [Epstein] in presenting [his] case.” *Fortin v. T & M Lawn Care, Inc.*, 178 So. 3d 438, 438 (Fla. 4th DCA 2015).

As Epstein's counsel emphasized at the March 8, 2018 hearing:

So one of the things that's in my mind that I can't let go of, is **how do we sanitize Rothstein from this case** – that's what [Edwards' counsel] wants to do -- **when [Edwards'] whole claim against is [Epstein] wrongly filed a pleading that connected Mr. Edwards to Rothstein. That's what Mr. Edwards has said has kept him in anxiety every single day since December 2009, the connection to Rothstein.**

So, they have the burden of proof to show that [Epstein] didn't have probable cause to make that allegation.

I promise you, Your Honor, when we get through the evidence, you will see there was plenty of reason to make that allegation.

**So I don't know how you sanitize Rothstein from this case. So if he's going to be in case, isn't it more efficient to do it once?** That's what the pretrial says. [Edwards' counsel] and I contracted to that.

The issue that really is the struggle -- and I get it -- the struggle is, yes, **these two cases are intertwined.**

(App. 19 at pp. 58-59).

In keeping with judicial economy, Epstein will present his case-in-chief against Rothstein in an expeditious manner. Of the ten days that have been allotted for trial, Epstein needs but two days to present his damages case against Rothstein.

**Denial of Bifurcation Will Not Prejudice Edwards**

Edwards argues separate trials are necessary, or the jury will be confused by the default liability judgment against Rothstein, and Edwards will have to object to evidence not being offered against him and appear to be defending Rothstein. These purported concerns of Edwards are impossible to take seriously at this stage of the proceedings. Discovery is closed and many depositions have been taken with the interrelated issues of Epstein originally suing Rothstein and Edwards, then dismissing Edwards *after* Edwards had solidified his party label as counter-plaintiff with his counterclaim against Epstein. Indeed, the fact that Edwards

requested bifurcation at the Eleventh Hour, less than two weeks before trial, in a case that has been pending for *over eight years*, suggests the risk of prejudice and confusion is not nearly as troublesome as he now suggests.

Edwards' failure to previously move for bifurcation during the eight years bolsters the conclusion that no prejudice will come to Edwards by proceeding with a consolidated trial—consistent with the parties' conducted during vast discovery and as the parties contracted to do in their pretrial stipulation. In Epstein's Response in Opposition to Edwards' Motion for Separate Trials, Epstein advised that he would agree to a statement read by the trial court that Edwards need not ask a single question of the witnesses called in Epstein's case against Rothstein, because Epstein dismissed Edwards from that original proceeding. Epstein also proposed that the trial court could instruct the jury that the presentation of damages evidence in Epstein's case against Rothstein in no way suggests or implies that Edwards is liable for the damages Epstein claims. Such direction from the trial court would quell Edwards' concerns.

## **II. EPSTEIN WILL SUFFER IRREPARABLE HARM IF FORCED TO PROCEED WITH SEPARATE TRIALS.**

Two separate trials, or a severance of the stipulated issues to be tried, would give rise to the prospect of inconsistent verdicts, resulting in irreparable harm to Epstein. *See, e.g., Martinique Condominiums, Inc. v. Short*, 230 So. 3d 1268, 1270

(Fla. 5th DCA 2017) (“[C]ertiorari is an appropriate remedy for orders severing claims that involve interrelated factual issues because of the risk of inconsistent verdicts.”). *Compare also Beekie v. Morgan*, 751 So. 2d 694 (Fla. 5th DCA 2000) (finding certiorari relief appropriate when, on appeal from final judgment, it could not be determined how error affected outcome of proceedings).

One possibility of an inconsistent verdict would be in Epstein’s case against Rothstein, the jury could find that Rothstein’s illegal conduct proximately caused damages to Epstein. Meanwhile, a second jury in Edwards’ counterclaim against Epstein will be asked to determine that Epstein did not suffer any damages proximately caused by Rothstein’s illegal conduct and therefore did not have probable cause to bring the original proceeding. This real potential for inconsistent verdicts requires one jury, one trial.

Furthermore, as argued in Epstein’s Emergency Petition for Writ of Mandamus, bifurcation or severance will not cure the defective trial request and order setting trial. Edwards’ counterclaim against Epstein and Epstein’s claim against Rothstein are not separate and independent actions. As such, Epstein will be irreparably harmed by being forced to go to trial in a case that is not at issue—that includes Edwards’ Counterclaim.

Indeed, Epstein will suffer irreparable harm if the trial proceeds because “[s]trict compliance with rule 1.440 is required and failure to adhere to it is reversible error.” *Melbourne HMA, LLC v. Schoof*, 190 So. 3d 169, 170 (Fla. 5th DCA 2016) (emphasis added). *See also Tucker v. Bank of N.Y. Mellon*, 175 So. 3d 305, 306 (Fla. 3d DCA 2014) (final judgment reversed because case noticed for trial before answer to counterclaim was filed); *Precision Constructors, Inc. v. Valtec Constr. Corp.*, 825 So. 2d 1062, 1063 (Fla. 3d DCA 2002) (judgment vacated because failure to adhere strictly to the mandates of Rule 1.440 is reversible error).

Once the trial begins, the error cannot be undone. A final appeal is an insufficient remedy. As the Second District explained in *Gawker Media, LLC v. Bollea*, 170 So. 3d 125 (Fla. 2d DCA 2015):

It is true that the Gawker defendants have available to them the legal remedy of pursuing an appeal from any future final judgment, in which they could complain of the errant order scheduling the trial. But owing to the mentioned differences between a mandamus proceeding and an appeal, the appellate remedy is not an adequate one. As we have established, a party is absolutely entitled to strict conformance with the terms of rule 1.440, including its mandated fifty-day hiatus between the service of the last pleading and the trial date. Whereas a writ of mandamus can preserve and effectuate this right in full, an appeal following entry of final judgment is inherently incapable of doing so because the appellant

already will have been forced to trial in violation of the rule. [e.a.]

*Gawker Media, LLC*, 170 So. 3d at 131. *See also Campbell v. Wells Fargo Bank, N.A.*, 204 So. 3d 476, 479 (Fla. 4th DCA 2016) (citing *Gawker*, and stating: “In that context, the appellate remedy was deemed insufficient to remedy the right to not be subjected to trial in violation of the timing requirements of rule 1.440.”) (emphasis added).

Severance does not suddenly make Edwards’ counterclaim “at issue.” The rule only exempts cross-claims from this judicial determination. *See Bennett v. Cont’l Chemicals, Inc.*, 492 So. 2d 724, 727 (Fla. 1st DCA 1986) (“Since rule 1.440(a) exempts only cross-claims from the determination of when an action is at issue, we disagree with appellee’s argument which would have us sever the motions directed to the counterclaim from the answer.”).

Contrary to Edwards’ argument and the circuit court’s belief, Edwards’ counterclaim against Epstein and Epstein’s claim against Rothstein are not separate, independent actions. They are not separate actions for several reasons.

*First*, Edwards chose to file a counterclaim, versus filing a separate lawsuit.

*Second*, the claim and counterclaim have been joined at the hip and proceeded together since the inception, discovery, and appeal for over eight years.

*Third*, when Edwards noticed this entire matter for trial he requested this Court “to set the above-styled cause for trial by jury,” and expressly stated: “This long delayed matter is now ripe for resolution.” (**App. 10**). “This matter,” this “above-styled cause,” since its inception over eight years ago, has always proceeded as one lawsuit. At that determining date, Edwards again chose to keep the counterclaim joined with the original suit.

Lastly, Edwards stipulated to one trial of the claim and counterclaim in the parties’ Joint Pretrial Stipulation. Pursuant to the Stipulation—which is binding on the parties and the court—the first issue to be tried is the “Case Against Rothstein”. Second, is Edwards’ Malicious Prosecution Counterclaim. (**App. 13 at C. 1.**)

In short, severing Edwards’ counterclaim from Epstein’s originating claim does not make the action “at issue.” Absent strict compliance with Rule 1.440, even Edwards’ counterclaim cannot yet proceed.

### **CONCLUSION**

This Court should grant certiorari relief because the circuit court departed from the essential requirements of the law when it severed Edwards’ counterclaim against Epstein from Epstein’s originating and intertwined claim against Rothstein. Bifurcation would cause a duplication of judicial resources because the claim and counterclaim are intertwined. Severing them would convert what should be one

trial into two trials with duplicative evidence and testimony from many of the same witnesses. Furthermore, Edwards has waived bifurcation and will not be prejudiced by a consolidated trial on both claims, as contemplated and expressly agreed to by the parties in their binding pretrial stipulation.

Two separate trials also would result in irreparable harm to Epstein. Inconsistent verdicts are possible and, more importantly, Epstein will be forced to go to trial in a case that is not at issue, which constitutes reversible error. Epstein respectfully requests this Court to grant the petition and quash the severance order.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Petition was furnished **via email** this 12<sup>th</sup> day of March, 2018:

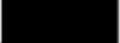
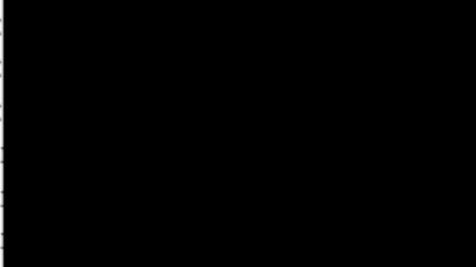
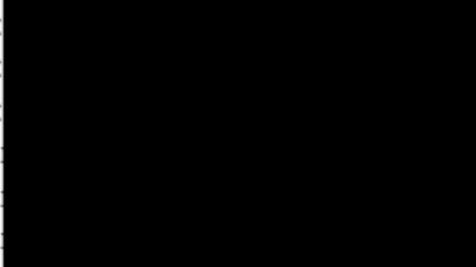
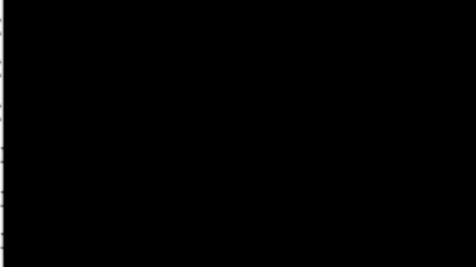
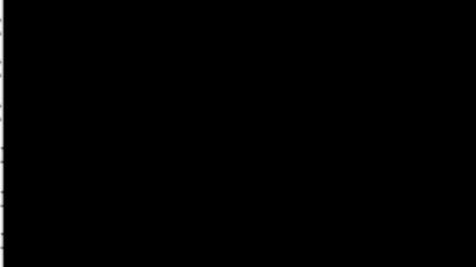
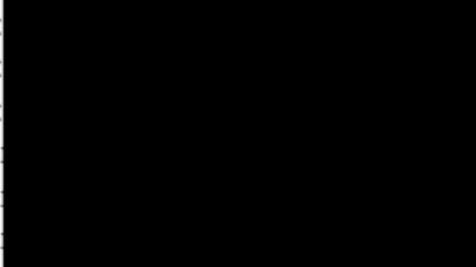
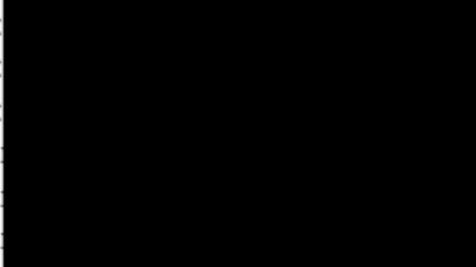
<p>Jack Scarola Karen E. Terry Searcy, Denny, Scarola, Barnhart &amp; Shipley, P.A.  Edward <i>Co-Counsel for Defendant/Counter- Plaintiff Bradley J. Edwards</i></p>	<p>Nichole J. Segal Burlington &amp; Rockenbach, P.A.  350 <i>Co-Counsel for Defendant/Counter- Plaintiff Bradley J. Edwards</i></p>
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<p>Bradley J. Edwards Edwards Pottinger LLC</p>  <p><i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Marc S. Nurik Law Offices of Marc S. Nurik   ward, Suite 700  01</p> <p><i>Counsel for Defendant Scott Rothstein</i></p>
<p>Jack A. Goldberger Atterbury, Goldberger &amp; Weiss, P.A.   Suite 1400  01</p> <p><i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p><b><u>VIA HAND DELIVERY</u></b>  The Honorable Donald W. Hafele  Palm Beach County Courthouse  205 N. Dixie Highway, Room 10.1216  West Palm Beach, FL 33401</p>

LINK & ROCKENBACH, PA



By: /s/ Kara Berard Rockenbach

Scott J. Link (FBN   
Kara Berard Rockenbach (FBN   
Rachel J. Glasser (FBN   
Primary:   
Primary:   
Primary:   
Seconda   
Seconda   
Seconda 

*Trial & Appellate Counsel for  
Plaintiff/Counter-Defendant Jeffrey  
Epstein*

**CERTIFICATE OF TYPE SIZE & STYLE**

I certify that the type, size, and style utilized in this Petition is 14-point Times New Roman.

*/s/ Kara Berard Rockenbach*  
\_\_\_\_\_  
Kara Berard Rockenbach