

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION**
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IN RE: CASE NO. 09-34791-RBR
ROTHSTEIN ROSENFELDT ADLER, P.A., CHAPTER 11
Debtor.

**JEFFREY EPSTEIN'S EXPEDITED MOTION TO BE EXCUSED FROM
ATTENDING SHOW CAUSE HEARING**

Jeffrey Epstein ("Epstein") moves the Court, on an expedited basis, to be excused from attending the **October 26, 2018**, show cause hearing, and states:

INTRODUCTION

On April 20, 2018, this Court entered its Order to Show Cause (the "Show Cause Order") why Fowler White and Epstein should not be held in contempt and scheduled an evidentiary show cause hearing for August 23 and 24, 2018. (D.E. 6366.) The hearing was reset to October 26, 2018, at 10:00 a.m. (D.E. 6431.) In its Show Cause Order, the Court ordered Epstein to sit for a limited deposition and to attend the show cause hearing in person. (D.E. 6366.)

Epstein respectfully requests to be excused from attending the show cause hearing because his deposition was taken on October 13, 2018, for a period of two hours and Epstein has filed a Declaration in support of his position.¹ There is nothing left to add to Epstein's testimony and it would be unnecessary and duplicative to require Epstein, who resides in the U.S. Virgin Islands, to travel to Florida for the hearing.

¹Epstein's deposition transcript and Declaration are attached as **Exhibits A and B**, respectively.

There are no disputed facts material to this show cause proceeding regarding Epstein. The Movants in these show cause proceedings (Farmer Jaffe, Bradley J. Edwards and L.M.) have acknowledged that Epstein did not have the disc or even know of the disc's existence before being advised by Link & Rockenbach in February 2018. Further, Epstein has testified that he only received select documents from the disc in February 2018. The select documents were provided to Epstein after Link & Rockenbach located the disc in Fowler White's boxes in February 2018. Because there are no material facts in dispute, live testimony will have no impact on this Court's determination of whether there was a violation by Epstein of the November 2010 Agreed Order.

As this Court will see, there is not a shred of evidence that Epstein knew about the disc before learning about it from Link & Rockenbach in February 2018. Movants' position is that Epstein violated the November 2010 Agreed Order because Link & Rockenbach – Epstein's "agent" -- found the disc in 2018 and provided select copies of documents from it to Epstein. This Court has already ruled that everything post Link & Rockenbach is not a violation of the November 2010 Agreed Order but, rather, is a State Court issue, and will not be considered at the Show Cause hearing. Therefore, there is no further live testimony that can be elicited from Epstein that would benefit the Court in deciding if Epstein violated the November 2010 Agreed Order. Epstein respectfully requests to be excused from personally attending the Show Cause hearing. Epstein will be represented at the hearing by his counsel, Chad Pugatch and Scott J. Link.

ARGUMENT

A. What Happened to the Disc in 2018 is Not a Violation of This Court's November 2010 Agreed Order.

The Court was clear that issues relating to what happened after Link & Rockenbach found the disc in 2018 are State Court issues and not to be considered in the Show Cause proceedings.

EDWARDS: ... The representation was made on the record by Mr. Link that he provided it within his law firm and his client, that being Mr. Epstein. When further asked by the court, has Mr. Epstein been provided with copies of the documents, or the contents of these privileged documents? Mr. Link replied, I just said my client, my law firm and my client, and I can saw legal counsel, Mr. Goldberger. So, that's it. So we now know that this information that was improperly obtained was disseminated not only to Mr. Epstein, the adversary who now has this information, it was also ---

COURT: Take that up in the state court.

(Apr. Tr. 39:15-40:3.)²

SCAROLA: Your Honor has made repeated reference to being permitted to inquire of Mr. Epstein about his possession of the disk. Your Honor's order related not only to the electronic documents, but related as well to any copies of the documents that were made. Mr. Link has made it clear in his representations to your Honor today, and he has stated previously that he sent copies of the privileged documents to Mr. Epstein. Mr. Epstein, we know, retained those documents, and retention of those documents is a clear violation of your Honor's order. What we would like to be able to inquire about, in addition to whether Mr. Epstein had possession of the disk, is whether Mr. Epstein had possession of copies of any of the information obtained from that disk, including the e-mail ---

COURT: But the disc wasn't discovered until Link found it in the 36 boxes.

SCAROLA: Well, yes, sir, that's what has been represented to the Court, but what Mr. Link has said is that he transferred that information to Mr. Epstein.

COURT: After he found it.

SCAROLA: Well, he obviously couldn't transfer it before.

COURT: But that's what you're litigating in state court.

SCAROLA: No, sir, I'm sorry, that's not what we're litigating in state court. What we are litigating in state court is the malicious prosecution claim. What we want to be able to litigate before your Honor is violation of this Court's order, and retention of documents obtained from that disk is a clear violation of your Honor's order.

²The April 13, 2018, hearing transcript (D.E. 6367) shall be referred to as "Apr. Tr."

COURT: I disagree with you. Take that up in your state court litigation.

(Apr. Tr. 43:19-45:6.)

B. Epstein has Provided Sworn Testimony and His Attendance at the Show Cause Hearing is Not Necessary.

The Court allowed Movants to take Epstein's deposition limited to the issue of his knowledge and possession of the disc. (Apr. Tr. 36:2-9.) The Show Cause Order also provided for the filing of sworn declarations. (D.E. 6366, ¶ 5 i.v.) Specifically, it provides:

Unless otherwise ordered, the direct testimony of each witness, except adverse, hostile or rebuttal witnesses, shall be presented by sworn declarations consisting of a succinct written statement of the direct testimony which that witness would be prepared to give if questions were propounded in the usual fashion at the Show Cause Hearing. ...

Objections to any portions of the statements may be raised at the time the sworn declaration of each respective witness is offered to the Court. The witness shall then be sworn and asked if the statement correctly reflects the testimony that would be given if the witness was asked the appropriate questions. Assuming an affirmative answer, opposing counsel may then cross-examine the witness. At the conclusion of cross-examination, the party whose witness is on the stand may conduct oral redirect examination in the usual manner.

Id.

Well before his deposition was taken, Epstein provided a sworn Declaration attesting to these matters. In addition, on October 13, 2018, Epstein sat for more than two hours and answered all questions relating to the alleged federal civil contempt for alleged discovery violations. There is simply nothing within the scope of this Court's ruling that Epstein has not answered.

At the April 13, 2018, hearing Edwards' counsel informed the Court that:

SCAROLA: ... and as far as Jeffrey Epstein is concerned, obviously he was personally prohibited by the express language of the Court's order from possessing or accessing any of this information, and he would certainly want to take Mr. Epstein's deposition.

While representations have been made with regard to the extent that Mr. Epstein has been in possession of, or had access to this privileged information, the record is completely devoid of any sworn representation by Mr. Epstein, and clearly that is essential in terms of this Court fashioning, or first of all determining who is responsible for these very serious violations, and in fashioning an appropriate response.

(Apr. Tr. 17:8-19.)

Epstein has now provided not only his direct testimony but two hours of cross examination. In his Declaration, Epstein attested that he had no personal knowledge how the disc came into Fowler White's possession (Ex. B, ¶ 5) and that he had never seen the disc (Ex. B, ¶ 6). Epstein confirmed this testimony during his deposition:

Q. How is it that you can tell us under oath today that you had no prior knowledge of Fowler White having come into possession of a disc relating to your litigation?

A. So, to be clear, to the best of my recollection today, the answer is no. I have no recollection whatsoever.

(Ex. A, 25:4-10.) *Also see* Ex. A, 25:24-26:8.

Q. Have you ever communication with any agent of Fowler White about the disc that was turned over by them to Link & Rockenbach?

A. No. Not to the best of my knowledge.

Q. Have you ever communicated with Tonja or Fred Haddad about the Fowler White disc?

A. Not to the best of my knowledge.

Q. Did you ever receive a copy of the disc itself?

A. No.

(Ex. A, 56:4-13.)

Edwards' counsel has admitted that it is not Edwards' contention that Epstein had the disc, but that after the disc was located by Link & Rockenbach, Epstein was provided alleged privileged information contained on the disc. While Edwards asked questions of Epstein about dissemination to others, what he read from the disc and things of that nature, those questions, among many others, exceeded the scope of inquiry allowed by this Court. This Court has already ruled that for purposes of the Show Cause proceedings it was not going to allow Movants to ask question regarding what material Epstein received after Link & Rockenbach discovered the disc. Consequently, any issues that remain resolved after Epstein's deposition as to those questions is of no moment in these proceedings. The alleged privileged e-mails and all issues related to privilege and waiver are currently pending before the State Court.

CONCLUSION

As the sole basis for seeking to hold Epstein liable for a violation of the November 2010 Agreed Order, Edwards contends that Epstein's receipt from Link & Rockenbach in 2018 of documents from the disc was somehow a violation of the nearly eight-year-old November 2010 Agreed Order. The Court has already flatly rejected that argument and determined that all issues relating to what happened after Link & Rockenbach found the disc in 2018 are matters exclusively for the State Court that will not be considered at the Show Cause proceedings. Rather, the Show Cause proceedings are limited, as to Epstein, regarding whether he was aware of Fowler White's possession of the disc and whether he possessed the disc or any alleged privileged documents at any time before Link & Rockenbach found it. Epstein's two hours of cross examination provides all the testimony necessary to determine if Epstein violated the November 2010 Agreed Order. There is nothing left to cross examine Epstein about within the parameters set by this Court.

Because cross examination would be duplicative of the testimony already given, Epstein's testimony at the Show Cause hearing would provide no further benefit to the Court.

Accordingly, Epstein respectfully requests that he personally be excused from attending the show cause hearing.

GOOD-FAITH CERTIFICATION

Epstein's counsel certify that on October 18, 2018, they asked Movants' counsel if Movants would oppose the relief sought herein. Movants oppose the relief sought.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 18, 2018, a true and correct copy of the foregoing was served electronically to all registered users on the CM/ECF system, which includes counsel identified on the service list below.

RICE PUGATCH ROBINSON STORFER &
COHEN, PLLC



By: */s/ Chad P. Pugatch*
CHAD P. PUGATCH (FBN 2 [REDACTED])



- AND -

I hereby certify that I am admitted to the Bar of the United States 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).

LINK & ROCKENBACH, PA



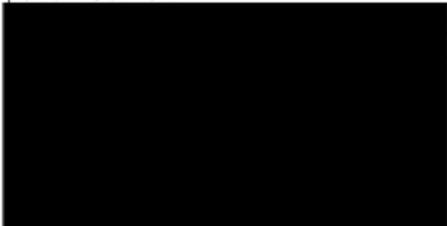
By: /s/ *Scott J. Link*

SCOTT J. LINK (FBN )



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