

**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.

**JEFFREY EPSTEIN'S EXPEDITED MOTION IN LIMINE TO ENFORCE COURT'S
RULING AND TO STRIKE IRRELEVANT, SCANDALOUS AND IMPERTINENT
DEPOSITION QUESTIONS AND FOR ATTORNEYS' FEES**
**(In order to grant effective relief Expedited Hearing Requested on or before October 24,
2018, so that the Court may rule prior to the October 26, 2018, hearing)**

Jeffrey Epstein ("Epstein") moves this Court in limine to enforce this Court's ruling at the upcoming October 26, 2018, evidentiary hearing, and to strike irrelevant, scandalous and impertinent questions asked during the deposition of Scott J. Link, acting as corporate representative of the law firm Link & Rockenbach, PA ("Link & Rockenbach"), which occurred on October 13, 2018. Due to the impermissible questions, Epstein additionally moves this Court to require Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L. ("Farmer Jaffe"), Bradley J. Edwards ("Edwards") and Intervenor L.M. ("L.M.") (collectively, the "Movants") to pay Epstein's attorneys' fees for the excessive time spent at the deposition, and states:

BACKGROUND

A. Show Cause Proceedings.

On March 19, 2018, Farmer Jaffe filed its Motion for Issuance of an Order to Show Cause Why Fowler White and Jeffrey Epstein Should Not be Held in Contempt of Court, to Permit Discovery, to Assess Sanctions and Costs, and for Other Appropriate Relief. (D.E. 6326.) Edwards and L.M. joined that request. (D.E. 6325; D.E. 6345.) Movants allege that Fowler White

and Epstein violated this Court's November 2010 Agreed Order by Fowler White's alleged retention of a copy of a disc that was provided to Epstein and his current counsel (Link & Rockenbach) in 2018. (D.E. 6326 at 6-11.) The November 2010 Agreed Order provides, in pertinent part, that:

Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White's copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards, or his client.

(D.E. 1194.)

During the April 13, 2018,¹ hearing on the Motions, Edwards' counsel asked the Court to be allowed to take the depositions of Fowler White, Epstein and Link & Rockenbach and for "direction with regard to pre-hearing discovery." (Apr. Tr. 15:14-18; 16:13-14.) Although Movants asked for document discovery in their written papers (D.E. 6326, pp. 13-14; D.E. 6345, p. 2), Movants did not raise that issue at the April 13, 2018, hearing. In any event, Epstein's counsel argued that discovery should be strictly limited to one issue – whether Epstein had a copy of the disc or had knowledge of it. (Apr. Tr. 35:8-15.) The Court agreed to this limited issue: "I'm going to allow the deposition of Epstein, as to knowledge about the disk, or possession about the disk, very limited." (Apr. Tr. 36:2-4.) The Court further stated that Epstein's testimony is to be limited to his knowledge of the disk prior to it being disseminated. (Apr. Tr. 42:7-12.) The Court clearly stated that Movants could not ask Epstein questions about his interactions with current counsel – Link & Rockenbach. (Apr. Tr. 42:1-12.) The Court also allowed the deposition of a representative of Fowler White to explain under oath and to answer the question if Fowler

¹The April 13, 2018, hearing transcript (D.E. 6367) shall be referred to as "Apr. Tr."

White retained any copies in its computers. (Apr. Tr. 38:4-9.) While the Court authorized the limited depositions of Fowler White and Epstein (Apr. Tr. 40:21-24; 46:1-2), it did not provide for any document or written discovery.

This Court's subsequent April 20, 2018, Order to Show Cause likewise did not permit document or written discovery. (D.E. 6366.) With regard to depositions, the Show Cause Order included the taking of Link & Rockenbach's deposition, and provided:

Movants may take the depositions of Mr. Jeffrey Epstein, any representative(s) of Fowler White with knowledge of the chain of custody of the discovery documents, and a representative of Link & Rockenbach, P.A.. [sic] ... The subject matter of the depositions shall be limited to the allegations of federal civil contempt regarding the alleged discovery violations of the Agreed Order. ...

(D.E. 6366.)

B. Link & Rockenbach's Representation.

Fowler White represented Epstein from June 2010 through May 2, 2012. Epstein retained Link & Rockenbach on November 1, 2017. In January 2018, Link & Rockenbach reviewed Fowler White's records and flagged items for reproduction, including a disc marked "Epstein Bate Stamp." Link & Rockenbach received those records in early February 2018 and began reviewing the disc on February 25, 2018. In early March 2018, in the State Court Action², Epstein filed a Clerk's Trial Exhibit List identifying some of the documents from the disc, 47 of which Edwards now alleges are attorney-client privileged. These show cause proceedings were instituted shortly thereafter. A privilege determination has never been made and that issue is currently before the State Court. The only issue for this Court to decide on October 26, 2018, is if Fowler White and/or Epstein violated the November 2010 Agreed Order.

²*Jeffrey Epstein v. Scott Rothstein and Bradley J. Edwards*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2009-CA-040800XXXXMBAG.

On August 14, 2018, pursuant to this Court's pre-trial procedures order, Scott Link signed a Sworn Declaration of Fact that set forth in detail how Link & Rockenbach located the disc and the steps taken to comply with the State Court's rulings regarding sealing the documents. A copy of the Declaration is attached as **Exhibit 1**. Although the Declaration provided sufficient information for the show cause hearing, Movants elected to take Link & Rockenbach's deposition to make additional inquiries.

C. Epstein's Objection to the Duces Tecum Directed to Link & Rockenbach.

On July 9, July 11, July 20, July 25 and September 26, 2018, Edwards filed Notices of Taking Link & Rockenbach's deposition duces tecum. (D.E. 6390; D.E. 6391; D.E. 6400; D.E. 6406; D.E. 6468.) Epstein filed his Responses and Objections on July 20 and October 4, 2018. (D.E. 6402; 6478.) In his Response, Epstein objected to producing document because (1) the Court did not contemplate document discovery; (2) the documents sought were outside the scope of the Court's ruling; (3) the documents sought have been sealed; and (4) the duces tecum sought documents protected by the attorney-client privilege and work product doctrine. Movants never sought to compel the documents but, instead, elected to go forward with the deposition as noticed on October 13, 2018.

VIOLATION OF THE COURT'S APRIL 13, 2018 RULINGS

During the October 13, 2018, deposition of Scott Link as the corporate representative of Link & Rockenbach, Movants' counsel exceeded the scope of the narrow and limited deposition topics allowed by this Court, ventured into State Court issues and used the deposition as a means to interrogate Epstein's counsel, to criticize his beliefs and accuse him of unethical actions post-discovery of the disc. The deposition, which should have lasted less than thirty minutes in light of the limited inquiry, took more than two hours.

A. Movants Exceeded the Scope of the Topics Allowed.

Mr. Link was questioned about matters outside the scope permitted by this Court. For instance, he was asked if he was retained on an hourly basis (Link 17:15)³, the terms of his engagement (Link 17:10), if he kept contemporaneous time records of services provided to Epstein (Link 17:19-22), and his belief why such information was privileged (Link 25:8-26:15).

Mr. Link was also asked a long line of questions about his firm's review of the disc **after** its discovery:

Q. How did she [Paralegal Tina Campbell] review the disc contents?

Rockenbach (counsel for Mr. Link): I am going to object on the basis of, not only work product protection, but that this exceeds the scope of Judge Ray's order. Mr. Scarola, I know you're allowed to ask questions of the corporate rep here today about when we located the disc and that particular chain of custody, but you are going beyond that. You're going directly into work product and how we formed mental impressions.

(Link 30:23-31:9.)

Q. Did Tina Campbell review those documents on a computer screen?

Rockenbach: Objection. Exceeds the scope of Judge Ray's order, work product. Do not answer.

Q. Did any of the contents of that disc get printed to hard copy at any time while Link & Rockenbach had access to that disc?

Rockenbach: Objection. Exceeds the scope of Judge Ray's order and work product. Do not answer.

Q. How many hard copies were made of any information contained on that disc?

Rockenbach: Same objection. Do not answer.

³A copy of Scott Link's October 13, 2018, deposition transcript is attached as **Exhibit 2**. In order to expedite matters, Mr. Link has not yet submitted an errata sheet, but reserves his right to do so if necessary.

Q. To whom were hard copies of information contained on that disc distributed?

Rockenbach: Same objection. Do not answer.

Q. Did you provide any hard copies of documents derived from that disc to Darren Indyke?

Rockenbach: Objection. Exceeds the scope of Judge Ray's order. Attorney-client privilege. Work product protection.

(Link 31:23-33:5.)

This line of interrogating as to the disc's dissemination and communications continued for several more questions, while Mr. Link's counsel continued to object to being outside the scope of this Court's Order. (Link 33-35.) Edwards' counsel, however, ignored the objections and continued with his line of questioning.

Edwards' counsel then turned his questioning to Mr. Link's Declaration. Failing to impeach Mr. Link with that testimony, Edwards' counsel returned to topics outside the scope of the Court's ruling:

Q. So that the record is clear, I want to know every source of information upon which you relied to conclude before filing the appendix in paragraph 10 that there had been a waiver of any privilege with regard to documents contained on the disc that permitted you to file documents that were included on Farmer Jaffe's privilege log.

Ianno (Fowler White's counsel): And I want to add my objection that that has nothing whatsoever to do with the motion, the order or anything else that's presently pending before the bankruptcy court. Those are state court issues and not bankruptcy court issues. At a minimum they are not bankruptcy court issues.

(Link 58:3-15.)

Q. -- you make reference to having retained Timothy Chinaris to review the circumstances under which Link & Rockenbach discovered the CD and its contents and then subsequent actions, correct?

A. Yes, sir.

Q. Did you ever provide Timothy Chinaris with a copy of Judge Ray's November 30, 2010 order?

Rockenbach: Objection. Work product protection and beyond the scope of Judge Ray's Order. Do not answer.

Q. Did you ever tell Timothy Chinaris that Judge Ray had entered an order on November 30, 2010 that prohibited Fowler White or Epstein from retaining images or copies of the documents that were included on the Fowler White disc?

Rockenbach: Same objections. Same instruction.

Q. Did you provide Timothy Chinaris with any of the documents upon which you claim to have relied to conclude that there had been some waiver of Farmer Jaffe's asserted privileges in their log?

Rockenbach: Same objections. Same instruction.

Q. Did you tell Timothy Chinaris how you went about identifying the 5,000 documents that you reviewed from the 27,542 documents that were included on the disc?

Rockenbach: Same objections. Same instructions.

Q. Did you tell Timothy Chinaris that you had selected some of the 5,000 documents for review by specifically identifying documents that were included on the Farmer Jaffe privilege log?

Rockenbach: Same objection. Same instruction.

Q. Did you, in fact, instruct Tina Campbell that she was to attempt to find on the Farmer Jaffe disc documents that had been listed by Farmer Jaffe -- excuse me -- on the Fowler White disc documents that had been listed by Farmer Jaffe on its privilege log?

Rockenbach: Same objection. Same instruction.

Q. ... Did you specifically review the Fowler White disc for the purpose of identifying documents that were included on the Farmer Jaffe privilege log?

Rockenbach: Same objection. Same instruction.

Q. As you sit here today, if you were asked to describe the content from memory of any of the documents that you review that were included on the Farmer Jaffe privilege log, would you be able to do that?

Rockenbach: Objection. This is notice for a corporate rep deposition, and not a specific attorney.

Q. That's right. And as I said, "you" means Link & Rockenbach

A. It's clearly beyond the scope of the bankruptcy court.

(Link 59:8-62:5.)

Q. How many times in the past have you conveyed information contained within the privileged documents on the Fowler White disc from memory?

Rockenbach: Object to the form. No court has deemed them privilege, and objection beyond the scope of Judge Ray's order. Please do not answer.

Q. Have you described information alleged to be privileged derived from the Fowler White disc to Darren Indyke?

Rockenbach: Objection. Work product, attorney-client, and beyond the scope of Judge Ray's order. Please do not answer.

Q. Same question as to Jack Goldberger.

Rockenbach: Same objection. Same instruction.

(Link 62:14-6:7.)

Again, this line of questioning as to whom Mr. Link spoke with continued for several more questions, despite constant objections and reminders that the questioning was outside the scope of this Court's Order.

While Edwards' counsel did ask some permissible questions, Mr. Link was forced to repeat himself several times that his firm did not possess the disc prior to February 2018 and could not attest to its location prior to that date. Link's counsel also repeatedly objected to questions that related to Link & Rockenbach's work *after* the disc was located because such questions were outside the scope of permissible questioning. (Link 90-91.)

B. Movants Ventured Into Areas Protected by the Attorney-Client Privilege and Work Product Doctrine.

Mr. Link was also questioned in areas both outside of this Court's ruling and clearly protected by the attorney-client privilege and work product doctrine, including who Mr. Link's sources were, who he spoke to about the case and what he spoke to them about. Epstein has not waived those protections. A sampling of those questions follows:

Q. I want to know where it came from. Did it come from documents, or did you talk to someone, a Fowler White lawyer or did you talk to Gary Farmer or did somebody else provide information to you? Where did this information come from?

(Link 55:18-22.)

Q. What were – what are the sources – every one of them – upon which you relied to conclude that there had been a voluntary waiver of any privilege asserted by Brad Edwards of the Farmer Jaffe law firm?

(Link 56:22-25.)

Q. Name for us all of those individuals to whom you have disclosed information claimed to be privileged that you derived from the Fowler White disc?

(Link 63:17-19.)

- Q. Did any of the information derived from the Fowler White disc cause you to initiate any investigation that you had not previously conducted?

(Link 66:22-24.)

- Q. Did any information derived from Fowler White disc cause you to retain an investigator?

(Link 67:17-18.)

Again, this line of questioning as to whom Mr. Link spoke to continued for several more questions, despite constant objections and reminders that this was work product and far beyond this Court's specific deposition limitations.

MOTION TO STRIKE

“The court may strike from a pleading an insufficient defense *or* any redundant, immaterial, impertinent, or scandalous matter. The court may act on its own or on a motion made by a party.” Fed. Rule Civ. P. 12(f). By the end of Edwards' counsel's questioning, it was clear he was just exploiting the limited deposition this Court had given him. This was nothing short of a blatant disregard for this Court's rulings. Movants were never given carte blanche to exhaustively examine Link & Rockenbach on every detail of the disc and what Link & Rockenbach did or did not do, what it planned and its strategy, but that is what Edwards' counsel's questions were focused on. During the examination, Edwards' counsel continuously repeated his questions after being objected to each time. He purposefully brought up topics that were not within the realm of what was admissible just to harass opposing counsel. The majority of the topics were immaterial and impertinent to the issue at hand. This deposition should have lasted fifteen to thirty minutes at most but as a result of the blatant disrespect for this Court, lasted more than two hours.

It was evident during the April 2018 hearing that the Court believed this to be a simple matter. The Court spent the majority of its time during the hearing directing the attorneys on the limited scope that would be allowed during the depositions. The Court clearly defined the narrow limits of permissible inquiry into Epstein's knowledge and possession of the disc (pre Link & Rockenbach) and the chain of custody of the disc. Movants' counsel blatantly, and with total disregard of this Court's ruling, exceeded that scope. This Court was crystal clear in defining the narrow limits of permissible inquiry of the disc's possession before Link & Rockenbach discovered it in Fowler White's files.

ATTORNEYS' FEES

One of the principal grounds upon which the law permits attorneys' fees to be awarded is bad faith, which allows an award where a party has willfully disobeyed a court order or has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *F.D. Rich Co. v. Industrial Lumber Co.*, 417 U.S. 116, 129 (1974). Edwards' counsel's intent is self-evident on his repetitious questions of Mr. Link far outside the scope of this Court's ruling that made the deposition last nearly two hours longer than it should have.

Epstein, accordingly, moves this Court to strike Link & Rockenbach's deposition testimony in its entirety due to Movants' noncompliance with this Court's ruling and to be compensated for two hours of attorneys' fees his counsel spent answering immaterial and improper questions well outside the scope ordered by this Court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 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

[REDACTED]

By: /s/

CHAD P. PUGATCH (FBN [REDACTED])

[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

[REDACTED] 930

By: /s/

SCOTT J. LINK (FBN [REDACTED])

[REDACTED]

Counsel for Jeffrey Epstein

SERVICE LIST

<p>Jack Scarola Searcy, Denny, Scarola, Barnhart & Shipley, P.A. [REDACTED] Edward <i>Counsel for Bradley J. Edwards</i></p>	<p>Bradley J. Edwards Brittany N. Henderson Edwards Pottinger LLC [REDACTED] Suite 2 [REDACTED] 33301-3268 <i>Counsel for Farmer Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.</i></p>
<p>Paul G. Cassell S.J. Quinney College of Law at the University of Utah [REDACTED] <i>Counsel for L.M., E.W. and Jane Doe</i></p>	<p>Peter E. Shapiro Shapiro Law [REDACTED] <i>Counsel for L.M., E.W. and Jane Doe</i></p>
<p>Niall T. McLachlan Carlton Fields Jordan Burt, P.A. [REDACTED] <i>Counsel for Fowler White Burnett, P.A.</i></p>	<p>Isaac M. Marcushamer Berger Singerman LLP [REDACTED] <i>Counsel for Liquidating Trustee</i></p>