



ORDERED in the Southern District of Florida on September 4, 2018.

Raymond B. Ray, Judge
United States Bankruptcy Court

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.

AGREED MEDIATION CONFIDENTIALITY ORDER

THIS CAUSE came before the Court upon the agreement of (1) Bradley J. Edwards (“Edwards”), (2) Jeffrey Epstein (“Epstein”), (3) Fowler White Burnett, P.A. (“Fowler White”) and its insurer, (4) Intervenors Jane Doe, L.M. and E.W. (collectively, “Intervenors”), and (5) Farmer Jaffe Weissing Edwards Fistos and Lehrman (“Farmer Jaffe”) (collectively, the “Mediation Participants”), to participate in mediation subject to this Agreed Mediation Confidentiality Order. The Court, hereby

ORDERS AND ADJUDGES as follows:

1. Pursuant to Florida Rule of Civil Procedure 1.720, Edwards, Epstein, and representatives from Fowler White and Farmer Jaffe who have the full authority to settle without

further consultation shall appear at the mediation in person. In addition, a representative of Fowler White's insurance carrier who has full authority to settle in an amount up to its policy limits without further consultation shall appear at the mediation in person. Finally, the Intervenor's counsel, who shall have full authority to settle the matter without further consultation, shall appear at the mediation by telephone.

2. The mediation proceeding is confidential and privileged as settlement negotiations. All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any Mediation Participant's legal position and are not discoverable or admissible for any purpose in any legal or administrative proceeding whatsoever.

3. Florida law applies and governs the mediation including, but not limited to, Chapter 44, Florida Statutes, and the following specific confidentiality provisions:

a. **Florida Statute Section 44.403:**

44.403 Mediation Confidentiality and Privilege Act; definitions.—As used in ss. [44.401-44.406](#), the term:

(1) "Mediation communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.

(2) "Mediation participant" means a mediation party or a person who attends a mediation in person or by telephone, videoconference, or other electronic means.

(3) "Mediation party" or "party" means a person participating directly, or through a designated representative, in a mediation and a person who:

(a) Is a named party;

(b) Is a real party in interest; or

(c) Would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.

(4) “Mediator” means a neutral, impartial third person who facilitates the mediation process. The mediator’s role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

(5) “Subsequent proceeding” means an adjudicative process that follows a mediation, including related discovery.

b. **Florida Statute Section 44.405(1) and (2):**

44.405 Confidentiality; privilege; exceptions.—

(1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant’s counsel. A violation of this section may be remedied as provided by s. [44.406](#). If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney’s fees, and mediator’s fees.

(2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.

c. **Florida Statute Section 44.406:**

44.406 Confidentiality; civil remedies.—

(1) Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. [44.405](#) shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:

(a) Equitable relief.

(b) Compensatory damages.

(c) Attorney’s fees, mediator’s fees, and costs incurred in the mediation proceeding.

(d) Reasonable attorney's fees and costs incurred in the application for remedies under this section.

(2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.

(3) A mediation participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. [119.07](#).

4. The mediation is being conducted in both this action (*In re Rothstein Rosenfeldt Adler, P.A.*, U.S. Bankruptcy Court, Southern District of Florida, Case No. 09-34791-RBR) and the State Court Action (*Jeffrey Epstein v. Scott Rothstein and Bradley J. Edwards*, 15th Judicial Circuit Case No. 50-2009-CA-040800XXXXMBAG), and will also address Epstein's potential claims against Fowler White.

5. For the limited purpose of the mediation, Epstein's 47 trial exhibits (the "47 e-mails") that Edwards claims are privileged and are currently under seal may be shown by Edwards' attorneys only to the mediator, Fowler White's attorneys and Fowler White's insurance carrier representative. Edwards' counsel shall bring Edwards' copy of the 47 e-mails to the mediation for this limited purpose. Edwards' counsel shall be present at all times during any review of the e-mails. No copies of the e-mails may be made and no notes may be taken regarding their content.

6. The use of the 47 e-mails during mediation will not constitute an additional argument of a waiver by Epstein of any privilege claimed by Edwards, Farmer Jaffe or the Intervenors. However, this does not vitiate or limit Epstein's existing waiver arguments, which are preserved pending further rulings of this Court.

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The Clerk shall provide copies to:

Chad Pugatch, Esq.

[Attorney Pugatch is directed to serve a conformed copy of this Order on all interested parties immediately upon receipt hereof and to file a certificate of service.]

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