

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

**EMERGENCY MOTION BY █, █, AND JANE DOE TO JOIN EDWARDS'
MOTION TO STRIKE AND FOR RELATED RELIEF**

Sexual assault victims █, █, and “Jane Doe” (hereinafter “the three victims”), proceeding pseudonymously and through undersigned counsel, having previously filed an (unopposed) motion to intervene, hereby file this Emergency Motion to Join in Bradley J. Edwards’ Motion to Strike Epstein’s Untimely Supplemental Exhibits and Any Reference to Documents Containing Privileged Materials Listed on Edwards’ Privilege Log, for related relief, and in support states as follows:

As the Court is aware from recently-filed pleadings, on the evening of Friday, March 2, 2018, counsel for defendant Epstein filed a Notice of Service of Unredacted Appendix in Support of Response in Opposition to Edwards’ Second Supplement to Motion in Limine Addressing Scope of Admissible Evidence (hereinafter “Notice of Unredacted Materials”). That “Notice” included as an exhibit a series of emails over which Edwards (on behalf of his clients, █, █, and Jane Doe, the three victims who bring this motion) had properly asserted

confidentiality protections of various types. Epstein filed that Notice of Redacted Materials – and the accompanying emails – in the public court file. On Monday, March 5, 2018, Edwards filed a Motion to Strike Epstein’s Untimely Supplemental Exhibits and to Strike All Exhibits and Any Reference to Documents Containing Privileged Materials Listed on Edwards’ Privilege Log (hereinafter “Motion to Strike”). The Motion to Strike generally asserted that Epstein was improperly disclosing privileged materials and asked to have all the materials stricken and precluded from us in the upcoming trial.

The three victims, having previously filed an (unopposed) motion to intervene in this matter, now join in Edwards’ motion to strike for all the reasons articulated therein. The victims also now provide additional arguments in support of Edwards’ requested relief, specifically Edwards’ request that the Court: (1) preclude any use of the privileged exhibits or any reference to them during the upcoming trial; (2) require Epstein’s counsel identify how they came into possession of the privileged materials; (3) order Epstein’s counsel pay reasonable attorneys’ fees and expenses caused by the improper disclosure of these materials, including fees and expenses to the victims’ counsel; and (4) grant other appropriate relief. The victims will seek to raise these arguments at the hearing on March 8, 2018, rendering this motion an “emergency” motion.

To Protect the Interests of the Three Victims, The Court Should Preclude Any Use of the Exhibits or the Underlying Information Therein

At issue before the Court is whether Epstein may make use of various emails – and information derived therefrom – that are contained on a privilege log provided by Edwards to Epstein’s lawyers on February 23, 2011 – *more than seven years ago*. See Plaintiff Jeffrey Epstein’s Notice of Filing of Privilege Log of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman Dated February 23, 2011 in Support of Plaintiff’s Motion to Compel Production of Documents from Defendant Bradley Edwards and Sanctions (privilege log dated February 23,

2011, filed with the Court on April 10, 2012).¹ And yet, on March 2, 2018, Epstein's counsel filed in the public court file some of those very same emails.

It is clear beyond dispute that many of these emails on the 2011 privilege log contain privileged attorney-client communications. To provide one straightforward illustration, consider an email on April 27, 2009, between the victims' attorney, Bradley J. Edwards, and attorney Mark Nurik – was revealed in Epstein's recent March 2 filing at Exhibit C, page 1 (identifying email by Bates number 1527). That email quotes anticipated statements from one the three victims. *Id.* (“she will say ... [recounting anticipated testimony].”).² This is core attorney-client protected material.

As another straightforward illustration, consider an email on October 23, 2009, between the victims' attorney, Bradley J. Edwards, and other attorneys (Fistos' et al.) – again revealed in Epstein's recent March 2 filing at Exhibit C, page 6 (identifying email by Bates number 8131). The email recounts conversations from the three victims. *Id.* (“I called all the clients and . . . [recounting information provided by the victims]).”³

Again, to be clear, both of these emails are on a privilege log provided to Epstein more than seven years ago.

It would be obvious on the face of these emails that they concern attorney-client communications regarding confidential subjects that were not intended to be disclosed. Indeed,

¹ The privilege log is attached as the first exhibit to Edwards' recent Motion to Strike.

² To avoid further disclosure of the confidential communication, the substance of the conversation is not recounted here, but can be determined by the Court from looking at Epstein's quotation of the document. To be clear, victims' counsel in no way intend to waive any privilege over this communication.

³ Again, to avoid further disclosure of the confidential communication, the substance of the conversation is not recounted here, but can be determined by the Court from looking at Epstein's quotation of the document. To be clear, victims' counsel in no way intend to waive any privilege over this communication.

other emails that Epstein has disclosed concern sexual events of the then-minor victims. *See, e.g.*, Epstein’s March 2 filing at Exhibit C, page 1 (identifying email by Bates number 1527) (discussing communications involving sexual abuse of then-minor girls). And to be clear, it is not just direct communications between a lawyer and his clients themselves that is protected by the attorney-client privilege, but many other related communications as well. *See Fla. Stat. § 90.502(c)(1)* (protecting disclosures “in furtherance of the rendition of legal services to the client”); *Ford Motor Co. v. Hall-Edwards*, 997 So. 2d 1148, 1153 (Fla. 5th DCA 2008) (attorney-client privilege “protects confidential communications between a lawyer and client, as well as third persons to whom disclosure is in furtherance of the rendition of legal services and those reasonably necessary for the transmission of the communication”).

Epstein seems to believe that there has been some sort of waiver over these obviously protected attorney-client communications (and communications “in furtherance of the rendition of legal services”). But Edwards properly asserted protection over all of the communications at issue here by filing a privilege log. At that point, substantial protections existed – protections that Epstein was obligated to honor. “The attorney-client privilege is the oldest confidential communication at common law and . . . is traditionally deemed worthy of maximum legal protection.” *Nova Southeastern Univ., Inc. v. Jacobson*, 25 So. 3d 82, 86 (Fla. 4th DCA 2009). And “[t]he attorney-client privilege is inviolate as to matters within its scope, and waiver of the attorney-client privilege is not favored in Florida.” *Markel Am. Ins. Co. v. Baker*, 152 So. 3d 86, 90 (Fla. 5th DCA 2014).

In order to find waiver, there must be a “clear, intentional waiver of the privilege” *Id.* As provided by Fla. Stat. § 90.507, it is only the “*voluntary disclosure* by the holder of the privilege [which] will waive the privilege. The consideration underlying this statute is the well-

settled notion that the privilege is held by the client, and protects the client.” *Abamar Hous. & Dev., Inc. v. Lisa Daly Lady Decor, Inc.*, 698 So. 2d 276, 278 (Fla. 3rd DCA 1997). And, most important for present purposes, “[i]f a party seeks to compel the disclosure of documents that the opposing party claims are protected by attorney-client privilege, the party claiming the privilege is entitled to an *in camera* review of the documents by the trial court prior to disclosure. . . . If the parties disagree as to the scope of the privilege waiver, a trial court must delineate the scope of the waiver before it may compel discovery of information.” *Butler v. Harter*, 152 So. 3d 705, 714 (Fla. 1st DCA 2014).

Epstein’s counsel short-circuited all of those protections for appropriate court review when they publicly filed documents over which the victims (through their attorney) had properly asserted privilege. And Epstein’s counsel publicly filed these protected documents at a time when it would obviously be up to Epstein to carry *his* burden of proof of showing waiver. *See, e.g., Hask Co. v. Georgia Pacific Corp.*, 684 So.2d 297 (Fla. 5th DCA 1996) (“When a privilege is facially apparent, the burden is on the party seeking disclosure to show that the privilege does not apply.”).

Edwards’ Motion to Strike makes clear how Epstein’s public filing violated numerous orders of this Court, including scheduling orders requiring advance production of materials to the opposing side. The victims would add to these violations the fact that the Florida Rules of Professional Conduct contain rules requiring attorneys to respect the rights of third persons. *See* Fla. R. Prof. Conduct 4-4.4 (Feb. 1, 2018). In particular, the Rules of Professional Conduct require that “[i]n representing a client, a lawyer may not use means that have no substantial purpose other than to embarrass, delay, or burden a third person or knowingly use methods of obtaining evidence that violate the legal rights of such a person.” *Id.* Here, Epstein’s counsel

have clearly used means that “have no substantial purpose other than to embarrass, delay, or burden a third person” – specifically, filing in the *public* court file materials that were obviously confidential attorney-client protected materials or, at the very least, materials over which it was obvious attorney-client protections were incontestably being asserted. Lest there be any doubt about the bad faith of Epstein’s counsel, attorneys for both Edwards and the victims repeatedly notified Epstein’s counsel that the public court filing was improper⁴ – and yet Epstein’s counsel took no steps to prevent the damage by immediately placing the filings under seal until the Court had ruled on the issues in dispute.

Moreover, the victims are prejudiced by Epstein’s late disclosure that he will attempt to use 111 itemized emails – many of which contain sensitive privileged information about the victims – just six business days before the trial.⁵ By first disclosing this issue after this litigation had spanned about 100 months, Epstein has forced the victims to litigate this issue on an “emergency” basis.

The solution to these problems – all created by Epstein and his multiple sets of law firms that have handled his interests along the way – is to preclude Epstein from making any use of the belatedly-disclosed emails and any information derived therefrom that discloses attorney-client privileged information. Given Epstein’s vast resources – and the large number of legal teams representing him at various points in the case – Epstein should not be heard to complain that he has inadequate opportunity to raise these issues before. Instead, as Edwards explains in his

⁴ For proof of this point, the victims would simply direct the Court to their letter and related emails to Epstein’s counsel, attached as exhibits to Epstein’s Motion to Declare Relevance and Non-Privileged Nature of Documents (filed Mar. 6, 2018).

⁵ Of the 111 emails in Epstein’s summary chart, at least 49 of the emails are privileged and designated as such on Edwards’ 2011 Privilege Log. The remaining 62 emails were turned over as Attorneys Eyes Only or otherwise. Because of Epstein’s last-minute filing, victims’ counsel are continuing to review the relevant materials and reserve the right to make additional objections.

Motion to Strike, it appears that the late disclosure is Epstein's effort "to either conduct trial by ambush or sufficiently muddy the waters to request yet another continuance." Mot. to Strike at 1. And equally important are the victims' interests. After having suffered sexual abuse at the hands of Epstein, the victims should not have to endure the further indignity of having their private communications with their attorneys paraded through the public court file – and then later through testimony in what appears to be likely to be a high-publicized trial. The Court should simply hold that Epstein is not entitled to disclose any of their emails over which protection was properly asserted – or information derived therefrom (which could serve to implicitly disclose the nature of the communications) – in the upcoming trial.

The Court Should Require Epstein's Counsel Explain How They came into Possession of the Privileged Materials

The Court should also require Epstein's counsel to disclose to the victims how he came into possession of their confidential and privileged materials. The victims have most assuredly never consented to have their lawyers' private communications provided to Epstein – the man who sexually abused them. And as explained at length by Mr. Edwards in his Motion to Strike, Edwards did not disclose them. So the question then naturally arises: How did Epstein's lawyers obtain them?

The victims have a compelling interest in learning who has viewed their confidential attorney-client privileged information. The victims have repeatedly asked Epstein's counsel to explain how they obtained this confidential information. If the victims understand Epstein's counsel's position correctly, counsel initially claimed that Edwards had released the emails to them directly by handing over to them a disk containing these materials. See Notice of Unredacted Materials at 2 (suggesting that Edwards released the documents to Epstein). As Edwards explains in detail in his Motion to Strike, this claim is simply untrue. See Mot. to Strike

at 6-13 (detailed time line with supporting exhibits proving that the privileged emails were never disclosed to Epstein by Edwards). Confronted with fact that their initial theory is contradicted by all the documentary evidence, now it appears that Epstein’s counsel are taking the position that they somehow simply recently found a disk among Epstein materials maintained by the Fowler White law firm and then “concluded the disc maintained in Fowler White’s files represented the production that Edwards testified about [having previously provided to Epstein].” Epstein’s Motion for Court to Declare Relevance and Non-Privileged Nature of Documents at 6 (Mar. 5, 2018) (emphasis added) (hereinafter “Mot. to Declare Relevance”).⁶ It is now abundantly clear that Epstein’s counsel’s uninformed and speculative “conclusion” was incorrect. *See generally* Motion to Strike at 2-6. So the obvious question remains: How exactly did these confidential and sensitive materials come into possession of Epstein’s previous legal counsel?

The Court should require Epstein – currently represented before this Court by the law firm of Link and Rockenbach – to promptly provide the victims with an explanation of the disk’s provenance. Of course, Epstein can have no claim of confidentiality in this inquiry. This is a disk *containing the victims’ own confidential materials* which, according to Epstein, was supposedly voluntarily provide by victims’ counsel to Epstein. The victims remain extremely concerned that the disk was obtained in an improper or inappropriate way, and that other persons

⁶ Epstein’ counsel also asserts that, in the *Razorback* litigation, the documents in question “appear to have been produced without confidentiality and with a waiver of any work product protection.” Epstein Mot. to Declare Relevancy at 4. But Epstein provides no supporting evidence for this assertion, or indeed an evidence of any production to *anyone* that was unprotected, in the *Razorback* litigation or any other litigation for that matter. Epstein’s unsupported speculation about what “appears” to him to have occurred can hardly constitute the specific evidence of an “intentional” waiver that would be required to pierce the attorney-client privilege. *Cf. First Union Nat. Bank of Fla. v. Whitener*, 715 So. 2d 979, 984 (Fla. 4th DCA 1998) (rejecting finding of waiver by bankruptcy trustee where the trust “specified that this production should *not* be construed as a waiver of the attorney-client privilege, thereby evincing its intent to otherwise claim the privilege”).

may have viewed materials concerning the victims' sexual abuse – materials that, of course, appear to identify them by name. All the victims want to know is how did that disk find its way to Epstein and who saw it along the way.

The concerns that Epstein may have acted improperly with regard to obtaining these materials must be assessed against the backdrop of Epstein's criminal conduct – and his improper conduct within the legal system. As the Court is well aware, Epstein is not a law-abiding citizen but, to the contrary, someone who ran a significant sex abuse organization leading to the abuse of dozens and dozens of minor girls. *See generally* Edwards' Statement of Undisputed Facts in Support of Summary Judgment Motion (Sept. 22, 2010). The victims will not belabor the point before this Court, other than to say that if there is one person who has both an overriding motive and opportunity to improperly obtain confidential materials about them, it is their sexual abuser – convicted sex offender Epstein.

Moreover, within the legal process, Epstein and his co-conspirators have violated ordinary rules of civil discovery. For example, members of Epstein's criminal conspiracy have evaded legitimate discovery attempts, such as dodging depositions. *See id.* at 21-23 (describing efforts to depose Ghislaine Maxwell and Jean Luc Brunel). And while impeding legitimate discovery efforts, Epstein (through his attorneys) has engaged in questioning of victims so savage that it made local headlines. *See id.* at 24 (citing Jane Musgrave, *Victims Seeking Sex Offender's Millions See Painful Past Used Against Them*, Palm Beach Post News, Jan. 23, 2010).

In addition, Epstein has harassed witnesses against him. For example, the U.S. Attorney's Office for the Southern District of Florida drafted an indictment against Epstein for conduct related to intimidating a witness. *Id.* at 31. And Epstein sent a defense investigator to