

EPSTEIN – TELEPHONE CF WITH MAGISTRATE-JUDGE 3-28-16

1. 30 minute public conference call. AUSAs Marie Villafana and Dexter Lee, Paul Cassell, MGW on phone. Representative of Sun-Sentinel in courtroom.
2. Court put on record the following: that he had previously represented Alfredo Rodriguez, an employee of JE who was prosecuted on a charge of selling an address book, that during the representation he spoke several times to Judge Cassell, that Mr. Rodriguez had passed away, that he knows Ms Villafana as a member of the small legal community in WPB and as the prosecutor of Mr Rodriguez, that he also represented a man named D.G. in an unrelated case but now understands that D.G. thereafter became a step-father of a victim but he, the Mag-Judge, has no knowledge if D.G. is the step-father of Jane Doe 1 or 2. Mr. Edwards has indicated that D.G. is not the step-father of Jane Doe 1 or 2.
3. That Judge Marra, in discussions with the Mag-Judge, did not believe that either his past representation of Rodriguez or of D.G would bar his participation in a settlement discussion. The Mag-Judge added that he would not be acting as a “fact-finder”.
4. Each party including MGW waived any objection to the Mag-Judge participating in a settlement conference
5. Because of scheduling conflicts of Cassell, the April dates were vacated (the Govt and Cassell had prior email discussions on new dates without any notice to JE lawyers) and the new date is May 23 starting at 9:30 AM.
6. Procedure: the Mag-Judge required the attendance of the decision-makers eg Jane Doe 1 and 2 and the Govt. Apparently Jane Doe 1 needs an Order to that effect but wants to attend (not clear why an Order was required*) and when Cassell indicated that Jane Doe 2 may not want to attend, the Mag-Judge required Cassell to file a Motion excusing her from being there. The first portion of the day where the Mag-Judge defined the process and made an introduction would be public. The Mag-Judge allowed Jane Doe 1,2 to bring emotionally supportive allies to this portion of the conference. Thereafter, each party, in private, subject to confidentiality rules, would make statements that would only be in the presence of the parties and lawyers unless there was no objection to the presence of a 3d party. The conference would proceed without a break for lunch until completion.

7. The Court asked what role the Intervenors should have:
- A) The Govt first set out that there were 3 sets of intervenors: Attorneys Black, Weinberg and Lefkowitz regarding privilege. The Govt contended they had no role. I made clear I was seeking to appear on JEs behalf not on behalf of the legal team
 - B) 2d – JE – The Govt said that JE had moved for prospective limited intervention at remedy phase in Dkt 207 and that it was granted at Dkt 246. The Govt said that JEs other intervention asserting 6E rights had been resolved (I disagreed, later). The Govt then said this was generally a dispute solely between the plaintiffs and Govt and that the point of a settlement conference would be to avoid issues of liability and remedy and that JE had no role in the mediation. Cassell also took the position that JE had no right to be at the mediation which he contended would be disadvantaged if it was a 3-sided not 2-sided mediation. He also said one of the sex abuse victims would be there. He argued that the Order allowing intervention was prospective, that JE had no current rights. He argued that although the plaintiffs would start by pressing for a finding of liability and the invalidation of the NPA, if that is the result of the settlement conference J Marra can then consider JEs prospective intervention but until then it is premature and disadvantageous. Ms Villafana and Cassell disagreed about the significance of Dkt 246, with the Govt saying that the intervention was allowed, Cassell saying only prospectively i.e. if the case addressed the invalidation remedy. I contended (a) there was no disadvantage to JE participating even if silently at the start so that if it evolved in a manner that would implicate his legal rights – I spelled out that you had performed your end of the contract, went to jail, had interests of finality, etc – it would not necessitate a second conference when the overall goal of each party was settlement and finality, (b) that one of the remedies Cassell had once advanced was to disclose GJ documents and that you had a 6E right to participate in the event any such remedy was again requested.
 - C) 3d Intervenor – Media – resolved. Govt argued they had no right to attend confidential portion of settlement conference. Court asked for caselaw. He identified one case of interest – State Farm v Jim Hood 266 FRD 135 (██████████ 2010), a case appended hereto which involved the media claiming that when

neither party to litigation properly represented the media's right that the media could intervene.

D) Court gave each party and JE until April 22 at 5 PM to give authority on right of intervenor to attend settlement discussion – which includes consideration of whether we should, procedurally, file a separate motion for limited intervention in the Settlement Conference

* Perhaps Jane Doe 1 is seeking an Order to cover expenses if she is not local, perhaps she is under a travel limitation issued by a court?? Not clear why her lawyers phone call would not be sufficient.