

## Fowler White May Be Sanctioned Over Retaining Epstein Docs

By **Nathan Hale**

Law360, Fort Lauderdale (October 26, 2018, 10:01 PM EDT) -- Convicted billionaire sex offender Jeffrey Epstein dodged sanctions claims in a Florida federal court Friday, but a bankruptcy judge is still weighing allegations that Fowler White Burnett PA, which used to represent him, retained copies of another firm's confidential documents in violation of a court order.

U.S. Bankruptcy Judge Raymond B. Ray reserved judgment after hearing testimony from witnesses during a lengthy hearing for Florida-based Fowler White to show why it should not be held in contempt after it was revealed earlier this year that it was allegedly in possession of a CD containing copies of privileged documents that the judge had ordered them not to retain — on threat of sanctions — in a 2010 order.

The recently disbanded South Florida firm of Farmer Jaffe Weissing Edwards Fistos & Lehrman PL brought the **sanctions bid** in March after recent developments in ongoing state court litigation between Epstein and former Farmer Jaffe partner Bradley J. Edwards, who represented several of Epstein's victims, revealed that a CD containing more than 27,500 pages of confidential Farmer Jaffe emails and about 30 printed pages of those files were among files Fowler White transferred to Epstein's current counsel in early 2018.

The scope of the matter was narrowed significantly at the start of Friday's hearing after Farmer Jaffe and Edwards informed the court the day before that they wanted to voluntarily dismiss Epstein. They said the limited discovery they had performed made clear that any violation in respect to Epstein was the result of Fowler White's wrongdoing.

The dispute arises from what Edwards' counsel Jack Scarola described Friday as the "extraordinary circumstance" surrounding the November 2010 order. Concerned about the expenses of responding to a subpoena from Epstein, Farmer Jaffe consented to deliver thousands of Edwards' attorney communications to Fowler White, which numbered them and printed copies for Farmer Jaffe and Edwards to compose a privilege log.

Fowler White proposed this step to save Epstein the cost of hiring a third-party processor, and said it could perform the task without reading the documents. But to assuage Farmer Jaffe's concerns about misappropriation of the documents, the parties agreed to an enforcement provision that Judge Ray would retain jurisdiction to award sanctions if it were determined Fowler White or Epstein retained any images or copies of the documents.

The issue ended up before the bankruptcy court because Epstein filed his subpoena in the liquidation case of law firm Rothstein Rosenfeldt Adler PA, where Edwards had been practicing when he represented several of Epstein's child sex-abuse victims.

Scarola noted during Friday's hearing that Farmer Jaffe and Edwards have contended that the documents encompassed both attorney-client privileged information and attorney work product, and the situation was especially sensitive because it involved information related to victims of Epstein's serial sex abuse being placed in possession of his counsel.

The hearing focused on ascertaining Fowler White's chain of custody, and it featured testimony from Fowler White's designated corporate representative James Hurley, Epstein's current counsel Scott Link of Link & Rockenbach PA, and the movants' IT expert John Hopkins, among others.

Hopkins' determination that the data on the disc that came into Link's possession had last been modified on Dec. 8, 2010, and featured numbered documents coincided with Hurley's findings in his internal review that two CDs containing the documents were received by Fowler White's Miami office on Dec. 8, 2010, and copied, numbered and printed between Dec. 8 and Dec. 10.

But Scarola raised questions about evidence indicating the discs were not mailed back to the judge overseeing the process until Dec. 28, 2010. He and Edwards also attempted to focus the court on uncertainty over which discs — the originals, copies with the number-stamped documents, or both — were returned to the court and how many discs were actually made.

Hurley also testified that the firm's files related to Epstein had been sent to an off-site archive by Fowler White in either late 2014 or early 2015, where they remained until being retrieved for Link to review them in early 2018. Hurley said the firm's inventory showed a file folder marked with the name of the judge assigned as special master for the case, but he could not be certain that the disputed disc was actually in the folder.

Judge Ray rejected a motion from Fowler White counsel Niall McLachlan's for the court to find that Farmer Jaffe and Edwards failed to present any evidence that could meet their burden of providing clear and convincing evidence that Fowler White retained the documents.

"It's not our burden to establish how those responsible violated the order," Scarola had argued in response. "There's no reasonable explanation for that except an explanation that clearly contravenes this court's order."

Judge Ray gave the parties until Nov. 13 to file proposed orders on the "narrow, narrow issue" of whether Fowler White violated the 2010 order.

Farmer Jaffe is represented by Bradley J. Edwards and Brittany N. Henderson of Edwards Pottinger LLC.

Epstein is represented by Scott J. Link and Kara Rockenbach of Link & Rockenbach PA, and Chad P. Pugatch of Rice Pugatch Robinson Storfer & Cohen PLLC.

Fowler White is represented by Niall T. McLachlan of Carlton Fields.

Edwards is represented by Jack Scarola and David P. Vitale of Searcy Denney Scarola Barnhart & Shipley PA.

The case is In re: Rothstein Rosenfeldt Adler PA, case number 0:09-bk-34791, in the U.S. Bankruptcy Court for the Southern District of Florida. The state court case is Epstein v. Rothstein et al., case number 50-2009CA04800XXXX MB AG, in the 15th Judicial Circuit Court of the State of Florida.

--Editing by Adam LoBelia.