

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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

COUNTER-DEFENDANT JEFFREY EPSTEIN'S
NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF HIS SUPPLEMENT
TO MOTION FOR COURT TO DECLARE RELEVANCE AND NON-PRIVILEGED
NATURE OF DOCUMENTS, ETC.

As supplemental authority in support of his Motion for Court to Declare Relevance and Non-Privileged Nature of Documents and with Specific Request for *In Camera* Review to Determine Relevance, Inapplicability and/or Waiver of Attorney-Client Privilege and Attorney Work Product With Regard to Sealed Documents, Plaintiff/Counter-Defendant, Jeffrey Epstein (“Epstein”), respectfully submits the attached Opinion in the case of *Jane Doe No. 1 v. United States*, 749 F.3d 999 (11th Cir. 2014), attached to this Notice as **Exhibit A**, and Edwards’ clients’ Appellee Brief filed in that case, attached to this Notice as **Exhibit B**. In *Jane Doe No. 1*, the United States Court of Appeals for the Eleventh Circuit held that Epstein’s former counsel had waived the work-product privilege with respect to documents sought by Edwards’ clients, after having voluntarily sent allegedly privileged correspondence to the United States during plea negotiations.

There, Edwards’ clients claimed that the United States failed to confer with them before entering into a non-prosecution agreement with Epstein. As part of that lawsuit, Edwards’ clients

sought to discover correspondence between Epstein's former counsel and the United States regarding the non-prosecution agreement. *Id.* at 1001. The federal district court overruled Epstein's former counsel's privilege objections. On appeal, the Eleventh Circuit held that Epstein's former counsel had waived the work-product privilege as to all persons, as a consequence of having sent the allegedly privileged correspondence to the United States:

The intervenors [Epstein's former counsel] next contend that the correspondence falls under the work-product privilege, but the finding of the district court that the intervenors waived any privilege when they voluntarily sent the correspondence to the United States during the plea negotiations is not clearly erroneous. Disclosure of work-product materials to an adversary waives the work-product privilege. *See, e.g., In re Chrysler Motors Corp. Overnight Evaluation Program Litig.*, 860 F.2d 844, 846 (8th Cir. 1988); *In re Doe*, 662 F.2d 1073, 1081-82 (4th Cir. 1981). **Even if it shared the common goal of reaching a quick settlement, the United States was undoubtedly adverse to Epstein during its investigation of him for federal offenses, and the intervenors' disclosure of their work product waived any claim of privilege.**

Id. at 1008 (emphasis added). **Exhibit A.**

In reaching its conclusion, the Eleventh Circuit agreed with the position of Edwards' clients, espoused by Edwards, as set forth in their Appellee Brief. In their Appellee Brief, Edwards' clients, through Edwards, made the following argument:

Case law is clear that "[d]isclosure to an adversary waives the work product protection as to items actually disclosed, even where disclosure occurs in settlement." *In re Chrysler Motors Corp. Overnight Evaluation Program Litigation*, 860 F.2d 844, 860 (8th Cir. 1988). In summarily rejecting Epstein's claim, the District Court found that Epstein had waived any work product protection in the materials by turning them over to the federal prosecutors:

Assuming without deciding that any part of the correspondence in question reflects "the mental impressions, conclusions, or legal theories" of Epstein's attorneys, Fed. R. Civ. P. 26(b)(3), any work product protection which might otherwise attach to this product was necessarily forfeited when Epstein voluntarily submitted the information to the United States Attorney's Office in the hopes of receiving the quid pro quo of lenient punishment for any

wrongdoings exposes in the process. Work product protection is provided only against “adversaries.” Thus, disclosure of the material to an adversary, real or potential, works a forfeiture of work product protection. In this case, Epstein’s attorneys’ disclosure to the United States Attorney’s Office was plainly a disclosure to a potential adversary. The United States Attorneys’ office, at that juncture, was reviewing evidence relating to Epstein’s sexual crimes against minor females within the Southern District of Florida and deliberating the filing of relevant federal charges; while Epstein’s counsel clearly hoped to avoid any actual litigation between the United States and Epstein, the potential for such litigation was plainly there. By voluntarily and deliberately disclosing this material to federal prosecutorial authorities investigating allegations against Epstein at that time, any work product protection was necessarily lost.

DE 188 at 6 (*citing, inter alia, United States v. Massachusetts Institute of Technology*, 129 F.3d 681 (1st Cir. 1997)). Numerous cases have reached the same conclusion as the District Court in similar circumstances.^[*]

Exhibit B, at 35-36.

Edwards supported this last statement with the following authorities:

See, e.g., Westinghouse Electric Corp. v. Republic of the Philippines, 951 F.2d 1414, 1429 (3d Cir. 1991) (Westinghouse’s disclosure of work product materials to the Justice Department during an investigation “waived the work-product doctrine as against all other adversaries.”); *In re Qwest Communications, Inc.*, 450 F.3d 1179, 1192-1201 (10th Cir. 2006) (company’s disclosure of documents to the SEC during criminal investigation waived work product protections); *Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 668 (10th Cir. 2005) (“any work product protection was waived by [party] via production” of the documents in question); *In re Columbia/HCA Healthcare Corp. Billing Practices Litigation*, 293 F.3d 289, 302 (6th Cir. 2002) (attorney client/work product privilege was “never designed to protect conversations between a client and the Government—i.e., an adverse party—rather, it pertains only to conversations between the client and *his or her* attorney. . . . purpose of [attorney-client privilege] is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice. Nowhere amongst these reasons [for protection] is the ability to ‘talk candidly with the Government.’”); *In re Chrysler Motors Overnight Evaluation Litigation*, 860 F.2d 844, 846-47 (8th Cir. 1988) (defendant company’s disclosure of computer tape to class counsel during settlement negotiated waived work product when tape sought by government as part of criminal

case); *In re Sealed Case*, 676 F.2d 793, 824-25 (D.C. Cir. 1982) (production of documents during settlement discussions with the SEC waived work product protection as to grand jury materials).

Exhibit B, at 36 n.13.

Epstein also files as **Exhibit C** the August 4, 2010, hearing transcript; *In re Rothstein Rosenfeldt Adler, P.A.*, United States Bankruptcy Court, Southern District of Florida, Case No. 09-34791-BKC-RBR, The following are statements made by William Scherer, Razorback's counsel.

- “[I]n November we filed a lawsuit in State Court and we alleged that as part of Mr. Rothstein and the firm, and the firm’s employees, and maybe some of the firm’s attorneys, conspired to use the Epstein/LM litigation in order to lure \$13.5 million worth of my victims, my clients, into making investments in these phoney [sic] settlements.” (17:7-14.)
- “In addition, as we have alleged, that Mr. Edwards and the firm put sensational allegations in the LM case that they knew were not true, in order to entice my clients into believing that Bill Clinton was on the airplane with Mr. Epstein and these young woman ...” (18:24-19:7.)
- “I can’t conceive that Mr. Edwards and the predecessor law firm would have any standing to prepare privilege logs or anything else, given what I just told the Court. That would be like having the fox guard the hen house.” (20:5-9.)
- “[The Complaint] names Rothstein. It does not name Mr. Edwards. It just names Rothstein, not the firm, and lays out the facts and says other people in the firm. We did not name them because we want to see the documents and see whether they had involvement.” (22:3-8.)
- I support the same position that [Epstein] has asked the Court, and that is to have the trustee deal with this, get these documents and deal with it with you, rather than allow the successor law firm to have them. (22:16-24.)

8/4/2010 Hearing Transcript, **Exhibit C**.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on August __, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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