

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.

**JEFFREY EPSTEIN'S RESPONSES AND OBJECTIONS TO
NOTICE OF TAKING VIDEO DEPOSITION DUCES TECUM**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), pursuant to Florida Rule of Civil Procedure 1.350(b), responds and objects to the Duces Tecum contained in Counter-Plaintiff Bradley J. Edwards' ("Edwards") June 20, 2018, Notice of Taking Video Deposition Duces Tecum, and states:

THE LIMITED SCOPE OF EPSTEIN'S DEPOSITION

On May 23, 2018, the Court held a hearing on Edwards' Motion to Permit him to Take the Limited Deposition of Epstein. (**Exhibit A** - Transcript). While the Court has not yet entered an Order, it granted Edwards' request to take Epstein's deposition on the following limited topics:

- Whether and to what extent Epstein reviewed any of the alleged privileged materials prior to March 2018. (**Exhibit A**, 19:7-12.)
- Whether and to what extent Epstein reviewed any of the alleged privileged materials after March 2018. (**Exhibit A**, 19:7-12.)

- Whether Epstein has any knowledge regarding compliance with the Court’s verbal rulings on the record at the March 8, 2018, hearing regarding destruction of those documents Edwards has claimed are privileged. (**Exhibit A**, 19:13-18.)
- Whether and to what extent Epstein has shared any of the alleged privileged materials with anyone other than his attorneys. (**Exhibit A**, 19:19-22.)
- Which, if any, of the alleged privileged materials Epstein plans to use to testify at trial. (**Exhibit A**, 19:22-20:2.)

While the Court has allowed Epstein’s limited deposition, document discovery was **not** addressed by the parties or the Court at the hearing and, in fact, discovery is closed.

EDWARDS’ DUCES TECUM

Edwards’ Duces Tecum requests Epstein to produce:

All communications and all records relating to all communications concerning or containing information derived from documents or data over which a claim of privilege was asserted by or on behalf of Bradley J. Edwards.

* “Documents” shall include, but not be limited to all non-identical copies of writings, drawings, graphs, charts, photographs, phonorecords, recordings, and/or any other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form. “Documents” also include all electronic data as well as application metadata and system metadata. All inventories and rosters of your information technology (IT) systems—e.g., hardware, software and data, including but not limited to network drawings, lists of computing devices (servers, PCs, laptops, PDAs, cell phones, with data storage and/or transmission features), programs, data maps and security tools and protocols.

Edwards seeks (1) documents that are protected by the attorney-client privilege; (2) documents that have been sealed; and (3) access to Epstein’s computers and electronic devices.

EPSTEIN'S RESPONSE AND OBJECTION

A. General Response.

Epstein's current trial counsel, Link & Rockenbach, PA, received the disc which is the subject of Epstein's deposition from Epstein's former counsel, Fowler White, in February 2018. Epstein never received the disc nor did he know of the disc's existence before that time.

At the March 8, 2018 hearing, this Court directed the parties to seal the disc and ensure no further dissemination of the documents Edwards claimed were privileged. Link & Rockenbach, PA, took immediate steps to comply with this Court's March 8, 2018, directives as set forth in Epstein's Notices of Compliance. The disc has been sealed and Edwards' privilege claims are currently the subject of Epstein's request that the Court conduct an *in camera* review to make a determination as to whether the documents are privileged as claimed by Edwards.

In any event, Epstein objects to the *Duces Tecum* because discovery is closed and Edwards did not obtain permission to reopen discovery for any purpose other than to take Epstein's limited deposition. Epstein also objects because the *Duces Tecum* seeks documents and information protected by the attorney-client privilege and work product doctrine and are not relevant to the limited issues of the deposition.

B. The Duces Tecum Seek Privileged, Protected and Sealed Documents

Notwithstanding that document discovery has not been reopened, even if the Court allowed the discovery the scope of permissible discovery in civil cases is set by Florida Rule of Civil Procedure 1.280(b):

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: . . . Parties may obtain discovery regarding any matter, **not privileged**, that is **relevant** to the subject matter of the pending action[.]

Fla. R. Civ. P. 1.280(b)(1) (emphasis added).

The sweepingly broad nature of the request—**all communication and all records relating to all communications**—inappropriately requires disclosure of documents protected by the attorney-client privilege and/or work product doctrine, as well as documents which have been (and remain) sealed by Order of this Court or destroyed at the Court’s direction.

Under Florida law, “[a] client has a privilege to refuse to disclose, and to prevent any other person from disclosing, the contents of confidential communications when such other person learned of the communications because they were made in the rendition of legal services to the client.” § 90.502(2), Fla. Stat. “The purpose of the attorney-client privilege is to encourage clients to make full disclosure to their attorneys,” and “protects . . . those disclosures necessary to obtain informed legal advice.” *Fisher v. United States*, 425 U.S. 391, 403 (1976).

The work-product privilege is set forth in Florida Rule of Civil Procedure 1.280, which states work product is discoverable only upon a showing of undue hardship and need, although mental impressions or legal opinions are always protected:

(4) *Trial Preparation: Materials*. Subject to the provisions of subdivision (b)(5) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and **prepared in anticipation of litigation or for trial** by or for another party or by or for that party’s representative, including that party’s attorney, consultant, surety, indemnitor, insurer, or agent, *only upon a showing that the party seeking discovery has need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means*. In ordering discovery of the materials when the required showing has been made, *the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation*.

Butler v. Harter, 152 So. 3d 705, 711 (Fla. 1st DCA 2014) (citing Fla. R. Civ. P. 1.280(b)(4) (bold/underline emphasis added)).

Here, the information requested by Edwards, on its face, is protected by both the attorney-client privilege and work product doctrine. While not all communications between lawyer and client are deemed privileged, a request for “all communications,” as Edwards makes here, necessarily includes information that is confidential and attorney-client privileged. And, as required to assert the work product protection, at least one reason for obtaining or preparing any such materials and data was in anticipation of this litigation or for trial. *See Marshalls of MA, Inc. v. Minsal*, 932 So. 2d 444, 448 (Fla. 3d DCA 2006) (“As there is substantial competent record evidence that the incident reports in question were prepared in anticipation of foreseeable litigation, which is uncontroverted by any competent evidence, we conclude that the trial court’s finding that the reports were not protected by work product, is unsupported by the record and departs from the essential requirements of the law in this jurisdiction. The fact that there was evidence that the reports may also have been prepared in order for [the defendant] to identify areas of concern does not alter this finding, as it does not eliminate the work product privilege.”) (emphasis added; citation omitted); *Federal Express Corp. v. Cantway*, 778 So. 2d 1052, 1053 (Fla. 4th DCA 2001) (indicating that documents keep their work product protection even if they were prepared for an additional reason not in anticipation of litigation as long as the anticipation of litigation was *one* of the reasons for preparing the documents).

C. **Edwards’ Request for Electronic Data is an Invasion of Epstein’s Privacy and Seeks Irrelevant, Confidential and Privileged Information**

Finally, Epstein objects to Edwards’ request as to “all electronic data as well as application metadata and system metadata. All inventories and rosters of your information technology (IT) systems—e.g., hardware, software and data, including but not limited to network drawings, lists of computing devices (servers, PCs, laptops, PDAs, cell phones, with data storage and/or transmission features), programs, data maps and security tools and protocols.” Such a

request is an invasion of Epstein's privacy, seeks irrelevant and confidential information, is overly broad, could result in the inadvertent disclosure of attorney-client privilege information and attorney work product, and is far outside the scope of the Court's oral ruling.

Edwards seeks unprecedented access into Epstein's computer systems and electronic devices which in no way supports his claim for damages. As the First District has explained:

Generally speaking, Florida Rule of Civil Procedure 1.280 allows for the discovery of matters that are relevant and admissible, or reasonably calculated to lead to admissible evidence, including electronically stored information. *See* Fla. R. Civ. P. 1.280(b)(1), (b)(3), 1.350 (2013); *see also* Fla. R. Civ. P. 1.280(d) (addressing limitations on the discovery of electronically stored information). But **where personal information is involved as in this case, the trial courts' discretion to permit discovery "must be balanced against the individual's competing privacy interests to prevent an undue invasion of privacy."** *McEnany v. Ryan*, 44 So. 3d 245, 247 (Fla. 4th DCA 2010). **Courts have reversed rulings for not adequately accounting for privacy interests in the inspection of electronic storage devices.** *See, e.g., Holland [v. Barfield]*, 35 So. 3d [953,] 955 [Fla. 5th DCA 2010] (reversing an order allowing the inspection of a computer hard drive and cellphone SIM card); *Menke v. Broward Cnty. Sch. Bd.*, 916 So. 2d 8, 12 (Fla. 4th DCA 2005) (reversing an order allowing the inspection of all computers in a household).

. . . privacy rights do not completely foreclose the prospect of discovery of data stored on electronic devices. Rather, limited and strictly controlled inspections of information stored on electronic devices may be permitted. *See Menke*, 916 So. 2d at 11 ("**Rule 1.350 is] broad enough to encompass requests to examine [electronic information storage devices] but only in limited and strictly controlled circumstances**"); *cf. Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (finding that privacy rights limit compelled disclosure to that which is necessary to determine contested issues). Both *Holland* and *Menke*, for instance, would have allowed for inspections of the devices involved (computers and cellphones) if: (1) there was evidence of destruction of evidence or thwarting of discovery; (2) the device likely contained the requested information; and (3) no less intrusive means existed to obtain the requested information. *Holland* 35 So. 3d at 955; *Menke*, 916 So. 2d at 12.

Antico v. Sindt Trucking, Inc., 148 So. 3d 163, 166 (Fla. 1st DCA 2014) (emphasis added).

Here, access to Epstein's computer systems and electronic devices should **not** be allowed absent any evidence whatsoever that Epstein destroyed any materials (other than as directed by this Court) or thwarted discovery, and because his devices are unlikely to contain the requested information. Far less intrusive means of discovery – Epstein's limited deposition, as the Court permitted -- should be the only discovery allowed.

CERTIFICATE OF SERVICE

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

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