

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.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S OBJECTION TO
DEFENDANT/COUNTER-PLAINTIFF BRADLEY J. EDWARDS' REQUEST FOR
JUDICIAL NOTICE PURSUANT TO FLORIDA STATUTES
SECTIONS 90.202 AND 90.203**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), objects to Defendant/Counter-Plaintiff Bradley J. Edwards' ("Edwards") Request for Judicial Notice Pursuant to Florida Statutes Section 90.202 and 90.203, and states:

INTRODUCTION

This Court must deny Edwards' request for judicial notice of Epstein's New York State Sex Offender registration information pursuant to the Florida Evidence Code. Although Edwards asks this Court to exercise its discretion to take judicial notice of the New York registration, it does not squarely fall under matters which this Court may take judicial notice. Moreover, sections 90.401 and 90.403, Florida Statutes (2017), preclude the registration from admissibility because it is wholly irrelevant to any claim to be tried in this matter and is presented solely to unfairly prejudice or inflame the jury against Epstein. Likewise, the registration information is akin to evidence that

is precluded by sections 90.404, 90.405, 90.609, and 90.610, Florida Statutes (2017). Therefore, this Court must deny the transparent request to prejudice the jury.

RECORD FACTS NOT IN DISPUTE

The only issues for trial are framed by the pleadings *in this lawsuit*: (1) Epstein's Complaint and damages against Defendant Scott Rothstein and (2) Edwards' Counterclaim for malicious prosecution against Epstein. There is no issue in any Complaint or Counterclaim as to Epstein's status as registered in the State of New York. The Court will not find this issue located in Epstein's Complaint, nor in Edwards' Counterclaim for malicious prosecution, nor either party's affirmative defenses pled or proposed.

MEMORANDUM

Sections 90.202 and 90.203, Florida Statutes

Edwards claims that the New York State Sex Offender registration information is a matter that this Court may take judicial notice pursuant to the procedure set out in section 90.203, Florida Statutes. However, the substantive part of the Florida Evidence Code that provides this Court "may" take judicial notice does not include out-of-state sex offender registration information. Rather, items that are typical for judicial notice pertain to acts of Congress, constitutional or statutory law, the Federal Register, laws of foreign nations, official acts of one of the three branches of government, court records, rules of court, county charters, the Florida Administrative Code, ordinances, or facts not subject to dispute because generally known within the court's territorial jurisdiction, or official seals of governmental agencies or United States departments. There is no listing for out-of-state sex offender registration information.

Sections 90.401 and 90.403, Florida Statutes

Additionally, the New York State Sex Offender registration information is neither relevant nor probative to any issue raised by Epstein, nor any element of proof that must be met by Edwards in his malicious prosecution Counterclaim. Instead, this request is merely a transparent attempt to prejudice the jury before it has a legitimate opportunity to determine if Epstein had probable cause to file his action against Edwards. Whether or not Epstein is a registered sex offender has zero relation to any of the damages sought by Epstein against Defendant Rothstein. Likewise, and significant to Edwards' Counterclaim, whether Epstein is a registered sex offender does not prove any element of the malicious prosecution claim that Edwards has raised. *See, e.g., Alamo Rent-A-Car Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994).

Contrary to Edwards' recent characterizations of the lawsuit filed by Epstein against Edwards (on which the malicious prosecution claim is based), Epstein did not allege that Edwards brought false tort claims. Rather, in December 2009, Epstein alleged that Scott Rothstein's partner, Bradley J. Edwards, exploited the civil tort lawsuits against Epstein for the purposes of luring investors into the Ponzi scheme that was being carried out under the auspices of Rothstein Rosenfeldt and Adler by attempting to conduct unnecessary and irrelevant discovery, by filing duplicative actions, and by other similar actions outlined more fully in Epstein's Complaint against Edwards.

One clear example of Edwards' litigation tactics that led Epstein to perceive a connection between Edwards and Rothstein's Ponzi scheme was Edwards' motion alleging that Epstein was fraudulently transferring assets and seeking a Court order requiring Epstein to post a \$15 million bond to secure a potential future judgment on the tort claims. In the motion, Edwards extensively publicly pled facts pertaining to Epstein's wealth, claiming his "billionaire" status – which were

reasonably perceived by Epstein, once the truth finally came out about the Rothstein Ponzi scheme, to be designed to entice existing investors or lure more investors to Rothstein's Ponzi scheme by citing Epstein's wealth. The only "evidence" Edwards could supply the court, however, showed that Epstein merely transferred title to a few automobiles. There was nothing fraudulent in those transfers and the value of the automobiles was minor relative to Epstein's overall wealth. United States District Judge Kenneth A. Marra determined that Edwards' motion seeking the \$15 million bond was "entirely devoid of evidence of [Epstein's] alleged fraudulent transfers." (*See Order*, D.E. 400, Case No. 08-CIV-80119, **Exhibit A.**)

Furthermore, even if this Court considers that the evidence might be relevant in some remote way to the claims for trial, the registration information should still be excluded under section 90.403 which provides, "[r]elevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, misleading the jury, or needless presentation of cumulative evidence." Florida courts have excluded evidence of prior convictions in analogous situations, finding that any probative value is substantially outweighed by the danger of unfair prejudice. *Horton v. State*, 943 So. 2d 1016, 1017-18 (Fla. 2d DCA 2006). Likewise, here, any remotely *probative* value is far outweighed by the prejudicial nature of the evidence, as well as the likelihood that it would confuse the true issues in this lawsuit and mislead the jury as to the subject of the claims that are being tried.

Sections 90.404 and 90.405, Florida Statutes

Additionally, the registration information is inadmissible under sections 90.404 and 90.405, Florida Statutes, because its only purpose is to disparage Epstein's character. Florida law is clear that "[e]vidence of a person's character or a trait of character is inadmissible to prove action in conformity with it on a particular occasion" except under certain limited circumstances not

present here. § 90.404(1), Fla. Stat. (2017); *see also* § 90.405(2), Fla. Stat. (2017) ("When character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may be made of specific instances of that person's conduct.") (emphasis added).

Edwards' Request for Judicial Notice is nothing more than a backdoor attempt to inject irrelevant and prejudicial character evidence into the trial, contrary to well-settled Florida law. *See, e.g., Pandula v. Fonseca*, 199 So. 358, 360 (Fla. 1940) ("neither [a witness's] general character nor particular phases of character can be gone into").

Sections 90.609 and 90.610, Florida Statutes

Finally, the registration information is inadmissible under sections 90.609 and 90.610, Florida Statutes, because it is irrelevant to Epstein's truthfulness and goes far beyond the bare fact he entered a plea agreement. *See* § 90.609, Fla. Stat. (2017) (character evidence used to impeach a witness "may refer only to character relating to truthfulness").

While section 90.610 permits a party to impeach a witness by evidence if the witness was convicted of a felony or a crime involving dishonesty, Epstein's registration information falls outside this narrow category of impeachment evidence by addressing the nature of his crime (a sexual offense). Impeachment under section 90.610 is strictly limited to the fact the witness was convicted of a felony or crime involving dishonesty, and the number of convictions. Further details, including the nature of the crime, are off limits. *See Rogers v. State*, 964 So. 2d 221, 222–23 (Fla. 4th DCA 2007) ("[I]mpeachment by prior convictions is 'restricted to determining if the witness has previously been convicted of a crime, and if so, how many times.'"); *Botte v. Pomeroy*, 497 So. 2d 1275, 1280 (Fla. 4th DCA 1986) ("[Q]uestioning is limited to whether the witness has ever been convicted of a felony or a crime involving dishonesty. ... The witness may be required to give the number of convictions, but if he answers truthfully, no further questions may be asked.

In particular, the nature of the crimes may not be elicited.") (emphasis added); *Reeser v. Boats Unlimited, Inc.*, 432 So. 2d 1346, 1349 (Fla. 4th DCA 1983) ("Neither statute permits the elicitation of the nature of the crime, because any additional light on his credibility would not compensate for the possible prejudicial effect on the minds of the jurors.") (emphasis added).

CONCLUSION

As supported by the pleadings and record in this lawsuit, whether or not Epstein is a registered sex offender in the State of New York is not probative of any material issue for this trial. Rather, this consistent attempt by Edwards to re-litigate his closed civil tort actions and interject mini-trials in this matter must be rejected. The purpose is inconsistent with the Florida Evidence Code, specifically sections 90.401, 90.403, 90.404, 90.405, 90.609, and 90.610, Florida Statutes, by attempting to take advantage of the jury's negative reaction to such information.

WHEREFORE, Epstein respectfully requests that this Court deny Edwards' Request for Judicial Notice.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November 17, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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