

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  
RENEWED MOTION FOR LEAVE TO DISCLOSE EXPERT WITNESS**

Plaintiff/Counter-Defendant Jeffrey Epstein (“Epstein”), respectfully renews his request to be allowed to disclose an expert witness, and states:

**INTRODUCTION**

This case is currently not set for trial and, therefore, Counter-Plaintiff Bradley Edwards (“Edwards”) will not be prejudiced by Epstein’s renewed request to disclose his expert witness to opine on matters of legal ethics and responsibility, probable cause and Edwards’ professional reputation.

**BACKGROUND**

1. Pursuant to this Court’s July 20, 2017, Order Specially Setting Jury Trial (D.E. 938), the disclosure of experts retained to formulate an expert opinion was due 60 days prior to trial. At that time, trial was set on December 5, 2017, making the deadline October 6, 2017.

2. Epstein's current trial counsel were retained after this deadline and, on November 6, 2017, in light of the uncertainty of what issues would be tried and the numerous outstanding evidentiary issues, moved for a continuance of the trial and to extend the pre-trial deadlines, including an extension of expert disclosures. (D.E. 1035.)

3. On November 14, 2017, the Court granted the continuance request and continued the special set trial to March 13, 2018. The Court's Order, however, did not address Epstein's request for an extension of the pre-trial deadlines. (D.E. 1057.) If that request were granted, the new deadline for expert disclosures would have been January 12, 2018.

4. Counsel went before the Court on November 27, 2017, to clarify the Court's ruling. The Court granted the Motion made by Defendant/Counter-Defendant Bradley Edwards ("Edwards") to reconfirm the existing pre-trial deadlines because of his concern over additional discovery. The Court noted, however, that it would permit additional limited discovery upon further motion. (D.E. 1086.)

5. On November 29, December 5 and December 7, 2017, the parties participated in extensive special set hearings wherein the Court made rulings relating to the issues and evidence to be presented at trial. Although the Court did not reach all of the issues, in light of the rulings made during those hearings, Epstein believed he needed to retain an expert to testify about legal ethics and responsibility, probable cause and Mr. Edwards' professional reputation. Epstein retained C. Culver Smith, III for this purpose and disclosed him on December 15, 2017.

6. On December 15, 2017, Epstein also filed his initial Motion for Leave to Disclose Expert Witness. (D.E. 1119.) The Motion was heard on January 17, 2018, but denied because the Court found the request untimely, not because of any undue prejudice to Edwards.

7. On January 18, 2018, Epstein served his Updated Answers to Expert Interrogatories which expounded upon the opinions Mr. Smith would testify about.

8. The March 13, 2018, trial was postponed in light of the appellate proceedings. Pursuant to the stay order issued by the Fourth District Court of Appeal, an Order resetting the trial cannot be issued until after May 28, 2018. Even then, the trial cannot take place for at least 30 days.

### **ARGUMENT**

Edwards was not prejudiced by Epstein's initial request, and he again will not be prejudiced. At most, Edwards may desire to take Mr. Smith's deposition, as Epstein did of Edwards' expert witness in December 2017. Astutely, this Court recognized at the March 8, 2018, hearing, striking an expert witness is a drastic measure:

[A] request to strike a witness is a drastic and extreme measure reserved only in rare circumstances, especially where here we're dealing with an expert which is otherwise qualified to testify to what he's going to testify.

(3/8/18 Aft. Tr. 93:16-20.) Indeed, "[a]s indicated in *Binger v. King Pest Control*, 401 So. 2d 1310 (Fla. 1981), the exclusion of an unlisted witness' testimony is a drastic remedy which should pertain in only the most compelling circumstances. . . . *Binger* further indicates that when the opposing party is not prejudiced by the late disclosure, and compelling circumstances are not otherwise shown, the witness should generally be allowed to testify." *Walters v. Keebler Co.*, 652 So. 2d 976, 977 (Fla. 1st DCA 1995).

Here, there is no question that Mr. Smith is qualified to testify. Further, due to Edwards' bifurcation of his Counterclaim and ensuing appeal, there is sufficient time before Edwards' Counterclaim is reset for trial for Edwards to take the witness's deposition. Epstein will not object to opening discovery for that limited purpose. Significantly, Edwards can claim no

surprise because he has known since December 2017 the opinions of which Mr. Smith will testify.<sup>1</sup> Because there is no showing nor can there be any genuine assertion of prejudice or other compelling circumstances, excluding Mr. Smith would be a drastic measure, and this Court should allow him to testify. *See Walters*, 652 So. 2d at 977.

**CONCLUSION**

Accordingly, Epstein respectfully requests that the Court grant this renewed Motion and allow his disclosure of Mr. Smith as an expert witness.

**CERTIFICATE OF SERVICE**

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

LINK & ROCKENBACH, PA  
1555 Palm Beach Lakes Boulevard, Suite 301  
West Palm Beach, Florida 33401  
(561) 727-3600; (561) 727-3601 [fax]

By: /s/  
Scott J. Link (FBN [REDACTED])  
Kara Berard Rockenbach ([REDACTED])  
Rachel J. Glasser (FBN [REDACTED])  
Primary: [REDACTED]  
Primary: [REDACTED]  
Primary: [REDACTED]  
Secondary: [REDACTED]  
Secondary: [REDACTED]  
Secondary: [REDACTED]

*Trial Counsel for Plaintiff/Counter-Defendant  
Jeffrey Epstein*

---

<sup>1</sup>Edwards first disclosed his expert's name on October 6, 2017, but did not disclose the subject matter of his testimony until October 20, 2017, after the disclosure deadline. The Court, however, denied Epstein's request to strike Edwards' expert. Epstein disclosed his expert a mere two months after Edwards' expert's report was disclosed.

SERVICE LIST

<p>Jack Scarola Karen E. Terry David P. Vitale, Jr. Searcy, Denny, Scarola, Barnhart &amp; Shipley, █. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 █ █ █ █ █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Philip M. Burlington Nichole J. Segal Burlington &amp; Rockenbach, █. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 █ █ █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>
<p>Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Fort Lauderdale, FL 33301-3268 █ <i>Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards</i></p>	<p>Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 █ <i>Counsel for Defendant Scott Rothstein</i></p>
<p>Jack A. Goldberger Atterbury, Goldberger &amp; Weiss, █. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 █ █ <i>Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein</i></p>	<p>Paul Cassell 383 S. University Salt Lake City, UT 84112-0730 <a href="mailto:cassellp@law.utah.edu">cassellp@law.utah.edu</a> <i>Limited Intervenor Co-Counsel for █., E.W. and Jane Doe</i></p>
	<p>Jay Howell Jay Howell &amp; Associates 644 Cesery Blvd., Suite 250 Jacksonville, FL 32211 █ <i>Limited Intervenor Co-Counsel for █., E.W. and Jane Doe</i></p>