

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

MOTION FOR SANCTIONS FOR VIOLATION OF COURT ORDER

Bradley J Edwards (“Edwards”), by and through undersigned counsel, hereby files this Motion for Sanctions for Violation of Court Order, and as grounds therefor states as follows:

Summary

At the March 8, 2018 hearing, this Court entered a blanket confidentiality order prohibiting Epstein from using or referring to, in any way, the documents contained on the Fowler White CD:

As a general blanket order I would simply say that all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing **and of non-dissemination of any such information that is contemplated in any of the documents that are part of the umbrella order of Judge Ray.** And that would include all of the exhibits that we spoke about today and that have been filed as a matter of record.

3/8/18 Afternoon Session Tr. at 79:9-18 (emphasis added).¹ In so ruling, the Court made clear that

“when this Court makes a statement, it is abundantly clear that it will be enforced to the letter.”

See id. at 78:7-19.

¹ While the parties have submitted competing written orders to the Court, both proposed orders memorialize this ruling. See Epstein’s Proposed Order at paragraph 2 (“Epstein and his current attorneys shall be subject to an order of

As discussed below, Epstein has violated this Court's order no less than four (4) times by repeatedly referencing the documents at issue in his filings in both the appellate and trial court.² Edwards therefore files this motion to compel Epstein to respect this Court's order, to strike references to the Fowler White documents in trial court pleadings, and to award Edwards his reasonable attorneys' fees and costs incurred in bringing this motion to enforce the Court's Order.

Background

1. On March 5, 2018, Epstein disclosed 700+ new exhibits only days before the scheduled trial and in clear violation of this Court's Pre-Trial Order.

2. Included within that submission was extensive internal email correspondence from Edwards' time as an attorney at Rothstein, Rosenfeldt and Adler. These emails were admittedly obtained from a CD that Epstein's current counsel acquired from its predecessor counsel, Fowler White.

3. At least 49 of these emails are listed by corresponding bates numbers on Edwards' April 12, 2012 privilege log, which was *filed by Epstein* (the "Privilege Log"). Epstein filed the

confidentiality concerning any of the documents that are part of the umbrella order of Judge Ray that have not already been produced **and shall not, in any way, refer to or disseminate any information** that is contained in any of the documents at issue."); Edwards' Proposed Order at paragraph 3 ("Epstein and his attorneys shall be subject to an order of confidentiality concerning any of the documents that are part of the umbrella order of Judge Ray **and shall not, in any way, refer to or disseminate any information** that is contained in any of the documents at issue.").

² Edwards feels compelled to point out that, despite Epstein's repeated claims to the contrary, the contents of the emails have no relevance to this litigation whatsoever. Chief among the reasons for their inadmissibility is Epstein's own admission in his Updated Notice of Compliance with Court's Rulings, filed March 23, 2018, that he never received the Fowler White CD at issue and only first learned of the emails in 2018, nearly six (6) years after he abandoned his meritless claims against Edwards. See Updated Notice at p. 2. The documents are therefore irrelevant to the issue of probable cause, both as to the initiation *and continuance* of Epstein's claims. The emails also, frankly, do not support any of the conclusions Epstein suggests and are barred not only because they are obviously privileged but also under the most basic 401 and 403 analyses. Those issues, however, can be addressed at a subsequent hearing, if required by the Court (although the Federal Bankruptcy Court's jurisdiction over the documents at issue likely precludes any such review).

Privilege Log in this state court proceeding after the same privilege log had been filed by Edwards in the bankruptcy proceeding before Judge Ray in 2011. Epstein subsequently voluntarily dismissed his claim against Edwards on August 16, 2012 without ever successfully challenging the asserted privileges, and therefore Edwards' Privilege Log remained in full force and effect. Thus, Edwards' privilege assertions were more than seven (7) years old at the time Epstein filed his late-disclosed exhibits and injected these privileged materials into the public domain, still without ever seeking review of the privileges claimed by Edwards.

4. Despite having been the party to file the Privilege Log, Epstein ignored Edwards' privilege assertions and ignored the obvious fact that the 49 documents in question are clearly on their face subject to either the attorney-client or work-product privileges (or both). Moreover, it later became apparent that Epstein was unable to separate the source of the Fowler White CD from the retention expressly prohibited by Judge Ray and was further unable to explain why, despite having been in Epstein's hands for over seven (7) years, its existence had never been disclosed to either Edwards or the Court.

5. On March 5, 2018, Edwards filed his Motion to Strike Epstein's Untimely Supplemental Exhibits Containing Privileged Materials Listed on Edwards' Privilege Log ("Motion to Strike"), which asked the Court to strike all late-disclosed exhibits and to prevent Epstein from further using or referencing Edwards' privileged materials.

6. On March 7, 2018, Edwards filed his Supplement to the Motion to Strike, which identified a Federal Court Order issued on November 30, 2010 by the Honorable Raymond B. Ray of the United States Bankruptcy Court for the Southern District of Florida, prohibiting Epstein's prior counsel, Fowler White, from creating or retaining the CD in question, and reserving

jurisdiction to sanction Epstein and his counsel for any violation of that order. Judge Ray's order reads in pertinent part as follows:

[T]he law firm of Fowler White Burnett, [REDACTED], will print a hard copy of all of the documents contained on the discs with Bates numbers added, and will provide a set of copied, stamped documents to the Special Master and an identical set to Farmer, who will use same to create its privilege log . . . Fowler White will not retain any copies of the documents contained on the discs provided to it, nor shall any images or copies of said documents be retained in the memory of Fowler White's copiers. Should it be determined that Fowler White or Epstein retained images or copies of the subject documents on its computer or otherwise, the Court retains jurisdiction to award sanctions in favor of Farmer, Brad Edwards or his client.

The Court's Blanket Confidentiality Order Prohibiting Epstein from Referring to the Privileged Documents

7. On March 8, 2018, the Court held a hearing on Edwards' Motion to Strike, at which time the Court granted the motion and ordered all pleadings referencing the e-mails at issue to be sealed.

8. In apparent recognition that the only credible explanation for Epstein's unexplained possession of Edwards' privileged materials was that Judge Ray's order had been violated³, the Court also entered the following blanket confidentiality order prohibiting any reference to, use, or dissemination by Epstein of any of the documents contained on the Fowler White CD:

[W]hat the attorneys here recognize – and Mr. Epstein is also under this order – is that no further dissemination is going to be made. I think that goes without saying as far as the attorneys are concerned . . . **I think they recognize that when this Court makes a statement, it is abundantly clear that it will be enforced to the letter.** I have no doubt in my mind that they will all be respectful of the court order of non-dissemination of any of those documents hence forth.

³ Epstein and Fowler White's possession and retention of the CD at issue is currently the subject of a Motion for Issuance of an Order to Show Cause that was filed in the Bankruptcy Court on March 19, 2018. The Bankruptcy Court has scheduled a hearing on that motion for April 13, 2018.

3/8/18 Afternoon Session Tr. at 78:7-19 (emphasis added).

...

As a general blanket order I would simply say that all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing **and of non-dissemination of any such information that is contemplated in any of the documents that are part of the umbrella order of Judge Ray.** And that would include all of the exhibits that we spoke about today and that have been filed as a matter of record.

3/8/18 Afternoon Session Tr. at 79:9-18 (emphasis added).

9. As previously stated, each party included explicit language memorializing this broad ruling in their competing proposed orders on Edwards' Motion to Strike Untimely Exhibits, et al, which were submitted to the Court late last week for consideration.

Epstein's Repeated Violation of the Court's Blanket Confidentiality Order

10. Despite this Court's crystal-clear order that Epstein is prohibited from referencing any of the information contained in the documents at issue, Epstein has nonetheless repeatedly characterized the contents of these documents in his filings in both the trial court and appellate proceedings. Epstein's purpose in disregarding this Court's order appears to be to "poison the well" by mischaracterizing the relevance, significance, and content of the emails.

A. Violations in the Appellate Proceedings.

11. In the appellate proceedings, Epstein has violated this Court's order no less than three times by referring to the documents at issue.

12. First, in his Response in Opposition to Edwards' Motion for Partial Relief from Stay filed on March 14, 2018, Epstein not only gratuitously referenced the documents, but also

mischaracterizes their contents in an improper attempt to influence the Fourth District Court of Appeal. Specifically, Epstein states as follows:

Second, the alleged eight-year-old “confidential” information to which Edwards refers is 47 exhibits comprised of a series of communications between Edwards and other attorneys, including Scott Rothstein, **that eviscerate Edwards’ case against Epstein in its entirety** . . . Moreover, on their face, all of these eight-year-old communications clearly show that Edwards’ claims of work product simply do not apply. **These inculpatory communications cannot constitute work-product.** They directly relate to issues that Edwards himself has made central to this case and their content provides independent grounds to reject work product protection, including both the **crime fraud exception and potential unprofessional conduct** . . . **the trial court refused to evaluate these issues, choosing instead to exclude the communications on the basis of what the Court believed was Epstein’s untimely request to identify them on his Exhibit List.**

Epstein’s Response in Opposition at p. 3-4 (emphasis added).

13. Over Epstein’s objection, the Fourth DCA nonetheless granted in part Edwards’ Motion for Partial Relief from Stay on March 20, 2018.

14. Immediately thereafter, and only three days after the Motion for Issuance of an Order to Show Cause was filed against Epstein in the bankruptcy proceedings, Epstein filed his own Motion for Order to Show Cause Why Edwards is Not in Violation of This Court’s Order Dated March 20, 2018, Granting “In Part” Edwards’ Motion for Partial Relief from Stay.⁴ In that motion, Epstein once again demonstrated his disregard for this Court by referencing the Fowler White documents at issue:

Included among those issues to be perfected at the trial court is Edwards’ errant claim of “privilege” which remains a cloud below preventing the **admission of crucial evidence that Epstein maintains is dispositive of this case. That evidence must be reviewed *in camera* by the trial court while the appellate issues are under review.** Consistent with this Court’s interest in “fairness” and “efficient use of the **trial court’s time and resources,**” Epstein will be narrowing

⁴ The Fourth DCA denied Epstein’s Motion for Order to Show Cause on March 29, 2018.

his request for *in camera* review down from 27,000 pages to a readily manageable fraction, 47 exhibits numbering approximately 100 pages.

Epstein's Motion for Order to Show Cause at p. 8 (emphasis added).

15. Epstein further disregarded this Court's blanket confidentiality order on March 26, 2018, when he again referenced the Fowler White documents in his Reply to Edwards' Response to the Petition for Writ of Certiorari, as follows:

In fact, Edwards' counterclaim is thoroughly disproved by direct documentary evidence of Edwards' own misconduct and credibility that **Epstein is currently asking the trial court to review for presentation to the jury when this case is tried.**

Epstein's Reply to Response to Petition for Writ of Certiorari at p. 1 (emphasis added). As the Court is aware, no such request for in-camera inspection has been made, and therefore this representation to the Appellate Court was improper.

B. Violations in the Trial Court Proceedings.

16. On March 29, 2018, faced with the pending Motion for Issuance of Order to Show Cause in the bankruptcy proceeding regarding the clear violation of Judge Ray's order, and having had his own Motion for Show Cause Order denied by the Appellate Court, Epstein filed a Motion to Address Scheduling and Professionalism, directed to undersigned counsel. The frivolousness of that motion, which appears to be nothing more than another attempt to "poison the well," is evident on its face.

17. Continuing with what can only be described as a lack of respect for this Court, however, Epstein *again* referenced the e-mails contained on the Fowler White CD that are the subject of this Court's blanket confidentiality and non-dissemination Order. Specifically, Epstein states as follows:

Recent events (appeal and stay) **and the discovery of e-mails that total [sic] eviscerate Counter-Plaintiff Bradley J. Edwards' ("Edwards") claims and shines a light on his true motivation** have prompted unprofessional behavior from Edwards and his counsel evidenced by the unilateral setting of hearings, certificates of conferring that never happened and intentional *ex parte* attendance at a hearing despite knowing of Epstein's counsel's unavailability.

Epstein's Motion to Address Scheduling at p. 1 (emphasis added).

18. Simply put, Epstein's repeated violations of this Court's order must end.

Conclusion

Undersigned counsel wholeheartedly agrees with this Court's pronouncement that "when this Court makes a statement, it is abundantly clear that it will be enforced to the letter." The statement made by this Court at the March 8, 2018 hearing, and memorialized in each parties' competing proposed orders, was clear: "all attorneys who have or are representing Mr. Epstein shall be subject to this order of confidentiality, of sealing **and of non-dissemination of any such information** that is contemplated in any of the documents that are part of the umbrella order of Judge Ray." Epstein's decision to disregard that Order and to instead repeatedly refer to and argumentatively mischaracterize the Fowler White documents is unacceptable and should not be tolerated. This Court has the power to enforce its orders, and Edwards respectfully requests that it exercise that clear authority.

Epstein's decision to violate Judge Ray's Order concerning the retention and possession of the documents at issue is currently pending before the United States Bankruptcy Court, and Epstein will be required to answer for his disregard of that court's order. He must be compelled to answer for his disregard of this Court's order as well.

WHEREFORE, Edwards respectfully requests that the Court enter an Order granting this Motion for Sanctions Regarding Epstein's Violations of Court Order, striking all references to the documents contained in the Fowler White CD in Epstein's trial court pleadings, and awarding Edwards his attorneys' fees and costs incurred in connection with the enforcement of this Court's order.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 3rd day of April, 2018.



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