

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502009CA040800XXXXMBAG



ORIGINAL

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

-vs-

SCOTT ROTHSTEIN, INDIVIDUALLY,
BRADLEY J. EDWARDS, INDIVIDUALLY,

Defendants/Counter-Plaintiffs.

TRANSCRIPT OF HEARING PROCEEDINGS
VOLUME 1 (Pages 1 - 25)

DATE TAKEN: Wednesday, May 20, 2015
TIME: 8:51 a.m.
PLACE: Palm Beach County Courthouse
205 N. Dixie Highway
Courtroom 9C
West Palm Beach, FL 33401
BEFORE: Donald W. Hafele, Circuit Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings were
stenographically reported by:

Nancy Cannizzaro, RPR

1 APPEARANCES:

2

3 On behalf of the Plaintiff/Counter-Defendant:
4 LAW OFFICE OF WILLIAM CHESTER BREWER, JR.
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7 West Palm Beach, Florida 33401
8 [REDACTED]

9 BY: WILLIAM CHESTER BREWER, JR., ESQUIRE
10 [REDACTED]

11

12 TONJA HADDAD, P.A.
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17 BY: TONJA HADDAD COLEMAN, ESQUIRE
18 [REDACTED]

19

20 On behalf of the Defendant/Counter-Plaintiff Bradley J.
21 Edwards:

22 SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY, P.A.
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24 West Palm Beach, Florida 33409
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BY: JACK SCAROLA, ESQUIRE
[REDACTED]

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1 Thereupon,
2 the following proceedings began at 8:51 a.m.:

3 THE COURT: Epstein and Rothstein. How are
4 you doing, gentlemen?

5 MR. SCAROLA: Good morning, Your Honor.

6 MR. BREWER: Well. Thank you.

7 Good morning, Your Honor.

8 THE COURT: Okay. I looked at this. I'm
9 not necessarily sure where the conflicts lie, so
10 let me know where we are, please.

11 MR. SCAROLA: Your Honor, let me call the
12 Court's attention to paragraph 1 of the joint
13 discovery schedule. And if Your Honor takes a
14 look at that paragraph, the scope of the
15 disclosure to be made by the defendant is the
16 issue that Your Honor needs to resolve.

17 THE COURT: You're speaking about an order
18 to try to prove up the time spent by Epstein's
19 attorney if they want to see the records of time
20 spent by Mr. Edwards' attorney?

21 MR. SCAROLA: No, sir. That is -- that is
22 a usual issue being presented to the Court, but
23 that's not the issue here.

24 THE COURT: Okay.

25 MR. SCAROLA: These fees are being sought

1 pursuant to a proposal for settlement.

2 THE COURT: Right. I understand.

3 MR. SCAROLA: And obviously, that proposal
4 for settlement triggers the entitlement to fee
5 recovery. That is the date of the filing. It is
6 the defendant's position that they should only be
7 obliged to disclose records that relate to time
8 expended subsequent to that date.

9 THE COURT: Now, you're saying the
10 defendant's position. Are you talking about
11 Epstein or are you talking about --

12 MR. BREWER: The counter-defendant.

13 MR. SCAROLA: I'm talking about Jeffrey
14 Epstein, Your Honor, yes.

15 THE COURT: Okay. Epstein was the
16 counter-defendant.

17 MR. SCAROLA: That is correct.

18 THE COURT: Okay.

19 MR. SCAROLA: And the counter-defendant's
20 position is they should only have to disclose time
21 records from the date of the filing of the
22 proposal for settlement.

23 Our position is that we are entitled to see
24 earlier time records in order to make the
25 determination as to whether services rendered

1 subsequent to the filing of the proposal were
2 duplicative of services that were filed before the
3 proposal for settlement.

4 Your Honor may recall that there have been
5 a large number of lawyers involved in representing
6 Mr. Epstein in this proceeding. If services were
7 in fact rendered prior to the proposal for
8 settlement, they ought not to be entitled to
9 recover for duplicate of services rendered after
10 the filing of the proposal. The only way I know
11 that is by getting to look at those time records.

12 THE COURT: Thank you. I understand the
13 issues.

14 Mr. Brewer.

15 MR. BREWER: Thank you, Your Honor.

16 Chester Brewer on behalf of Jeffrey Epstein.

17 Mr. Scarola is correct, there have been a
18 number of different law firms involved. Our
19 position is that we are only entitled to claim
20 time from the effective date of the proposal of
21 settlement until Your Honor entered an order on
22 entitlement. In other words, once entitlement has
23 been determined, you're no longer allowed to claim
24 fees or hours. We have got that -- before the
25 proposal for settlement was filed, there was one

1 law firm involved, Bob Critton's firm.

2 THE COURT: Okay.

3 MR. BREWER: This is a 2009 case. They
4 were involved for roughly two years. They
5 withdrew. They withdrew over a year before the
6 proposal for settlement was made.

7 THE COURT: Okay.

8 MR. BREWER: Then comes -- then Fowler
9 White comes in, primarily Mr. Ackerman, and they
10 are on the case for 16 months before the proposal
11 for settlement was made. The way this is worded,
12 by the way, this is all records. And if you say
13 "all records," you're talking about those law
14 firms -- well, certainly Mr. Critton's law firm,
15 but you're also talking about -- for services
16 rendered, we're talking about -- we've got an
17 active appeal going on and there are time records
18 related to that appeal which we don't think we
19 should be forced to reveal at this point.

20 They're asking for records for which we are
21 not claiming time. This is -- it's really almost
22 in the form of a request for production. If --

23 THE COURT: The only issue that I'm not
24 understanding, that is pending right now on this
25 particular matter, is the issue concerning time

1 records prior to the offer of -- proposal for
2 settlement, right?

3 MR. BREWER: Yes, sir.

4 MR. SCAROLA: We are not seeking
5 post-entitlement time records, Your Honor. That's
6 not the issue.

7 THE COURT: That's what I was trying to
8 narrow.

9 MR. BREWER: Okay.

10 THE COURT: All right.

11 MR. BREWER: So let me continue on then,
12 Your Honor.

13 THE COURT: Briefly.

14 MR. BREWER: Briefly. They are requesting
15 records for time that we are not claiming.
16 Ordinarily, attorney's fee records are to be
17 protected. They can be obtained upon a showing
18 of -- what is the word? I've forgotten for a
19 second -- compelling need and no ability to obtain
20 the equivalent through less invasive or involved
21 methods.

22 THE COURT: Mr. Ackerman was the one who
23 filed the proposal, correct?

24 MR. BREWER: That is correct.

25 THE COURT: All right.

1 MR. BREWER: So they can ask -- he's going
2 to take -- I'm sure he's going to take Joe
3 Ackerman's deposition. He's going to take
4 everybody's deposition.

5 He can ask Joe Ackerman: "Did you
6 duplicate any time that was prior to the proposal
7 for settlement?" Joe Ackerman is not going to be
8 dishonest from the standpoint of one or two or
9 three or four or five hours of potentially
10 duplicative time. Certainly, Critton is out of
11 the picture for over a year before the proposal
12 for settlement is made.

13 And our position is we should be -- and we
14 voluntarily agreed to do this. We're going to
15 provide all the time records in the operative
16 period from the effective date of the proposal to
17 the entitlement order.

18 THE COURT: Okay. Let me last hear from
19 Mr. Scarola on the issue.

20 MR. SCAROLA: Yes. Thank you very much,
21 Your Honor.

22 Your Honor, lawyers who were no longer
23 involved in the case subsequent to the filing of
24 the proposal for settlement are not in a position
25 to be able to say whether their successors

1 duplicated efforts in which they were involved.

2 Even if they were in a position to say
3 that -- and obviously they can't; they don't know
4 what was done after they got out of the case.
5 Even if they were in a position to address that by
6 way of testimony, I'm not limited to what their
7 recollection is or what their opinion is. I'm
8 entitled to see the records of the services that
9 were rendered in order to make that determination.

10 THE COURT: Do you have any cases or case
11 law that would support your position in this
12 regard? Because there is a certain degree of
13 privacy associated with bills that are forwarded
14 to an attorney -- forwarded by an attorney to his
15 or her client. And in a sensitive matter such as
16 this, I would think that that privacy issue may be
17 heightened in light of what may be on the bill and
18 what the reasons for the billing may be.

19 I recognize the concerns over duplication.
20 The Court has to make a determination of
21 reasonableness of attorneys' fees, which I believe
22 legitimately can be called into question if there
23 are duplications involved. So we do have that
24 tension between privacy and a disclosure issue and
25 the need to determine what is reasonable, and as

1 part of that analysis would include whether or not
2 there are duplicates of entries.

3 MR. SCAROLA: May I address that concern,
4 Your Honor?

5 THE COURT: I would like you to address not
6 so much your argument, because while I appreciate
7 both side's positions, they have equal merit, I
8 would like to see a case that goes either way as
9 it relates to attorneys' fees, billing, prior to
10 the offer or proposal for settlement.

11 I see a lot of attorneys' fees cases, as
12 you can imagine, and I haven't seen this issue
13 come up, to my recollection.

14 MR. SCAROLA: Nor have I, sir. And quite
15 frankly, I think it's unlikely that we are going
16 to find an analogous situation described in
17 reported cases.

18 But the concerns that Your Honor is
19 expressing are concerns that are not addressed by
20 way of a blanket prohibition of the discovery.
21 Those concerns are addressed by providing redacted
22 records if in fact there is a matter of concern
23 that relates to the kinds of privacy issues that
24 Your Honor has recognized potentially could exist.

25 So you redact those out, you provide us

1 with a privilege log, and we have an opportunity
2 to challenge the redaction, if in fact the
3 redaction is appropriate. But the privacy
4 concerns are largely waived by virtue of the
5 application that is being made.

6 So once they come into court and they say
7 "we want to be reimbursed" for what I anticipate
8 are going to be probably hundreds of thousands of
9 dollars in fees, given the size of Mr. Epstein's
10 legal team, we're entitled to defend against that.

11 So, respectfully, I suggest to Your Honor
12 that while I'm more than happy to undertake an
13 effort to try to find case law, I don't think
14 we're going to find it. But the way to address
15 the Court's concerns is produce the records,
16 produce them in redacted form, if necessary,
17 provide a privilege log.

18 THE COURT: Mr. Brewer.

19 MR. BREWER: Yes, sir.

20 I also searched for a case that would be to
21 this specific issue and could not find one.
22 Doesn't mean it's out there, but I couldn't find
23 one.

24 There is, however, a case that Mr. Scarola
25 pointed out to me when I was asking for his time

1 records. It's a Fourth District Court of Appeals
2 case. I don't remember the name of it. But the
3 Fourth District sort of overturned what we had all
4 thought to be the case, which was if you object --
5 if the non-moving party objects, then you can
6 force them to turn over their time records so you
7 can compare the two from the standpoint of what's
8 reasonable or not.

9 The Fourth District Court of Appeals found,
10 no, you've got to show a compelling need and an
11 inability to obtain that in another fashion, and
12 turned over the lower court's ruling that said
13 that the, in this case, non-moving party had to
14 turn over their records.

15 I think we're in somewhat of an analogous
16 situation because we're not claiming the time
17 prior to the time that we filed the proposal.

18 THE COURT: Well, many times, those
19 decisions are based upon the skills of appellate
20 counsel and trial counsel, and the skills and
21 knowledge associated with them, as well as the
22 panel of district court of appeal judges who are
23 making the ultimate decision.

24 I'm going to make the following ruling:
25 And that is, I'm going to order that the records

1 of Mr. Ackerman and his firm be turned over for a
2 period of 90 days prior to the date that the offer
3 of judgment -- offer to settle -- proposal for
4 settlement, whatever the current terminology is,
5 was filed.

6 I think that provides a sufficient time
7 frame prior to the proposal being filed to
8 investigate what would be, in my view, material
9 duplication and relevant and timely potential
10 duplication; meaning something that may have
11 happened a year prior, such as a conference with a
12 client, things of that nature, wouldn't be within
13 the Court's scope of analysis anyway, in all
14 likelihood.

15 So in balancing the issue of privilege --
16 and it goes beyond just the mere entries. It goes
17 to the amounts of moneys spent, things of that
18 nature, by a given individual. And those things
19 should remain something -- somewhat in confidence
20 between lawyer and client. If there are any
21 matters deemed to be privileged, as far as the
22 entries are concerned, I'll require a privilege
23 log to be filed.

24 Let's look at timing. How much time do you
25 believe would be necessary for counsel to be able

1 to retrieve those records?

2 MR. BREWER: Well, Your Honor, if I might.
3 We have the actual time periods during that 90-day
4 period only. I have gone through them. Rather
5 than a "privilege log," can we redact those actual
6 records and provide them to Mr. Scarola?

7 THE COURT: Well --

8 MR. BREWER: It will say -- what it will
9 say is things like: "Conversations with Epstein
10 re." And then after the "re," we'll redact.

11 THE COURT: That's important, though, to
12 know. And the Court would either have to --
13 depending upon the extent of the documents, either
14 a special master or myself would have to look at
15 those documents to make a determination, first, as
16 far as privilege, second, whether or not there is
17 duplication ultimately. So there's no way for
18 Mr. Scarola to know the subject matter without the
19 Court's intervention to some degree.

20 Your position as far as the procedure
21 involved?

22 MR. SCAROLA: Your Honor, I understand what
23 the Court is suggesting with regard to the 90-day
24 period of time.

25 THE COURT: And I've already ruled on that,

1 so we're not going to tread on that ground again.
2 Thank you. I'm asking only about the procedure.

3 MR. SCAROLA: In terms of having a special
4 master look at these issues?

5 THE COURT: The logistics issue and the
6 manner in which Mr. Brewer has suggested the
7 disclosure.

8 MR. SCAROLA: Well, I have agreed that they
9 can redact what they consider to be privileged, so
10 I don't have a problem with that.

11 THE COURT: All right.

12 MR. SCAROLA: And if what they're
13 suggesting is they want the Court to review that
14 to determine whether in fact it's privileged, I
15 have no problem with that either.

16 THE COURT: Okay. Very well.

17 MR. BREWER: Just so I'm clear, we'll give
18 them the actual time records with --

19 THE COURT: Only those issues that are
20 deemed to be privileged, i.e., a matter of
21 privacy, a matter of what would be considered
22 attorney-client-privileged information within
23 those bills.

24 MR. SCAROLA: Your Honor, I haven't asked
25 for financial information. I don't care how much

1 they were charged before.

2 THE COURT: I agree. But I'm talking about
3 the "re" aspect. Meaning, what is being discussed
4 may have a certain privacy component, a certain
5 attorney-client-privileged component that only the
6 client and the attorney know about.

7 Now, how much an attorney will put in
8 there, if it had such information, I'll leave to
9 the discretion of counsel. But I don't know what
10 the answer is right now.

11 MR. BREWER: Just so you'll know, Your
12 Honor, there are also work-product privileges that
13 will be claimed.

14 THE COURT: Okay.

15 MR. BREWER: I don't know about that 90-day
16 period.

17 THE COURT: Again, I don't know what the
18 nature of that type of a privilege would be, how
19 an attorney's fee bill could be claimed as being
20 prepared in anticipation of litigation. Is that
21 what you're suggesting to me?

22 MR. BREWER: No. As an example, there were
23 issues that I know that Mr. Ackerman was looking
24 at with regard to -- let's see. What would be an
25 example.

1 THE COURT: I don't need examples now.

2 MR. BREWER: A particular issue is
3 discussed in there.

4 THE COURT: If that's the case, it's the
5 case. We'll deal with that when the time comes.

6 MR. SCAROLA: Your Honor, there's a second
7 issue that needs to be addressed.

8 THE COURT: Certainly.

9 MR. SCAROLA: And that is with regard to
10 paragraph 5 of this order, and that raises timing
11 issues as well. The Court has asked us to address
12 in this order the issue of mediation.

13 THE COURT: Well, I've ordered mediation,
14 Mr. Scarola, to be more precise.

15 MR. SCAROLA: Yes, sir, you did order
16 mediation. And both parties are in agreement that
17 mediation before a resolution of the pending
18 appeal is an absolute and total waste of time.

19 THE COURT: Well, let me say this: What
20 won't be a waste of time, however, is to narrow
21 the issues as to what is being challenged in terms
22 of hourly rate, what won't be challenged as far as
23 the number of hours, what won't be challenged as
24 far as the individual entries relative to same,
25 which all go hand-in-hand, as far as the Court is

1 concerned.

2 So, if mediation does nothing else other
3 than to assist the parties in narrowing those
4 issues for the Court, so that I'm not forced to go
5 through every 0.2 and 0.1 that may be sitting
6 there on a timesheet -- because you yourself have
7 indicated that we're looking at multiple hundreds
8 of thousands of dollars potentially --

9 MR. SCAROLA: That's a guess.

10 THE COURT: Probably an educated guess, I
11 would assume.

12 MR. BREWER: A very educated guess.

13 THE COURT: So, in that regard, I have more
14 of a concern based upon the time that I have spent
15 in this chair regarding these 0.2 and 0.4 entries
16 than I do in terms of a global settlement.

17 Mediation doesn't necessarily have to mean
18 that you are going to resolve the case in its
19 entirety. Mediators work toward resolving issues
20 and narrowing same for the Court's convenience and
21 for the Court's assistance. So that's the reason,
22 in part, that I ordered mediation.

23 I had all of that in mind prior to making
24 that part of the order. One, that the likelihood
25 of a global settlement was slim. Two, that there

1 is an appeal of my order on summary judgment, and
2 I recognize that. But three, also that I believe
3 the weight of the case law, at least from my
4 perspective, mandated that I proceed with this
5 process. So mediation was considered by the Court
6 with all of those factors in mind.

7 MR. SCAROLA: May I respond?

8 THE COURT: And I believe, from my
9 perspective, it would have been better practice to
10 have moved the Court to either cancel mediation or
11 to request some kind of relief from same as
12 opposed to presumptively adding it into a
13 stipulation.

14 MR. SCAROLA: Your Honor, we haven't added
15 it into a stipulation.

16 THE COURT: I see it here as a proposed
17 part of the stipulation.

18 MR. SCAROLA: Yes, sir. And that -- this
19 was our opportunity to present these matters to
20 the Court. I'm sorry if Your Honor thinks that we
21 haven't done it in a procedurally proper manner.

22 THE COURT: Not only do I think it, I know
23 it.

24 MR. SCAROLA: Yes, sir. If I may.

25 THE COURT: Yes, sir.

1 MR. SCAROLA: What Your Honor may not know
2 is that a companion case addressing the viability
3 of the Wolf decision was argued before a panel of
4 the Fourth District Court of Appeal about a month
5 or so ago.

6 THE COURT: Okay.

7 MR. SCAROLA: Both Mr. Brewer and I were in
8 attendance at that oral argument. And the oral
9 argument began with an acknowledgement from the
10 panel that they believed Wolf to be an improper
11 statement of the law, that it was overly broad,
12 and there is very likely going to be an opinion
13 from the Fourth District Court of Appeal that will
14 have a significant impact on the applicability of
15 Wolf to this case.

16 This case has been fully briefed and is
17 also going to be presented before the Fourth
18 District Court of Appeal in oral argument, which
19 has already been scheduled, correct?

20 MR. BREWER: I don't think it's been, no.

21 MR. SCAROLA: Okay. It hasn't been fully
22 briefed. We are awaiting oral argument on this
23 case. But we are likely to get guidance from the
24 Fourth DCA that will assist this Court in making a
25 determination as to whether the expenditure of

1 resources that is going to be involved in
2 following the procedures that have been set out
3 and that will be necessary to, in effect, try a
4 very substantial, contested legal proceeding makes
5 any sense.

6 So what I am suggesting to Your Honor,
7 although it is not yet raised, because I believe
8 it to be premature to raise it right now, there is
9 a serious concern about whether we should be going
10 forward with these procedures at this time in
11 light of the appellate posture of the Wolf
12 decision in the Fourth DCA.

13 THE COURT: All right. Well, again, I
14 can't presume everything that's going on here. I
15 appreciate that. But simply making a statement
16 during oral argument by a Fourth District Court of
17 Appeal judge is not going to be persuasive, in my
18 view.

19 MR. BREWER: I was just going to say, Your
20 Honor, that that was a side comment that was made
21 by Judge Gross, and to say that it was espoused by
22 the panel, I think, is totally incorrect. And we
23 do disagree as well with whether the Wolf decision
24 was correct and whether the Fourth District Court
25 of Appeal is going to come out and go right into

1 the face of Wolf.

2 There were four or five other issues, and
3 they spent all their time on the other issues, not
4 the --

5 THE COURT: Again, like I said before, that
6 doesn't change the fact that when a court orders
7 mediation, I do think it presumptuous to state in
8 a proposed stipulation that you're not going to
9 mediate without relief from the Court.

10 MR. BREWER: Excuse me, Your Honor. That's
11 not what it says.

12 THE COURT: "The parties are in agreement
13 that there is absolutely no chance for a
14 successful mediation prior to resolution of
15 pending appellate issues." That's what it says.

16 MR. SCAROLA: Yes, sir.

17 THE COURT: What does that mean?

18 MR. SCAROLA: That means we fully intend to
19 follow the Court's order, unless Your Honor
20 decides that you don't want us to engage in what
21 both sides consider to be a useless process.

22 THE COURT: Well, I don't see a portion of
23 this proposed stipulation, Mr. Scarola, that
24 provides for a court order or the Court's --

25 MR. SCAROLA: Your Honor has already

1 ordered us to mediation.

2 THE COURT: I understand that. But in
3 other words, for you to change -- you,
4 collectively, to change the Court's order with
5 this joint discovery schedule and ask for the
6 Court's imprimatur on same, without anything
7 attached that would allow the Court to make such a
8 ruling, meaning to sign and sign off on this,
9 still remains, in my view, presumptuous.

10 MR. BREWER: If I might, Your Honor. The
11 stipulation that you see there is not agreed to.
12 And I will show you the draft that we made, if I
13 might approach, and you'll see what the last
14 paragraph says.

15 THE COURT: Well, I appreciate that.

16 Okay. In any event --

17 MR. BREWER: If I might have that back.

18 THE COURT: -- as I said before, I want to
19 make sure that we recognize protocol still has to
20 be respected and followed. That's all I'm asking.

21 And that for the reasons stated, I continue
22 to order mediation to go forward. At this point,
23 if the Fourth District Court of Appeal takes issue
24 with Wolf and finds conflict, then I have a
25 different matter to consider. But at this point,

1 as far as the Court is concerned, I've seen
2 nothing to indicate that Wolf is not good law
3 here, in the Fourth District, as well as
4 elsewhere, and I was not convinced otherwise that
5 it does not stand as good law in the most recent
6 pronouncement on the issue of malicious
7 prosecution and abuse of process, for that matter,
8 as well.

9 Anyway, have a good day.

10 MR. SCAROLA: Thank you, sir.

11 MR. BREWER: Thank you.

12 THE COURT: I want you to go ahead and fill
13 out that order, please, indicating as well that
14 the Court continues to order mediation to proceed
15 until further order of the Court.

16 (Thereupon, the proceedings were concluded
17 at 9:19 a.m.)

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COURT CERTIFICATE

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STATE OF FLORIDA)
COUNTY OF PALM BEACH)

I, Nancy Cannizzaro, Registered
Professional Court Reporter, State of Florida at Large,
certify that I was authorized to and did stenographically
report the foregoing proceedings and that the transcript
is a true and complete record of my stenographic notes.

Dated this 28th day of May, 2015.

Nancy Cannizzaro
Nancy Cannizzaro, RPR

