

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION AG
CASE NO. 502009CA040800XXXXMB
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.

**PLAINTIFF JEFFREY EPSTEIN'S MOTION TO COMPEL
AND AMEND PROTECTIVE ORDER**

Plaintiff, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, moves this Court to compel the production of documents from Defendant, BRADLEY J. EDWARDS ("Edwards") and to amend and lift a protective order relating to a subpoena to the Bankruptcy Trustee. The grounds for this Motion are as follows:

1. On April 12, 2010, Epstein sent a Request to Produce to Edwards requesting the following documents:

3. All emails, data, correspondence, memos, or similar documents between Bradley J. Edwards, Scott W. Rothstein, William Berger, and Russell Adler and/or any attorney or representative of RRA and any investor or third party (person or entity) regarding Jeffrey Epstein or which mentions Jeffrey Epstein (including Mike Fisten, Kenneth Jenne, Patrick Roberts or Rick (Rich) Fandrey).

2. On May 11, 2010, Edwards served his response to this request by stating:

3. Objection as to communications to or from investigators as that is protected by the work-product and/or attorney-client privilege.

3. Although Edwards did not object to producing all documents requested, he did not produce *any* documents responsive to this request. Nor did Edwards, who asserted privilege, prepare a privilege log related to this request. It is important to note that this request went to documents *within Edwards' possession and control* as opposed to documents that were produced from the Bankruptcy Trustee.

4. The documents requested in #3 were also requested by means of a subpoena to the Bankruptcy Trustee dated April 17, 2010. After several motions and orders to compel, Edwards finally prepared a privilege log relating to communications to and from the investigators among others. However, Edwards did not produce any e-mails or documents between the lawyers at RRA and (a) the U.S. Attorney's Office, (b) the State Attorney's Office, (c) the Federal Bureau of Investigation – to which he had not objected and for which he did not claim a privilege on his privilege log.

5. Edwards did not produce any documents by and between RRA lawyers or representatives and third parties such as Conchita Sarnoff, a reporter, and any other news employees or reporters. Edwards has not identified any communication with reporters on his privilege log.

6. On January 3, 2011, Epstein sent a second subpoena requesting the following documents from the Bankruptcy Trustee:

1. Any and all email communications by/between any attorney and/or employee of the former Rothstein law firm, including but not limited to, Scott Rothstein, Russell Adler, William Berger, Michael Fisten, Ken Jenne, David Boden, Deborah Villegas, Andrew Barnett, Patrick Roberts, Richard Fandry, Christina Kitterman, Gary Farmer and Bradley Edwards, on the one hand, and any of the following regarding Jeffrey Epstein:

- a) U.S. Attorney's office;
- b) State of Florida Attorney's Office
- c) Federal Bureau of Investigations;
- d) City of Palm Beach Police Department;
- e) Any investigator working for the State of Florida;
- f) Any attorney, law firm and any agent of any attorney or law firm who represented any individual with a claim against Jeffrey Epstein.

7. On April 1, 2011, Epstein sent a Request to Produce to Edwards seeking documents that support Edwards' contention that Epstein has waived his Fifth Amendment right by speaking to reporters.

8. On May 5, 2011, Edwards responded with objections and claims of privilege. Edwards did not prepare a privilege log even though the Court ordered him to do so.

9. On July 14, 2011, this Court entered an Order granting a Motion for Protective Order without prejudice relating to the records on the subpoena to the Bankruptcy Trustee based on scope and relevancy. A copy of the Order is attached to this Motion as Exhibit 1.

10. On November 11, 2011, Edwards filed his Renewed Motion for Summary Judgment and a lengthy Statement of Undisputed Facts in which he purported to identify "summary judgment evidence" on which he relied. Such "undisputed facts" reference and/or quote the Palm Beach Police Incident Report (*see* ¶3), correspondence from the U.S. Attorney's Office to Epstein (*see* ¶¶5, 19, 25), correspondence between the U.S. Attorney's Office and Epstein's counsel (*see* ¶¶6, 20, 27) to support Edwards' argument that he acted in good faith and that Epstein "violated his agreement with the U.S. Attorney's Office..." (¶28). Edwards also quotes correspondence from the U.S. Attorney's Office to Epstein's counsel (*see* ¶6) specifically in support of his contention that there was a "joint attempt to minimize Epstein's civil exposure."

(*Id.*). Edwards also cites from a proposed plea agreement (*see* ¶20) in support of his contention that Epstein engaged in witness tampering.

11. Edwards has also referred to statements allegedly made by Epstein to a reporter in ¶¶80-81 of his Undisputed Statement of Facts. Edwards contends Epstein's alleged statements to reporters waives his Fifth Amendment rights.

12. As a result of Edwards relying on communications with the government and reporters as part of his Renewed Motion for Summary Judgment and to support his contention that Epstein has waived his Fifth Amendment rights by speaking with reporters, discovery is highly appropriate on these issues and should be permitted.

13. Epstein wishes to amend and narrow his request to the Trustee to obtain the following records:

All e-mails, data, correspondence, and similar documents dated April 1, 2008 through August 1, 2010 by and between Bradley J. Edwards, Scott W. Rothstein, Marc Nurik, Cara Holmes, Mike Fisten and any one of the following regarding or mentioning Jeffrey Epstein in any way: (a) the U.S. Attorney's Office, (b) the State Attorney's Office, (c) the Federal Bureau of Investigation, (d) [REDACTED] and (e) any other news employees or reporters.

14. The described documents are *not* privileged, so no in camera review is necessary. Epstein's request has been narrowed so that compliance and production are not overly broad or burdensome. The request is relevant and necessary in order for Epstein to defend Edwards' Renewed Motion for Summary Judgment, including Edwards' contention that Epstein has waived his Fifth Amendment rights by discussions and communications with media, news employees or reporters.

15. Based on the above, Epstein requests the following relief:

a. An Order directing Edwards to produce the above-described records that are in *his* possession and control;

b. An Order directing the Bankruptcy Trustee to produce the records described above and amending the prior protective order so as to allow the Bankruptcy Trustee to produce the records described above; and

c. That the Order contain a specific deadline for compliance. Epstein requests compliance within twenty (20) days of the date of the Order so as to allow time for any additional discovery in advance of Rothstein's deposition and in advance of the hearing on Edwards' Renewed Motion for Summary Judgment.

16. The undersigned counsel certifies that he has and will continue to attempt to resolve this matter with counsel for Edwards without the need of a hearing.

WHEREFORE, Plaintiff, JEFFREY EPSTEIN, requests the Court grant its Motion to Compel and Amend Protective Order for the reasons set forth above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail on this 9th day of March, 2012 to: Jack Scarola, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409; Jack Alan Goldberger, Esq., Atterbury, Goldberger & Weiss, P.A., 250 Australian Ave. South, Suite 1400, West Palm Beach, FL 33401-5012; and Marc S. Nurik, Esq., Law Offices of Marc S. Nurik, One East Broward Blvd., Suite 700, Fort Lauderdale, FL 33301.



Joseph L. Ackerman, Jr.

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

CASE NO.: 502009CA040800 AG

JEFFREY EPSTEIN,

Plaintiff(s),

vs.

SCOTT ROTHSTEIN, etc., et al.,

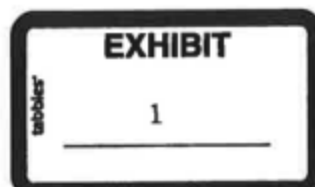
Defendant(s).

ORDER ON DEFENDANT/COUNTER-DEFENDANT'S
MOTION FOR PROTECTIVE ORDER IN REGARD TO THE DEPOSITION
DUCES TECUM OF RECORDS CUSTODIAN AND TRUSTEE HERBERT STETTIN

THIS CAUSE came before the Court upon the above Motion, the Court heard argument of counsel and is fully advised in the premises. Based upon the foregoing, it is

CONSIDERED, ORDERED AND ADJUDGED as follows:

The Subpoena seeks all e-mail communication between various attorneys of the former Rothstein firm and various governmental offices regarding JEFFREY EPSTEIN. The request is not limited to time, subject matter or scope and, according to the documents presented to this Court, could be in excess of 10,214 pages of e-mails. At this point, the Court finds that the request is overbroad and not necessarily calculated to lead to admissible evidence. The purported basis for obtaining these records is to establish some type of "abuse of process" in regard to the non-prosecution agreement entered into between the government and the Plaintiff. At present, there is no pending Complaint by the Plaintiff which has withstood a Motion to Dismiss dealing with the issue of whether or not some actions by the Defendant in regard to the non-prosecution agreement could constitute "abuse of process". Therefore, the Defendant's Motion for Protective Order is



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granted and the Objection to production of records is hereby granted, both without

prejudice.

DONE AND ORDERED this 14th day of July, 2011 at West Palm Beach, Palm

Beach County, Florida.

DAVID F. CROW
CIRCUIT COURT JUDGE

Copy furnished:

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