

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT, IN  
AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-000072

BRADLEY J. EDWARDS and  
PAUL G. CASSELL,

Plaintiffs,

vs.

ALAN M. DERSHOWITZ,

Defendant.

**PLAINTIFFS EDWARDS AND CASSELL'S**  
**MOTION TO COMPEL DERSHOWITZ TO ESTABLISH FOUR PRIVILEGES**  
**ASSERTED AT HIS DEPOSITION AND TO PROVIDE A PRIVILEGE LOG FOR ALL**  
**COMMUNICATIONS UNDER THOSE PRIVILEGES**

Plaintiffs/Counterclaim Defendants Bradley J. Edwards and Paul G. Cassell move to have defendant/counterclaim plaintiff Alan Dershowitz compelled to establish the existence of four privileges he asserted at his deposition and to provide a privilege log for all communications he asserts are covered by those privileges.

*Four Areas Identified by the Special Master*

During Dershowitz's recent deposition, the Special Master identified four privilege issues that he believed need to be reviewed by the Court. The Special Master described these issues as:

- (1) attorney-client privilege with regard to Dershowitz's representation of Jeffrey Epstein;
- (2) work-product protection with regard to Dershowitz's activities representing Epstein;
- (3) a joint defense agreement/common interest privilege between Dershowitz and other individuals; and

(4) the existence of a negotiation privilege.

See Volume 4, AD Depo, at p. 596.

*Dershowitz Bears the Burden of Proving the Applicability of Privilege*

With regard to each of these four issues, the burden is on Dershowitz to prove both the existence of the privilege and the applicability of the privilege to the communications at issue. It is well settled that “[t]he burden of establishing the attorney-client privilege rests on the party claiming it.” *RC/PB, Inc. v. Ritz-Carlton Hotel Co.*, 132 So. 3d 325, 326 (Fla. Dist. Ct. App. 2014) (citing *S. Bell Tel. & Tel. Co. v. Deason*, 632 So.2d 1377, 1383 (Fla.1994)); *Liberty Mut. Fire Ins. Co. v. Kaufman*, 885 So. 2d 905, 910 (Fla. Dist. Ct. App. 2004) (same rule on burden of establishing the existence of the work product doctrine). Accordingly, for each of these four areas, Dershowitz should be compelled to establish both the legal and factual predicates for the privilege, as well as the applicability to the communications over which it was asserted.

With regard to establishing factual predicates, Dershowitz must prove the basis for the privilege covering each of the privileges he asserts. For example, with regard to attorney-client privilege, Dershowitz must prove all the elements needed for the privilege, *see* Florida Stat. Ann. § 90.502, such as the existence of an attorney-client relationship and a confidential communication in furtherance of the rendition of legal services by a lawyer. Similarly, with regard to the work-product doctrine, Dershowitz bears the burden of establishing the relation to litigation and other elements of the doctrine. *See Liberty Mut. Fire Ins. Co. v. Kaufman*, 885 So. 2d 905, 910 (Fla. 3<sup>rd</sup> DCA 2004). And with regard to the existence of a “joint defense agreement,” there again

Dershowitz must prove all of the factual components – including the very existence of such an allegedly recently-created agreement.

With regard to establishing legal predicates, Edwards and Cassell do not dispute that the first three privileges have been recognized in the law, providing an appropriate factual predicates are established; accordingly, Dershowitz should proceed to establish the factual predicates for their application. A “negotiation” privilege, however, does not exist under Florida law. *See Fla. Stat. § 90.501* (restricting privileges to those specifically recognized in law). Indeed, Dershowitz’s client – Epstein – has attempted a similar fanciful claim that a “plea bargain” privilege exists. That claim was rejected both by the trial court and the Eleventh Circuit in parallel Crime Victims’ Rights Act Litigation. *See Doe No. 1 v. United States*, 749 F.3d 999 (11<sup>th</sup> Cir. 2014) (plea negotiations between Jeffrey Epstein and prosecutors were not protected from disclosure by any privilege).

*Dershowitz Must Log All Communications Under these Privileges*

Finally, so that Edwards and Cassell may have an opportunity to contest Dershowitz’s claims of privilege, Dershowitz must provide an appropriate privilege log for all communications he has claimed are covered by the privilege. *See Gosman v. Luzinski*, 937 So. 2d 293, 295-96 (Fla. 4<sup>th</sup> DCA 2006) (production of a privilege log is “mandatory”). If Dershowitz will not voluntarily agree to do what he is obligated to do, the Court should order him to do so promptly.

**CONCLUSION**

The Court should order Dershowitz to prove the existence and applicability of privilege in the four areas identified by the Special Master. Dershowitz should also be ordered to provide a

privilege log of all communications he claims are covered by these privileges.

DATED: February 12, 2016.

Respectfully submitted,

/s/ Jack Scarola

Jack Scarola

Florida Bar No.: 169440

Attorney E-Mail(s): [REDACTED] and

[REDACTED]

Primary E-Mail: [REDACTED]

Searcy Denney Scarola Barnhart & Shipley, P.A.

2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409

Phone: [REDACTED]

Fax: [REDACTED]

SEAN D. REYES

Utah Attorney General

By: Joni J. Jones

Joel A. Ferre

Assistant Utah Attorneys General

350 N. State Street, Suite 230

Salt Lake City, Utah 84114-2320

Telephone: [REDACTED]

E-mail: [REDACTED]

Bradley J. Edwards

FARMER, JAFFE, WEISSING,

EDWARDS, FISTOS & LEHRMAN, P.L.

425 North Andrews Avenue, Suite 2

Fort Lauderdale, Florida 33301

Telephone [REDACTED]

Facsimile [REDACTED]

E-mail: [REDACTED]

Edwards, Bradley vs. Dershowitz  
Case No.: CACE 15-000072

*And*

Paul G. Cassell  
*(Pro Hac Vice)*  
S.J. Quinney College of Law at the  
University of Utah\*  
383 S. University St.  
Salt Lake City, UT 84112  
Telephone: [REDACTED]  
Facsimile: [REDACTED]  
E-Mail: [REDACTED]

Attorneys for Plaintiffs Bradley J. Edwards and Paul  
G. Cassell

---

\* This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah

**COUNSEL LIST**

Thomas Emerson Scott, Jr., Esquire

[REDACTED]; [REDACTED]

Cole Scott & Kissane P.A.  
9150 S Dadeland Boulevard, Suite 1400  
Miami, FL 33156  
Phone: [REDACTED]  
Fax: [REDACTED]  
Attorneys for Defendant

Richard A. Simpson (pro hac vice)

[REDACTED]

Mary E. Borja (pro hac vice)

[REDACTED]

Ashley E. Eiler (pro hac vice)

[REDACTED]

WILEY REIN LLP  
1776 K St. NW  
Washington, DC 20006  
Phone: [REDACTED]  
Fax: [REDACTED]