

JEFFREY EPSTEIN,

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

CASE NO.: 502009CA040800XXXXMBAG

JUDGE: CROW

Plaintiff,

vs.

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

Defendants.

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**PLAINTIFF JEFFREY EPSTEIN'S MOTION FOR  
CLARIFICATION/RECONSIDERATION OF THIS COURT'S ORDER  
DATED MAY 17, 2013**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.530 of the *Florida Rules of Civil Procedure*, hereby seeks clarification/reconsideration of this Court's Order dated May 17, 2013, in which the Court directs Epstein to produce a privilege log as to the requested items/information for which he asserted his Constitutional Privilege Against Self- Incrimination in response to Defendant/Counter Plaintiff Bradley Edwards's Net Worth Interrogatories and Requests for Production (hereinafter "the Order"). In support thereof, Epstein states:

## SUMMARY OF PROCEEDINGS

On February 22, 2013, Epstein filed his responses to Edwards's Net Worth Interrogatories and Request for Production. On February 25, 2013, in response, Edwards filed a Motion to Strike Untimely Objections to Financial Discovery. In that Motion, Edwards moved to strike all objections and privileges raised by Epstein *except* his Constitutional Privilege. On March 11, 2013, this Court entered its Order on Edwards's Motion by overruling all objections other than privilege; to wit:

[t]he court heard argument of counsel, reviewed the court file, has reviewed the authorities counsel has cited, has reviewed the discovery along with the objections filed on behalf of the Counter-Defendant . . . [t]he Counter-Defendant's Objections to Discovery other than privilege (including but not limited to constitutional guarantees under the V, VI and XIV Amendments, attorney/client privilege, work product privilege) are overruled. . . **The Counter-Defendant shall not be required to list any documents he contends are privileged pursuant to the V, VI and XIV Amendments.**

*March 11, 2013 Order on Counter-Plaintiff's Motion to Strike Untimely Objections to Financial Discovery*, attached hereto as "Exhibit A" (emphasis added). In that Order, this Court specifically, and correctly, ruled that Epstein shall not file a privilege log as to any documents he contends are Constitutionally Privileged. Edwards did not, and has not, challenged that portion of this Court's Order.

However, the Order entered by the Court on May 17, 2013 appears to compel Epstein to create a privilege log as to those items/answers for which he has asserted his Constitutional Privilege against Self-Incrimination. A true and correct copy of the May 17, 2013 Order is attached hereto as "Exhibit B." As such, Epstein requests that this Honorable Court clarify its May 17, 2013 ruling with respect to the Constitutional Privilege issue already adjudicated in its March 11, 2013 Order, or alternatively

reconsider its May 17, 2013 Order if it is, in fact, compelling Epstein to provide a privilege log with respect to those items/answers for which he has asserted his Fifth Amendment Privilege against Self-Incrimination.

### ARGUMENT

A motion for clarification is the equivalent of a motion for rehearing. *Kirby v. Speight*, 217 So. 2d 871, 872 (Fla. 1st DCA 1969); *Dambro v. Dambro*, 900 So. 2d 724, 725-26 (Fla. 4th DCA 2005). As such, a motion for clarification is filed in accordance with Rule 1.530(b) of the *Florida Rules of Civil Procedure*. “The purpose of a Motion for a Rehearing is to give the trial court an opportunity to consider matters which it failed to consider or overlooked.” *Pingree v. Quaintance*, 394 So. 2d 161, 162 (Fla. 1st DCA 1981). Here, Epstein is requesting that this Court issue another opinion in which it more clearly delineates its ruling with respect to the required privilege log and Epstein’s asserted Constitutional Privilege, as pursuant to the most recent Order it appears that Epstein is being forced to waive his Constitutional Privilege.

The law is clear that a party may invoke his Fifth Amendment Privilege against Self-Incrimination if he has reasonable grounds to believe discovery answers would furnish a link in a chain of evidence needed to prove a crime against him. *Rainerman v. Eagle Nat. Bank of Miami*, 541 So. 2d 740 (Fla. 3d DCA 1989). Epstein’s assertion of his Constitutional Privilege is “a fundamental principle.” *Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006):

It need not be probable that a criminal prosecution will be brought or that the witness’s answer will be introduced in a later prosecution; the witness need only show a realistic possibility that the answers will be used against him.

*Id.* at 1220 (quoting *Magid v. Winter*, 654 So. 2d 1037, 1039 (Fla. 4th DCA 1995)). Here, the mere act of providing the information required to be included in a privilege log would constitute communicative testimony itself that is protected from discovery. *Id.* See also *Wehling v. Columbia Broadcasting Sys.*, 608 F.2d 1084, 1086 (5th Cir. 1979) (“Even if the rules did not contain specific language exempting privileged information, it is clear that the Fifth Amendment would serve as a shield to any party who feared that complying with discovery would expose him to a risk of self-incrimination. The fact that the privilege is raised in a civil proceeding rather than a criminal prosecution does not deprive a party of its protection.”) (citing *Lefkowitz v. Cunningham*, 431 U.S. 801, 805 (1977)).

In the case at hand, Epstein provided the following response to certain Requests for Production for which he was asserting his Constitutional Privilege:

This Request for Production requires the identification of the existence of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1976). “[T]he act of production itself” may implicitly communicate “statements of fact” that are testimonial in nature. *United States v. Hubbell*, 530 U.S. 27, 35-36 (2000). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a “link in the chain of evidence” that could be used to prosecute me in future criminal proceedings. See *Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

In its March 11, 2013 Order, this Court recognized Epstein’s right to assert his Constitutional Privileges under the United States Constitution. A witness invoking the privilege against self-incrimination is not required to establish that criminal prosecution is probable or imminent; instead, the court must only be satisfied that there is a

reasonable possibility that the witness' answer will be used against him. *See In re Keller Financial Services of Florida, Inc.*, 259 B.R. 391 (Bkrtcy. M.D. Fla. 2000); *see also Meek v. Dean Witter Reynolds, Inc.*, 458 So. 2d 412 (Fla. 4th DCA 1984) (finding a witness need only show a realistic possibility that an answer to the question will be used against him or her). Epstein has both demonstrated and articulated a "substantial and reasonable basis for concern" that the requested information could "form a link in the chain of evidence" that could be used to prosecute him in criminal proceedings. Specifically, should Edwards be successful his ardent quest to invalidate the Non-Prosecution Agreement entered into between Epstein and the United States, Epstein could face the prospect of future prosecution. Therefore, Epstein must, and will continue assert to his rights as afforded to him by the Constitutional Privileges. *See Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006); *Urbanek v. Urbanek*, 50 So. 3d 1246 (Fla. 4th DCA 2011).

As this Court is aware, "[t]he Fifth Amendment privilege can be asserted in any proceeding, civil or criminal... in which the witness reasonably believes that the information sought, or discoverable as a result of his testimony, could be used in a subsequent state or federal criminal proceeding." *Kastigar v. U.S.*, 406 U.S. 441, 444-45, (1972). Moreover, "[t]he privilege afforded not only extends to answers that would in themselves support a conviction...but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant." *Hoffman v. U.S.*, 341 U.S. 479, 486 (1951). *In re Rothstein Rosenfeldt Adler, P.A.*, 2011 WL 6067494, page \*2 (S.D. Fla. 2011), is an instructive case whose facts are remarkably analogous to the facts in the instant case. In *In re RRA*, the deponent seeking the protection of her Fifth

Amendment rights, Debra Villegas, had “previously pleaded guilty, been convicted, and was sentenced for the fraud that forms the basis of her Fifth Amendment claims.” Though no charges were currently pending, “Villegas’ **defense attorney proffers** what seems to be ‘real possibilities’ of criminal liability, claiming that the statute of limitations has not run on all possible charges that conceivably could be brought against Villegas.” *Id.* (emphasis added). Finding that Villegas had a “legitimate fear of prosecution,” the Court ruled that, as to those questions to which she would have possibly given testimony that could have been the basis for prosecution, she was within her rights to maintain her silence. The court relied upon the proffer from her attorney in so ruling. *Id.*

Similarly, Epstein was previously convicted and sentenced for certain crimes that may “form the basis of his Fifth Amendment claims,” and, according to Edwards, may face future prosecution. Edwards’s own allegations in his Fourth Amended Counterclaim support this assertion, as Edwards himself claims that Epstein is the target of inquiry with respect to additional charges stemming from the very core of facts for which he already stands convicted. Edwards is also vigorously seeking to overturn the Non-Prosecution Agreement between Epstein and the United States Government, and has, on numerous occasions, made allegations of prosecution for financial crimes against Mr. Epstein. As such, it is irrefutable that Edwards’s own pleadings in this case have proven Epstein’s contention that he has a legitimate fear of future prosecution. Epstein has, therefore, properly asserted the Fifth Amendment in response to every question/request propounded by Edwards where an answer, if provided, could conceivably “furnish a link in the chain of evidence needed to prosecute the claimant.”

Accordingly, if the Court's Order is compelling Epstein to provide a privilege log with respect to his Constitutional Privilege it is, in essence, forcing Epstein to waive this privilege. *See United States v. Doe*, 465 U.S. 605, 612 (1984); *People v. Traylor*, 23 Cal App.3d 323, 330 (1972) ("If the witness were required to prove the hazards he would be compelled to surrender the very protection the constitutional privilege is designed to guarantee.")

Finally, the Court's Order is unclear as to whether or not a privilege log is required for Mr. Epstein's responses to the Net Worth Interrogatories. However, because responses to Interrogatories must be verified; sworn to under Oath, they are irrefutably testimonial in nature, and Epstein should not be compelled to provide a privilege log for the responses for which he asserts his Fifth Amendment Privilege. Epstein asserted Constitutional Privileges to Interrogatories Nos. 3 through 13 and 15, including all subparts, specifically stating:

This Interrogatory requires the provision of detailed financial information which communicates statements of fact. *Fisher v. United States*, 425 U.S. 391, 410 (1977). I have a substantial and reasonable basis for concern that these statements of fact that are testimonial in nature could reasonably furnish a "link in the chain of evidence" that could be used to prosecute me in criminal proceedings. *See Hoffman v. United States*, 341 U.S. 479, 486 (1951). I cannot provide answers/responses to questions relating to my financial history and condition without waiving my Fifth, Sixth and Fourteenth Amendment rights as guaranteed by the United States Constitution.

Epstein has both demonstrated and articulated a "substantial and reasonable basis for concern" that the requested information could "form a link in the chain of evidence" that could be used to prosecute him in criminal proceedings. Specifically, should Edwards be successful his ardent quest to invalidate the Non-Prosecution Agreement

entered into between Epstein and the United States, Epstein could face the prospect of future prosecution. Therefore, Epstein will, and must, continue assert to his right to the Constitutional Privileges. See *Piscotti v. Stephens*, 940 So. 2d 1217 (Fla. 4th DCA 2006); *Urbanek v. Urbanek*, 50 So. 3d 1246 (Fla. 4th DCA 2011).

**CONCLUSION**

Accordingly, for all of the reasons delineated above and in reliance upon the applicable law cited herein, Jeffrey Epstein respectfully requests that this Court clarify or reconsider its Court Order dated May 17, 2013, and such other and further relief as this Court deems proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this May 23, 2013.

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