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

JEFFREY EPSTEIN,

Plaintiff, Counter-Defendant,

Case No. 50 2009 CA 040800XXXXMBAG

vs.

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

Judge: CROW

Defendants/Counter-Plaintiffs.

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PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION TO DISQUALIFY DEFENDANT/COUNTER-PLAINTIFF BRADLEY J. EDWARDS AS CO-COUNSEL

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, hereby moves this Court to disqualify Defendant/Counter-Plaintiff Bradley Edwards ("Edwards") from acting as his own co-counsel at trial in this matter. In support of this Motion, Epstein states:

INTRODUCTION

Bradley J. Edwards should be disqualified from acting as his own as co-counsel at trial in this matter because he is, irrefutably, a key witness, if not *the* key witness, in this trial. Since the inception of this litigation in November 2009, Edwards has been represented by Searcy Denney Scarola Barnhart & Shipley, P.A. Edwards did not file his Notice of Appearance as co-counsel for himself until March 2012; nearly three years after he filed his Counterclaim, which is the only cause of action currently pending. Edwards is listed as a witness on his own witness list, as well as Epstein's. Every issue in this case

hinges, in essence, on actions taken by Edwards. Edwards is a featured witness in his case, and as such, an indispensable witness. Edwards acting as his own co-counsel at trial in this case is prohibited by both the *Rules Regulating the Florida Bar* and prevailing case law. Accordingly, Edwards must be disqualified.

MEMORANDUM OF LAW

Edwards, as the Plaintiff, will be a key witness at the trial of this matter, and his knowledge and testimony will concern crucial issues to be determined by the finder of fact. The dual role of an advocate and a witness has been found to prejudice the opposing party as the testimony by the attorney is bolstered because it comes from an advocate. *AlliedSignal Recovery Trust v. AlliedSignal, Inc.*, 934 So. 2d 675, 678 (Fla. 2nd DCA 2000). This Court has the authority to disqualify him pursuant to Rule 4-3.7 of the *Rules Regulating the Florida Bar* which provides, in pertinent part, as follows:

> (a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client except where:
> (1) the testimony relates to an uncontested issue;
> (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
> (3) the testimony relates to the nature and value of legal services rendered in the case; or
> (4) disqualification of the lawyer would work substantial hardship on the client.

Rule 4-3.7 R. REG. FLA. BAR. *See also comments to Rule 4-3.7* ("[t]he problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party.") "When it is shown that the attorney will be an indispensible witness or when the attorney becomes a 'central figure' in the case, disqualification is appropriate." *Fleitman v. McPherson*, 691 So. 2d 37, 38 (Fla. 1st DCA 1997).

In *Columbo v. Puig,* 745 So. 2d 1106 (Fla. 3d DCA 1999), the appellate court, in analyzing this Rule and its applicability to disqualification, stated:

> Rule 4-3.7 of the Rules of Professional Conduct provides that a "lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client." The key words here are "at a trial." Therefore, it follows that a lawyer may act as an advocate at pre-trial (before the start of the trial) and post-trial (after the judgment is rendered) proceedings. See also ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 89-1529 (1989) (lawyer may take depositions of witnesses and engage in other pre-trial proceedings as long as other requirements of the Rules are met).

Id. at 1107. Likewise, in *Larkin v. Pirthauer*, 700 So. 2d 182 (Fla. 4th DCA 1997), the Fourth District Court of Appeal avowed that Rule 4-3.7 "generally prohibits lawyers from being advocates at trials at which they will be witnesses on **matters of substance**." *Larkin,* 700 So. 2d at 183 (emphasis added). Such is the case here, as it is incontrovertible that the crux of Edwards's causes of action against Epstein involves substantial and complex issues between the parties during the course of several years of litigation. Irrefutably, not only will Edwards's testimony constitute "matters of substance," but it will be the focal point of the case, as both Edwards and Epstein will be calling Edwards as a witness at trial. Unquestionably, therefore, Edwards's disqualification is mandated.

For example, Edwards may be forced to testify regarding the credibility of his own case filed against Epstein. In *Eccles v. Nelson*, 919 So. 2d 658, 662 (Fla. 5th DCA 2006), the appellate court affirmed a trial court order disqualifying an attorney from trial where attorney's knowledge and involvement concerned crucial issues to be determined at trial. As in the *Eccles* case, Edwards's testimony as a witness in the trial of this matter goes "well beyond a mere formality," mandating disqualification. *See also City of Lauderdale Lakes v. Enterprise Leasing Co*., 654 So. 2d 645 (Fla. 4th DCA 1995).

It is well established law in Florida that an attorney should be prohibited from being an advocate at trial where the attorney will be a material witness. *Graves v. Lapi*, 834 So. 2d 359, 360 (Fla, 4th DCA 2003); *Hubbard v. Hubbard*, 233 So. 2d 150, 152 (Fla. 4th DCA 1970); *Cerillo v. Highley*, 797 So. 2d 1288, 1289 (Fla. 4th DCA 2001). In fact, the Florida Supreme Court has held that the "dual capacity of counsel and witness in the trial of a cause, except as to formal matters, should be avoided if possible." *Dudley v. Wilson*, 152 Fla. 752, 754, 13 So. 2d 145, 146 (Fla. 1943). An attorney is an indispensable witness when the attorney has "crucial information in his possession which must be divulged." *Cazares v. Church of Scientology of California, Inc.*, 429 So. 2d 348, 351 (Fla 5th DCA 1983). An attorney is essential as a witness if the attorney's testimony could not be established in detail by another witness. *See Laura McCarthy, Inc. v. Merrill-Lynch Realty/Cousins, Inc.*, 516 So. 2d 23, 23-4 (Fla. 3rd DCA 1987).

Here, Edwards will be called as a witness by both Epstein and Edwards. Edwards may be forced to testify regarding the credibility of his own case filed against Epstein. Without Edwards's testimony, Edwards cannot establish his case. Additionally, just like the attorney in *Eccles*, Edwards is a witness as to all of the issues in dispute and is certainly an essential one. Further, his testimony would not be mere formality, as it would go to the substantive and contested matters of this case. Consequently, this Court must disqualify Edwards as co-counsel at trial in this matter.

CONCLUSION

Based on the arguments presented above, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court enter an Order disqualifying

Defendant/Counter-Plaintiff Bradley Edwards as co-counsel in this matter, and grant such other and further relief as deemed necessary and proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this September 9, 2013.

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