

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

JEFFREY EPSTEIN,

CASE NO.: 502009CA040800XXXXMBAG

Plaintiff,

vs.

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

Defendants.

**COUNTER-PLAINTIFF EDWARDS' MOTION TO OVERRULE
COUNTER-DEFENDANT EPSTEIN'S OBJECTIONS
AND TO COMPEL ANSWERS TO INTERROGATORIES**

Counter-Plaintiff, Bradley Edwards ("Edwards"), pursuant to Florida Rule of Civil Procedure 1.380, moves for an order overruling the blanket attorney-client privilege objections raised by Counter-Defendant, Jeffrey Epstein ("Epstein"), in answers to interrogatories, and compelling Epstein to answer the interrogatories, and states:

Background

1. Epstein is a convicted felon for having engaged in illicit sexual activity with numerous underaged girls over a period of years.
2. Edwards represented three of Epstein's victims in connection with criminal investigations and civil lawsuits.
3. In an effort to avoid compensatory and punitive damage liability, to deter cooperation in the ongoing criminal investigations, and to intimidate his victims and their

counsel into abandoning legitimate claims and/or resolving claims for substantially less than their just value, Epstein filed an entirely baseless lawsuit falsely accusing Edwards of knowing participation in an effort by Scott Rothstein to defraud investors (the “Scott Rothstein Ponzi scheme”).

4. Epstein later dropped his fraudulent claims against Edwards, who is pursuing a counterclaim for abuse of process and malicious prosecution.

5. This Court has already determined that an evidentiary basis exists to permit Edwards to seek punitive damages against Epstein on the counterclaim.

Interrogatories and Objections

6. Edwards propounded two interrogatories upon Epstein, asking for details regarding (a) all presuit communications in which Epstein expressed the position that Edwards was a knowing participant in the Scott Rothstein Ponzi scheme or had engaged in any misconduct relating to the Scott Rothstein Ponzi scheme, and (b) any presuit request, direction, or authorization to sue Edwards communicated by Epstein.

7. As to each interrogatory, Epstein provided no substantive response. Instead, Epstein raised a blanket objection that the answer would require the disclosure of information “absolutely protected” by the attorney-client privilege.

Legal Analysis

a. Overly Broad Objection

A party may obtain interrogatory responses regarding any matter, not privileged, that is relevant to the subject matter of the pending action. Fla. R. Civ. P. 1.280(b), 1.340(b). Thus, when an interrogatory calls for both privileged and non-privileged information, the responding

party must answer the interrogatories by disclosing the non-privileged information. *See Century Medical Centers, Inc. v. Marin*, 686 So. 2d 606, 608 (Fla. 3d DCA 1997).

Epstein refused to provide any substantive response to either interrogatory on the basis of the attorney-client privilege, which protects from disclosure communications between a lawyer and client, not intended to be disclosed to third persons, made in the rendition of legal services to the client. Fla. Stat. §§ 90.502(1)(c), 90.502(2). The interrogatories propounded by Edwards did not ask only about confidential communications with attorneys made in the rendition of legal services to Epstein. There is no reason to believe that all responsive communications fall within the attorney-client privilege. Certainly, Epstein's communications with non-lawyers would not be covered by the attorney-client privilege. Communications with lawyers that are made in the presence of non-lawyers, or are knowingly shared with non-lawyers, are likewise not protected by the privilege. *Olds v. State*, 302 So. 2d 787, 790 (Fla. 4th DCA 1974) (third party present); *Dees v. Scott*, 347 So. 2d 475, 477 (Fla. 1st DCA 1977) (shared with third party). Even communications with attorneys alone might not be privileged, depending on the circumstances. *E.g.*, *State v. Branham*, 952 So. 2d 618, 621 (Fla. 2d DCA 2007) (the attorney-client privilege "does not extend to every statement made to a lawyer"); *Hoch v. Rissman*, 742 So. 2d 451, 458 (Fla. 5th DCA 1999) (defamatory statement about judge made at law firm's seminar not protected by attorney-client privilege).

Epstein objected only that responses would require the disclosure of information protected by the attorney-client privilege. He did not provide the context for any attorney-client communications and did not indicate whether any responsive communications would fall outside of the privilege. For these reasons alone, the objections must be overruled.

b. The Crime-Fraud Exception

Epstein's objections should be overruled for a more fundamental reason: the attorney-client privilege does not apply to any communication with an attorney for the purpose of aiding a plan to commit what the client knew was a crime or fraud. Fla. Stat. § 90.502(4)(a). The crime-fraud exception "effectively eliminates the privileged character of an attorney-client communication." *Butler, Pappas, Weihmuller, Katz, Craig, LLP v. Coral Reef of Key Biscayne Developers, Inc.*, 873 So. 2d 339, 342 (Fla. 3d DCA 2003). The crime-fraud exception can serve as a basis for requiring answers to interrogatories. *Leithauser v. Harrison*, 168 So. 2d 95, 98 (Fla. 2d DCA 1964).

Epstein filed a baseless lawsuit against Edwards in order to avoid compensatory and punitive damage liability, to deter cooperation in the ongoing criminal investigations, and to intimidate his victims and their counsel into abandoning legitimate claims and/or resolving claims for substantially less than their just value. Thus, his retention of legal services assisted Epstein in committing, or attempting to commit, the crimes of extortion, obstruction of justice, and witness tampering.¹

The party invoking the crime-fraud exception has the initial burden of presenting prima facie evidence that the exception applies. *BNP Paribas v. Wynne*, 967 So. 2d 1065, 1067 (Fla. 4th DCA 2007) (citing *American Tobacco Co. v. State*, 697 So. 2d 1249, 1256 (Fla. 4th DCA 1997)). The burden then shifts to the party asserting privilege to show, by a preponderance of the evidence, that there is a reasonable explanation for the communication. *Id.*

¹ It is immaterial whether the lawyer knows that the client intends to commit a crime or perpetrate a fraud. *BNP Paribas v. Wynne*, 967 So. 2d 1065, 1067 (Fla. 4th DCA 2007).

On November 4, 2010, Edwards filed a 42-page Statement of Undisputed Facts, supported by 46 exhibits, in connection with a motion for summary judgment. The Statement of Undisputed Facts and supporting record evidence establish that, in filing his fraudulent lawsuit against Edwards, Epstein committed, or attempted to commit, extortion, obstruction of justice, and witness tampering. The Court may rely upon this evidentiary submission alone in finding that Edwards has made a prima facie showing. See *Walanpatrias Found. v. AMP Servs., Ltd.*, 964 So. 2d 903, 905 (Fla. 4th DCA 2007). At that point, the Court may, in its discretion, order an in camera inspection of the attorney-client communications to determine the applicability of the crime-fraud exception. *Butler, Pappas*, 873 So. 2d at 342 (citing *United States v. Zolin*, 491 U.S. 554, 572 (1989)); see generally *International Tel. & Tel. Corp. v. United Tel. Co. of Florida*, 60 F.R.D. 177, 185 (M.D. Fla. 1973) (ordering in camera inspection of answers to interrogatories).

Before production to Edwards can be ordered, Epstein is entitled to an evidentiary hearing at which he will bear the burden of persuasion. *BNP Paribas*, 967 So. 2d at 1068; *First Union Nat'l Bank v. Turney*, 824 So. 2d 172, 183-84 (Fla. 1st DCA 2001). But, in light of the prima facie presentation on the crime-fraud exception, Epstein's blanket privilege objections will not suffice.

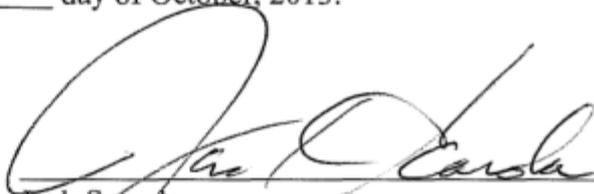
Conclusion

Edwards asks that this Court overrule Epstein's privilege objections, require substantive responses regarding all communications with non-lawyers, with lawyers in the presence of third parties, with lawyers about matters disclosed to third parties, and with lawyers but not relating to

the rendition of legal services, find that Edwards has made a prima facie showing that the crime-fraud exception applies, require the interrogatories to be answered in full and submitted for in camera review, schedule an evidentiary hearing on the crime-fraud exception, and provide such further relief as may be just.

I HEREBY CERTIFY that, before filing this motion, and consistent with Local Rule 4, I contacted opposing counsel in an effort to resolve this matter without the need for a motion and hearing.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 9th day of October, 2013.



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