

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

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-  
Defendant,

JUDGE: HAFELE

v.

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

Defendant/Counter-  
Plaintiffs.

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**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MEMORANDUM  
OF LAW REGARDING ETHICAL ISSUES RAISED BY  
DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS REGARDING  
ACCEPTANCE OF EPSTEIN'S PROPOSAL FOR SETTLEMENT**

Plaintiff/Counter-Defendant Jeffrey Epstein (hereinafter "Epstein"), by and through his undersigned counsel and pursuant to this Court's request on December 6, 2014, hereby files this Memorandum of Law regarding Defendant/Counter-Plaintiff Bradley Edwards's (hereinafter "Edwards") Opposition to Epstein's Motion for Attorneys' Fees and Costs on the issue of "Ethical grounds" and states:

**INTRODUCTION**

On June 2, 2014, Epstein filed his Motion for Attorneys' Fees and Costs pursuant to §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure* (hereinafter "Epstein's Motion"). On June 26, 2014, Edwards filed his Response in Opposition to Epstein's Motion for Attorneys' Fees and Costs, incorrectly asserting therein that Epstein's Proposal for Settlement (hereinafter the "Proposal") failed to

comply with the requisites delineated in both §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*. (hereinafter “Edwards’s Opposition”) Specifically, in Edwards’s Opposition, Edwards posed two arguments to support his assertion that Epstein’s Proposal was invalid; to wit: “[t]he Proposal is invalid because Epstein failed to explain material terms of the confidentiality clause, and its implications;” and that Epstein “cannot prove he has beaten or even equaled his Proposal.” See *Edwards’s Response in Opposition to Plaintiff/Counter-Defendant’s Motion for Fees and Costs* (hereinafter “Edwards’s Opposition”), pp. 5- 6. Epstein addressed both arguments in his written reply, aptly demonstrating that the Proposal fully complied with all requirements of the Florida Statutes, the Florida Rules of Civil Procedure and applicable case law, mandating that the Court grant Epstein’s Motion for attorney’s fees and costs. See *Plaintiff/Counter-Defendant Jeffrey Epstein’s Reply to Defendant/Counter-Plaintiff Bradley Edwards’s Response in Opposition to Plaintiff/Counter-Defendant’s Motion for Attorney’s Fees and Costs* (hereinafter “Epstein’s Reply”).

At the hearing on this matter on December 6, 2014, for the first time, Edwards attempted to persuade the Court that “the circumstances under which this proposal for settlement were made made it absolutely unethical for Brad Edwards to have accepted this proposal for settlement.” See *Transcript of Hearing on Epstein’s Motion for Fees and Costs*, p. 14; line 24-p. 15; line 2 (hereinafter “Transcript”)<sup>1</sup>. Edwards argued that he

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<sup>1</sup> Edwards also raised the issue of Edwards’s pending appeal of the summary judgment ordered in the instant case, which is premised on *Wolfe v. Foreman*. 128 So. 3d 67 (Fla. 3d DCA 2013). However, as the Court noted, Edwards has made no motion to stay this matter pending his appeal. Moreover, on October 28, 2014, the First District Court of Appeal in the case of *Steinberg v. Steinberg*, in a decision also premised upon *Wolfe v. Foreman*, affirmed the trial court’s decision that the litigation privilege precludes a

ethically could not sign the Settlement Agreement and Release attached to the Proposal (hereinafter the “Release”) because it contained a confidentiality provision, which, according to Edwards, “would have been imposing an unethical restriction upon his legal obligations to existing clients.” *Transcript*, p. 17; lines 7-10.

Edwards’s ethical argument is entirely without merit. Edwards rejected the Proposal, not because of some ethical conundrum, but because he felt that the \$300,000 offered was unacceptable. Indeed, as confirmed by Mr. Scarola at the December 6, 2014 hearing, Edwards characterized this offer of hundreds of thousands of dollars as “nominal” and refused to settle for that amount because “this case was proceeding on the basis of both compensatory and punitive damages against a billionaire . . .” *Transcript*, p. 24, lines 18-23. As more fully explained below, Edwards’s eleventh hour assertion of an ethical issue (1) is contrary to the clear ethical guidance from the Florida Bar, (2) provides no legal basis for his opposition to Epstein’s motion, and (3) is simply a last ditch effort by Edwards to invalidate the Proposal after he gambled and lost, causing the needless waste of judicial resources, fees and costs in the process, which he continues to this day even after the decision directly on point was handed down in *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013), and recently again in *Steinberg v. Steinberg*, 2014 WL 5460437 (Fla. 1<sup>st</sup> DCA 2014)

### **MEMORANDUM OF LAW**

The clients to whom Edwards purports to owe the ethical obligations claimed in the instant case are two plaintiffs in the matter of *Doe v. United States*, 08-80736-CIV-

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civil claim for malicious prosecution, 2014 WL 5460437, rendering the merits of Edwards’s appeal questionable at best.

MARRA (hereinafter the “CVRA case”). At the hearing on December 6, 2014, Edwards asserted that Edwards could not accept the Proposal because it required him to sign and comply with the Release containing a confidentiality provision, which would create conflicts of interest in his representation of these clients. This is simply untrue.

As more fully explained below, express guidance from the Florida Bar establishes that accepting the Proposal would have created no such conflicts of interest. If anything, accepting the Proposal would have eliminated any such ethical concerns by ending the instant lawsuit and any purported impact it might have had on Edwards’s representation of his clients, as Edwards moved forward in the CVRA case. To the extent that Edwards believed that any conflict of interest existed, it would have been created by Edwards, himself, over a year and half prior to the date of the Proposal, when Edwards commenced his lawsuit against Epstein. At the time of filing his lawsuit, Edwards had the opportunity to make full disclosure to his clients regarding the same, including the possibility of his receiving substantial compensation in settlement of the lawsuit. Had such disclosure been made, subsequent disclosure after acceptance of the Proposal of the fact of the settlement, which disclosure was permitted by the Release, would have been more than sufficient to dispel any concerns Edwards claims to have had. Finally, by the very terms of the confidentiality provision, Edwards could always have received authority to make disclosures “**by valid order of a Court of competent jurisdiction**” at any time he felt it necessary to avoid a conflict of interest. Under the circumstances Edwards’s purported conflict of interest is a fiction and provides no basis for him to invalidate the Proposal.

**I. An Ethical Issue Does not Exist With Regard to the Confidentiality Agreement**

Edwards first claims that he could not ethically accept the Proposal because the Release contained a confidentiality provision compliance with which, according to Edwards, would violate his ethical duty to disclose this settlement to his clients in the CVRA case. *See Transcript*, p.19; line 19-p.20; line 2. While there is no case directly on point, there is an ethics opinion from the Florida State Bar Association Committee on Professional Ethics that clearly rejects any such purported ethical violation. In FL. ETH. OP. 04-2, 2005 WL 4692972 (Jan. 21, 2005), a member of The Florida Bar requested an advisory opinion regarding a provision that the opposing party in a securities litigation wanted to include in a settlement agreement. The relevant portion of the provision at issue in the ethics opinion provided:

Other than discussions between the parties, their immediate families, their respective attorneys, accountants, government officials, and self-regulatory bodies such as the NASD, all parties and their attorneys and agents agree, acknowledge and consent that they **shall not in any method or manner discuss, publish, or disseminate any information concerning the settlement or the terms of this Release** with any other party not specifically authorized by this Release to receive such information.

*Id.* at \*1 (emphasis added). The inquiring attorney asked for “a formal opinion as to whether he may ethically enter into an agreement containing this provision.” *Id.* at \*2. <sup>2</sup>

The Florida Bar stated that Rule 4-5.6 of the *Rules Regulating the Florida Bar* was applicable. That Rule states in pertinent part that “[a] lawyer shall not participate in offering or making: (b) an agreement in which a restriction on the lawyer’s right to

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<sup>2</sup> If Edwards desired to accept the Proposal, but had genuine ethical concerns, like the attorney in this ethics opinion, Edwards also could have sought an advisory opinion within the time permitted to accept or reject the Proposal.

practice is part of the settlement of a client controversy.” R.REG. FLA. BAR 4-5.6. The Bar stated: “[t]o the extent this clause is **merely a confidentiality agreement as to the terms of the settlement it does not pose an ethical problem**, provide[d] there is no legal prohibition against confidentiality of a particular settlement. **The clause at issue makes only the terms of the settlement and release itself confidential. Such confidentiality clauses have typically been determined not to violate ethics rules.**” *Id.* at \*6 (emphasis added). See also *Lee v. Florida Dep’t of Ins. & Treasurer*, 586 So. 2d 1185 (Fla. 1st DCA 1991) (stating that to use this Rule for the purpose of invalidating a private contractual provision is beyond its scope and purpose and constitutes error).<sup>3</sup>

Similarly, in the case at hand, Epstein’s confidentiality clause provided that Edwards “agree[s] not to disclose the **details of this release** in settlement of all claims, **including the nature or the amount paid and the reasons for the payment**, to any person other than my lawyer, accountant, income tax preparer, or by valid order of a Court with competent jurisdiction whether directly or indirectly.” See *Plaintiff/Counter-Defendant Jeffrey Epstein’s Proposal for Settlement to Defendant/Counter-Plaintiff Bradley J. Edwards, Individually*, attached to Epstein’s Motion as *Exhibit A* (emphasis added). Just as the confidentiality clause in FL. ETH. OP. 04-2, 2005 WL 4692972 (Jan. 21, 2005), Epstein’s confidentiality clause was “**merely a confidentiality agreement as to the terms of the settlement**” and made “**only the terms of the settlement . . . confidential.**” *Id.* at \*6. Accordingly, the confidentiality provision in the Release “does not pose an ethical problem” as established under the *Rules Regulating the Florida Bar*. *Id.* at \*6.

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<sup>3</sup> Regarding the reference in this quotation to a legal prohibition against confidentiality, see, e.g.; [Fla. Stat. 69.081](#) (Sunshine in Litigation Act which prohibits judgments, agreements and contracts that have the effect of concealing a public hazard).

Upon examination of Edwards's claimed conflict of interest in the instant case, the wisdom of The Florida Bar's opinion is apparent. Under the relevant provisions of Rule 4-1.7(a) of the *Rules Regulating the Florida Bar*, a conflict of interest exists in the representation of a client "if there is a **substantial risk** the representation will be '**materially limited**' by **the lawyer's own personal interests.**" *The Florida Bar v. Roberto*, 59 So. 3d 1101, 1104 (Fla. 2011) (quoting R.REG. FLA. BAR 4-1.7(a)(2)) (emphasis added). Where such a substantial risk of material limitation exists, as provided in Rule 4-1.7(b), under certain circumstances that conflict can be cured by written consent from the lawyer's clients after full disclosure of the conflict. R.REG. FLA. BAR 4-1.7(b)(4). However, where no conflict exists to begin with, neither disclosure nor consent is required.

In the instant case, Edwards claims that a conflict of interest would have been created by the Release's prohibition against Edwards disclosing the amount of the settlement payment or the "reasons for payment" to his clients and the international press. *See Transcript*, p.19, line 14-p. 20; line 2; and p. 23; lines 10-24. Edwards's assertion cannot withstand analysis.

As stated above, under Rule 4-1.7 disclosure to a client is merely a corrective remedy in the event a conflict of interest existed. In the instant case, disclosure to Edwards's clients would only be required if the settlement payment itself or any duties imposed on Edwards by accepting it created a substantial risk that Edwards's representation of his clients would be materially limited, and this clearly was not the case.

First, from the onset of the CVRA case, Edwards has served and continues to serve as co-counsel with attorney Paul Cassell, a former judge and law professor, who

has no interest whatsoever, either as lawyer or client, in the instant case. Professor Cassell's judgment would be unimpaired by any settlement in the instant case, thereby eliminating any risk that Epstein's proposed settlement with his co-counsel, Edward's, could somehow materially limit the representation of the clients in the CVRA case.

Second, it cannot be said that the settlement payment by Epstein in the Proposal would have created a substantial risk of materially limiting Edwards's representation in the CVRA case [**NOTE – DO WE INCLUDE THE FOLLOWING - , a case by Edwards's clients against the U.S. Government where Epstein was not a party, but only intervened for a limited purpose**]. The proposed payment was in full settlement of Edwards's lawsuit against Epstein and Epstein's lawsuit against Edwards in the instant proceedings. *See Plaintiff/Counter-Defendant Jeffrey Epstein's Proposal for Settlement to Defendant/Counter-Plaintiff Bradley J. Edwards, Individually*, attached to Epstein's Motion as *Exhibit A*. The payment would have ended these proceedings finally, thereby eliminating any possibility that the instant proceedings might somehow impact Edwards's representation in the CVRA case. Thus, the payment did not create a substantial risk of material limitation of that representation. To the contrary, it eliminated any such risk altogether.

Nor can it be said that under the terms of the Release acceptance of the settlement payment imposed on Edwards any duties or obligations that created a substantial risk of materially limiting Edwards's representation, and Edwards's attempts to establish that it did fall short under analysis. Edwards claims that the prohibition against disclosure of the "reasons for payment" in the Release should be read expansively to have precluded Edwards from discussing with his clients and the international press the facts pertaining

to the civil cases underlying the malicious prosecution claims in the instant case, and how those facts would have related to Epstein's settlement payment. *See Transcript*, p.19; line 14-p.20; line 2 and p.22; line 3-p.23; line 24. However, A careful reading of the very narrow and specific non-disclosure provisions in the Release belies such an expansive construction.

The Release provides that Edwards will “not to disclose the **details of this release** in settlement of all claims, **including** the nature or the amount and **the reasons for the payment.**” *See Plaintiff/Counter-Defendant Jeffrey Epstein's Proposal for Settlement to Defendant/Counter-Plaintiff Bradley J. Edwards, Individually*, attached to Epstein's Motion as *Exhibit A* (emphasis added). The “reasons for the payment” as “detailed” in the Release are expressly contained in the following provision of the Release: “I understand that this settlement is the **compromise of a doubtful and disputed claim**, and that payment made is not to be construed **as an admission of liability on the part of the party or parties hereby released, and that Releasees deny liability therefor and intend merely to avoid litigation and to buy peace.**” *Id.* (emphasis added).

Accordingly, the “reasons for payment” that Edwards claims he would have been prohibited from discussing with his clients and the international press were simply that Epstein settled this case as a “compromise of a doubtful and disputed claim,” and made a payment “that is not to be construed as an admission of liability,” under circumstances where Epstein denied any liability and settled to “avoid litigation and buy peace”. This very narrow prohibition against disclosing to his clients in the CVRA case these “reasons for payment” in the instant case would have created no material limitation on Edwards's representation of those clients in the CVRA case; nor would the prohibition against

Edwards's disclosure of the same to the international press, as disclosing Epstein's denial of liability for and payment to compromise a disputed and unrelated malicious prosecution claim would do little to advance Edwards's clients interests in the CVRA case. Under the circumstances, the narrow non-disclosure obligation in the Release provided little, if any, risk of any material limitation on Edwards's representation in the CVRA case, and did not create a conflict of interest that would require disclosure to Edwards's clients as a corrective measure under Rule 4-1.7(b).

Furthermore, to the extent that Edwards claims a conflict of interest prevented him from accepting the Proposal, if it existed at all, a conflict of interest was not created by the valid confidentiality clause contained in the Release. Rather, it was created by Edwards, himself, more than a year and a half earlier, when Edwards sued Epstein and created his own personal interest while still representing his clients in the CVRA case.

If Edwards had any ethical concerns regarding his lawsuit against Epstein, he could have waited to sue Epstein until the conclusion of his representation in the CVRA case. If Edwards wished to proceed against Epstein, he could have dispelled any such ethical concerns under the Rules Regulating the Florida Bar by explaining to his clients at the outset any potential conflict issues that could be caused thereby, including disclosing the possibility of Edwards receiving substantial consideration from Epstein in the settlement of his lawsuit. *See* R.REG. FLA. BAR. 4-1.7(b). Had Edwards done so, a subsequent general disclosure of the fact that the case settled, which was permissible under the provisions of the Release, would have been sufficient to address any ethical considerations Edwards might claim to have. As stated previously, the confidentiality

provisions in the Release preclude disclosure of the “details” the Release, but not a general disclosure of the fact that the settlement occurred.

In addition, even if Edwards believed he had any ethical duties of disclosure in conflict with the terms and conditions of the Release, the clear language of the confidentiality provisions in the Release gave Edwards the option of seeking permission from the Court to make any necessary disclosure. The unambiguous and plain language of the Release remedied Edwards’s purported issue altogether by authorizing Edwards to make disclosures permitted “**by valid order of a Court of competent jurisdiction.**” See *Plaintiff/Counter-Defendant Jeffrey Epstein’s Proposal for Settlement to Defendant/Counter-Plaintiff Bradley J. Edwards, Individually*, attached to Epstein’s Motion as *Exhibit A* (emphasis added).

The purported ethical considerations asserted by Edwards provide no legal justification for Edwards to avoid the consequences of his imprudent decision to ignore the Proposal, and he should not now be permitted to use them in this manner. As stated in the preamble to Rule 4-5.6 of the *Rules Regulating the Florida Bar*, “[t]he purpose of the rules can be subverted when they are invoked by opposing parties as procedural weapons.” *Lee v. Florida Dep’t of Ins. & Treasurer*, 586 So. 2d 1185, 1188 (Fla. 1st DCA 1991). The rules are designed to provide guidance to lawyers and may not be invoked by parties as procedural weapons. *Id.* (citing R.REG. FLA. BAR 4-5.6 preamble). As such, Edwards cannot now use the Rules Regulating the Florida Bar as a procedural

weapon to protect him from having to pay the costs and fees associated with his own failure to accept Epstein's valid Proposal for Settlement.<sup>4</sup>

## **II. Edwards's Alleged Ethical Conflict Provision Does Not Render the Proposal for Settlement Invalid**

As fully explained in Epstein's Motion for Attorney's Fees and Costs and Epstein's Reply, the Proposal was valid on its face and complied with the particularity requisites as delineated in Rule 1.442(B) of the *Florida Rules of Civil Procedure*. The confidentiality clause was clear and unambiguous and satisfied both Rule 1.442 and the case law applicable to it. *See State Farm Mut. Auto Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006). Two Florida cases have discussed the validity of confidentiality provisions contained in proposals for settlement and denied attorneys' fees and costs because of them. Each case, however, is factually distinguishable and inapposite to the instant case. As previously cited by both parties, in *Swartsel v. Publix Super Markets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004), the court affirmed the denial of a motion for attorney's fees **not** because the proposal contained a confidentiality clause, but because the offeror **failed to either include the terms of the settlement agreement in the proposal or attach a copy of the agreement to the proposal**, violating the particularity requirement of Rule 1.442 of the *Florida Rules of Civil Procedure*. *Id.* The second case is *Jamieson v. Kurland*, 819 So. 2d 267 (Fla. 2d DCA 2002), in which the court reversed an order granting fees based

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<sup>4</sup> Within the time for Edwards to accept or reject the Proposal, he certainly could have raised his ethical concerns with Epstein's counsel to negotiate an acceptable confidentiality provision. He chose not to, and should not now be permitted to use them as a weapon to invalidate the Proposal.

on a proposal requiring the plaintiff to execute a confidentiality agreement. The court was not troubled by the inclusion of a confidentiality requirement, but rather by the **lack of particularity** with which it was stated. The proposal in *Jamieson* contained an obvious ambiguity in violation of Rule 1.442(B) of the Florida Rules of Civil Procedure. Paragraph three of the proposal in *Jamieson* listed certain conditions to the proposal, including that the plaintiff execute a general release and that a confidentiality agreement be part of the release. However, the proposal also stated in the very next paragraph that "[t]here are **no non-monetary [sic] terms** of the Proposal for Settlement." *Id.* (emphasis added). Undeniably, neither situation is present in the instant case.

Epstein's Proposal for Settlement, and all of its terms and conditions, were in compliance with Rule 1.442(B) of the *Florida Rules of Civil Procedure*, §768.79 of the *Florida Statutes*, and prevailing case law. The fact that Edwards now for the first time asserts, incorrectly, that his acceptance of the Proposal would have been "absolutely unethical" has no bearing on the fact that Epstein properly served Edwards with a Proposal for Settlement that met all of the requisites, and that Epstein is entitled to recovery of his attorney's fees and costs as a matter of law.

### **CONCLUSION**

In sum, Edwards's asserted ethical violations and conflicts of interest as grounds for invalidating the Proposal are fictions constructed in the final hour to avoid paying the price for a gamble that he lost when he rejected a reasonable and valid offer of settlement from Epstein. Clear guidance from the Florida Bar and the Rules Regulating the Florida Bar establishes that there were no potential ethical violations or conflicts of interest created by Epstein's Proposal and the accompanying confidentiality clause contained in

the Release. In fact, had Edwards accepted the Proposal it would have eliminated the potential for any such ethical concerns in connection with his representation in the CVRA case. At all times that the Proposal remained open for acceptance by Edwards and, had it been accepted, even after acceptance, Edwards had and would have had ample means to make disclosure to his clients in order to dispel any claimed ethical concerns. Edwards has not until now, more than three years after receiving the Proposal, asserted any purported ethical justifications for his rejection of the Proposal. Edwards may not now, at the 11<sup>th</sup> hour, attempt to “invoke the rules as [a] procedural weapon” because he is faced with the consequences of his imprudent gamble. *Lee v. Florida Dep’t of Ins. & Treasurer*, 586 So. 2d 1185, 1188 (Fla. 1st DCA 1991) (citing R.REG. FLA. BAR 4-5.6 preamble). For these reasons, and in reliance upon the law cited herein, Epstein respectfully requests that this Court grant his Motion for Attorneys’ Fees and Costs.

I HEREBY CERTIFY that a true copy of the foregoing was furnished to all counsel on the attached service list, via electronic service, this December 22, 2014.

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