

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

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-
Defendant,

v.

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

Defendant/Counter-
Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR
RULING ON EPSTEIN'S MOTION FOR ATTORNEYS' FEES AND COSTS AND
RESPONSE TO EDWARDS' MOTION TO STAY PROCEEDINGS PENDING
COMPLETION OF ADDITIONAL DISCOVERY**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, hereby files this Motion for a Ruling on Epstein's Motion for Attorneys' Fees and Costs based on the evidence submitted regarding Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Opposition to Epstein's Motion for Attorneys' Fees and Costs on the issue of "Ethical grounds." Also included herein is Epstein's Response to Edwards' Motion to Stay Proceedings Pending Completion of Additional Discovery filed on January 5, 2015, as Edwards filed his Motion to Stay as his Response to Epstein's brief on the issue of "Ethical grounds." In support of this Motion, Epstein 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*. On June 26, 2014, Edwards filed his Response in Opposition to Epstein's Motion for Attorneys' Fees and Costs, asserting therein that Epstein's Proposal for Settlement (hereinafter "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*. At the hearing on this matter on December 8, 2014, Edwards raised a new contention; to wit: 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. 14; line 2 (hereinafter "Transcript"). Edwards argued that he ethically could not sign the Settlement Agreement 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.

At the December 8, 2014 hearing, this Court ordered supplemental briefing of the new issue raised by Edwards. Epstein timely filed his Memorandum of Law Regarding Ethical Issues Raised by Defendant/Counter-Plaintiff Bradley Edwards Regarding Acceptance of Epstein's Proposal for Settlement on December 23, 2014. Pursuant to this Court's order, Edwards had ten (10) days from which to file a response to same. On January 5, 2015, and outside of the ten (10) days within which he had to respond, Edwards filed a Motion to Stay Proceedings Pending Completion of Additional Discovery as his

response to Counter-Defendant, Jeffrey Epstein's Memorandum of Law Regarding Ethical Issues regarding acceptance of Epstein's Proposal for Settlement.

Within his Motion, Edwards seeks to stay proceedings in order to obtain evidence that he purports is relevant to the value Epstein placed on a confidentiality provision contained within Epstein's Settlement Agreement. However, as more fully set forth herein, Edwards's argument in support of his Motion to Stay is without merit, as the information he seeks to obtain is irrelevant to the Court's ruling on Epstein's Motion for Fees and Costs. Next, a confidentiality clause is considered a non-monetary term of a Settlement Agreement, thus vitiating any need for determining its definite value. Finally, Edwards lacks a legal basis upon which he may rely to stay the proceedings to conduct discovery on a Motion for Attorneys' Fees and Costs. Accordingly, Edwards's Motion should be denied.

I. The Information Edwards Seeks to Obtain is Irrelevant to The Court's Ruling on Epstein's Motion for Fees and Costs

Edwards' attempt to stay proceedings to conduct discovery for the purpose of placing a value on the confidentiality provision within Epstein's Proposal for Settlement is without merit, and any information obtained for this purpose would be irrelevant to the Court's ruling on Epstein's Motion for Fees and Costs. Rule 1.442 of the *Florida Rules of Civil Procedure* requires that a proposal for settlement "state with particularity all nonmonetary terms of the proposal[]" FLA. R. CIV. P. 1.442(2)(D). A confidentiality provision is considered to be a type of non-monetary term within a proposal for settlement to which Rule 1.442(2)(D) *Florida Rule of Civil Procedures* refers. *See Jamieson v. Kurland*, 819 So. 2d 267, 269-70 (Fla. 2d DCA 2002); *Swartsel v. Publix Super Markets, Inc.*, 882 So. 2d 449, 453 (Fla. 4th DCA 2004). All that is required for a confidentiality provision to be valid is that it be stated with particularity; in a way that it is clear and

unambiguous, to allow for the offeree to make an informed decision without the need for clarification. *State Farm Mut. Auto Ins. Co. v. Nichols*, 932 So. 2d 1067, 1979 (Fla. 2006). There is no Rule or case law in Florida that creates any requirement to assess the value of a non-monetary confidentiality provision in a Proposal for Settlement in order to determine whether that Proposal is valid.

Edwards seeks to depose Epstein about Epstein's expenditures that have no bearing on this case in an attempt to place a value on the confidentiality provision within Epstein's Proposal for Settlement. Not only is it unclear as to how an adequate value could even be placed on such a provision, it is also irrelevant and immaterial to Epstein's pending Motion. Edwards' attempt to depose Epstein on financial issues related to a separate contractual issue in a completely different state has no bearing on whether Epstein's confidentiality clause is stated with the particularity required by the controlling Rules and case law. FLA. R. CIV. P. 1.442(2)(D); *Nichols*, 932 So. 2d 1067, 1979 (Fla. 2006).

In Edwards's Motion, he implausibly and misguidedly quotes the following language as language from Epstein's Proposal for Settlement: ““that they shall not in any method or manner discuss, publish, or disseminate any information concerning the settlement...”” *See Defendant/Counter-Plaintiff Bradley Edwards' Motion to Stay Proceedings Pending Completion of Additional Discovery*, page 1. This quoted language is not contained anywhere in Epstein's Proposal for Settlement or the attachments thereto. Rather, it is excerpted from a provision included in a settlement agreement reviewed **and approved by** The Florida State Bar Association Committee in an ethics opinion, FL. ETH. OP. 04-2, 2005 WL 4692972 (Jan. 21, 2005). In their advisory opinion, the Florida 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.

Interestingly, the language of the confidentiality provision within Epstein’s Proposal for Settlement is even less restrictive than the language that Edwards misquotes from the settlement agreement found to be valid by the Florida Bar in the above referenced ethics opinion. Epstein’s confidentiality provision prohibits only the disclosure of the **details** of the release, “including the **nature** or the **amount paid** and the reasons for payment”

Plaintiff/Counter-Defendant Jeffrey Epstein’s Proposal for Settlement to Defendant/Counter-Plaintiff Bradley J. Edwards, Individually, Exhibit A. (emphasis added). Conversely, the accepted language misquoted by Edwards from the Florida Bar ruling prohibits the disclosure of **any information** concerning the settlement. Further, the prohibitions within Epstein’s provision are stated with much more specificity, as required by the particularity Rule applicable herein. Thus, controlling case law should be the basis by which the validity of Epstein’s Proposal for Settlement is considered, and not the information Edwards attempts to obtain from an unrelated case. Accordingly, Edwards’ Motion to Stay should be denied.

II. Edwards Lacks Any Legal Basis Upon Which he Can Rely to Conduct Discovery and Stay Proceedings on a Motion for Fees and Costs

Next, Edwards lacks any basis in law to stay the determination of costs and fees proceedings and conduct discovery on Epstein’s Motion for his Attorneys’ Fees and Costs. There is no legal grounds permitting discovery on entitlement to attorneys’ fees and costs; much less staying the issuance of a ruling on entitlement in order to conduct discovery.

The trial court has broad discretion in deciding whether or not to grant a motion for stay, but the courts should deny a motion for stay when such a motion will impede the goal to promote judicial efficiency. *See id.* A party should not be allowed to stay proceedings when doing so will lead to delay and confusion for the court. *See Williams v. Edwards*, 604 So. 2d 930, 932 (Fla. 5th DCA 1992); *Shoemaker v. State Farm Mut. Auto. Ins. Co.*, 890 So. 2d 1195, 1197 (Fla. 5th DCA 2005). The only issue with which the Court is faced regarding Epstein's Motion is whether, on its face, Epstein's Proposal for Settlement and its Exhibits complies with all the requisites delineated by Florida law. Florida law unequivocally establishes that a Proposal for Settlement that requires execution of a release complies with the particularity requisites as delineated in Rule 1.442(B) of the *Florida Rules of Civil Procedure* if it contains *any one* of the following: the language of the proposed agreement; a summary of the substance of the agreement; or, as in the case at hand, the proposed release agreement **is actually attached to the Proposal**. *State Farm Mut. Auto Ins. Co. v. Nichols*, 932 So. 2d 1067, 1079-80 (Fla. 2006); *see also 1 Nation Technology Corp. v. A1 Teletronics, Inc.*, 924 So. 2d 3, 7 (Fla. 2d DCA 2005); *Swartsel v. Publix Supermarkets, Inc.*, 882 So. 2d 449 (Fla. 4th DCA 2004) (confidentiality clauses).

The information Edwards seeks to obtain through discovery is irrelevant and will only lead to confusion regarding the issues germane to evaluating a Proposal for Settlement. Edwards's motion is therefore devoid of any legal basis upon which he can legally request to stay a ruling on Epstein's Motion. There is simply no law in Florida that justifies the court staying its determination that Epstein is entitled to his fees and costs in order for Edwards to conduct immaterial discovery regarding the value of a non-monetary term. Edwards's attempt to stay a ruling on Epstein's Motion for Costs and Attorneys'

Fees is little more than another eleventh hour attempt by Edwards to further delay this matter. Accordingly, Edwards' motion should be denied.

III. The Record Evidence Shows that Epstein's Motion For Costs and Fees Should be Granted

As demonstrated above, during the December 8, 2014 hearing, this Court ordered the parties to brief the new issue raised by Edwards at that hearing. Epstein timely filed his Memorandum of Law Regarding Ethical Issues Raised by Defendant/Counter-Plaintiff Bradley Edwards Regarding Acceptance of Epstein's Proposal for Settlement on December 23, 2014. Pursuant to this Court's order, Edwards had ten (10) days from which to file a response to same. However, Edwards blatantly disregarded this Court's order by failing to file a response which in any way addresses Epstein's timely filed Memorandum.

Instead, on January 5, 2015, and outside of the ten (10) days within which he had to respond, Edwards filed a Motion to Stay Proceedings Pending Completion of Additional Discovery as his response to Counter-Defendant, Jeffrey Epstein's Memorandum of Law Regarding Ethical Issues regarding acceptance of Epstein's Proposal for Settlement as an attempt to back-door his delay tactics under the guise of a response to Epstein's Memorandum filed per Court order. Inasmuch as Epstein's Memorandum of Law Regarding the Ethical Issues demonstrates that any ethical issues claimed by Edwards do not exist, and Edwards has failed to dispute same, Epstein's Motion for Costs and Fees should be granted.

CONCLUSION

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 January 12, 2015.

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