

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION AG
CASE NO. 502009CA040800XXXXMB
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

FILED
OCT 31 PM 3:06
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIVIL 4

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RESPONSE IN
OPPOSITION TO DEFENDANT/COUNTERPLAINTIFF BRADLEY J. EDWARDS'
MOTION FOR ATTORNEY'S FEES PURSUANT TO FLA. STAT. §57.105**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his undersigned counsel, hereby offers the following Response In Opposition To Defendant/Counterplaintiff Bradley J. Edwards' Motion For Attorney's Fees Pursuant To Fla. Stat. §57.105, and states as follows :

I. SUMMARY OF ARGUMENT

Edwards' motion for attorney's fees pursuant to §57.105, Fla. Stat. ("§57.105 motion"), is frivolous. Edwards seeks sanctions against Epstein based upon Epstein's service of a §57.105(4) notice of intent directed to Edwards' Counterclaim for abuse of process. Epstein asserted in his §57.105 motion that Edwards' abuse of process counterclaim was legally insufficient because it did not allege any abuse of process *after* Epstein filed his Complaint. At a September 28, 2011 hearing, this Court expressed the same concern that Edwards' Counterclaim for abuse of process did *not* state a valid claim because it failed to allege any improper process by Epstein subsequent

to the filing of the Complaint. In response to the Court's concerns, on October 4, 2011, Edwards filed an Amended Counterclaim for abuse of process and malicious prosecution. The next day, *after* filing an Amended Counterclaim, Edwards nevertheless filed the subject sanctions motion, contending that Epstein's §57.105 motion was frivolous because Edwards' initial Counterclaim for abuse of process was valid. But Epstein's contentions regarding the *invalidity* of Edwards' abuse of process claim have been *validated* by both this Court's statements at the September 28 hearing and by Edwards' own decision to amend his counterclaim. As a result, Edwards cannot credibly claim that his initial abuse of process claim was valid, much less that he is entitled to sanctions on that basis.

Edwards' sanctions motion should also be denied because a §57.105 motion cannot be based on an unfiled §57.105 motion. Finally, Edwards' §57.105 motion should be denied and stricken because it reveals the general amount of a proposal for settlement that Epstein made to Edwards in this litigation, which information is confidential and inadmissible.

II. BACKGROUND

In December, 2009, Epstein, through prior counsel, filed a Complaint naming Edwards as a defendant. Edwards filed an Answer and Counterclaim for abuse of process, followed by a motion for summary judgment and motion for leave to assert punitive damages. The Court denied Edwards' summary judgment motion and denied without prejudice Edwards' motion for leave to assert punitive damages. Epstein filed an Amended Complaint, which Edwards moved to dismiss. The Court granted Edwards' motion to dismiss the Amended Complaint, with leave to amend. Epstein then filed a Second Amended Complaint containing a single count against Edwards for abuse of process, and a single count against Rothstein for conspiracy, which Edwards moved to dismiss.

On or about August 25, 2011, Epstein sent Edwards a proposal for settlement directed to Edwards' Counterclaim. On or about September 2, 2011, Epstein served Edwards with a notice of intent pursuant to §57.105(4), Fla. Stat., and a §57.105 motion alleging that Edwards' abuse of process counterclaim was legally insufficient because it was based solely on the filing of an allegedly baseless complaint, and *not* on any post-issuance process.

At a September 28, 2011 hearing on Edwards' motion to dismiss Epstein's Second Amended Complaint, the Court expressed "serious concerns" as to whether Edwards' *Counterclaim* stated a viable claim for abuse of process, and explained that abuse of process required improper use of process *after it issued*. (Hearing Tr. 9/28/2011 at 24-6).

On October 4, 2011, Edwards filed an Amended Counterclaim for abuse of process (Count I) and malicious prosecution (Count II). The Amended Counterclaim alleged *inter alia* that: Epstein *filed* civil claims against Edwards and others to intimidate them (§9); Epstein knew and knows that his prior Complaint had no factual support (§§10-12); in filing and "continuing to prosecute each of the claims" against Edwards, Epstein acted maliciously and to extort Edwards into abandoning his claims against Epstein (§14); and each pleading, motion, subpoena and request for production by Epstein was extortion and "constituted a perversion of process after its initial service." (§16).

On October 5, 2011, Edwards served the subject one-and-a-half-page §57.105 motion seeking sanctions based on Epstein's *filing* "a Notice of Intent to File a F.S. §57.105 motion seeking to sanction Edwards and his counsel for the prosecution of Edwards' Counterclaim against Epstein." Edwards' entire argument is as follows (*id.*):

The assertion that the Counterclaim lacked factual and legal support is clearly spurious in light of the factual and legal support detailed in EDWARDS' pending Motion for Summary Judgment and Motion to Assert Claim for Punitive Damages. Moreover, at

the very same time that EPSTEIN takes the position in his §57.105 motion that EDWARDS' claim is baseless, he has filed a Proposal for Settlement offering to pay hundreds of thousands of dollars to settle that same claim.

III. ARGUMENT

A. LEGAL STANDARDS

Section 57.105(1), Fla. Stat., provides as follows:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

Section 57.105(4), Fla. Stat., states:

A motion by a party seeking sanctions under this section must be served but may not be filed with or presented to the court unless, within 21 days after service of the motion, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

B. EDWARDS' 57.105 MOTION IS IMPROPERLY DIRECTED TO A NOTICE OF INTENT UNDER §57.105(4), FLA. STAT.

Edwards' §57.105 motion seeks sanctions based on the *notice of intent* that Epstein served on Edwards. Edwards incorrectly states in his motion that Epstein filed his notice of intent. Section 57.105, Fla. Stat., however, does not authorize the imposition of sanctions based on the service of a notice of intent. Rather, the statute limits a §57.105 motion to seeking attorney's fees on the basis of an unsupportable "claim or defense." An unfiled notice of intent

served pursuant to the statute's mandatory safe-harbor provision is not a "claim or defense." It is nothing more than a procedural condition precedent to seeking attorney's fees pursuant to the statute, and §57.105, by its terms, does not authorize a party to seek attorney's fees from an opposing party who has done nothing more than comply with the statute's notice of intent requirement. Indeed, if attorney's fees could be awarded solely on the basis of a notice of intent, the courts judicial system would become mired in endless rounds of retaliatory §57.105 motions. Edwards' §57.105 motion would trigger a retaliatory §57.105 motion, and so on. Section §57.105, however, does not license such gamesmanship.

**C. EDWARDS' §57.105 MOTION IS FRIVOLOUS BECAUSE
EDWARDS' COUNTERCLAIM FOR ABUSE OF PROCESS
FAILED TO STATE A VALID CLAIM FOR RELIEF**

Assuming *arguendo* that a §57.105 motion can properly be based on a notice of intent, Edwards' §57.105 motion should still be denied because it is patently untenable. Edwards has not demonstrated that Epstein's notice of intent was frivolous when served, nor can he. To the contrary, as Epstein argued in his recently filed motion to dismiss, Edwards' counterclaim for abuse of process is, and has always been, *factually and legally unsupported*. All that Edwards has demonstrated is that his *own* §57.105 motion is baseless.

Edwards cannot credibly argue that Epstein's notice of intent was "clearly spurious" (Edwards motion at 2) for at least two reasons. First, this Court expressed precisely the same "serious concerns" as to whether Edwards' Counterclaim for abuse of process was viable (*see* Tr. 9/28, 2011 at 24-26) as those that Epstein raised in his *notice of intent*. Second, in response to the Court's "serious concerns," Edwards immediately amended his counterclaim for abuse of process. It is staggering that -- one week after the Court *vindicated* Epstein's position that Edwards' abuse of process claim was not actionable -- Edwards turned around and sought sanctions on the ground that Epstein's argument was "spurious." Given the inescapable fact that

this Court effectively agreed with Epstein that Edwards' abuse of process claim was legally insufficient, Edwards' subsequent filing of a §57.105 motion directed to Epstein's notice of intent is abusive and sanctionable.

**D. EDWARDS' §57.105 MOTION SHOULD BE STRICKEN
BECAUSE IT DISCLOSES CONFIDENTIAL INFORMATION**

Edwards contends that he is entitled to §57.105 sanctions because Epstein "filed a Proposal for Settlement offering to pay hundreds of thousands of dollars to settle that claim." Edwards' §57.105 motion should be denied and stricken on the additional ground that it improperly discloses the fact and general amount of Epstein's Proposal for Settlement. Fla. R. Civ. P. 1.442(i) states that "[e]vidence of a proposal . . . is admissible *only* in proceedings to enforce an accepted proposal or to determine the imposition of sanctions." (Emphasis added).¹ Thus, pursuant to Rule 1.442, the fact or amount of a proposal for settlement is confidential and may not be disclosed until the end of the case, and then only if the result is better than the proposal as provided by the Rule.

Edwards' disclosure of confidential information in the public domain is impermissible and inexcusable, requiring denial of his §57.105 motion.

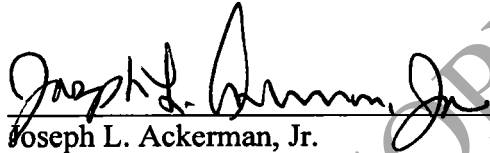
Moreover, as Edwards and his attorneys are well aware, the making of a proposal for settlement does not indicate in any way that a claim has merit or that a §57.105 motion directed to that claim is without merit. Accordingly, Epstein's proposal for settlement is not probative of whether Edwards' abuse of process claim was actionable.

¹ Similarly, under §768.79, Fla. Stat., evidence of an offer of judgment is admissible "only in proceedings to enforce an accepted offer or to determine the imposition of sanctions under this section."

IV. CONCLUSION

Based upon the foregoing arguments and authorities, Edwards' §57.105 motion should be denied.

Respectfully submitted,



Joseph L. Ackerman, Jr.
Florida Bar No. 235954
FOWLER WHITE BURNETT, P.A.
901 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401
Telephone: (561) 802-9044
Facsimile: (561) 802-9976
Attorneys for Jeffrey Epstein, Plaintiff

and

Christopher E. Knight
Florida Bar. No. 607363
FOWLER WHITE BURNETT, P.A.
Espirito Santo Plaza, 14th Floor
1395 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 789-9200
Facsimile: (305) 789-9201
Attorneys for Jeffrey Epstein, Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S.

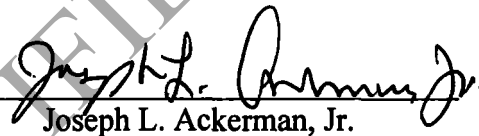
Mail on this 28th day of October, 2011 to:

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart & Shipley, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jack A. Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401-5012

Marc S. Nurik, Esq.
Law Offices of Marc S. Nurik
One E. Broward Blvd., Suite 700
Ft. Lauderdale, FL 33301

By:


Joseph L. Ackerman, Jr.