

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-Civ-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

/

Related cases:

08-80232, 08-80380, 08-80381, 08-80994,

08-80993, 08-80811, 08-80893, 09-80469,

09-80591, 09-80656, 09-80802, 09-81092

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**Jane Doe No. 103's Motion for Leave to File Brief**

**as Amicus Curiae in Support of Plaintiff Jane Doe's Opposition to Defendant Epstein's Motion for Summary Judgment and Certification of Having Conferred Pursuant to S.D. Fla. L.R. 7.1.A.3**

Jane Doe No. 103, Plaintiff in *Jane Doe No. 103 vs. Jeffrey Epstein*, Case No. 10-80309, individually and in her representative capacity for all those similarly situated, and by and through her undersigned counsel, respectfully files this Motion requesting that this Court confer *amicus curiae* status on Plaintiff Jane Doe No. 103 and permit undersigned counsel to file an *Amicus Curiae* brief in support of Plaintiff Jane Doe's Opposition to Defendant Epstein's Motion for Summary Judgment and Certification of Having Conferred Pursuant to S.D. Fla. L.R. 7.1.A.3 [D.E. No.128]. In light of the consolidation of the related cases listed under the caption above, and considering the similar, if not identical, material facts and law in these cases and the instant one, Jane Doe No. 103 most likely will ultimately be bound by the Court's decision on the motion for summary judgment in Jane Doe's case.<sup>[1]</sup> As such, Jane Doe No. 103 definitely has an interest in the determination of the issues at hand and should be afforded an opportunity to be heard on these issues.

In his motion, Defendant raises the issue of which version of 18 U.S.C. § 2255 applies, i.e., the version in effect at the time that Defendant committed the wrongs, or the amended version, which became effective in July 2006 and thus was in effect at the time that the Jane Does—including, but not limited to, Jane Doe and Jane Doe No. 103—filed

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<sup>[1]</sup> Plaintiff is filing a motion to transfer and consolidate this action, *Jane Doe No. 103 vs. Epstein*, Case No. 08-CIV-80119-MARRA/JOHNSON, with the other related cases that have already been consolidated for the purposes of discovery and procedural motions that relate to multiple cases pursuant to the Court's Order dated May 14, 2009 (D.E. 98) and filed under the consolidated Case No. 08-CV-80119-MARRA/JOHNSON.

their claims. The Court's ruling on this issue also will likely resolve other related matters that are critical to all of the Jane Does, e.g., whether, under the earlier version of the Act, victims who were minors at the time, but no longer minors, were allowed to bring suit; whether the minimum compensation to victims on the part of the defendant was per incident, or per count; and which conduct constituted a violation. These issues and sub-issues have been lurking ominously since the inception of these cases. Their resolution should enhance the settlement process

Although the Federal Rules of Civil Procedure do not specifically provide for the filing of *amicus curiae*, or “friend of the court,” briefs at the district level, district courts have inherent authority to allow the filing of such briefs if they will assist in the proceedings. *See In re Bayshore Ford Trucks Sales, Inc. v. Ford Motor Co.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006) (*citing Lathrop v. Unidentified, Wrecked & Abandoned Vessel*, 817 F. Supp. 953, 960 n.10 (M.D. Fla. 1993); *Resort Timeshare Resales, Inc. v. Stuart*, 764 F. Supp. 1495, 1500-01 (S.D. Fla. 1991)). Ample authority and numerous instances exist in which courts have allowed parties who do not necessarily meet the criteria for intervention to appear as *amici* before the court and submit briefs and argument as necessary. *See, e.g., Hopwood v. Texas*, 21 F.3d 603, 605-06 (5th Cir. 1994) (black student organizations invited to appear as *amici* in case by white applicants challenging law school admissions policy at state law school as discriminatory); *British Airways Bd. v. Port Auth. of N.Y. & N.J.*, 71 F.R.D. 583, 585 (S.D.N.Y. 1976) (denying motion to intervene, but allowing party to participate as *amicus curiae* in the case), *aff'd*, 556 F.2d 554 (2d Cir. 1976); *United States v. Mass. Mar. Acad.*, 76 F.R.D. 595, 598 (D. Mass. 1977) (same). *Amicus* status is particularly warranted where, as here, the putative

*amici* will bring perspectives and analyses that will be of use to the court in making its determinations. *Mausolf v. Babbitt*, 158 F.R.D. 143, 148 (D. Minn. 1994) (environmental group conferred *amicus* status where the participation of the group “may assist the Court in its resolution of the issues raised by the parties in this case”), *rev’d on other grounds*, 85 F.3d 1295 (8th Cir. 1996). An *amicus* participates only for the benefit of the court; thus the court has the discretion to determine the ““fact, extent, and manner of participation by the amicus.”” *Resort Timeshare Resales, Inc.*, 764 F. Supp. at 1501 (citing *News & Sun-Sentinel Co. v. Cox*, 700 F. Supp. 30, 31 (S.D. Fla. 1988)).

Plaintiff Jane Doe No. 103’s brief will assist the Court in arriving at an accurate, well-reasoned, and consistent resolution of issues of critical concern and import to each of the victim plaintiffs who have filed or will file claims against Defendant, Jeffrey Epstein. Counsel for Jane Doe No. 103 have been unable to agree with Defendant and his counsel on the issues outlined above. Plaintiff Jane Doe No. 103’s proposed *amicus* brief would oppose Defendant’s interpretation of his rights with regard to sexual exploitation and other abuse of children pursuant to 18 U.S.C. § 2255. Being mindful of the interests of Plaintiff Jane Doe No. 103 in these issues, and understanding that, “[w]here [s]he presents no new questions, a third party can contribute usually most effectively and always most expeditiously by a brief *amicus curiae*,” *Bush v. Viterna*, 740 F.2d 350, 359 (5th Cir. 1984) (*amicus curiae* status confirmed), the Court should therefore confer *amicus curiae* status on Plaintiff Jane Doe No. 103 with respect to the determination as to which version of § 2255 applies. This will involve consideration of retroactivity, legal disability, the effect on damages of Defendant’s multiple violations of a victim, and Defendant’s *ex post facto* argument. These issues critically affect not only

Jane Doe's recovery, but also that of Jane Doe No. 103 and all of the other Jane Doe victims of Defendant.

WHEREFORE, Plaintiff Jane Doe No. 103 respectfully moves this Court for the entry of an order permitting her to appear as *amicus curiae* in support of Plaintiff Jane Doe's position.

s/Katherine W. Ezell

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1.A.3**

Undersigned counsel conferred on April 1, 2010 with Defendant's counsel Robert Critton, Esq., who advised that Defendant is unable to agree to this Motion.

Date: April \_\_\_, 2010.

s/Katherine W. Ezell

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**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that, on this \_\_\_\_\_ day of April, 2010, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to electronically receive Notices of Electronic Filing.

Respectfully submitted,

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Case No. 08-CV-80119-MARRA/JOHNSON

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