

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendant,

**RESPONSE IN OPPOSITION TO EPSTEIN'S RENEWED MOTION FOR LEAVE TO  
DISCLOSE EXPERT WITNESS**

Plaintiff, Bradley J. Edwards, by and through undersigned counsel, hereby files this Response in Opposition to Defendant Jeffrey Epstein's Renewed Motion for Leave to Disclose Expert Witness, and as grounds therefor states as follows:

**Binger Does Not Permit a Party to Ignore Trial Court Orders**

In this and other motions, Epstein relies on the Supreme Court's decision in Binger to argue that Epstein should be permitted to ignore this Court's pre-trial orders, as long as there is no prejudice to Edwards. This interpretation of Binger is wrong and is an affront to the authority of a trial court to control its docket. Epstein has already tried, once, to belatedly add Mr. Smith as a purported "expert" witness well after the Court's deadline to disclose witnesses. The Court denied that request by order dated January 17, 2018.

And, although Epstein relies on Binger and its related cases, this is not a situation where Epstein only recently discovered the existence of this new witness or the relevance of his

“expert” testimony. See Tomlinson-McKenzie v. Prince, 718 So. 2d 394, 396 (Fla. 4th DCA 1998) (“There was no finding that appellants failed to comply with the pretrial order in bad faith. **The record reflects that appellants moved to amend the witness and exhibit list as soon as the surveillance tape became available.**”) (emphasis added). Rather, the issues about which Epstein seeks to have Mr. Smith testify have been known to Epstein and his extensive team of defense lawyers for years. Those attorneys made the tactical decision not to retain an expert in this case, and for eight (8) years Edwards prepared his case in reliance on that decision. If the Court were to permit Mr. Smith to be added as a witness, this case would be further delayed by the reopening of discovery, the taking of Mr. Smith’s deposition, and Edwards likely having to retain one or more rebuttal experts, assuming Epstein would be able to overcome multiple legal challenges to the admissibility of Mr. Smith's opinions. Daubert/Fabre challenges are likely. Admissibility hinges on the extent to which legal opinions invade the province of the Court to decide probable cause as a matter of law. Prior assertions of Fifth Amendment and Attorney-Client privileges present foundational challenges.

Enough. The parties were ready to try this case on March 13, 2018. At the March 8, 2018 hearing, counsel for Epstein repeatedly stated on the record that they were ready to try this case, which has been pending for 3,146 days. Any further delay in the trial of this matter severely prejudices Edwards, who is entitled to his day in court to clear his name in connection with the malicious lawsuit Epstein filed on December 7, 2009. And as the delays continue, Edwards is denied access to the only effective antidote to the poison that Epstein created and spread to intentionally destroy Edwards's reputation.

In addition to the foregoing, Edwards has included below a slightly revised version of his prior-filed Response in Opposition to Epstein's original Motion for Leave to Disclosure Expert Witness:

**The Renewed Motion Fails to Meet the Court's Requirements to Reopen Discovery**

1. On November 27, 2017, the Court entered its Order on Motion to Reconfirm Existing Pre-Trial Deadlines, in which the Court ruled that additional discovery will only be permitted if "the discovery requests are impacted by the Court's rulings on motions currently pending to be heard on November 29<sup>th</sup>, December 6<sup>th</sup> and 7<sup>th</sup>." At the hearing preceding the Order, the Court outlined the standard by which any such additional discovery requests would be considered:

So what I am going to do is this. Because there are issues that need to be addressed -- and I'm hoping I will have orders out as soon as possible after those hearings are done -- is that I am going to require motions to be filed on a discovery issue-by-discovery issue, deposition by deposition, so as to find out several things. One, is the need to take that deposition and whether that need has been either clarified or required by virtue of a court order that will be entered subsequently to the commencement of Wednesday's hearings and thereafter on those days that I provided. **If it cannot be demonstrated to the Court that these witnesses need to be taken solely as a result the Court's ruling, then those requests will be denied,** because, again, we were set to try the case next week.

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So 20 some-odd deposition, unless they can be proven and shown to the Court as being required as a result of the rulings of the Court, will not be entertained. **They should have been done before. And if not done before, I will need a reason for that as well.**

11/27/2017 Hearing Tr. at 12:11-25 and 13:1-6, 17-23.

2. Thus, Epstein must establish that D. Culver Smith III's ("Smith") proposed expert testimony is required solely as a result of a recent Court ruling. Epstein's renewed motion, like the prior motion that was denied by the Court, clearly fails to meet this requirement, and therefore the renewed motion should be denied.

**A. The "Legal Ethics and Responsibility" Related to the Discovery Edwards Conducted in the L.M., E.W. and Jane Doe Cases Has Been at Issue Since 2009.**

3. The first category of Smith's proposed expert testimony is "legal ethics and responsibility," regarding the legitimacy of the discovery Edwards conducted in his clients' sexual molestation cases.

4. Obviously, the propriety of this discovery has been challenged by Epstein since December 7, 2009, when Epstein filed this malicious lawsuit claiming, *inter alia*, that he had somehow been damaged by Edwards's litigation conduct in those cases (despite the absolute litigation privilege). In fact, the Court need look no further than Epstein's 'Summary of Action' in the Complaint, which includes the following allegations:

Attorney Scott Rothstein aided by other lawyers . . . at the firm of Rothstein, Rosenfeldt and Adler, P.A., for personal greed and enrichment, in betrayal of the ethical, legal and fiduciary duties to their own clients and professional obligations to the administrative of justice . . . conduct[ed] egregious civil litigation abuses that resulted in profoundly serious injury to Jeffrey Epstein . . . The misconduct featured the filing of legal motions and the pursuit of a civil litigation strategy that was unrelated to the merits or value of their clients' cases . . . As a result, Epstein was subject to abusive investigatory tactics, unprincipled media attacks, and unsupportable legal filings. . . .

5. Specific allegations concerning Edwards' purported litigation misconduct are replete throughout the December 7, 2009 Complaint. *See, e.g.*, ¶ 35 (alleged improper pursuit of

flight logs); ¶ 36 (alleged improper depositions of pilots); ¶ 38 (alleged improper scheduling of depositions of well-known figures).

6. Thus, any purported expert testimony concerning Edwards's litigation strategy and conduct in the three victims' cases (assuming it has any relevance in light of the litigation privilege) has been challenged by Epstein since 2009. No recent ruling of the Court has impacted in any way on this subject matter so as to give rise to a previously unrecognized need for expert testimony, and Edwards would be highly prejudiced in having to depose Smith at this juncture and reopen discovery in a case that has been ready for trial since March 2018.

**B. Epstein Has Been on Notice of the Attorney Witnesses Since 2010.**

7. To the extent Smith is intended to rebut testimony offered by the unretained and unpaid attorney witnesses who may provide expert opinion as to the propriety of and justification for Edwards's litigation conduct in the underlying victim cases, Epstein has been aware of Edwards's intent to call these witnesses since at least 2010.

8. Specifically, Edwards witness lists over the years have included the following disclosures:

a. June 30, 2010 (Witness List)

"All attorneys currently prosecuting claims against Jeffrey Epstein on behalf of other victims."

b. June 25, 2013 (Witness List)

"All attorneys currently prosecution claims against Jeffrey Epstein on behalf of other victims" and "Robert Josefsberg, Esquire"

c. September 27, 2013 (Amended Expert Witness List)

“Experts include all listed attorneys involved in the prosecution of civil claims against Jeffrey Epstein arising out of Epstein’s serial abuse of minor females. They will testify based upon their background, training and experience as civil litigators and the personal involvement that each had in prosecuting claims against Jeffrey Epstein, about the legal and ethical propriety of the actions taken by Bradley Edwards in fulfilling the obligations to the victims of Epstein’s criminal assaults.”

d. January 6, 2014 (Amended and Supplemental Witness List)

“All attorneys currently prosecution claims against Jeffrey Epstein on behalf of other victims” and “Robert Josefsberg, Esquire”

“Experts include all listed witnesses involved in the prosecution of civil claims against Jeffrey Epstein arising out of Epstein’s serial abuse of minor females.”

e. January 6, 2014 (Amended Expert Witness List)

“Experts include all listed attorneys involved in the prosecution of civil claims against Jeffrey Epstein arising out of Epstein’s serial abuse of minor females. They will testify based upon their background, training and experience as civil litigators and the personal involvement that each had in prosecuting claims against Jeffrey Epstein, about the legal and ethical propriety of the actions taken by Bradley Edwards in fulfilling the obligations to the victims of Epstein’s criminal assaults.”

f. August 15, 2016 (Second Amended and Supplemental Witness List)

“All attorneys currently prosecution claims against Jeffrey Epstein on behalf of other victims” and “Robert Josefsberg, Esquire”

“Experts include all listed witnesses involved in the prosecution of civil claims against Jeffrey Epstein arising out of Epstein’s serial abuse of minor females.”

9. The attorneys who were obviously known to Epstein since the day he was served with civil complaints, were nevertheless individually named in subsequent witness lists. There can

therefore be no claim that Epstein was not aware that these witnesses were expected to testify, and he has had years to take discovery related to their expected testimony. Tellingly, he as never attempted to depose even one of them.

**C. Whether Probable Cause Existed (an Issue in This Case Since at Least 2011) is a Question of Law for the Court.**

10. Absent a disputed material fact, whether Epstein had probable cause to initiate or continue his claims against Edwards is an issue of law to be determined by the Court.

11. Florida law is clear: "An expert should not be allowed to testify concerning questions of law." *Edward J. Seibert, A.I.A. Architect & Planner, P.A. v. Bayport Beach & Tennis Club Ass'n, Inc.*, 573 So. 2d 889, 892 (Fla. 2d DCA 1990) citing *Devin v. City of Hollywood*, 351 So. 2d 1022, 1022 (Fla. 4th DCA 1976). Thus, Smith's purported opinions on whether probable cause existed are improper and irrelevant.

12. And, again, whether Jeffrey Epstein had probable cause to initiate and continue his malicious claims against Edwards has been an issue in this case for years, and Edwards specifically pled a count for malicious prosecution in his Amended Counterclaim (October 4, 2011), Second Amended Counterclaim (November 29, 2011), Third Amended Counterclaim (May 21, 2012) and Fourth Amended Counterclaim (January 9, 2013).

13. Epstein therefore had, at a minimum, six (6) years to take discovery on the issue of probable cause prior to the discovery deadline on November 24, 2017. Any prejudice for his failure to do so is therefore entirely self-inflicted.

**D. Edwards Has Pled Reputational Damages in Every Counterclaim in this Case.**

14. Epstein has been on notice of Edwards' reputational damages claim since December 21, 2009, when Edwards filed his initial counterclaim. Moreover, reputational damages were pled in the Malicious Prosecution counts in Edwards' Amended Counterclaim (October 4, 2011), Second Amended Counterclaim (November 29, 2011), Third Amended Counterclaim (May 21, 2012) and Fourth Amended Counterclaim (January 9, 2013).

15. Any discovery related to this issue could, and should, have been conducted years ago. Once again, any claimed prejudice is entirely self-inflicted.

**Conclusion**

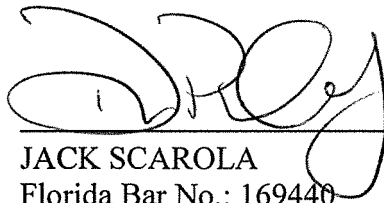
For the foregoing reasons, Epstein's Renewed Motion for Leave to Disclose Expert Witness should be denied.

Edwards adv. Epstein

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Response in Opposition to Epstein's Renewed Motion for Leave to Disclose Expert Witness

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 20<sup>th</sup> day of July, 2018.



JACK SCAROLA

Florida Bar No.: 169440

DAVID P. VITALE JR.

Florida Bar No.: 115179

Attorney E-Mail(s): jsx@searcylaw.com and

mmccann@searcylaw.com

Primary E-Mail: ScarolaTeam@searcylaw.com

Searcy Denney Scarola Barnhart & Shipley, P.A.

2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409

Phone: (561) 686-6300

Fax: (561) 383-9451

Attorneys for Bradley J. Edwards

**COUNSEL LIST**

Bradley J. Edwards, Esquire  
staff.efile@pathtojustice.com  
425 N Andrews Avenue, Suite 2  
Fort Lauderdale, FL 33301  
Phone: (954)-524-2820  
Fax: (954)-524-2822

Jack A. Goldberger, Esquire  
jgoldberger@agwpa.com; smahoney@agwpa.com  
Atterbury Goldberger & Weiss, P.A.  
250 Australian Avenue S, Suite 1400  
West Palm Beach, FL 33401  
Phone: (561)-659-8300  
Fax: (561)-835-8691  
Attorneys for Jeffrey Epstein

Nichole J. Segal, Esquire  
njs@FLAppellateLaw.com; kbt@FLAppellateLaw.com  
Burlington & Rockenbach, P.A.  
444 W Railroad Avenue, Suite 350  
West Palm Beach, FL 33401  
Phone: (561)-721-0400  
Attorneys for Bradley J. Edwards

Scott J. Link, Esquire  
Eservice@linkrocklaw.com; Scott@linkrocklaw.com; Kara@linkrocklaw.com;  
Angela@linkrocklaw.com; Tanya@linkrocklaw.com; tina@linkrocklaw.com  
Link & Rockenbach, P.A.  
1555 Palm Beach Lakes Boulevard  
Suite 301  
West Palm Beach, FL 33401  
Phone: (561)-727-3600  
Fax: (561)-727-3601  
Attorneys for Jeffrey Epstein

Marc S. Nurik, Esquire  
marc@nuriklaw.com  
One E Broward Blvd., Suite 700

Edwards adv. Epstein  
Case No.: 502009CA040800XXXXMBAG  
Response in Opposition to Epstein's Renewed Motion for Leave to Disclose Expert Witness

Fort Lauderdale, FL 33301  
Phone: (954)-745-5849  
Fax: (954)-745-3556  
Attorneys for Scott Rothstein

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