UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA-JOHNSON

JANE DOE NO. 2,

Plaintiff,

v.

JEFFREY EPSTEIN,

Defendant.
_____/

Related Cases:
08-80232, 08-80380, 08-80381, 08-80994,
08-80993, 08-80811, 08-80893, 09-80469,
09-80581, 09-80656, 09-80802, 09-81092.
_____/

DEFENDANT'S, JEFFREY EPSTEIN, MOTION FOR SANCTIONS AND TO COMPEL DEPOSITION OF JANE DOE NO. 4 AND MEMORANDUM IN SUPPORT THEREOF

Defendant, JEFFREY EPSTEIN, by and through his undersigned attorneys, moves this court for an order granting sanctions pursuant to Rule 30(d)(2) and (3)(A) and (C) (referencing Rule 37(a)(5)), Federal Rules of Civil Procedure and compelling the deposition of Jane Doe No. 4 within fifteen (15) days and as grounds therefore would state:

1. On August 16, 2009, the deposition of Jane Doe No. 4 was noticed for September 16, 2009 to begin at 1:00 p.m. Plaintiff's counsel had advised that Jane Doe No. 4 could not appear for a deposition prior to that time of day, i.e. 1:00 p.m.

2. The deposition was originally set at the offices of the undersigned, but Plaintiff's counsel requested that it be moved to the court reporter's office. The court reporter is Prose Court Reporting located at 250 Australian Avenue South, Suite 115, West Palm Beach, FL 33401.

3. The undersigned's office began attempting to set the deposition of Jane Doe No. 4 on July 21, 2009. Because of the number of attorneys who would be attending (based on the court's consolidation order) coordinating the video deposition creates logistical problems.

4. On August 27, 2009, the undersigned wrote a letter to counsel for the Plaintiff indicating that Mr. Epstein would be present at the deposition. A copy of that letter is attached as **Exhibit 1.**

5. Some 13 days later, counsel for Jane Doe No. 4 filed a motion for protective order on September 9, 2009 attempting to prohibit Mr.Epstein's presence at the deposition. The Defendant immediately filed a response (an Emergency Motion) on September 11, 2009 requesting that the court enter an order allowing Epstein, the Defendant in this matter, to attend the deposition. This is common procedure. See **Exhibit 2, without exhibits**. As of the date of the deposition, the court had not ruled on these motions.

6. On Monday, counsel for Jane Doe No. 4 and the undersigned spoke, an agreement was reached that the deposition would proceed as scheduled, and that Mr. Epstein would not be in attendance other than by telephone or other means. See **Exhibit 3.**

7. The deposition was originally scheduled on the 15th Floor and moved by Prose to a larger ground floor to accommodate the number of people who were to attend

8. The undersigned and his partner, Mark T. Luttier, had scheduled a meeting with Mr. Epstein for approximately an hour prior to the deposition. It is well known through multiple newspaper articles that Mr. Epstein's office at the Florida Science Foundation is located on the 14th Floor in the same building as the court reporter and Mr. Epstein's criminal attorney, Mr. Goldberger. As well, had the court issued an order prior to the deposition that would have allowed Mr. Epstein to attend, he was readily available.

9. As of 1:00 p.m., no order had been received from the court, so Epstein's attorneys, in good faith, decided that Epstein would not attend the deposition (as per the agreement), if we chose to proceed, which we were doing. The undersigned and Mr. Luttier specifically waited until just after 1:00 o'clock, the time that the deposition was to start, prior to leaving with Mr. Epstein. Counsel instructed Mr. Epstein to leave the building. Clearly, Defendant and his counsel simply wish to have meaningful discovery.

10. The undersigned and Mr. Luttier exited the elevator heading toward the deposition room and Mr. Epstein and his driver, Igor Zinoviev exited in separate elevator at the same time and turned to depart from through the front entrance such that he could go to his home to watch the deposition and assist counsel, from a video feed.

11. Completely unbeknownst and unexpected by anyone, apparently the Plaintiff and her attorney(s) were at the front door where Mr. Epstein was intending to exit. Upon seeing two women, one who might be the Plaintiff, Mr. Epstein immediately made a left turn and exited through a separate set of doors to the garage area. See affidavit of Jeffrey Epstein and Igor Zinoviev, **Exhibit 4 and 5, respectively**.

12. The entire incident was completely unknown to the undersigned and Mr. Luttier until Adam Horowitz, Esq. came in and announced that the deposition was not going to take place in that Mr. Epstein and his client saw one another, she was upset and therefore the deposition was cancelled from his perspective.

13. The undersigned and his partner, Mr. Luttier, had a court reporter and a videographer present. Additionally, Mr. Hill on behalf of C.M..A., Adam Langino on behalf of B.B., William Berger on behalf of three Plaintiffs were present for the deposition.

14. Any suggestion that the chance "visual" between Mr. Epstein and Jane Doe No. 4 was "pre-planned" would be absurd, disingenuous and false. The undersigned counsel went out of his way to make certain Mr. Epstein would not be in the building after the time the deposition was set to begin. Had the Plaintiff and her counsel been in the deposition room at the appointed time, no visual contact would have occurred.

15. It is possible that Plaintiff's counsel, by filing their motion for protective order on September 9, 2009 and then advising the undersigned on September 14, 2009 that the deposition would not go forward unless the undersigned agreed to exclude Mr. Epstein from the deposition, were not prepared and/or did not want to proceed with the deposition.

16. The unilateral termination of the deposition was unnecessary, inappropriate and a substantial waste of attorney time and the costs related to the deposition (court reporter and videographer). (See **Affidavit of Robert D. Critton, Jr., Mark T. Luttier and Deposition Transcript, Exhibits 6, 7, and 8 respectively).**

17. Had the "visual" been premeditated, the cancellation of the deposition may have been justified, however, under these circumstances, it was grandstanding and improper. In that the Plaintiff has stated that she voluntary went to JE's home 50 plus times without trauma until she filed a lawsuit, this brief visual encounter from a distance should not have resulted in the unilateral cancellation of her deposition.

18. The costs associated with the court reporter and videographer total $428.80. See **Exhibit 9.**

Memorandum of Law In support of Motion

A substantial amount of administrative time went into the setting up the deposition of Jane Doe No. 4. Almost two months passed from the time that the Defendant's counsel first

requested a date for the deposition of Jane Doe No. 4. The deposition of Jane Doe No. 4 was to begin at 1:00 p.m, based on her schedule, and was moved from the undersigned's office to the office of the court reporter at her counsel's request.

Pursuant to Rule 30(d)(2) and (3)(A) and (C) and its reference to 37(a)(5)), Federal Rules of Civil Procedure, the court may impose an appropriate sanction, including reasonable expenses in attorneys fees incurred by any party on a person who impedes or delays the fair examination of the deponent. In this instance, the brief visual encounter, which was completely unintended and inadvertent, should not have been grounds for Plaintiff's counsel and Plaintiff refusing to move forward with the deposition. Furthermore, pursuant to (3)(A) and (C), Plaintiff and Plaintiff's counsel had no right to unilaterally terminate/cancel the deposition and fail to move forward. Plaintiff should have continued with the deposition and filed any motion deemed appropriate post deposition. Therefore, Defendant is asking for the costs associated with the attendance of the court reporter, her transcript and the presence of the videographer. Defendant would also request reasonable fees for 2.5 hours at $500 per hour for being required to prepare this motion and affidavits associated with same.

The records obtained thus far on Jane Doe No. 4, do not reflect any "emotional trauma" by her own account of some 50 plus visits to the Defendant's home prior to the time that she hired an attorney. Even in her interview with attorney's handpicked expert, Dr. Kliman, by her own comments, her significant emotional trauma relates to physical and verbal abuse by a prior boyfriend, Preston Vineyard, and deaths associated with two close friends, Chris and Jen. Therefore, the supposed "emotional trauma" caused by a chance encounter resulting in a "glance" at best, should not be the basis for Plaintiff unilaterally cancelling her deposition.

Rule 7.1 A. 3. Certification of Pre-Filing Conference

Counsel for Defendant conferred with Counsel for Plaintiff by telephone and by e-mail; however, an agreement has not been reached.

WHEREFORE, Defendant moves this court for an order granting sanctions to include attorneys fees and costs as set forth above and costs associated with the attendance of the court reporter, the transcript and the presence of the videographer and direction that Jane Doe No. 4 appear for deposition within fifteen (15) days from the date of the court's order at the court reporter's office. If the court has not issued an order regarding Mr. Epstein's attendance at Plaintiff's deposition when Jane Doe No. 4 is to appear, the Defendant will agree that Mr. Epstein will not be present in the building on the date of her scheduled deposition such that no "inadvertent" contact will occur.

Robert D. Critton, Jr.
Michael J. Pike
Attorneys for Defendant Epstein

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was hand-delivered to the Clerk of the Court as required by the Local Rules of the Southern District of Florida and electronically mailed to all counsel of record identified on the following Service List on this 17th day of September, 2009.

Certificate of Service
Jane Doe No. 2 v. Jeffrey Epstein
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Respectfully submitted,

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