UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

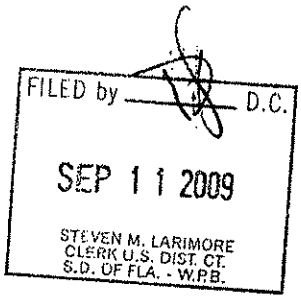
JANE DOE NO. 2,

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 Epstein's Emergency Motion To Strike Plaintiff's Motion For Protective Order (DE 292) And Emergency Motion To Allow The Attendance Of Jeffrey Epstein At The Deposition Of Plaintiffs And Response In Opposition To Plaintiffs', Jane Doe Nos. 2-8, Motion For Protective Order As To Jeffrey Epstein's Attendance At The Deposition Of Plaintiffs, With Incorporated Memorandum of Law

Defendant, Jeffrey Epstein, by and through his undersigned counsel, and pursuant to all applicable rules, including Local Rule 7.1(e) and Local Rule 12, hereby files and serves his Emergency Motion To Strike Plaintiff's Motion For Protective Order (DE 292) And Emergency Motion To Allow The Attendance Of Jeffrey Epstein At The Deposition Of Plaintiffs And Response In Opposition To Plaintiffs', Jane Doe Nos. 2-8, Motion For Protective Order As To Jeffrey Epstein's Attendance At The Deposition Of Plaintiffs. In support, Epstein states:

Introduction and Background

1. On August 19, 2009, Defendant sent a Notice for Taking the Deposition of Jane Doe No. 4 for September 16, 2009. See **Exhibit "1"**

EXHIBIT 2

2. Additionally, notices were sent out in other cases in connection with deposing additional Plaintiffs.

3. No objection(s) was/were received for Jane Doe No. 4, which was the only deposition set relative to the Jane Doe 2-8 Plaintiffs.

4. On August 27, 2009, the undersigned counsel sent a letter to counsel for Jane Doe No. 4 concerning her deposition and the scheduling of same on the above date. See **Exhibit "2".**

5. No response was received until counsel for Jane Doe No. 4 called on September 8, 2009, approximately eight days prior to the scheduled deposition, to indicate that they now had an objection and would be filing a motion for protective order seeking to prevent Epstein from attending the deposition. Once again, Plaintiffs are attempting to stifle this litigation through their own delay tactics during discovery. Plaintiffs wish not only to attempt to force Epstein to trial without any meaningful discovery, but now wish to ban Epstein from any depositions, thereby preventing him from assisting his attorneys in his very own defense. What's next – will Plaintiffs seek to prevent Epstein from attending any of the trials that result from the lawsuits Jane Does 2-8 have initiated? Plaintiffs see millions of dollars in damages, both compensatory and punitive, against Defendant.

6. Defendant is filing this emergency motion and his immediate response to the motion for protective order to guarantee his right to be present and assist counsel in deposing not only Jane Doe No. 4, but other plaintiffs and witnesses in these cases. To hold otherwise would violate Epstein's due process rights to defend the very allegations Plaintiffs have alleged against him. Does a Defendant not have a right to be present at depositions or other court proceedings to assist counsel with the defense of his case? Does a Defendant, no matter what the charges or the allegations, have full and unbridled access to the court system and the proceedings it governs,

including discovery? The short answer is unequivocally, yes. To hold otherwise would be a direct violation of Epstein's constitutional due process rights. Plaintiffs' attempts to play fast and loose with the law should not be tolerated.

7. As the court is aware, plaintiffs and defendants routinely attend depositions of parties and other witnesses in both State and Federal court proceedings. In fact, parties have a right under the law to attend such depositions.

8. As the court will note from Exhibit 2, counsel for the Defendant specifically stated that "Please be advised that Mr. Epstein plans to be in attendance at the deposition of your client. He does not intend to engage in any conversation with your client. However, it is certainly his right as a party-defendant in the lawsuit to be present and to assist counsel in the defense of any case." Despite this right, Plaintiffs continue to attempt to control how discovery is conducted in this case and how this court has historically governed discovery.

9. Interestingly, in Jane Doe II, the state court case, attorney Sid Garcia took the deposition of the Defendant and his client, Jane Doe II, was present throughout the deposition. This is despite her claims of "emotional trauma" set forth in her complaint. Jane Doe No. II is also a Plaintiff in the federal court proceeding *Jane Doe II v. Jeffrey Epstein* (Case No. 09-CIV-80469). Is this court going to start a precedent where it allows Plaintiffs to attend the depositions of Jeffrey Epstein, but not allow Epstein to attend their depositions (i.e., the very Plaintiffs that have asserted claims against him for millions of dollars)? This court should not condone such a practice.

10. The undersigned is well aware of the court's No-Contact Order entered on July 31, 2009 (DE 238). A copy of the order is attached as **Exhibit "3".** In fact, the order provides that the defendant have no direct or indirect contact with the plaintiffs, nor communications with

the plaintiffs either directly or indirectly. However, there is no prohibition against Mr. Epstein's attendance at a deposition where, as is reflected in the order, the communication will be made to the plaintiff solely through defense counsel with one or more of plaintiffs' counsel of record present in the room in a videotaped deposition. Obviously, any inappropriate contact or communication will certainly be flagged by the attorneys in attendance. As such, Plaintiffs really have the cart before the horse in this instance (i.e., nothing prevents Epstein from attending these depositions and, to the extent Plaintiffs believe that something improper occurs at any deposition, only then can that circumstance be addressed by a motion such as the instant one.)

11. Next, Plaintiffs, Jane Does 2-8, attempt to use the Affidavit of Dr. Kliman for every motion for protective order/objection filed to date. This also includes the two most recent motions, which attempt to prevent Defendant's investigators from doing their job, such that the Defendant and his attorneys can defend the claims asserted in these cases. Plaintiffs lose sight of the fact that the court, in discussing the Non-Prosecution Agreement, inquired as to whether Epstein and his counsel could fully defend the case, which included discovery and investigation. All plaintiffs' counsel and the USAO responded in the affirmative. In fact, Plaintiffs universally agreed at the June 12, 2009 hearing on Defendant's Motion to Stay that regular discovery could proceed. See **Composite Exhibit "4"** at pages 26-30 & 33-34. For instance, the court asked Plaintiffs' attorneys the following questions:

> **The Court:** [] So again, I just want to make sure that if the cases go forward and if Mr. Epstein defends the case as someone ordinarily would defend a case being prosecuted against him or her, that that in and of itself is not going to cause him to be subject to criminal prosecution? (Ex. "A," p.26).
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> ***
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> **The Court:** You agree he should be able to take the ordinary steps that a defendant in a civil action can take and not be concerned about having to be prosecuted? (Ex. "A," p.27).

***

The Court: Okay. But again, you're in agreement with everyone else so far that's spoken on behalf of a plaintiff that defending the case in the normal course of conducting discovery and filing motions would not be a breach? (Ex. "A," p.30).

Mr. Horowitz – counsel for Jane Does 2-7: Subject to your rulings, of course, yes. (Ex. "A," p.30).

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The Court: But you're not taking the position that other than possibly doing something in litigation which is any other discovery, motion practice, ***investigations*** that someone would ordinarily do in the course of defending a civil case would constitute a violation of the agreement? (Ex. "A," p.34).

Ms. Villafana: No, your honor. I mean, civil litigation is civil litigation, and being able to take discovery is part of what civil litigation is all about.... But. . . , Mr. Epstein is entitled to take the deposition of a Plaintiff and to subpoena records, etc. (Ex. "A," p.34)

12. It is clear from the transcript attached as Exhibit "4" that each of the Plaintiffs' attorneys, including Mr. Horowitz for Jane Does 2-8, expected and conceded that regular/traditional discovery would take place (i.e., discovery, motion practice, depositions, requests for records, and investigations).

13. Importantly, Plaintiffs' counsel advised the undersigned that they coordinate their efforts in joint conference calls at least two times per month. At recent depositions of two witnesses, Alfredo Rodriguez and Juan Alessi, five different plaintiffs' attorneys questioned the witnesses for approximately six to eight hours, often repeating the same or similar questions that had previously been asked.

14. Clearly, the Plaintiffs' counsel wish to control discovery and how the Defendant is allowed to obtain information to defend these cases. However, the court has ruled on a number of these issues as follows:

A. Plaintiffs' counsels sought to preclude the Defendant from serving third party subpoenas and allowing only Plaintiffs' counsel to obtain

depositions and those materials and "filter them" to defense counsel. That motion was denied, and the court tailored a method such that the Defendant could obtain the records directly.

B. Plaintiffs' counsels sought to limit the psychological psychiatric examination in C.M.A. v. Jeffrey Epstein and Sarah Kellen (Case No. 08-CIV-80811), as to time, subject matter and scope. However, Magistrate Johnson entered an order denying the requested restrictions.

C. Other Plaintiffs' attorneys have said that they object to requested psychological exam of their client(s), thus motions for such exams will now need to be filed; yet all seek millions of dollars in damages for alleged psychological and emotional trauma.

D. Many Plaintiffs' object to discovery regarding current and past employment (although they are seeking loss of income, both in past and future).

E. All Plaintiffs object to prior sexual history, consensual and forced as being irrelevant, although in many of the medical records that are now being obtained, as well as the psychiatric exams done by Dr. Kliman, there is reference to rape, molestation, abusive relationships (both physical and verbal), prior abortions, illegal drugs and alcohol abuse.

15. Clearly, Plaintiffs wish to make allegations; however, they forget that they must meet their burden by proving same. Meeting that burden and disproving those allegations is not possible if this court allows Plaintiffs to stifle and/or control the discovery process.

16. Specifically, with regard to Jane Doe No. 4, which is the deposition set for next week, September 16, 2009, the plaintiff has in her past (see affidavit of Richard C.W. Hall, M.D., an expert psychiatrist retained by Defendant to conduct exams on various claimants.) See **Exhibit "5"**

A. Sought counseling due to a dysfunctional home situation, specifically with regard to her father. She described herself as being angry, bitter, depressed and having body image problems;

B. Had an ex-boyfriend, Preston Vinyard, who was, on information and belief, a drug dealer who she lived with;

C. Had drug and alcohol problems herself; and

D. Spoke with two psychiatrists when she was sixteen or seventeen (before this lawsuit!) and did not reference Epstein, but did reference her boyfriend and family issues.

17. There are police reports that reflect that:

A. In September 2004, a battery report was filed regarding Jane Doe No. 4 and Vinyard based on an argument where he grabbed her by the neck and began spitting on her and calling her a cheater.

B. Also in September 2004, there was a domestic violence file opened where Vinyard was physically and verbally abusive to Jane Doe No. 4, his girlfriend at the time. There is reference that the two started a serious relationship in January 2002, when she was only fourteen (14) years old.

C. Vinyard was arrested in December 2003, and charged with reckless driving and leaving the scene of the accident with Jane Doe No. 4, when their vehicle hit a tree and they fled.

18. Moreover, an ex-boyfriend of Jane Doe No. 4 died in a DUI accident and it took her two years to get over his death, and another good friend of hers, "Jen," died in an automobile accident involving drinking. Within her Amended Complaint and Answers to Interrogatories, she indicates that she went to Epstein's house on several occasions. However, at no time did she call the police, at no time did she report any traumatic or severe emotional trauma, nor alleged coercion, force or improper behavior by Epstein until she got a "lawyer" and is now pursuing claims for millions of dollars. Epstein's assistance to his attorneys at these depositions regarding the above issues is not only a constitutional due process right afforded to him but essential given the fact that this court has ruled that Plaintiffs' depositions can only occur one time, no "second bite" absent a court order.

19. Given the breadth of the allegations made against Epstein and the substantial damages sought, Epstein has an unequivocal and constitutional right to be present at any deposition such that he can assist his counsel with the defense of these cases. See *infra*. **Dr. Hall**

also prepared affidavits regarding Jane Does 2, 3, 5, 6, and 7, which are attached to DE 247.

Memorandum Of Law

20. Plaintiffs' motion is required to be denied as they have failed to meet their burden showing the "extraordinary circumstances" necessary to establish good cause to support a protective order which would grant the extraordinarily rare relief of preventing a named party from attending in person the deposition of another named party. Also requiring denial of Plaintiffs' motion is the fact that it seeks to exclude Epstein from all the depositions of all the Plaintiffs in actions before this Court. Such relief is unprecedented and attempts to have this Court look at the Plaintiffs' collectively as opposed to analyzing each case based on facts versus broad speculation whether "extraordinary circumstances" exist on a case by case basis. In other words, the standard is such that the Court would be required to determine whether each Plaintiff has met her burden, should the Court consider adopting such extraordinary relief. On its face, the motion does not meet the necessary burden as to Jane Doe 4, or Jane Does 2, 3, 5, 6, or 7.

Discussion of Law Requiring the Denial of the Requested Protective Order

Rule 26(c)(1)(E), Fed.R.Civ.P. (2009), governing protective orders, provides in relevant part that:

> **(1)** ***In General.*** A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending--or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. **The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:**
>
> * * * *
>
> **(E)** designating the persons who may be present while the discovery is conducted;

* * * *

In seeking to prevent the Defendant from being present in the room where the Plaintiffs are being deposed, Plaintiffs generally rely on treatise material from Wright & Miller, 8 Federal Practice & Procedure Civ.2d, *§2041,* and cases cited therein. The case of Gaella v. Onassis, 487 F.2d 986, at 997 (2d Cir. 1973), cited by Plaintiffs, makes clear that the exclusion of a party from a deposition "should be ordered rarely indeed." Unlike the Gaella case, there is no showing by each of the Plaintiffs that there has been any conduct by Epstein, in rightfully defending the actions filed against him, reflecting "an irrepressible intent to continue … harassment" of any Plaintiff or a complete disregard of the judicial process, i.e. prior alleged conduct versus any action/conduct displayed in this or other cases that would justify extraordinary relief. There is absolutely no basis in the record to indicate that Epstein will act other than properly and with the proper decorum at the depositions of the Plaintiffs and abide in all respects with the No-Contact Order.

Wherefore, Epstein respectfully requests that this Court enter an order denying Plaintiffs' Motion for Protective Order, provide that Epstein is permitted to attend the depositions of the Plaintiffs that have asserted claims against him in the related matters, and for such other and further relief as this court deems just and proper.

Robert D. Critton, Jr.
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Attorney 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 11th day of September, 2009.

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