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

JEFFREY EPSTEIN,

Plaintiff,

v.

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

Defendants.

_____/

Complex Litigation, Fla. R. Civ. Pro.1201

Case No. 50 2009CA040800XXXXMB AG

AMENDED AND SUPPLEMENTAL MOTION OF PLAINTIFF TO OVERRULE OBJECTIONS AND COMPEL DEFENDANT EDWARDS TO ANSWER QUESTIONS AND APPEAR FOR FURTHER DEPOSITION

Plaintiff Jeffrey Epstein ("Epstein") moves the court, pursuant to Rule 1.380(a), Fla. R. Civ. P., for entry of an order directing Defendant Bradley J. Edwards ("Edwards") to appear for further deposition before a court appointed Special Master and to respond to questions asked of him at his deposition taken on March 23, 2010 and to answer such follow up questions as are appropriate. This motion is in addition to and supplements a previously filed motion on May 10, 2010 seeking the similar relief. The grounds for this motion are:

1. Late last year, Epstein filed this action to recover damages from Defendants, Scott Rothstein ("Rothstein") and Edwards, based on Epstein's well founded belief that the two, and possibly others, had perpetrated an illegal pyramid scheme directed toward unwitting investors who were defrauded into investing in settlements allegedly concerning Epstein as its centerpiece defendant who reportedly had settled and was expected to settle cases worth millions of dollars with clients of Rothstein Rosenfeldt & Adler ("RRA").

2. Specifically, targets were told by Rothstein that Edwards – then a member of RRA – represented under-aged women who claimed that they had had intimate relationships with Epstein, a wealthy man, and that this conduct had resulted in felony convictions against Epstein and civil cases leading to multi-million dollar settlements and that numerous other such women had sued or made demands of Epstein, who, the investors were told, would have little choice but to settle by paying them large sums of money or be exposed to further criminal and civil charges.[1]

3. The scheme seems to have been based on the notion that the "victims" would take a lesser settlement if paid promptly and that the investors who funded these early payments would be paid when Epstein paid the greater amounts to settle these claims.

4. Rothstein lured investors into turning over to the Rothstein group approximately $13 million as investments into fabricated settlements by using one or two real cases then pending against Epstein that had been filed by Edwards. In effect, Rothstein and his co-conspirators sought to trade on Epstein's perceived "bad" name in much the same way as unauthorized persons sometimes misrepresent their connections and trade on the "good names" of others.

5. On March 23, 2010, counsel to Epstein deposed Edwards. During that examination, Edwards refused to answer numerous questions to which he or his counsel Jack Scarola objected. For example, he was asked generically about RRA's document storage system:

Q. And what type of information did you put into Q-task regarding the claims against Mr. Epstein?

[1] Edwards had filed suits against Epstein on behalf of Jane Doe, L.M. and E.W. before joining RRA, but some months *after* he joined the firm, he filed a second suit, a federal court action, on behalf of L.M.

MR. SCAROLA: We're going to object . . . I will instruct you not to answer on the basis of both attorney-client and work-product privileges.

Id. at 54. This question in no way threatened either privilege and could have been answered without disclosing any client confidence, strategy or manner of handling the litigation.

6. Edwards's counsel made it clear that his client would not answer any question when instructed not to answer. *Id.* at 55, lines 4-8. Epstein's counsel then asked Edwards how he came to join RRA. His counsel – based on a "privacy right" that is not a recognized privilege – would not permit questions to be answered about the terms of Edwards's hire by Rothstein, including his compensation. Edwards was asked about his job interview with Rothstein:

Q. Did [Rothstein] ask you how much you were making . . . ?

A. I believe so.

Q. What did you tell him?

MR. SCAROLA: Objection, Instruct you not to answer on the basis of economic privacy.

* * *

Q. What did you tell him that you expected?

MR. SCAROLA: Objection, economic privacy.

Id. at 72 - 73.

Q. All I am interested now. . . [is] what you told him . . .

MR. SCAROLA: Objection, economic privacy, instruct you not to answer. It's neither relevant nor material nor reasonably likely to lead to relevant material information and invades the economic privacy of the witness.

Id.

Q. And was the number that you gave him more than you had earned for the year 2008 or less?

MR. SCAROLA: Same objection.

Q. Did you tell him that you . . . wanted to make more money than you had in the proceeding year?

MR. SCAROLA: Same objections and instructions.

Id., at 72-74; *see also id* 73, lines 20-24.

7. Edwards acknowledged that he was given a "number," but was instructed on multiple questions *not* to answer because the question was deemed by his attorney to be irrelevant and invasive of Edwards's privacy rights. *Id.* at 73. Clearly, there was no basis for Edwards's lawyer to direct Edwards not to answer questions about the job offer he received from Rothstein. Moreover, relevancy is not a sufficient ground to silence a witness, especially in a case like this where incentives offered to Edwards and accepted by Edwards are plainly relevant to a determination of whether he was privy to the Rothstein Ponzi scheme and why he decided even to join RRA. It is significantly relevant to his counterclaim since he is claiming loss of profits and injury to his professional reputation.[2]

8. Edwards then proceeded not to answer at least sixteen other questions claiming attorney-client privileges. (Copies of the applicable transcript pages are attached hereto as Exhibit

2 Edwards cannot reply on privilege to shield discovery and at the same time claim monetary damages relating to the subject of the privilege claim. At this point Edwards should be well versed on the Sword/Shield Doctrine. *See Boys and Girl's Club of Marian County, Inc.v. J.A.*, 22 So. 3d 855, 856 (Fla. 5th DCA 2009); *Brancaccio v. Mediplex Mandarin, Inc.*, 711 So. 2d 1206, 1210 (Fla. 4th DCA 1998) ("the law is well settled that a plaintiff is not entitled to both his silence and his lawsuit")

1.) For example, Edwards's attorney instructed him when Edwards was asked how one plaintiff, E.W., came to contact referring attorney Howell. *Id.* at 89, lines 9-19. Edward's attorney told him he could not even answer the threshold "yes" or "no" question: Did [Mr. Howell] ever relate that to you." *Id.*

9. Edwards in one instance when asked what his client E.W. told him on the phone, *himself* claimed privilege. *Id.* at 90. Later, when asked "for what purpose did Ms. L.M. originally hire you?," his attorney objected based on so-called attorney privilege, although Edwards could have answered the question without disclosing information intended to be kept confidential by his client L.M[3] *Id.* at 99.

10. Mr. Scarola also erroneously counseled Edwards not to answer a series of question about his communications with federal prosecutors: ". . .do you know whether, at the time that you represented Jane Doe. . . whether she was considered a victim by the U.S. Attorney's Office?" and then re-phrased: ". . .[D]id you learn whether [Jane Doe 1] was listed as a, or deemed to be a victim by the U.S. Attorney's Office?" *Id.* at 100-104. Although contrary to law, Mr. Scarola's stated position was that *any thing* learned in the course of representation of a client is privileged, regardless of whether the information came from the client or was in the nature of work product or simply told to the client in a discussion about another case. He announced "[w]e are not going to discuss anything that Mr. Edwards did in the course of the prosecution of his claims on behalf of

[3] Facts are only protected by the attorney-client privilege if they are intended by the client to be maintained in confidence and are communicated by one seeking legal advice from the attorney to whom the communication is made. Section 90.502 (2), Fla. Stat.; *State v. Rabin,* 475 So. 2d 257, 260 (Fla. 3d DCA 1986)*; see Hoch v. Rissman, Weisberg, Barrett*, 742 So. 2d 451 (Fla. 5th DCA 1999. Therefore, if the answer was evident from the complaint eventually filed by Edwards ("to seek redress from Jeffrey Epstein"), it would not be privileged. Likewise, if L.M. had initially hired Edwards to consult him about a claim she never pursued, the subject might arguably be privileged depending on the client's intent. *Id.*

his clients. *Id.* at 100-104. Conceding only that the court might give some instruction on how it will interpret work product privilege "in this context," Edwards's lawyer asserted that questions about Edwards's interaction with the U.S. Attorney's Office "exert[ed] a chilling effect" on the work he continued to do for his three clients.[4] *Id.* at 104. Edwards through counsel also raised relevance which is not an objection that would support a directive not to answer at all. *See*, e.g., *id.* at 105. This claim of privilege is also frivolous, because Edwards has filed adversary lawsuits *against* The United States of America for alleged violations of the Criminal Victims Rights Act. [5]

11. Next, Epstein's counsel asked about Rothstein's involvement in the cases brought by Edwards against Epstein. Edwards testified that he had fewer than three conversations with Rothstein about the Epstein cases. *Id.* at 112-113. Edwards described one, after conferring with his counsel to determine if it could be disclosed or was privileged, which was merely a passing comment by Rothstein, "I want you to get that pedophile." *Id.* at 114. The next was another such comment: "did you get that f'ing pedophile yet?" *Id.* at 116. Counsel continued:

Q. Do you remember a third occasion that [Rothstein] spoke to you regarding Epstein related cases?

A. Anything else that he ever spoke with me about related to Epstein related issues is attorney-client and work-product privileged information that I am not going to divulge.

Id. at 116-117.

[4] The three cases referred to above have concluded as of this time and there seems to be no way disclosure about communications with government lawyers could adversely effect Edwards's now former clients.

5 *See Jane Does No. 1 and No. 2, Petitioners v. United States of America, Respondent*, Case No. 08-CV-80736-CIV-Marra/Johnson, United States District Court, Southern District Court of Florida.

Q. What was the legal issue [raised by Rothstein about Epstein]?

MR. SCAROLA: Work product privilege.

Id. at 126-127.

Edwards wrongfully claimed the work product privilege for these questions as well:

Q. What connection, if any, did Ghislaine Maxwell have to [your three clients]?

MR. SCAROLA: Objection, work product. Instruct you not to answer.

Id. at 155.[6]

Q. Who did [Mike Fisten] go to California to interview?

MR. SCAROLA: That is work product and I instruct you not to answer.

Id. at 170.

Q. Did Mr. Fisten interview a person by the name of Michael Sanka?

MR. SCAROLA: That is work product and I instruct you not to answer.

Q. Did Mr. Fisten interview a individual by the name of Michael Friedman?

MR. SCAROLA:. That is work product and I instruct you not to answer . . . any and all questions about investigative work will meet with the same objection and same instruction.

Id. at 170-171.

Q. Who was the first investigator that you believe was involved in investigating the Epstein cases? . . .

MR. SCAROLA: Work-product, instruct you not to answer.

Id. at 179.

[6] Edwards had by this time already put considerable allegations concerning the answer to this question into the records. Obviously, his clients' interaction with Maxwell was not intended to be kept in confidence.

Q. Who other than Mr. Fisten from an investigator, from an internal investigator at RRA employee worked on doing investigation on the Epstein files?

MR. SCAROLA: Same objection [work product], same instruction.

Id. at 181.

Q. Did you ever tell them or direct [your investigators] to go through Mr Epstein's trash?

MR. SCAROLA: . . . Same objection [work-product, attorney-client privilege].

Id. at 185.

Q. Did you ever direct the investigators to go through the trash of the lawyers who were representing Mr. Epstein including myself?

MR. SCAROLA: Same objection [work-product, attorney-client privilege].

Id. at 185-186.

Q. Did you ever direct the investigators to, during the time you were at RRA, to conduct a surveillance on Mr. Epstein's property?

MR. SCAROLA: Same objection [work-product, attorney-client privilege].

Id. at 186. [repeats similar questions and same objections, p. 187].

Q. Did you authorize your investigators to hire . . . informants?

MR. SCAROLA: Same objection [work-product, attorney-client privilege]

Q. Did you authorize your investigators to do electronic eve's dropping [sic]

MR. SCAROLA: Same objection [work-product, attorney-client privilege]

Id. at 192.

Q. Did you ever authorize any investigators to enter . . . Mr. Epstein's property on March 17, 2010?

MR. SCAROLA: Objection . . .work-product privilege.

Id. at 198.

Q. Are you aware of any investigators who entered Mr. Epstein's property on March 17th, 2010.

MR. SCAROLA: Same objection as well as, attorney-client privilege. . . .

Id.

Q. . . . did you authorize any investigators to trespass on Mr. Epstein's property on March 17th of 2010?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction.

Id. at 198-199.

Q. Did you authorize investigators to hide in the bushes at Mr. Epstein's house in order to take photographs . . . .?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction.

Id. at 199, lines 25, 1-12.

Q. [regarding Patrick Roberts] Did he ever perform investigation work on any of the Epstein files?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction.

Id. at 200.

Q. [regarding investigator named "Rick"] . . . did you authorize Rick to perform any investigation on the Epstein files?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction.

Id. at 200-201.

Q. Would it be a correct statement that you have never authorized anyone from Blue Line Research and Development, LLC, to conduct any investigation of Jeffrey Epstein?

MR. SCAROLA: Same objection [work-product, attorney-client privilege].

Id., at 201.

Q. [D]id you ever authorize or direct Ken Jenne to perform any investigation on the Epstein files?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction.

12. Counsel to both parties agreed that Edwards would identify investigators who worked at the direction of Edwards if the Court were to determine Epstein is entitled to this information. *Id.* at 202-203. Counsel to Epstein clarified that by moving on to other subject matter, he was not waiving his right to pursue inquiry about these individuals. Mr. Scarola agreed. *Id.* at 203, || 4-16.

13 Epstein's counsel proceeded to other areas of inquiry. He asked if Edwards had ever spoken to Alfredo Rodriguez during the hiatus between the deposition sessions with Rodriguez. A claim of work product privilege was made. *Id.* At 205-206. Edwards refused to

answer any questions about his communications with Rodriguez. *Id.* at 208-210. He similarly refused to say if he was cooperating with any other lawyers. *Id.* at 223 (citing work product)

Q. Have you had any discussion with any of the other lawyers who represent clients in the . . . matters regarding Mr. Epstein's probation?

MR. SCAROLA: Same objection [work-product, attorney-client privilege] and instruction and joint prosecution interest.

Id. at 223

14. The court must overrule the foregoing objections raised because many were never sought to discover privileged information and the privileges are not absolute. In fact, the cases referred to - - L.M., E.W. and Jane Doe - - have all been settled and there is no longer any basis to seek to protect most information gleaned in preparing for them as work product. This is particularly true given the allegations of this case. Moreover, even where work product is raised, the circumstances surrounding the Ponzi scheme perpetrated at the Rothstein firm require responses to information directed to its methods and perpetrators.[7]

15. A special master should preside at the further deposition of Edwards in order to rule on objections and order answers where no valid objection is made and the Court or the designated Special Master should (a) examine *in camera* any documents referred to by Edwards and which he claims are work product to determine if they deserve protection from discovery in this case; and (b) take testimony *in camera* on any question that Edwards refuses to answer based on privilege.

[7] The sensational nature of the charges against Epstein in the cases brought by Edwards and others ought not diminish the fact that Epstein was used as bait by Rothstein and others to entrap third parties seeking investments. In this, those investors as well as Epstein – all victims in this scenario – have a compelling need to discover *all* of the evidence known to those who surrounded Rothstein and his cohorts.

LEGAL MEMORANDUM

A. Objections Based on the Attorney Client Privilege Generally Should Be Overruled

During his deposition, Edwards and/or his counsel invoked a claim of attorney client privilege more than 15 times in response to questions that seemingly could have been answered without divulging confidential information obtained from clients who at the time the information was given were seeking legal services from Edwards. *See, e.g.*, Deposition Transcript at 54, 89, 91, 98, 114, 116-117, 208; Exhibit A. In nearly all of these, as evidenced by the questions outlined above, Edwards's objection should be overruled and he should be required to answer the questions. He can do this without disclosing privileged information.

The attorney-client privilege applies to confidential communications made in the rendition of legal services to the client. Section 90.502, Fla. Stat.; *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377 (Fla.1994). Section 90.502 codifies the attorney-client privilege which protects those confidential communications between attorney and client made to obtain or to provide legal services to the client. *State v. Rabin*, 495 So. 2d 257, 260 (Fla. 3d DCA 1986); *see U.S. v. Kelly*, 569 F.2d 928, 938 (5th Cir. 1978).

In order to invoke the attorney-client privilege, one must establish the following elements: (1) the asserted holder of the privilege is or sought to become a client; (2) the person to whom the communication was made (a) is a member of a bar of a court, or his subordinate, and (b) in connection with this communication is acting as a lawyer; (3) the communication relates to a fact of which the attorney was informed (a) by his client (b) without the presence of strangers (c) for the purpose of securing primarily either (I) an opinion on law or (ii) legal services or (iii) assistance in

some legal proceeding, and not (d) for the purpose of committing a crime or tort; and (4) the privilege has been (a) claimed and (b) not waived by the client. *In re Grand Jury Proceedings*, 517 F.2d 666, 670 (5th Cir. 1975), *quoting United States v. United Shoe Machinery Corp.*, 89 F.Supp. 357, 358-59 (D. Mass.1950). The burden of proof is in the first instance on the individual asserting the privilege to demonstrate an attorney-client relationship. C. McCormick Evidence, s 88, p. 179 (Cleary ed. 1972).

The privilege does not apply to all communications between attorney and client. For example, where a client shared confidential communications with an attorney to confer about his client, her former husband, a client of that attorney, the confidential communications were not privileged. *State v. Rabin*, 495 So. 2d 257, 260 (Fla. 3d DCA 1986)(even if the giving of such advice constitutes the rendering of legal services, it could not serve as a basis for protecting Diaz's earlier communications because those communications were not made for the purpose of receiving said legal services). *See Fisher v. U.S.*, 425 U.S. 391, 403 (attorney-client privilege "protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege").

Moreover, not all communications between attorney and client are privileged. For example, in *Kilbourne & Son v. Kilbourne*, 677 So. 2d 855 (Fla 1st DCA 1995), the court held that a worker's compensation attorney's advice given to a client that he was statutorily required to perform a good faith job hunt in order to receive benefits for lost wages, was not a confidential communication within the ambit of the privilege; *see also Watkins v. State*, 516 So. 2d 1043 (Fla. 1st DCA 1987), *rev. denied*, 523 So.2d 579 (Fla. 1988) (defendant's former attorney not barred

from testifying at trial that he gave notice to client about the trial dates where defendant failed to appear).

Once a good faith claim of privilege is made, the burden shifts to the adverse party to show that the communication was not privileged. *Leithauser v. Harrison*, 168 So. 2d 95 (Fla. 2d DCA 1964); *see also Nationwide Mut. Fire Ins. Co. v. Harmon*, 580 So. 2d 192, 192-93 (Fla. 4th DCA 1991) ("[N]othing in the record indicates that any documents are protected by the attorney/client privilege. If petitioner thought some documents might be protected by either privilege, it should have listed the specific documents to which it claimed the privilege attaches. Otherwise, neither the trial court nor this court has anything specific to address."). "The proper procedure is for the trial court to examine the disputed documents in-camera and remove those documents which fall into the privileged category." *State Farm Mut. Auto. Ins. Co. v. Kendrick*, 780 So. 2d 231, 233 (Fla. 3d DCA 2001) (error for trial court to order production of documents allegedly protected by attorney-client privilege with instruction to counsel seeking discovery to decide whether the document was privileged); *see Paston v. Wiggs Contracting Co., Ltd., Inc.*, 698 So. 2d 933, 934 (Fla. 4th DCA 1997) (error to deny motion for protective order concerning subpoena duces tecum seeking records on basis of attorney-client and work product privilege without conducting an *in camera* inspection of items in question to determine whether claimed privileges apply); *Skorman v. Hovnanian of Florida, Inc.*, 382 So. 2d 1376, 1378-79 (Fla. 4th DCA 1980). Use of an in camera examination also applies to testimony a witness seeks to protect as privileged. *State v. Young*, 654 So. 2d 962, 963 (Fla. 3d DCA 1995) (trial court properly conducted *in camera* hearing outside of the State's presence to determine whether testimony was protected by attorney-client privilege).

Here, Edwards's testimony is required and a further deposition should be conducted before a judge or special master so that privilege determinations can be made as required by Florida law.

B. The Work Product Doctrine Does not Prevent Edwards from Responding to Questions at Deposition

Edwards also claims that he could not respond to a host of questions at his deposition because to answer them would reveal work product. *See, e.g.*, Deposition Transcript at 50, 54, 91, 100-104, 114, 126,-127, 155, 170, 181, 184-187, 192, 198-202, 205-206, 208-210, 212, 215-217; Exhibit 1.

Forty years ago, the Florida Supreme Court, in *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108, 112 (Fla. 1970), gave this general definition of work product saying what it is and what it is not:

> [T]hose documents, pictures, statements and diagrams which are to be presented as evidence are not work products anticipated by the rule for exemption from discovery. Personal views of the attorney as to how and when to present evidence, his evaluation of its relative importance, his knowledge of which witness will give certain testimony, personal notes and records as to witnesses, jurors, legal citations, proposed arguments, jury instructions, diagrams and charts he may refer to at trial for his own convenience, but not to be used as evidence, come within the general category of work product.

Id. at 112 (emphasis added). The "work product" doctrine protects documents and papers of an attorney or a party prepared in anticipation of litigation, regardless of whether they pertain to confidential communications between attorney and client. Fla.R.Civ.P. 1.280(b)(2). *See Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). The privilege may also protect an attorney's mental impressions which may be disclosed through testimony. *Hamilton v. Ramos*, 796 So. 2d 1269, 1270 (Fla. 4th DCA 2001) (error to compel deposition answers over

claim of fact and opinion work product without conducting an in camera hearing); *State v. Rabin*, 475 So. 2d 257 (Fla. 3d DCA 1986).

Notwithstanding the general rule, a party may obtain discovery of documents and tangible things prepared in anticipation of litigation or for trial by another party (i.e., "fact" work product) upon a showing of (a) need for the materials to prepare the party's case, and (b) inability to obtain the substantial equivalent of such materials without undue hardship. *Metric Engineering, Inc. v. Small*, 861 So. 2d 1248, 1250 (Fla. 1st DCA 2003) (to show 'need,' a party must present testimony or evidence demonstrating that the requested material is critical to the theory of his case, or to some significant aspect of the case after which the trial court should conduct an in camera review to evaluate whether the contested materials provide the requisite evidentiary value alleged by the requesting party and determine whether the requested materials are substantially similar to materials already available.)

Generally, fact work product is subject to discovery upon a showing of "need." Rule 1.280(b)(3), Florida Rules of Civil Procedure, provides for a limited privilege for "fact" work product – factual information concerning the client's case and prepared or gathered in connection with its preparation. *Wal-Mart Stores, Inc. v. Weeks*, 696 So. 2d 855, 856 (Fla. 2d DCA 1997) (trial judge did not depart from essential requirements of by not protecting materials from discovery when plaintiff retailer presented no evidence to support its claim, but only made "a blanket statement that the requested items were prepared in anticipation of litigation.").

On the other hand, opinion work product is absolutely, or nearly absolutely, privileged. The Rule requires courts to protect against disclosure respecting mental impressions, conclusions, opinions, or legal theories of an attorney (i.e., "opinion" work product). The difference between

the degrees of protection given oral and written statements is based partially upon this distinction between fact and opinion work product.

Work product protection is limited to materials which are not intended to be used as evidence at trial. *Northup v. Acken,* 865 So. 2d 1267, 1270 (Fla. 2004) ("when a party reasonably expects or intends to utilize an item before the court at trial, for impeachment or otherwise, the video recording, document, exhibit, or other piece of evidence is fully discoverable and is not privileged work product."). In *Northup,* the court remarked that a litigant must decide whether the material is going to be used only for strategy and trial preparation purposes prior to the entry of a pretrial case management order by the trial court. If it is, the work product protection can continue. *See also Gabriel v. Northern Trust Bank of Florida, N.A.*, 890 So. 2d 517 (Fla. 4th DCA 2005) (request for production of documents that required party to produce all documents that "relate to or otherwise support" each allegation [in the] complaint" and required attorney to make a determination of relevance are protected work product unless the attorney expects or intends documents to be used at trial.) On the other hand, if the party reasonably expects or intends to use the evidence at trial, for impeachment, or otherwise, the work product protection ceases and the material must be identified and disclosed.)

If the court determines that a particular request or question calls for the disclosure of protected work product, before determining whether a requesting party has shown sufficient need and hardship, a trial court must first decide whether the material involved was prepared in anticipation of litigation. *Airocar, Inc. v. Goldman*, 474 So. 2d 269, (Fla. 4th DCA1985) (citing *Cotton States Mutual Insurance Company v. Turtle Reef Associates, Inc.*, 444 So. 2d 595 (Fla. 4th

DCA 1984); *Selected Risks Insurance Company v. White*, 447 So.2d 455 (Fla. 4th DCA 1984)(urging trial court to make findings on that issue).

If the requested material or information was prepared in anticipation of litigation and its disclosure has not been waived, then the requestor must allege "need and hardship" in the motion to compel supported by evidence such as an affidavit to establish both. *Whealton v. Marshall*, 631 So. 2d 323, 325 (Fla. 4th DCA 1994) (because motion "contained no claim that the factual information in the memorandum is needed in the forthcoming evidentiary hearing or that the information cannot be obtained from any other source without undue hardship, the motion was facially insufficient to compel production and should have been summarily denied").

In this case, the questions that Edwards refused to answer questions concern the handling of cases that are now resolved while he was at the RRA criminal enterprise. There is a split of authority as to whether the work-product privilege extends beyond the case for which the work product was gathered. *State v. Rabin*, 495 So. 2d at 262; *Alachua Gen. Hosp. v. Zimmer USA, Inc.*, 403 So. 2d 1087, 1088 (Fla. 1st DCA 1981) (privilege continues after case concludes); *United States v. International Business Machs. Corp.*, 66 F.R.D. 154, 178 (S.D.N.Y.1974) (privilege applies only if the work product was gathered in anticipation of the very case in which the privilege is sought); *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 207 F.Supp. 407, 410 (M.D. Pa.1962) (same); *cf. Hercules Inc. v. Exxon Corp.*, 434 F.Supp. 136, 153 (D.Del.1977) (privilege extends to only those subsequent cases which are closely related); *Midland Inv. Co. v. Van Alstyne, Noel & Co.*, 59 F.R.D. 134 (S.D.N.Y.1973) (same). In this case, there is good cause to overrule the objections bases on the work product doctrine and require Edwards to answer.

The Rabin Case. One Florida court of appeal has carefully distinguished the difference between fact and opinion work product. In *Rabin*, the court of appeal concluded that the State was entitled to all of the factual information which the witness Diaz, the former wife of Rabin's client, had transmitted to attorney Rabin during their conversation while Rabin was preparing her ex-husband's case. Because Diaz did not come to see Rabin to obtain legal advice, their conversation was not that of attorney and client and thus not privileged, so the substance of her statements was discoverable. In *Rabin*, the trial court had ordered that Rabin did not have to respond to questioning regarding the initial conversation that took place between Diaz and him. On petition for writ of certiorari, the Third District concluded that the trial court had departed from the essential requirements of the law by directing that Rabin need not respond to questions about what Diaz said and that, because Rabin could have had no significant interest in the substance of Diaz's statements, the State should have been permitted to question Rabin regarding Diaz's communications. The court clarified that Rabin did not need not to respond to questions concerning his half of the conversation or to questions which would require him to reveal either his mental impressions of the conversation, or his conclusions, opinions, or theories drawn from the conversation -- he needed only to respond to questions concerning the content of Diaz's statements. Rabin, 495 So. 2d at 263-26, citing *In re Grand Jury Subpoena Served upon Doe*, 781 F.2d 238, 249 (2d Cir.), cert. denied, 475 U.S. 1108 (1986)(attorneys are not exempted from duty to appear and give evidence before grand jury merely because they are attorneys).

As for the trial court's decision to require Rabin to produce documents relating to his conversation with Diaz other than his notes, the court of appeal found no departure from the

essential requirements of law and that the State was entitled to Rabin's fact work product but not his opinion work product. 495 So. 2d at 263.

C. No Objection Based on a Non-Existent Privilege Should be Sustained.

During his deposition, Edwards also raised something called economic privacy as a basis not to answer questions. See Transcript at 72-74. While Edwards may have some interest in keeping his earnings to himself, in this case he has raised a Counterclaim that he has suffered damages to his earnings due to the filing of this action. Moreover, what he was offered and actually received while at RRA is relevant to explain how he came to move his practice to RRA and what his motives may have been to assist Rothstein in his conspiracy. Finally, even if these factors did not exist, there is no recognized economic privacy privilege and a confidentiality order limiting the use of compensation information to this case would reasonably resolve any legitimate concerns. Edwards is not entitled simply to not answer in this case.

CONCLUSION

WHEREFORE, based on the foregoing grounds, Jeffrey Epstein requests that the Court enter an order (1) appointing a special master to consider objections of Bradley Edwards made at his deposition in March 2010 and overruling those that are unfounded, (2) directing Mr. Edwards to submit to a further deposition to answer questions he previously refused to answer and permit follow up questions as counsel to Plaintiff deems appropriate, (3) examine *in camera* any documents referred by Edwards in his claims of work product, and (4) awarding Epstein his reasonable expenses incurred in obtaining such order and such other relief as the Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Motion to Overrule Objections and Compel Defendant Edwards to Answer Questions and Appear for Further Deposition was served by mail this 3rd day of February, 2011 on:

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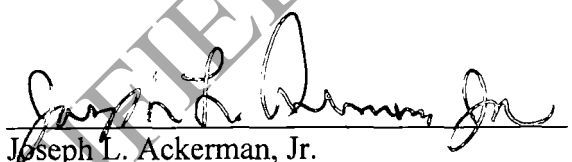

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Epstein v. Rothstein, et al.

Case No.: 50 2009CA040800XXXXMB AG

DEPOSITION OF BRADLEY J. EDWARDS

Page/Line	Testimony
50/5-11	Q. When I describe both the Jane Doe versus Jeffrey Epstein case and the L.M. versus Jeffrey Epstein case being on Qtask, I don't necessarily mean just the pleadings. I mean any aspect of it, not necessarily the pleadings or the fact that the case was there but the factual circumstances surrounding either case.
50/12-15	A. I am not going to into what my work-product privilege, I am not going to allow you to pierce that privilege. I am not going to tell you what, regarding those cases, was or was not on Qtask.
54/9-10	Q. And what type of information did you put into Qtask regarding the claims against Mr. Epstein?
54/14-17	A. SCAROLA: We're going to object and that I will instruct you not to answer on the basis of both attorney-client and work-product privileges.
72/10-12	Q. Did he ask you how much you were making at that time or how much you had made the preceding year, '08?
72/13	A. I believe so.
72/14	Q. What did you tell him?
72/15-16	A. SCAROLA: Objection. Instruct you not to answer on the basis of economic privacy.
73/2	Q. What did you tell him that you expected?
73/3	A. Objection, economic privacy.
73/5-8	Q. All I am interest now, not necessarily what you were earning but what you told him, i.e., Mr. Rothstein that you wanted to get or expected to earn if considered a job at RRA.

73/9 -14	A. SCAROLA:Objection. Economic privacy, instruct you not to answer. It's neither relevant nor material nor reasonably likely to lead to relevant material information and invades the economic privacy of the witness.
74/2-4	Q. Did you tell him that you – did you tell him that you wnated to make more money than you had the proceeding year?
74/5-6	A. SCAROLA: Same objections and instructions.
89/2-3	Q. Why did E.W. come, why did she hire you in the first place? What was the purpose?
89/4-8	A. This is going to get into attorney-client privileged information as to why she hired me which would incorporate the things that she told me that related to my representation, therefore, I am invoking the privilege and not answering.
90/25	Q. What kind of – what has he [Mr. Howell] done?
91/1-3	A. SCAROLA: Objection. Attorney-client privilege and work-product. Instruct you not to answer.
98/22-23	Q. And what, for what purpose did Ms. L.M. originally hire you?
98/24-25	A. SCAROLA: I am going to object. That calls for attorney-client privilege.
100/9-14	Q. At the time do you know whether, at the time that you represented Jane Doe 1, do you know whether her name, whether she was considered a victim by the United States Attorney's Office?
100/15-23	A. SCAROLA: If that information you obtained in the course of the performance of you responsibilities in representation of any client, I would instruct you not to answer. If that information was obtained through some public source independent of the work that you performed as counsel, then you may respond. THE WITNESS: I cannot respond.
100/25-101 /1-12	Q. With regard to the question, I am not interested in what you learned from E.W. All right. Did you learn from either any correspondence or a telephone call with any third party that whether again prior to the – let me start again.

	Prior to the filing of the lawsuit against Jane Doe 1 and Jane Doe 2 against the United States Government, did you learn from any source, maybe a document, maybe a telephone call or a conversation that you had with a third party separate from your client, that E.W. was a victim or was deemed to be a victim by the United States Government or the United States Attorney's Office?
	A. SCAROLA: Same objection and instruction.
101/16	Q. Same question with regard to L.M. Miller.
101/17-18	A. SCAROLA: Same objection and instruction.
101/20	Q. And same question with regard to Jane Doe.
101/21-22	A. Same objection and instruction.
101/24-25 - 102/1-6	Q. Prior to your filing the lawsuit with the United States Government, did you ever any conversations with the United States Attorney's Office–regarding the subject of the lawsuit or Jeffrey Epstein?
102/7-8	A. Same objection and instruction.
102/24-25 - 103/9-16	Q. All right. Did you ever speak with Marie Villafana during the pendency of that litigation which is still pending today? SCAROLA: Are you asking whether such conversations occurred that were relevant to his prosecution of the claims on behalf of his three clients?
	CRITTON: Sure. SCAROLA: Then the instruction remains the same. The objection remains the same.
103/18-22	Q. So, even if, do you – even if you talked about it with Mrs. Villafana, even if your client Mr. Edwards spoke with Mrs. Villafana about a scheduling issue, it's your position that its what, work-product?
103/23-25 - 104/1	A. SCAROLA: That's correct. We are not going to discuss anything that Mr. Edwards did in the course of the prosecution of his claims on behalf of his clients.

104/2-9	Q. So, any questions that I ask you with regard to conversations that Mr. Edwards had with the USAO's office, whether it was Mrs. Villafana or anyone else from the time, with regard to the Jane Doe 1 and Jane Doe 2 versus USA case, you would instruct Mr. Edwards, not to answer those questions?
104/10- 104/14-25 - 105/1-12	A. SCAROLA That is correct. Obviously pending some instructions or guidance from the court with regard to how the court will interpret the work-product privilege in this context. I might also add that it is our position that any such inquiry exerts a chilling effect upon the work that Mr. Edwards continues to do on behalf of his three clients. It is intended to as a means to obtain discovery that would not othersie be available in those pending claims. It intended to annoy, harass, and embarrass Mr. Epstein in a lawsuit that has absolutely no foundation whatsoever, and was filed for purposes other than a legitimate claim against Mr. Edwards based upon any good faith belief that he engaged in any form of improper or tortious conduct and — those inquiries are not reasonably calculated to lead to the discovery of admissible and relevant evidence. So for all of those reasons we object.
114/11 114/12-19	Q. What did he [Rothstein] say? A. SCAROLA: To the extent that you can answer that question without disclosing any mental impressions with regard to the lawsuit or any attorney-client privileged communications, you can answer. To the extent that it may invade either the work-product or attorney-client privilege, you should not respond.
116/21-23 116/24-25 - 117/1-2	Q. Do you remember a thrid occasion that he spoke to you regarding Epstein related occasion, cases? A. Anything else that he ever spoke with me about related to Epstein related issues is attorney-client and work-product privileged information that I'm not going to divulge.
126/13	Q. What was the legal issue?

126/20 -25 - 127/2-7	A. SCAROLA: If this was an issue that was identified during the course of the legal proceedings to opposing counsel, then I am going to allow you to identify the issue without getting into any of the substance of the discussion regarding that issue. If this was an issue that was identified in the course of the proceedings to opposing counsel, I am going to object and instruct you not to answer on the basis of the work-product privilege.
155/19-23 155/24-25	Q. What was, what is the purpose; that is, with regard to your three clients and only your three clients – what connection if any, did Ghislaine Maxwell have to those individuals? A. SCAROLA: Objection, work-product. Instruct you not to answer.
170/19-20 170/21-22 181/19/23 181/24-25	Q. Did Mr. Fisten interview a person by the name of Michael Sanka? A. SCAROLA: That is work-product and I instruct you not to answer. Q. Who other than Mr. Fisten from an internal investigator at RRA employee worked on doing investigation on the Epstein files? A. SCAROLA: Same objection, same instruction.
184/20-23 184/24-25 185/2-5 185/11-13 185/15-20 185/21-22	Q. Did you ever direct your investigators to go through Mr. Epstein's trash? A. SCAROLA: I am going to object, work-product, attorney-client privilege. Q. Have you directed – this is the investigators during the time you were at RRA and that's the question you're claiming the privilege over, correct? A. SCAROLA: I am claiming the privilege with respect to any action that was taken by Mr. Edwards or at Mr. Edward's direction – in connection with the investigation in prosecution of the claims against Mr. Epstein. Q. With regard to your investigators, you gave direction with regarding the Epstein cases, during the time you were with RRA did you ever tell them or direct them to go through Mr. Epstein's trash? A. SCAROLA: Same objection, same instruction.

185/24 -25	Q. Did you ever direct the investigators to go through the trash of the lawyers who were representing Mr. Epstein including myself?
186/2-3	A. SCAROLA: Same objection, same instruction.
186/19-22	Q. Did you ever direct the investigators to, during the time you were at RRA to conduct a surveillance on Mr. Epstein's property?
186/23-24	A. SCAROLA: Same objection, same instruction.
187/2-4	Q. Since the time you have left RRA in your current firm, have you conducted surveillance on Mr. Epstein's property?
187/5-6	A. SCAROLA: Same objection, same instruction.
187/8-10	Q. Have you instructed anyone, either of the in-house investigators to conduct surveillance of Mr. Epstein's property?
187/11-12	A. SCAROLA: Same objection, same instruction.
187/14-17	Q. Have you authorized investigators employed by RRA, either employees of the firm or an outside investigation firm, to walk around the perimeter of Mr. Epstein's home on or about March 17th of 2010?
187/18-19	A. SCAROLA: Same objection, same instruction.

192/11 -14	Q. Did you authorize your investigators to hire informants?
192/15	A. SCAROLA: Same objection, same instruction.
198/11-13	Q. Did you ever authorize any investigators to enter Mr. Epstein's property on March 17, 2010?
198/14-16	A. SCAROLA: Objection. Instruct you not to answer on the basis of work-product privilege.
198/18-20	Q. Are you ware of any investigators who entered Mr. Epstein's property on March 17, 2010?

198/21-23	A. SCAROLA: Same objection as well as attorney-client privilege and instruct you not to answer.
199/1-2	Q. Did you authorize any investigators to trespass on Mr. Epstein's property on March 17, 2010?
199/3	A. SCAROLA: Same objection and instruction.
199/6-10	Q. Mr. Edwards, did you authorize investigators to hide in the buses at Mr. Epstein's house in order to take photographs of either Mr. Epstein or any associated objects on his property?
199/11	A. SCAROLA: Same objection and instruction.
200/7-8	Q. Did he [Mr. Roberts] ever perform investigation work on any of the Epstein files?
200/9	A. SCAROLA: Same objection and instruction.
200/22-24	Q. Did you authorize Rick to perform any investigation on the Epstein files?
200/25	A. SCAROLA: Same objection and instruction.
201/3-6	Q. Did you ever authorize or direct Mr. Jenne to perform any investigation on the Epstein files?
	A. SCAROLA: Same objection and instruction.
201/19-24	Q. If you're unaware of the existence of the entity called Blue Line Research and Development, LLC, would it be a correct statement that you have never authorized anyone from Blue Line Research to conduct any investigation of Jeffrey Epstein?
201/25	A. SCAROLA: Same objection and instruction.
202/4-11	SCAROLA: We're not going to permit Mr. Edwards to answer any questions about either what he did or what he didn't do that are part of the work product involved in his representation of the Plaintiffs with claims against Mr. Epstein whom Mr. Edwards is representing.

205/13-16	Q. Between July 29th and August 7th 2009, did you speak with Mr. Rodriguez at all?
205/17-21	A. SCAROLA: Same objection, same instruction to the extent that any such conversation may have occurred in connection with your representation of the Plaintiffs and claims against Mr. Epstein.
206/2-5	A. If I did or didn't, either way that's going to be protected by the work-privilege and I'm not going to give you that information because you're not entitled to it.
208/4-6	Q. After Mr. Rodriguez's deposition, did Mr. Rodriguez contact you?
208/7-8	A. SCAROLA: Objection, instruct you not to answer.
208/18-25	A. SCAROLA: Anything that Mr. Edwards has done or may have done in connection with his investigation and prosecution of the claims against Mr. Rothstein, it is our position is not the appropriate subject matter of inquiry in the context of this lawsuit, and is an attempt to invade the attorney-client and work-product privileges. I am instructing him not to answer. We have an obligation to protect Mr. Edwards' clients' rights and for that reason we are obliged to interpret those privileges in their broadest sense unless and until the court deceides that a more restrictive interpretation should be applied.
209/23-24	Q. Did you speak with Mr. Rodriguez between his first and second?
	A. SCAROLA: Same objection, same instruction.
210/3-7	Q. Did Mr. Rodriguez ever make a request of you at any time for any type of monies for testimony, documents, or any other information associated with any existing or potential claimants directed to Mr. Epstein?
210/8	A. SCAROLA: Same objection, same instruction.
210/19-23	Q. Did you after Mr. Rodriguez's completion of his deposition on August 7, 2009, id you have an occasion to speak with any representative, a professional attorney, for the US Attorney's office?
210/24	A. SCAROLA: Same objection, same instruction.
212/12-15	Q. Did you sign any affidavit or give any sworn testimony associated with the criminal complaint that was filed by USA versus Mr. Rodriguez?

212/16-24	A. I am not here to divulge any anything that may waive my attorney-client or work-product privilege or otherwise jeopardize the claims that my three clients are pursuing against Jeffrey Epstein.
215/6-9	Q. Before you filed a lawsuit against the USA, did you ever speak with Ms. Villafana?
	A. I believe any communications that I would have had with respect to Ms. Villafana would have only been in the interest of pursuing claims on behalf of the clients that I represented. Therefore, I am going to claim a work-product privilege as to those communications.
215/16-20	Q. My question was is only did you speak with her prior to filing that Complaint?
	A. SCAROLA: Same objection, same instruction.
216/8-13	Q. Have the only conversations that you have had with Ms. Villafana only been in the context of Jane Doe 1 and 2 versus USA only in the context of that case?
	A. SCAROLA: Same objection.
216/22-25	Q. Have you had an occasion to speak with Ms. Villafana with regard to the criminal complaint involved Alfredo Rodriguez?
217/1-2	A. SCAROLA: Same objection, same instruction.
217/7-8	Q. Any of the three clients who have claims against Mr. Epstein?
217/10	A. SCAROLA: Same objection, same instruction.