

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

CASE NO: ~~2006CF009454 AX~~
2008CF009381 AX

STATE,

vs.

EPSTEIN, JEFFREY E,

Defendant.

FILED
2009 JUN 29 AM 11:49
HAROLD R. ENOK, CLERK
PALM BEACH COUNTY, FL

**INTERVENER'S RESPONSE TO MOTION TO STAY
AND SUPPORTING MEMORANDUM OF LAW**

COMES NOW, Intervener [REDACTED] and files this Response to Defendant Jeffrey Epstein's Motion to Stay, and states:

In their motion, Defendant asks the Court to stay its ruling on the production of the NPA agreement pending review by the Fourth DCA. Since this NPA was never properly sealed in the first place, a Stay is improper because this document is a public record until such time as it has been properly sealed. Furthermore, as Defendant EPSTEIN has failed to demonstrate that he is likely to succeed on the merits of his appeal or describe how he will be harmed by this disclosure, Intervener [REDACTED] respectfully requests the Court deny their Motion.

Pursuant to Florida Rule of Appellate Procedure 9.310(a), a trial court has the discretion to enter a stay pending interlocutory review of a non-final order. The burden to satisfy the

requirements for a stay rests with the party requesting the stay. A trial court is not obligated, or even encouraged, to enter such a stay as the Appellate Rules specifically provide, "In the absence of a stay, during the pendency of a review of a non-final order, **the lower tribunal may proceed with all matters**, including trial or final hearing; provided that the lower tribunal may not render a final order disposing of the cause pending such review." Fla. R. App. P. 9.130(f) (emphasis added).

Defendants ask the Court to stay disclosure of a public document which was never properly sealed. Factors to be considered by a court when deciding whether to enter a stay "include the moving party's likelihood of success on the merits, and the likelihood of harm should a stay not be granted." Perez v. Perez, 769 So.2d 389, 391 n.4 (Fla. 3d DCA 1999). Defendants fail to adequately address these factors in their motion. In fact, Defendant completely ignores the likelihood of success analysis. Likely this is because there is no likelihood that the Fourth District would reverse this court's ruling since the proper procedures for sealing the NPA were never followed.

As to likelihood of harm, the only reference Defendant [REDACTED] makes to this issue is in paragraph 3 of his motion. Here, Defendant merely makes a broad assertion that there will be "irreparable harm caused by the disclosure of the NPA." There is no explanation of who will be harmed or what harm will be caused. How can a public document which redacts the names of the minor victims cause harm? This necessary question is never answered. Defendant's broad and vague assertion is insufficient to grant a stay.

Finally, since there has been no showing by Defendant EPSTEIN that the proper procedure for sealing court documents were ever followed, the NPA is a public record.

Therefore, Plaintiff respectfully requests the Court DENY Defendants' Motion to Stay the Proceedings.

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 26 day of June, 2009 to Jack A. Goldberger, Esq., 250 Australian Avenue, Suite 1400, West Palm Beach, FL 334101; Bruce E. Reinhart, Esq., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401; Robert D. Critton, Jr., Michael J. Pike, 515 North Flagler Drive, Suite 400, West Palm Beach, FL 33401.

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By: _____

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West's Florida Statutes Annotated Currentness
Florida Rules of Appellate Procedure (Refs & Annos)

→**Rule 9.310. Stay Pending Review**

(a) Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

(b) Exceptions.

(1) *Money Judgments.* If the order is a judgment solely for the payment of money, a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest. Multiple parties having common liability may file a single bond satisfying the above criteria.

(2) *Public Bodies; Public Officers.* The timely filing of a notice shall automatically operate as a stay pending review, except in criminal cases, in administrative actions under the Administrative Procedure Act, or as otherwise provided by chapter 120, Florida Statutes, when the state, any public officer in an official capacity, board, commission, or other public body seeks review; provided that an automatic stay shall exist for 48 hours after the filing of the notice of appeal for public records and public meeting cases. On motion, the lower tribunal or the court may extend a stay, impose any lawful conditions, or vacate the stay.

(c) Bond.

(1) *Defined.* A good and sufficient bond is a bond with a principal and a surety company authorized to do business in the State of Florida, or cash deposited in the circuit court clerk's office. The lower tribunal shall have continuing jurisdiction to determine the actual sufficiency of any such bond.

(2) *Conditions.* The conditions of a bond shall include a condition to pay or comply with the order in full, including costs; interest; fees; and damages for delay, use, detention, and depreciation of property, if the review is dismissed or order affirmed; and may include such other conditions as may be required by the lower tribunal.

(d) Judgment Against a Surety. A surety on a bond conditioning a stay submits to the jurisdiction of the lower tribunal and the court. The liability of the surety on such bond may be enforced by the lower tribunal or the court, after motion and notice, without the necessity of an independent action.

(e) Duration. A stay entered by a lower tribunal shall remain in effect during the pendency of all review proceedings in Florida courts until a mandate issues, or unless otherwise modified or vacated.

(f) Review. Review of orders entered by lower tribunals under this rule shall be by the court on motion.