

FILED
2009 JUL -6 PM 2:58
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL

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

CASE NO: 2006CF009454AXX,
2006CF009454AXX

STATE,

vs.

EPSTEIN, JEFFREY E,

Defendant.

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2009 JUL -2 PM 3:40
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
CIRCUIT CIVIL 2

**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.

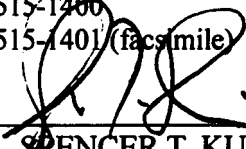
Finally, since there has been no showing by Defendant EPSTEIN that the proper procedure for sealing court documents were ever followed, the NPA is a public record.

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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