
**IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA**

CASE NO. 4D09-2554

JEFFREY EPSTEIN,

Petitioner,

vs.

**STATE OF FLORIDA, PALM BEACH NEWSPAPERS, INC.,
E.W., and B.B.,**

Respondents.

Pending in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida,
Case Nos. 2006 CF 9454AMB, 2008 CF 9381AMB

**PALM BEACH NEWSPAPERS, INC. d/b/a *THE PALM BEACH POST*'S
MOTION FOR APPELLATE ATTORNEYS' FEES AND COSTS**

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**RESPONDENT PALM BEACH POST'S
MOTION FOR APPELLATE ATTORNEYS' FEES AND COSTS**

Pursuant to Florida Rules of Appellate Procedure 9.400 and 9.410 and Administrative Order Number 2.303 of the Fifteenth Judicial Circuit of Florida, Respondent Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post (the "Post") moves this Court for an award of attorneys' fees and costs in connection with this review proceeding. In support thereof, the Post states:

1. The Post is a daily newspaper that has covered this matter and related proceedings. In an effort to inform its readers concerning these matters, the Post relies upon (among other things) law enforcement records and judicial records.

2. On June 10, 2009, the trial court granted the Post's Motion to Intervene in this action for the purpose of seeking access to court records. Specifically, the Post sought access to a non-prosecution agreement that was docketed on July 2, 2008, and an addendum docketed on August 25, 2008.

3. On June 25, 2009, the trial court heard oral argument on the Post's (and other non-parties') motions. The Court found that the documents had not properly been sealed in the first instance and further denied Petitioner Jeffrey Epstein's Motion to Make Court Records Confidential dated June 11, 2009.

4. The Post is entitled to its fees and costs in this matter pursuant to Administrative Order Number 2.303 of the Fifteenth Judicial Circuit of Florida.¹ Specifically, that order allows sanctions to be imposed against the moving party “if a motion to seal is not made in good faith and is not supported by a sound legal and factual basis.” Admin. Or. 15th Jud. Cir. Fla. 2.303.

5. The Post also is entitled to fees and costs in this matter pursuant to Florida Rule of Judicial Administration 9.410, which gives appellate courts discretion to impose sanctions if an appeal “presents no justiciable question and is so devoid of merit on the face of the record that there is little prospect it will ever succeed.” E.g., Visoly v. Sec. Pac. Cred. Corp., 768 So. 2d 482, 490-91 (Fla. 3d DCA 2000) (citing Fla. R. App. P. 9.410). Frivolous appeals include those in which a case is found:

- a. to be completely without merit in law and not supported by a reasonable argument for an extension, modification or reversal of existing law;
- b. to be contradicted by overwhelming evidence;
- c. as having been undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or
- d. as asserting material factual statements that are false.

Id. at 491.

¹ A copy of Administrative Order 2.303 is attached at Tab 2 to the Post’s Supplemental Appendix, which was filed with its response brief.

6. In this case, Mr. Epstein's certiorari petition – like his initial filing of these documents under seal and his June 11, 2009 Motion to Make Court Records Confidential – was neither made in good faith nor supported by a sound legal and factual basis. The certiorari petition asserted three interests that ostensibly would be protected by closure but cited no record evidence in support of that assertion. Indeed, both in his motion below and at the hearing on the motion, Epstein made no genuine effort to demonstrate by evidence how and why any material interests would be served by closure. Instead, Epstein's arguments addressed extraneous, inapplicable issues that did not support closure and demonstrated his lack of good faith in bringing his motion. Moreover, Epstein's assertion that the trial court's orders contradicted and were preempted by federal court rulings was simply false. Epstein likewise failed to substantiate his arguments in this proceeding, instead again relying on red herrings and unsubstantiated blanket assertions to support his baseless claim that closure is or was proper in this case.

7. Rather, it appears Epstein opposed unsealing of these records simply for the purpose of shielding from public view documents material to the resolution of criminal charges against him for soliciting children for prostitution. In other words, the petition to this Court was merely a ploy intended to delay the public access to judicial records that the Florida Constitution and common law guarantee.

8. In sum, Epstein's arguments for restricting access to his non-prosecution agreement and its addendum are without merit, Epstein's petition to this Court was likewise without support in fact or law, and the Post is entitled to an award of its fees and costs in defending its rights of access.

WHEREFORE, the Post respectfully requests that this Court award to it its fees and costs and grant such other relief as the Court deems proper.

Respectfully submitted,

THOMAS, LOCICERO & BRALOW
PL



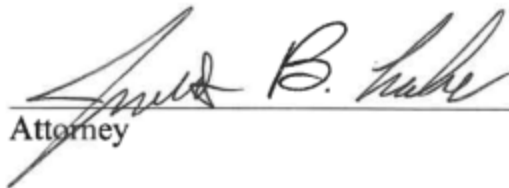
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished U.S. Mail to: **Hon. Jeffrey Colbath**, Palm Beach County Courthouse, 205 N. Dixie Highway, Room 11F, West Palm Beach, FL 33401; and via facsimile and U.S. Mail to: **R. Alexander Acosta**, United States Attorney's Office - Southern District, 500 S. Australian Ave., Ste. 400, West Palm Beach, FL 33401; **Barbara Burns, Esq.**, State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401; **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401; **Robert D. Critton, Esq.**, Burman, Critton, Luttier & Coleman, 515 N. Flagler Drive, Suite 400, West Palm Beach, FL 33401; **Jane Kreusler-Walsh, Esq.**, 501 S. Flagler Drive, Suite 503, West Palm Beach, FL 33401-5913; **Spencer T. Kuvn, Esq.**, Leopold-Kuvn, P.A., 2925 PGA Boulevard, Suite 200, Palm Beach Gardens, FL 33410; and **Bradley J. Edwards, Esq. and William J. Berger, Esq.**, Rothstein Rosenfeldt Adler, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394 on this 20th day of July, 2009.



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