

THOMAS | LoCICERO
& | BRALOW

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facsimile transmittal

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William J. Berger, Esq.
From: Deanna K. Shullman, Esq. Date: 06/01/2009
Re: State v. J. Epstein Pages: 6

Urgent For review Please comment Please reply Please recycle

Please see attached Motion to Intervene and Petition for Access

Please place in
Epstein file
Thx.

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09/12/2019

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Agency to Agency Request: 19-411

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Reply To Tampa

June 1, 2009

VIA FEDERAL EXPRESS OVERNIGHT MAIL

The Honorable Jeffrey Colbath
Fifteenth Judicial Circuit-Palm Beach
Palm Beach County Courthouse
Main Judicial Complex
205 N. Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re:

Dear Judge Colbath:

Enclosed is a courtesy copy of non-party Palm Beach Newspapers, Inc. d/b/a The Palm Beach Post's (the "Post") Motion to Intervene and Petition for Access to certain court records in this case. It is our understanding that Bradley Edwards and William Berger of Rothstein Rosenfeldt Adler have filed a similar motion on behalf of a non-party known as "E.W.," and that E.W.'s motion is set for hearing on June 10, 2009. The Post requests an opportunity to be heard on the issue of access to these records at that time.

Thank you for your consideration in this matter. Please do not hesitate to contact me with any questions or comments.

Sincerely,

THOMAS, LOCICERO & BRALOW PL



Deanna K. Shullman

cc: Counsel of Record

09/12/2019

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Agency to Agency Request: 19-411

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EFTA02729583

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA

vs.

Case Nos.: 2006-CF9454-AXX &
2008-9381CF-AXX

JEFFREY EPSTEIN

**PALM BEACH POST'S MOTION TO INTERVENE
AND PETITION FOR ACCESS**

Palm Beach Newspapers, Inc., d/b/a The Palm Beach Post (the "Post") moves to intervene in this action for the limited purpose of seeking access to documents filed under seal. The documents relate directly to the Defendant's guilty plea and sentence. Thus, the sealed documents go to the heart of the disposition of this case. But in requesting that Judge Pucillo seal these documents, the parties failed to comply with Florida's strict procedural and substantive requirements for sealing judicial records. In addition, continued sealing of these documents is pointless, because these documents have been discussed repeatedly in open court records. For all of these reasons, the documents must be unsealed. As grounds for this Motion, 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. As a member of the news media, the Post has a right to intervene in criminal proceedings for the limited purpose of seeking access to proceedings and records. See Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113, 118 (Fla. 1988) (news media have standing to challenge any closure order); Miami Herald Publ'g Co. v. Lewis, 426 So. 2d 1, 7 (Fla. 1982) (news media must be given an opportunity to be heard on question of closure).

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3. The particular documents under seal in this case are a non-prosecution agreement that was docketed on July 2, 2008, and an addendum docketed on August 25, 2008. Together, these documents apparently restrict any federal prosecution of the Defendant for offenses related to the conduct to which he pleaded guilty in this case. Judge Pucillo accepted the agreement for filing during a bench conference on June 30, 2008. The agreement, Judge Pucillo found, was "a significant inducement in accepting this plea." Such agreements and related documents typically are public record. See Oregonian Publishing Co. v. United States District Court, 920 F.2d 1462, 1465 (9th Cir. 1990) ("plea agreements have typically been open to the public"); United States v. Kooistra, 796 F.3d 1390, 1390-91 (11th Cir. 1986) (documents relating to defendant's change of plea and sentencing could be sealed only upon finding of a compelling interest that justified denial of public access).

4. The Florida Constitution provides that judicial branch records generally must be open for public inspection. See Art. I, § 24(a), Fla. Const. Closure of such records is allowed only under narrow circumstances, such as to "prevent a serious and imminent threat to the fair, impartial and orderly administration of justice," or to protect a compelling governmental interest. See Fla. R. Jud. Admin. 2.420(c)(9)(A). Additionally, closure must be effective and no broader than necessary to accomplish the desired purpose, and is lawful only if no less restrictive measures will accomplish that purpose. See Fla. R. Jud. Admin. 2.420(c)(9)(B) & (C); Lewis, 426 So. 2d at 3.

5. In this case, the non-prosecution agreement and, later, the addendum were sealed without any of the requisite findings. Rather, it appears from the record, the documents were sealed merely because the Defendant's counsel represented to Judge Pucillo that the non-prosecution agreement "is a confidential document." See Plea Conference Transcript page 38

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(June 30, 2008). Such a representation falls well short of demonstrating a compelling interest, a genuine necessity, narrow tailoring, and that no less restrictive measures will suffice. Consequently, the sealing was improper and ought to be set aside.

6. In addition, at this time good cause exists for unsealing the documents because of their public significance. Since the Defendant pleaded guilty to soliciting a minor for prostitution, he has been named in at least 12 civil lawsuits that – like the charges in this case – allege he brought and paid teenage girls to come his home for sex and/or “massages.”¹ At least 11 cases are pending. In another lawsuit, one of the Defendant’s accusers has alleged that federal prosecutors failed to consult with her regarding the disposition of possible charges against the Defendant.² State prosecutors also have been criticized: The Palm Beach Police Chief has faulted the State Attorney’s handing of these cases as “highly unusual” and called for the State Attorney’s disqualification. Consequently, this case – and particularly the Defendant’s agreements with prosecutors – are of considerable public interest and concern.

7. The Defendant’s non-prosecution agreement with federal prosecutors also was important to Judge Pucillo. As she noted in the June 2008 plea conference, “I would view [the non-prosecution agreement] as a significant inducement in accepting this plea.” See Plea Conference Transcript page 39. Florida law recognizes a strong public right of access to documents a court considers in connection with sentencing. See Sarasota Herald Tribune, Div.

¹ See, e.g., Doe v. Epstein, Case No. 08-80069 (S.D. Fla. 2008); Doe No. 2 v. Epstein, Case No. 08-80119 (S.D. Fla. 2008); Doe No. 3. v. Epstein, Case No. 08-80232 (S.D. Fla. 2008); Doe No. 4. v. Epstein, Case No. 08-80380 (S.D. Fla. 2008); Doe No. 5 v. Epstein, Case No. 08-80381 (S.D. Fla. 2008); C.M.A. v. Epstein, Case No. 08-80811 (S.D. Fla. 2008); Doe v. Epstein, Case No. 08-80893 (S.D. Fla. 2008); Doe No. 7 v. Epstein, Case No. 08-80993 (S.D. Fla. 2008); Doe No. 6 v. Epstein, Case No. 08-80994 (S.D. Fla. 2008); Doe II v. Epstein, Case No. 09-80469 (S.D. Fla. 2009); Doe No. 101 v. Epstein, Case No. 09-80591 (S.D. Fla. 2009); Doe No. 102 v. Epstein, Case No. 09-80656 (S.D. Fla. 2009); Doe No. 8 v. Epstein, Case No. 09-80802 (S.D. Fla. 2009).

² See In re: Jane Doe, Case No. 08-80736 (S.D. Fla. 2008).

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of the New York Times Co. v. Holtzendorf, 507 So. 2d 667, 668 (Fla. 2d DCA 1987) ("While a judge may impose whatever legal sentence he chooses, if such sentence is based on a tangible proceeding or document, it is within the public domain unless otherwise privileged."). In this case, no interest justifies continued sealing of these "significant" documents that Judge Pucillo considered in accepting the plea and sentencing the Defendant. The lack of any such compelling interest – as well as the parties' failure to comply with the standards for sealing documents initially – provide good cause for unsealing the documents at this time.

8. Finally, continued closure of these documents is pointless, because many portions of the sealed documents already have been made public. For example, court papers quoting excerpts of the agreement have been made public in related federal proceedings.³ As the Florida Supreme Court has noted, "there would be little justification for closing a pretrial hearing in order to prevent only the disclosure of details which had already been publicized." Lewis, 426 So. 2d at 8. Similarly, in this case, to the extent that information already has been made public, continued closure is pointless and, therefore, unconstitutional.

9. The Post has no objection to the redaction of victims' names (if any) that appear in the sealed documents. In addition, insofar as the Defendant or State Attorney seek continued closure, the Post requests that the Court inspect the documents in camera in order to assess whether, in fact, continued closure is proper.

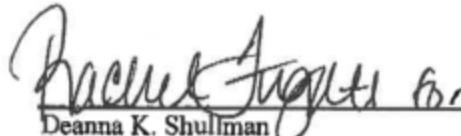
³ See, e.g., "Defendants Jeffrey Epstein and Sarah Kellen's Motion for Stay," C.M.A. v. Epstein, Case No. 08-80811 (S.D. Fla. July 25, 2008) (filed publicly Jan. 7, 2009).

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WHEREFORE, the Post respectfully requests that this Court unseal the non-prosecution agreement and addendum and grant the Post such other relief as the Court deems proper.

Respectfully submitted,

THOMAS, LOCICERO & BRALOW PL


Deanna K. Shullman
Florida Bar No.: 0514462
James B. Lake

101 N.E. Third Avenue, Suite 1500
Fort Lauderdale, FL 33301


Attorneys for The Palm Beach Post

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished 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 (fax: 561-820-8777); **Michael McAuliffe, Esq.**, and **Judith Stevenson Arco, Esq.**, State Attorney's Office - West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401 (fax: 561-355-7351); **Jack Alan Goldberger, Esq.**, Atterbury Goldberger, et al., 250 S. Australian Ave., Ste. 1400, West Palm Beach, FL 33401 (fax: 561-835-8691); and **Bradley J. Edwards, Esq. and William J. Berger, Esq.**, Rothstein Rosenfeldt Adler, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394 (fax: 954-527-8663) on this 1st day of June, 2009.


Rachel Jiggetts
Attorney

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facsimile transmittal

To: **Marilyn, Judicial Assistant to Judge** FAX
Colbath



R. Alexander Acosta, Esq., USAO

Barbara Burns, Esq., ASA

Jack Alan Goldberger, Esq.

Bradley J. Edwards, Esq.
William J. Berger, Esq.

Robert D. Critton, Esq.

Spencer T. Kuyin, Esq.

From: **Deanna K. Shullman, Esq.** Date:

Re: **State v. J. Epstein** Pages: **5**

Urgent For review Please comment Please reply Please recycle

Please see attached proposed Order.

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Reply To Tampa

June 26, 2009

VIA FASCIMILE

The Honorable Jeffrey Colbath
Fifteenth Judicial Circuit-Palm Beach
Palm Beach County Courthouse
Main Judicial Complex
205 N. Dixie Highway, Room 11F
West Palm Beach, FL 33401

Re: State of Florida v. Jeffrey Epstein

Dear Judge Colbath:

This law firm represents the Palm Beach Post in the above matter. I have prepared a proposed Order, which I believe accurately reflects your ruling at the hearing on June 26, 2009 on Defendant Jeffrey Epstein's Motion to Stay Disclosure of the Non-Prosecution Agreement and Addendum Pending Review.

By copy of this letter, I am providing all counsel of record a copy of the proposed Order. If the attached Order meets with Your Honor's approval, please enter the same. If you would like to have an electronic copy of this proposed order, please have your Judicial Assistant call my office to make arrangements for us to send you the order via email.

Sincerely,

THOMAS, LOCICERO & BRALOW PL

Deanna K. Shullman

Deanna K. Shullman

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Hon. J. Colbath
06/26/09
Page 2 of 2

DKS/kb
Enclosures

cc: U.S. Attorney's Office (via facsimile)
State Attorney's Office (via facsimile)
Jack Alan Goldberger, Esq. (via facsimile)
Bradley J. Edwards, Esq. (via facsimile)
Deanna K. Shullman, Esq. (via facsimile)
Spencer T. Kuvin, Esq. (via facsimile)

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA

vs.

Case Nos.: 2006-CF9454-AXX &
2008-9381CF-AXX

JEFFREY EPSTEIN

ORDER

This matter came before the Court on Defendant Jeffrey Epstein's Motion to Stay Disclosure of the Non-Prosecution Agreement and Addendum Pending Review and upon further consideration of this Court's June 26, 2009 Order unsealing certain records in this case. A hearing was conducted on these matters on June 26, 2009.

On June 26, 2009, this Court entered an order unsealing the non-prosecution agreement and an addendum on file in this case. Having inspected the documents, this Court finds that they do not name any victims and do not contain any material subject to confidentiality pursuant to Federal Rule of Criminal Procedure 6. Thus, the Court declines to make any redactions to the records before releasing them to the public.

The Court further finds that Defendant has not demonstrated that a stay pending appeal is warranted. Defendant has not shown any irreparable harm or likelihood of success on the merits on appeal. These documents were not properly closed in the first instance, no present basis for closure exists, and good cause supports disclosure given the public interest in these proceedings and the lack of compelling interest in closure.

Accordingly, it is ordered and adjudged as follows:

1. Effective at noon on July 2, 2009, the non-prosecution agreement (docketed July 2, 2008) and addendum (docketed August 25, 2008) are unsealed;

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2. Defendant's Motion for Stay pending appellate review is DENIED;
3. The Clerk of Court is directed to release the documents to the public at noon on Thursday, July 2, 2009.

Done and ordered this _____ day of June, 2009 in Palm Beach County, West Palm Beach, Florida.

Hon. Jeffrey Colbath
CIRCUIT JUDGE

cc: U.S. Attorney's Office
State Attorney's Office
Jack Alan Goldberger, Esq.
Bradley J. Edwards, Esq.
Deanna K. Shullman, Esq.
Spencer T. Kuvin, Esq.

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ATTERBURY, GOLDBERGER & WEISS, P.A.
ATTORNEY AT LAW
SUITE 1400
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WEST PALM BEACH, FLORIDA 33401-5086

FAX COVER SHEET

Date: 6/26/09

To: R. Alexander Acosta, Esq. USAO
Barbara Burns, Esq. ASAO
Bradley J. Edwards, Esq.
William J. Berger, Esq.
Robert D. Critton, Esq.
Spencer T. Kuvin, Esq.

Subject: State of Florida v. Epstein

Pages: 3, including this cover sheet.

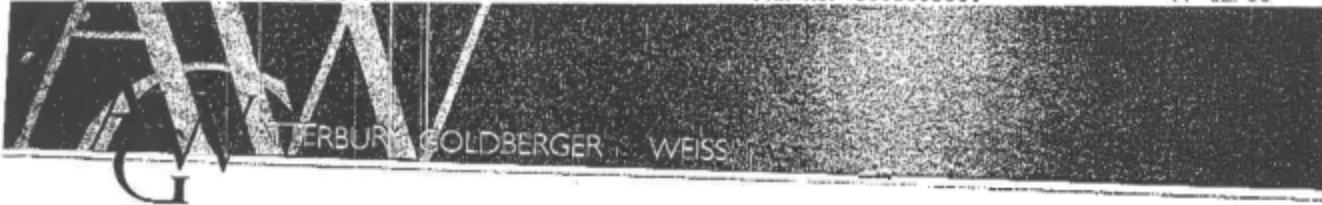
See attached letter.

ORIGINAL WILL BE SENT: YES NO

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JOSEPH R. ATTERBURY

† JACK A. GOLDBERGER

JASON S. WEISS

Board Certified Criminal Trial Attorney
Member of New Jersey & Florida Bars

June 26, 2009

TELECOPIED THIS DATE

The Honorable Jeffrey Colbath
Palm Beach County Courthouse
205 N. Dixie Highway
Room 11F
West Palm Beach, FL 33401

Re: State of Florida v. Jeffrey Epstein

Dear Judge Colbath:

On behalf of Mr. Epstein, we strongly object to the proposed order submitted by Deanna Shulman on behalf of the Palm Beach Post. The court has already entered an order dated June 25, 2009 on:

- a) Non-party, E.W.'s Motion to Vacate Order Sealing Records and Unseal Records
- b) Palm Beach Post's Motions to Intervene and petition for Access
- c) B.B's Motions to Intervene and for an order to Unseal Records
- d) Jeffrey Epstein's Motion to Make Court Records Confidential.

The only matter before the court today was Defendant Epstein's Motion for a Stay which the court denied. Contrary to the assertions in the proposed order submitted to you by the Palm Beach Post, the court made a specific finding that the Defendant Epstein has met his burden of irreparable harm. Additionally, all of the other matters contained in the proposed order were addressed in the court's Order of June 25, 2009.

It is the position of Defendant Epstein that the order on today's Motion to Stay should simply state that the Defendant's Motion to Stay is denied. In this way, the court's order of June 25, 2009 on the merits of the issue and the order of the court

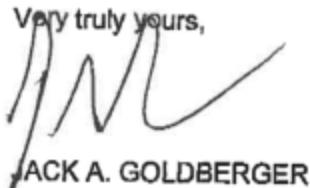
JUN-26-2009 FRI 02:30 PM

FAX NO. 5618358691

P. 03/03

The Honorable Jeffrey Colbath
June 26, 2009
Page 2

denying the stay motion can properly be reviewed by the Fourth District Court of Appeal.

Very truly yours,

MARK A. GOLDBERGER

JAG:cg

cc: U.S. Attorney's Office (via facsimile)
State Attorney's Office(via facsimile)
Deanna K. Shullman, Esquire (via facsimile)
Bradley J. Edwards, Esquire (via facsimile)
Spencer t. Kuvin, Esquire (via facsimile)

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