

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

CASE NO: 2006CF009454AXX,
2008CF009381AXX

STATE,

vs.

EPSTEIN, JEFFREY E,

Defendant.

MOTION TO INTERVENE AND SUPPORTING MEMORANDUM OF LAW

COMES NOW, Applicant, B.B. and requests this Court, pursuant to Florida Rule of Civil Procedure 1.230, for leave to intervene as a party in Mr. Epstein's criminal matter for the following reasons:

1. Applicant's intervention is in subordination to, and in recognition of, the propriety of the main proceeding.
2. Applicant stands to either gain or lose by the court's direct legal operation and effect of judgment in the pending matter.
3. Applicant is not injecting a new issue into the pending matter.
4. Applicant's motion to intervene is timely.

5. Defense counsel, Robert Critton, Jr. in the civil matter, does not object to Applicant's motion, but Plaintiff's counsel has not heard back from Defendant Epstein's criminal counsel, Jack Goldberger as to whether he opposes this motion.

MEMORANDUM OF LAW

Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

Fla.R.Civ.P. 1.230. "A person seeking leave to intervene must claim an interest of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." Litvak v. Scylla Properties, LLC, 946 So.2d 1165, 1172 (Fla. 5th DCA 2006). Additionally, "an intervenor may not inject a new issue into the case."

Environmental Confederation of Southwest Florida, Inc. v. IMC Phosphates, Inc., 857 So.2d 207, 211 (Fla.1st DCA 2003). "An intervention is thus only appropriate where the issue the intervenor raises are related to the case being litigated." Racing Properties, L.P. v. Baldwin, 885 So.2d 881, 883 (Fla. 3rd DCA 2004).

Once the trial court determines that the intervenor's interest is sufficient, it exercises its discretion to determine whether to permit intervention. Union Cent. Life Ins. Co. v. Carlisle, 593 So.2d 505, 507 (Fla. 1992). "In deciding this question the court should consider a number of factors, including the derivation of the interest, any pertinent contractual language, the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance." Id. Finally, an intervention is generally considered timely if it is made before a final decree has been entered. See Technical Chemicals And Products, Inc. v. Porchester Holdings, Inc., 748 So.2d 1090, 1091 (Fla. 4th DCA 2000).

Applicant's proposed intervention is subordinate and in recognition of the propriety of the main proceeding. Additionally, Applicant will not inject any new issue into Mr. Epstein's criminal case. In fact, Applicant's intervention is for the limited purpose of joining already intervening parties "E.W." and "the Palm Beach Post" in their arguments regarding the sealed Federal non-prosecution agreement in Mr. Epstein's criminal file. Finally, Applicant's interest is of such a direct and immediate character that the Applicant stands to either gain or lose by the court's judgment in the pending matter. The Applicant currently has a civil complaint against Mr. Epstein regarding allegations similar to those in this pending criminal matter. The sealed document may contain discoverable information or may lead to the discovery of new relevant information. See Fla.R.Civ.P. 1.280(b)(1). Additionally, the document may contain valuable impeachment information that the Applicant would intend to use if the Applicant's civil case proceeded to trial.

WHEREFORE, Applicant, B.B., respectfully requests the Court grant B.B.'s motion to intervene in the pending criminal matter.

CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 11 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: 
SPENCER T. KUVIN, Esq.
Florida Bar No.: 089737

TO REORDER CALL 954-846-9399



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Agency to Agency Request: 19-411

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

CASE NO. 2008CF009381A
DIVISION W

STATE OF FLORIDA

vs.

JEFFREY EPSTEIN,

Defendant.

MOTION TO MAKE COURT RECORDS CONFIDENTIAL

Comes now the Defendant, JEFFREY EPSTEIN, by and through his undersigned attorney's, pursuant to Florida Rule of Judicial Administration 2.420 and the Administrative Orders of this Court, specifically AO 2.303 and moves this Court to treat as confidential the following records.

- A. A document referred to as "Non-Prosecution Agreement" filed under seal in the court file on July 2, 2008.
- B. A document referred to as "The Addendum to the Non-Prosecution Agreement" filed under seal in the court file on August 25, 2008.
1. The above referenced documents were Ordered Sealed at a hearing held before the Honorable Judge Deborah Dale Pucillo on June 30, 2008.
2. A Motion to Vacate Order Sealing Records and Unseal Records was filed by Non-Party EW on or about May 15, 2009.
3. A Motion to Intervene and Petition for Access was filed by Non-party Palm Beach Post on June 1, 2009.
4. This Court granted Non-Party E.W. and Palm Beach Post Motion to Intervene on June 10, 2009 but took no immediate action on E. W.'s Motion to Vacate Order Sealing Records and Unsealing Records or on Palm Beach Posts Petition For Access, pending a further hearing.

5.. The documents should remain confidential for the following reasons:

- a. To prevent a serious imminent threat to the fair, impartial, and orderly administration of justice.
- b. To protect a compelling government interest.
- c. To avoid substantial injury to innocent third parties.
- d. To avoid substantial injury to a party by disclosure of matters protected by a common law and privacy right, not generally inherent in these specific type of proceedings, sought to be closed.

WHEREFORE, Defendant moves this Honorable Court to enter an Order keeping the above referenced records confidential, and maintaining them under seal.

I HEREBY CERTIFY that this motion is made in good faith and supported by a sound and factual legal basis.


JACK A. GOLDBERGER, ESQ.

WITNESS my hand and seal in the County and State last aforesaid this 11 day of June, 2009.




Notary Public State of Florida
My Commission Expires

CERTIFICATE OF SERVICE


by hand delivery


WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via ☐ U.S. Mail; ☐ Facsimile; ☐ Overnight Delivery to R. Alexander Acosta, United States Attorney's Office-Southern District, 500 S. Australian Ave., Suite 400, West Palm Beach, FL 33401, Judith Stevenson Arco, Esq., State Attorney's Office-West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401, William J Berger, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394; Bradley J. Edwards, Esq., ROTHSTEIN ROSENFELDT ADLER, 401 East Las Olas Blvd., Suite 1650, Fort Lauderdale, FL 33394; Deanna K. Shullman, 400 North Ashley Drive, Suite 1100, P.O.Box 2602 (33601) Tampa, FL 33602, Robert D. Critton, BURMAN, CRITTON, LUTTIER, & COLEMAN, 515 N. Flagler Dr. Suite 400, West Palm Beach, Florida 33401. this 11 day of June, 2009.

*and
Spencer Krumm*

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

CASE NO. 2008CF009381A
DIVISION W

STATE OF FLORIDA

v.

JEFFREY EPSTEIN,

Defendant.

**EPSTEIN'S MOTION TO STAY DISCLOSURE OF THE NON-
PROSECUTION AGREEMENT AND ADDENDUM PENDING REVIEW**

Defendant, JEFFREY EPSTEIN ("EPSTEIN"), by and through his undersigned counsel and pursuant to Rule 9.310, Florida Rules of Appellate Procedure, moves to stay disclosure of the Non-Prosecution Agreement and Addendum (collectively, the "NPA") pending review, and states:

1. In the event the Court grants Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN moves to stay the disclosure of the NPA pending review by the Fourth District Court of Appeals.

2. Rule 9.310(a), Florida Rules of Appellate Procedure, provides in pertinent part, "...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."

3. A stay pending review is warranted under the circumstances because of the irreparable harm that would be caused by disclosure of the NPA including, but not limited to, substantial injury to a party by disclosing matters protected by common law and privacy rights, substantial injury to a compelling government interest, substantial injury to innocent third parties and a serious imminent threat to the fair, impartial and orderly administration of justice as set forth in the hearing record date June 25, 2009.

4. In Mariner Health Care of Nashville, Inc. v. Baker, 739 So. 2d 608, 609 (Fla. 1st DCA 1999), defendant Mariner filed a petition for writ of certiorari after the trial court compelled it to produce certain incident reports. Mariner also moved for a stay pending review pursuant to Fla. R. App. Pro. 9.310. The trial court advised the parties that Mariner would be required to submit the incident reports to the court under seal as a prerequisite to a stay. Mariner refused to produce the documents under seal and the trial court denied the motion for stay and imposed daily fines until the documents were produced. Id. The First District Court of Appeals affirmed the trial court's order and noted

Mariner has failed to explain how the production of the reports under seal would result in any prejudice. To the contrary, the records will be protected from disclosure during the entire course of the certiorari proceeding before this court. No harm can be done if this court ultimately determines that the reports are protected by the work product privilege.

Id. at 610.

5. In the instant case the NPA is already filed under seal. Should the Court grant Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grant Palm Beach Post's Motion to Intervene and Petition for Access and/or deny

EPSTEIN's Motion to Make Court Records Confidential, EPSTEIN requests the Court exercise its discretion under Fla. R. App. Pro. 9.310(a) and enter a stay pending review by the 4th DCA.

6. No harm will be done if the NPA remains under seal pending appellate review. To the contrary, EPSTEIN will suffer irreparable harm if a stay is not entered and the NPA is disclosed to the public.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests that if the Court grants Nonparty E.W.'s Motion to Vacate Order Sealing Records and Unseal Records, grants Palm Beach Post's Motion to Intervene and Petition for Access and/or denies EPSTEIN's Motion to Make Court Records Confidential, the Court enter a stay pending review and grant any additional relief the Court deems just and proper.

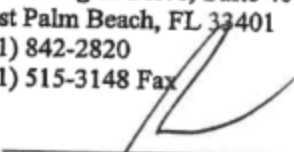
Certificate of Service

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery to JEFFREY SLOMAN, ESQ., United States Attorney's Office – Southern District, 500 S. Australian Avenue, Suite 400, West Palm Beach, FL 33401, JUDITH STEVENSON AREO, ESQ., State Attorney's Office – West Palm Beach, 401 North Dixie Highway, West Palm Beach, FL 33401, WILLIAM J. BERGER, ESQ., and BRADLEY J. EDWARDS, Rothstein Rosenfeldt Adler, 401 East Las Olas Boulevard, Suite 1650, Fort Lauderdale, FL 33394, JACK A. GOLDBERGER, ESQ., Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401, SPENCER T. KUVIN, ESQ., Leopold-Kuvin, P.A., 2925 PGA Blvd., Suite 200, Palm Beach Gardens, FL 33410, and DEANNA K. SHULLMAN,

400 North Ashley Drive, Suite 1100, P.O. Box 2602 (33601) Tampa, FL 33602, this 25th
day of June, 2009.

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