

SVU

IN THE DISTRICT COURT OF
APPEAL OF THE STATE OF
FLORIDA, FOURTH DISTRICT

JEFFREY EPSTEIN,

Petitioner,

CASE NO. 4D09-2554

PALM BEACH COUNTY

L.T. CASE NO. 2008 CF 009381A

v.

STATE OF FLORIDA,

Respondent.

RESPONSE TO MOTION TO SUPPLEMENT THE RECORD

Petitioner, JEFFREY EPSTEIN, files this response to the Motion to Supplement the Record filed by Respondent, B.B. on August 5, 2009. Mr. Epstein has no objection to the motion.

I HEREBY CERTIFY that a copy of the foregoing has been sent by mail this 20th day of August, 2009, to:

JEFFREY H. SLOMAN
U.S. Attorney's Office-Southern District
500 South Australian Avenue, Suite 400
West Palm Beach, FL 33401

JUDITH STEVENSON ARCO
State Attorney's Office-West Palm Beach
401 North Dixie Highway
West Palm Beach, FL 33401

WILLIAM J. BERGER
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Boulevard, Suite 1650
Fort Lauderdale, FL 33301
Counsel for E.W.

DEANNA K. SHULLMAN
400 North Ashley Drive, Suite 1100
P. O. Box 2602 (33601)
Tampa, FL 33602
Counsel for The Palm Beach Post

SPENCER T. KUVIN
DIANA L. MARTIN
LEOPOLD-KUVIN, P.A.
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
Counsel for B.B.

HONORABLE JEFFREY COLBATH
15th Judicial Circuit
Palm Beach County Courthouse
205 North Dixie Highway
Room 11F
West Palm Beach, FL 33401

ROBERT D. CRITTON of
BURMAN, CRITTON, LUTTIER & COLEMAN
515 North Flagler Drive, Suite 400
West Palm Beach, FL 33401
[REDACTED]

and

JACK A. GOLDBERGER of
ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, FL 33401
[REDACTED]

and

JANE KREUSLER-WALSH and
REBECCA MERCIER VARGAS of
KREUSLER-WALSH, COMPIANI & VARGAS, P.A.
501 South Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913
[REDACTED]

Counsel for Petitioner

By: Rebecca Mercier Vargas FL Bar No. 0150037
FOR: JANE KREUSLER-WALSH
Florida Bar No. 272371

IN THE FOURTH DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

JEFFREY EPSTEIN,

Petitioner,

CASE NO: 4D09-2554

vs.

L.T. No. 20098CF009381A (Palm
Beach)

STATE OF FLORIDA,

Respondent.

RESPONDENT B.B.'S MOTION TO SUPPLEMENT THE RECORD

Respondent B.B. moves to supplement the record before the Court on
Petitioner Jeffrey Epstein's petition for writ of certiorari and states as follows:

1. Petitioner Epstein filed an emergency petition for writ of certiorari requesting that this Court quash the order of Fifteenth Judicial Circuit Judge Jeffrey Colbath unsealing a nonprosecution agreement between Petitioner Epstein and the United States Attorney's Office.
2. One of Petitioner Epstein's arguments for quashing the lower court order is that Respondent B.B. is able to obtain the sealed nonprosecution agreement from the United States Attorney's Office pursuant to the terms of a federal order issued by Judge Marra of the Southern District of Florida:

As Mr. Epstein's counsel stated at the June 25, 2009 hearing in front of Judge Colbath, B.B., as an alleged victim, is entitled to production of the document subject to the conditions in Judge Marra's orders (A-18:41).

Reply Brief, p. 21, ¶ 3.

3. Respondent B.B., in fact, is not able to obtain the nonprosecution agreement from the United States Attorney's Office. Late yesterday afternoon, counsel for B.B. received the attached letter from the United States Attorney advising that he cannot disclose the nonprosecution agreement to B.B. because she was not identified by the USAO as one of Epstein's victims.
4. Although this letter was not before the trial court prior to the issuance of the order unsealing the agreement, it directly bears on the proceedings before this Court. It should also be noted that Petitioner Epstein submitted a supplemental appendix with his reply brief that includes documents created after the order under review here and were not, therefore, considered by Judge Colbath when unsealing the nonprosecution agreement.
5. The undersigned counsel for Respondent B.B. has conferred with Jane Kreusler-Walsh, counsel for Petitioner Epstein, regarding this motion to supplement. Ms. Walsh advised that she is on vacation and would refer the matter to trial counsel. Undersigned counsel has not yet heard from trial counsel regarding Petitioner Epstein's position on this motion to supplement. As briefing in this case has been completed and the Court might rule at any time, Respondent B.B. is filing this motion without knowledge of whether opposing counsel opposes the relief requested. Respondent will file an

amended motion upon opposing counsel advising of the Petitioner's position on this motion.

WHEREFORE, Respondent B.B. respectfully requests the Court supplement the record before the Court on Petitioner Epstein's petition for writ of certiorari with the attached letter to Respondent B.B. from the United States Attorney's Office.

Dated: August 5, 2009

By:



Diana L. Martin
Florida Bar No. 624489
LEOPOLD-KUVIN, P.A.
2925 PGA Blvd., Suite 200
Palm Beach Gardens, FL 33410



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via U.S. Mail on August 5, 2009, on the following:

Jack A. Goldberger, Esq.
Attorney For: Jeffrey Epstein
250 Australian Avenue
Suite 1400
West Palm Beach, FL 334101


Jane Kreusler-Walsh, Esq.
Barbara J. Compiani, Esq.
Attorneys For: Jeffrey Epstein
Kreusler-Walsh, Compiani & Vargas,
P.A.
501 S. Flagler Drive, Suite 503
West Palm Beach, FL 33401-5913
Phone: (561) 659-5455

Robert D. Critton, Jr., Michael J. Pike
Attorney For: Jeffrey Epstein
515 North Flagler Drive
Suite 400
West Palm Beach, FL 33401


Jeffrey H. Sloman, Esq.
U.S. 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 N. Dixie Highway
West Palm Beach, FL 33401

William Berger, Esq.
Attorney For: E.W.
Rothstein Rosenfeldt Adler
401 E. Las Olas Blvd., Suite 1650
Ft. Lauderdale, FL 33394

Deanna K. Shullman
Attorney For: Palm Beach Post
400 N. Ashley Dr., Suite 1100
P.O. Box 2602 (33601)
Tampa, FL 33602



Diana L. Martin
Florida Bar No. 624489



U.S. Department of Justice

United States Attorney
Southern District of Florida

500 South Australian Ave., Suite 400
West Palm Beach, FL 33401

August 4, 2009

VIA ELECTRONIC MAIL

Spencer T. Kuvin, Esq.
Leopold-Kuvin, P.A.
2925 PGA Boulevard
Suite 200
Palm Beach Gardens, FL 33410

Re: Jeffrey Epstein/B.B. – Requested Disclosure of Non-Prosecution Agreement

Dear Mr. Kuvin:

Thank you for your letter regarding the disclosure of the Non-Prosecution Agreement signed by Jeffrey Epstein. I understand that you are asking for a copy of that Agreement in connection with your representation of "B.B." As you are aware, the Agreement contains a confidentiality provision. Based upon a lawsuit filed by some of Mr. Epstein's victims, U.S. District Judge Kenneth Marra has issued a Protective Order requiring the U.S. Attorney's Office to provide copies of the Agreement to certain individuals under certain circumstances. The Order states:

If any individuals who have been identified by the USAO [U.S. Attorney's Office] as victims of Epstein and/or any attorney(s) for those individuals request the opportunity to review the Agreement, then the USAO shall produce the Agreement to those individuals, so long as those individuals also agree that they shall not disclose the Agreement or its terms to any third party absent further court order, following notice to and an opportunity for Epstein's counsel to be heard . . .

(Court File No. 08-CV-80737-MARRA, DE 26, ¶ (e).)

The language "individuals who have been identified by the USAO as victims of Epstein" refers to a specific list of individuals who were the subject of the federal investigation. A list of those individuals was provided to Mr. Epstein's attorney. Your client, B.B., was not identified during that investigation, and, therefore was not on the list. By stating this I am not, in any way, denigrating any harm that your client may have suffered. I am simply stating that, given time and resource limitations that we faced during the investigation, B.B. was not a person who was positively identified, such that she would have been the subject of charges within a

SPENCER T. KUVIN, ESQ.

AUGUST 4, 2009

PAGE 2

possible federal indictment.

For this reason, your client is not covered by the Court's Protective Order and the Agreement's confidentiality provision remains intact. If you are unable to get a copy of the Agreement via the civil discovery process in the lawsuit that you have filed against Mr. Epstein, please ask his counsel if they will consent to my production of the Agreement to you and I will send a copy to you.

Sincerely,

Jeffrey H. Sloman
Acting United States Attorney

By:


Assistant U.S. Attorney

cc: Karen Atkinson, Esq.