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M E M O R A N D U M

TO: Robert Critton
FROM: Jane Kreusler-Walsh *gkw*
DATE: June 25, 2009
RE: Epstein: Motion to Stay

You asked me to provide you with a brief summary of the law regarding stays pending appeal. Florida Rule of Appellate Procedure 9.310(a) allows the trial court to stay an order pending appeal. Whether to grant a stay is discretionary with the trial court. See Pabian v. Pabian, 469 So. 2d 189, 191 (Fla. 4th DCA 1985) (“[T]he trial court has considerable latitude in controlling the circumstances under which the proceedings may be stayed pending review.”). Factors courts consider in deciding whether to grant a stay pending appellate proceedings include: the likelihood of success on the merits, the likelihood of harm if no stay is granted, and the remedial quality of any such harm. See State ex rel. Price v. McCord, 380 So. 2d 1037, 1038 n.3 (Fla. 1980); Perez v. Perez, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999); see also Mitchell v. State, 911 So. 2d 1211, 1219 (Fla. 2005)

“Ordinarily, there are two principal considerations that courts must take into account when deciding whether to vacate a stay: the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the entity seeking to maintain the stay.”).

You should argue that it is likely the appellate court will quash the order. There is no prejudice from granting a stay, while there is irremediable harm to Epstein from a denial.