

FILED

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

IN THE GENERAL COURT OF JUSTICE  
2011 JUN -8 PM 4:27  
SUPERIOR COURT DIVISION  
10 CVS 149  
ORANGE COUNTY, C.S.C.

RIELLE HUNTER,

BY ABA

Plaintiff,

**MOTION FOR STAY OF CONTINUED  
DEPOSITION OF JOHN EDWARDS**

v.

ANDREW YOUNG and CHERI YOUNG,  
Defendants.

NOW COMES a third-party witness in the above-captioned matter, JOHN EDWARDS ("Senator Edwards"), pursuant to G.S. §1A-1, Rule 30(b), the Fifth and Fourteenth Amendments to the U.S. Constitution, and Article I, §§ 18, 20 and 23 of the North Carolina Constitution, and moves this Court for a stay of his continued deposition presently scheduled for June 20, 2011. In support of this Motion, Senator Edwards respectfully shows unto this Court that:

**Factual Background**

1. This is a lawsuit that seeks to protect the privacy of materials that were intended to always remain private; it accuses the Defendants of stealing these materials and using them for commercial gain. Ownership of the materials lies at the heart of this dispute.

2. On February 9, 2011, the Defendants deposed Senator Edwards as a third-party witness in this case. The deposition lasted approximately 6 hours (excluding breaks) and ran some 273 pages. Senator Edwards was asked roughly 2200 questions; he was instructed not to respond to 74 questions. Those questions had

nothing to do with the ownership of the materials in question and, in fact, dealt with issues that are not even in dispute between the parties.

3. Following the deposition, the Defendants moved to compel answers to these questions; Senator Edwards, moved for a Protective Order providing that this discovery not occur.

4. On April 29, 2011, this Court held a hearing on these Motions. This Court deferred ruling on the merits of the issues presented and, instead, ordered that Senator Edwards' deposition would be reconvened on June 20, 2011, and that the Court would preside over the deposition in private. At that time, the Court indicated that it would rule on the merits of each question sought to be asked.

5. Senator Edwards' deposition was taken pursuant to a Protective Order entered by this Court on November 9, 2010. Paragraph 4 of that Order provided that Senator Edwards retained the "right to assert all appropriate statutory, constitutional, or common law privileges or immunities under state and federal law . . . at the time of his deposition." A copy of the Protective Order is attached to this Motion as **Exhibit 1**.

6. This Court's Order stemming from the April 29, 2011 hearing specifically provided that the reconvened deposition would proceed under the terms and conditions of the Protective Order.

7. On June 3, 2011, a United States Grand Jury returned an indictment alleging six felony counts against Senator Edwards. Senator Edwards was arraigned on the same day as the return of the indictment and pleaded "Not Guilty" to the counts. A copy of this Indictment is attached to this Motion as **Exhibit 2**.

8. The questions sought to be propounded to Senator Edwards by counsel for the Defendants involve the subject matter of the indictment. Indeed, the Defendant Andrew Young is, on information a belief, an unnamed and unindicted co-conspirator listed in the Indictment and will be a material witness for the Government at any trial involving the Indictment. On further information and belief, one of the conditions of any agreement that the Defendant Andrew Young has entered into with the Government is that he fully cooperate with the Government in its requests for assistance.

9. Thus, a material witness for the Government, who is under an obligation to cooperate with the Government, proposes to have his attorney examine Senator Edwards under oath about the subject matter of the Indictment.

**Senator Edwards is Entitled to a Stay of His Deposition Until the Conclusion of the Indictment in Order to Protect His Constitutional Rights to Due Process, a Fair Trial, and Against Self-Incrimination and In Order to Prevent an Improper Expansion of Discovery Under the Federal Rules of Criminal Procedure**

10. For more than 40 years, courts have recognized that, where civil proceedings overlap with and may impair the constitutional rights associated with criminal charges, civil proceedings should give way. See *United States v. Kordel*, 397 U.S. 1, 12, 90 S.Ct. 763, 770 n.27 (1970) ("Federal courts have deferred civil proceedings pending completion of parallel criminal prosecutions when the interests of justice seemed to require such action.").

11. In *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1375-76 (D.C. Cir. 1980) (*en banc*), the D.C. Circuit, sitting *en banc*, discussed when civil proceedings should be either discontinued or stayed pending the resolution of parallel criminal proceedings:

Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter.

12. The D.C. Circuit continued, noting that when a party under indictment was forced to deal with the same matter in a civil case, the “noncriminal proceedings, if not deferred, might undermine the party’s Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits of Federal Rule of Criminal Procedure 16(e), expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case.” *Id.* See, e.g., *Trustees of Plumbers and Pipefitters National Pension Fund v. Transworld Mechanical, Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995) (“A stay of a civil case is most appropriate where a party to a civil case has already been indicted for the same conduct for two reasons: First, the likelihood that a defendant may make incriminating statements is greatest after an indictment has issued, and second, the prejudice to the plaintiffs in the civil case is reduced since the criminal case will likely be quickly resolved. . . .”) (granting stay of civil proceedings); *Volmar Distributors, Inc. v. New York Post Co., Inc.* 152 F.R.D. 36, 39 (S.D.N.Y. 1993) (“The strongest case for granting a stay is where a party under criminal indictment is required to defend a civil proceeding on the same matter. [ ] While the constitution does not mandate a stay in such circumstances [ ], denying a stay might undermine a defendant’s Fifth Amendment privilege against self-incrimination. . . . [and] might also expand the rights of criminal discovery beyond the limits of Rule 16(b) . . . expose the basis of the defense to the prosecution in advance of trial, or otherwise prejudice the case.”) (citations omitted) (granting stay of civil proceedings).

13. Indeed, even without an active indictment, and based merely on the possibility of an indictment, stays of civil proceedings pending the running of a criminal statute of limitations have been granted and approved. See, e.g., *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084, 1088-89 (5th Cir. 1979) (ordering stay of proceedings until expiration of statute of limitations for criminal offenses); *Brumfield v. Shelton*, 727 F. Supp. 282 (E.D. La. 1989) ("In a case where there is a real and appreciable risk of self-incrimination, an appropriate remedy would be a protective order postponing civil discovery until the termination of the criminal action.") (granting stay pending outcome of criminal investigation).

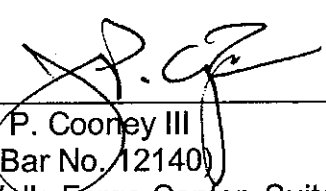
14. In determining whether a stay should be imposed, the courts have looked to five factors: (1) whether Fifth Amendment rights are implicated if the case or discovery proceeds; (2) the interests of the parties in proceeding expeditiously with litigation and the prejudice of delay; (3) the burden imposed on the party seeking the stay; (4) the interests of persons not parties to the civil litigation; and, (5) the interest of the public in both the civil and criminal case. See *Federal Savings and Loan Insurance, Corp. v. Molinaro*, 889 F.2d 899, 901 (9th Cir. 1989).

15. In this case, each of these factors plainly weigh in favor of a stay of this deposition. First, given the subject matter of the indictment and the questions sought to be posed, there is no serious question that Fifth Amendment rights are implicated if the deposition occurs. Second, since Senator Edwards is not even a party to the litigation, the litigation can proceed with other depositions and discovery while the redeposition of Senator Edwards is stayed. Indeed, and importantly, Senator Edwards has already been extensively examined under oath about the subject matter of the litigation - - the

videotape and other personal items that were allegedly stolen by the Youngs and his knowledge of the ownership of those items. Third, the burden on Senator Edwards in being deposed in light of the recent indictment is both obvious and not open to serious dispute. Fourth, there is no countervailing interest against a stay by persons who are not parties to the litigation (such as, for example, beneficiaries under a pension plan seeking recovery of money). Finally, the public interest in the criminal process - - and particularly the public's interest in ensuring that a criminal defendant receive a fair trial, free from prejudicial publicity and that the Government, either directly or indirectly, is not free to circumvent important constitutional rights - - is paramount. By contrast, the public has no substantial interest in seeing that this civil litigation between private parties over the ownership of private materials be resolved before the criminal case. Indeed, the materials themselves are within the custody of the court and will be available to whichever party prevails after the criminal case has ended. In short, nothing about delaying the civil case - - to the extent that a stay of the redeposition of Senator Edwards will delay it - - poses any threat to the public interest whatsoever.

WHEREFORE, Senator Edwards prays that this Court Order that his redeposition presently scheduled for June 20, 2011, be stayed until the conclusion of the criminal proceedings set forth in the Indictment.

This 7th day of June, 2011.



---

James P. Cooney III  
(State Bar No. 12140)  
One Wells-Fargo Center, Suite 3500  
301 South College Street  
Charlotte, NC 28202-6037  
Telephone: 704.331.4980

***Attorney for John Edwards***

OF COUNSEL:

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC  
One Wells Fargo Center, Suite 3500  
301 South College Street  
Charlotte, NC 28202-6037

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing **Motion for Stay of Continued Deposition of John Edwards** was served on the Plaintiff and the Defendants by electronic means and by causing to be deposited a copy of the same in an official depository of the United States Postal Service, in a postage-paid envelope, addressed to Plaintiff's counsel of record as follows:

Robert M. Elliot  
David C. Pishko  
Elliot Pishko Morgan P.A.  
426 Old Salem Road  
Winston-Salem, NC 27101

***Attorneys for Defendants***

Alan W. Duncan  
Allison O. Van Laningham  
Smith Moore Leatherwood LLP  
300 North Greene Street, Suite 1400  
Greensboro, North Carolina 27401

Wade Barber  
Wade Barber, PLLC  
27 Hillsboro Street  
Pittsboro, North Carolina 27312

***Attorneys for the Plaintiff***

This 7th day of June, 2011.

  
\_\_\_\_\_  
James P. Cooney III