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June 16, 2011

VIA OVERNIGHT MAIL

Honorable Clarkson S. Fisher, J.A.D.  
Monmouth Park Corporate Center, Suite 1  
185 Route 36  
West Long Branch, New Jersey 07764

**Re: State v. Kisha Curtis**  
**Our client: Associated Humane Societies, Inc.**

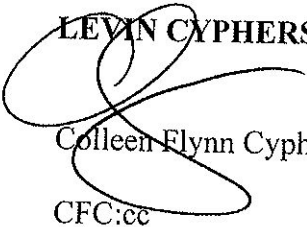
Dear Judge Fisher:

This firm represents the Associated Humane Societies, Inc. (AHS) in the above-referenced matter. Enclosed for your review and consideration are an Application for Permission to File an Emergent Motion, a copy of the June 10, 2011 Order from Judge Cassini from which an appeal is being sought, and a copy of the transcript from the Motion hearing on June 2, 2011.

If Your Honor has any questions or requires any further information, please do not hesitate to contact this office. Your attention to this emergent matter is greatly appreciated.

Respectfully submitted,

LEVIN CYPHERS

  
Colleen Flynn Cyphers

CFC:cc

Enclosure

cc: Associated Humane Societies  
C. Cucinello, Esq. (via overnight mail)  
W. Strazza, Esq. (via overnight mail)  
A. Rojas, Esq. (via overnight mail)  
G. Korf, Esq. (via overnight mail)

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION**

TO: Hon. Clarkson S. Fisher, Jr.

DATE: 06/16/2011

FROM: Harry Jay Levin, Esq.

TELEPHONE: (732) 240-0909 ext.

The following questions are to be answered by the attorney or pro se litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed without permission of the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. You must also pay the applicable filing fee (\$30 for a motion for leave to appeal; \$200 for a notice of appeal), direct the charging of an account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

CASE NAME: State v. Kisha Curtis

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)

Hon. Joseph C. Cassini, III, Essex County, Criminal Part

2. a) What is your name, address, including any e-mail address, phone number and fax number?

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700 Hooper Avenue, Toms River, New Jersey 08753  
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- b) Whom do you represent?

Associated Humane Societies, Inc. ("AHS")

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

See Addendum attached with interested party list.

4. Do you have a written order or judgment entered by the judge or a written agency decision? **You must attach a copy of the order, judgment or decision.**

Yes, see attached Order dated June 10, 2011.

5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? **If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought.**

The attached Order was deemed final by Judge Cassini.

6. Have you filed for a stay before the trial court or agency?

No.

If so, do you have a court order or agency decision denying or granting same? **Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)**

7. If the order or agency decision is interlocutory, are you filing a motion for leave to appeal?

Not applicable.

8. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

Not applicable.

9. If the order, judgment or agency decision is final, have you filed a notice of appeal?

No, however, a Notice of Appeal will be filed.

10. What is the essence of the order, judgment or agency decision?

A denial of a Motion to vacate a prior Order of the Court.

11. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

No.

- b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part?  
No.

12. What is the nature of the emergency?

The sequestered animal is being held at a veterinary hospital lacking essential services and conditions to rehabilitate the animal. By requiring the animal to improperly remain at the veterinary hospital, it will result in a "constructive adoption" as a staff member of the hospital wants to keep the dog permanently. The interference with the status quo provides an advantage over others who have expressed an interest to adopt.

13. What is the irreparable harm, and when do you expect this harm to occur?

The animal is the property of AHS, yet the Court ordered sequestration interferes with the property of AHS.

14. What relief do you seek?

We ask the animal to be returned to AHS, who rescued the animal, provided it emergency care saving its life, delivered the animal to the veterinary hospital, and paid the hospital for surgical care. The hospital does not have the facilities or the personnel to provide post operative, reorientation care. Pursuant to the laws of bailment, contract and property law, AHS is the custodian of the animal until it is adopted out.

15. What citation is most important for the proposition that you are likely to prevail on appeal?

N.J.A.C. 8:23A-1.9, 1.10.

16. Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?

No.

17. Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?

Yes. The transcript from the Motion hearing is attached.

If so, when will the transcript be available?

18. Please give a brief summary of the facts of your case.

See attached Addendum.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DISPOSITION ON APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION

Case Name: State v. Kisha Curtis

Trial Court or Agency Below: Essex County, Criminal Part

**DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY**

I. The application for leave to file an emergent motion on short notice is **Denied** for the following reasons:

The application does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. Counsel may file a motion with the Clerk's Office in the ordinary course.

The applicant did not apply to the trial court or agency for a stay, and obtain a signed order, before seeking a stay from the Appellate Division.

The application concerns an order entered during trial as to which there is no prima facie showing that immediate interlocutory intervention is warranted.

Other reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

II. The application for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. The applicant must file an original and two copies of the motion for emergent relief and a notice of appeal or motion for leave to appeal (plus all required fees or an indigency motion) with Judge \_\_\_\_\_ by no later than \_\_\_\_\_. On that same date, copies must be delivered to all counsel/pro se parties and to Judge \_\_\_\_\_. A copy must also be sent to the trial judge or agency whose decision is being appealed.

B. Opposition must be served and filed by no later than \_\_\_\_\_.

C. Other terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
J.A.D.

\_\_\_\_\_  
Date

**ADDENDUM**  
**SUPERIOR COURT OF NEW JERSEY – APPELLATE DIVISION**  
**APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION**

#3: Interested Parties and Counsel

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Andrew C. Rojas, Esq.  
Assistant Deputy Public Defender  
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Attorney for Defendant, Kisha Curtis

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Email: [GKorf@KorfRosenblatt.com](mailto:GKorf@KorfRosenblatt.com)  
Attorney for Garden State Veterinary Services

## #18: Summary of Facts

On March 16, 2011, AHS, pursuant to its charitable mission, administrative law and its contract with the City of Newark, rescued a dog, which AHS named Patrick. The dog was emaciated and near death after being abandoned and thrown down a 16 floor garbage chute. A veterinarian employed by AHS provided emergency care to save and stabilize the animal and transported Patrick to Garden State Veterinary Services (GSVS), a veterinary hospital in Tinton Falls, New Jersey which, pursuant to past practices and contract, provided medical services to animals delivered to GSVS. In all cases for decades, once the surgical or medical care was accomplished at GSVS, the animal is returned to AHS for adoption. Routine veterinary care is provided for free by the veterinarians at AHS, and when outside veterinarians provide services, they are paid by AHS.

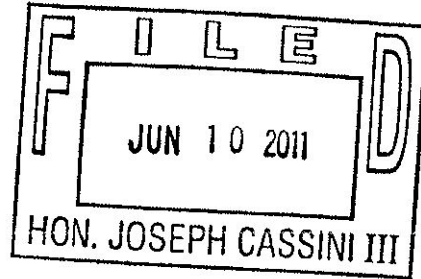
Patrick's rescue has gone "viral," meaning that it has hundreds of thousands of hits on the internet. Patrick has become a celebrity and, as such, a very valuable brand for commercial exploitation and fund raising. Because of its value, for the first time in 50 years, the City of Newark has expressed interest in securing Patrick for its stated fund raising purposes. The Mayor has publicly stated that he intends on using Patrick to solicit public donations to construct a new animal shelter in Newark. Newark has retained counsel on behalf of GSVS to argue that Patrick should remain at GSVS in Tinton Falls. The argument below by Newark's attorney focused almost entirely on the rights of Newark. GSVS did not have counsel other than the counsel for Newark.

AHS merely seeks to continue what it has done for 100 years, namely to rescue animals and provide a vehicle for them to be adopted out as opposed to being euthanized.

The Court erred by signing an ex parte order on April 26, 2011, without a proper basis. The original order usurped the interests of AHS both under the statutory law of this state and the express contract with Newark. The Court accepted the argument that Patrick is "evidence" in a criminal trial for animal cruelty. By torturing the notion of evidence, the Court ratified its own prior order. Both law and contract state that once AHS becomes the custodian of an animal, it has the authority to either euthanize the animal or adopt it out. As argued below, given the statutory and contractual predicate, if AHS has the unfettered authority to euthanize an animal, it has property rights. Moreover, as AHS rescued, provided emergency care to save his life, delivered Patrick to GSVS for surgical care, which AHS paid for, AHS has a valid interest in Patrick.

LAW OFFICE OF WILLIAM STRAZZA, P.C.  
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Attorney for the City of Newark



STATE OF NEW JERSEY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: Essex County
v.	:	
	:	
KISHA CURTIS,	:	Prosecutor File No.:11002173
	:	
Defendant.	:	

ORDER DENYING A MOTION TO VACATE  
A PRIOR ORDER DATED APRIL 26, 2011

**THIS MATTER**, having come before the court on the motion of third-party intervenor, Associated Humane Society, seeking an order to vacate a prior order of this Court dated April 26, 2011;

**AND THE COURT**, having reviewed all moving papers and having heard argument of counsel on the record, and for good cause shown;

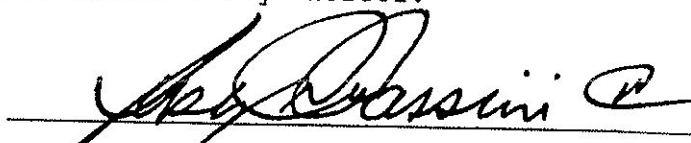
IT IS HEREBY ON THIS 10<sup>th</sup> DAY OF JUNE 2011 ORDERED AS FOLLOWS:

- 1) The application of Associated Humane Society to vacate this Court's prior order of April 26, 2011 is DENIED;
- 2) The interim order of this Court dated May 27, 2011 is vacated, but that the vacating of the May 27, 2011 order is stayed pending the disposition of any appeal, or motion for leave



to appeal, filed by Associated Humane Society

3) Counsel for Associated Humane shall serve a true copy of this order upon all counsel within 7 days hereof.

  
Hon. Joseph Cassini III, J.S.C.

Application Opposed  x

Unopposed

P#: 11002173