

NO. 09-CI-5292

FAYETTE CIRCUIT COURT  
DIVISION 3  
HONORABLE JAMES D. ISHMAEL

AMERICAN SADDLEBRED  
HORSE ASSOCIATION, INC.

PLAINTIFF

**AMERICAN SADDLEBRED HORSE ASSOCIATION'S**  
**RESPONSE TO DEFENDANTS' OPPOSITION TO PROPOSED**  
v. **FINAL JUDGMENT TENDERED BY PLAINTIFF**

EDWARD R. BENNETT, CARL T.  
FISCHER, JR., KRIS KNIGHT, TOM  
FERREBEE, SIMON FREDRICKS,  
M.D. AND LYNN W. VIA

DEFENDANTS

Comes the Plaintiff, American Saddlebred Horse Association (hereinafter "ASHA"), by counsel, and for its Response to Defendants' Opposition to Proposed Final Judgment Tendered by Plaintiff, states as follows:

**I. INTRODUCTION**

This matter came before the Court upon ASHA's motion for entry of a final and appealable order in the above captioned matter. The Court heard oral arguments at its motion hour on Friday, December 17, 2010. ASHA objected to the proposed final order that Defendants tendered at the hearing for two reasons. First, ASHA opposed any final order that may later be misconstrued as ASHA conceding to the production of all documents notwithstanding any exercise of ASHA's appellate rights. Second, ASHA objected to any final order that may deprive the association of the statutory right to appeal if its governing members chose to do so. At the close of the December 17 hearing, the Court took the matter under advisement and requested that ASHA tender its proposed order for the Court's consideration.

ASHA tendered its proposed order on December 20, 2010 pursuant to the Court's request. At that time, ASHA expected the matter to stand fully submitted for the Court's consideration. Defendants then took the liberty of filing a memorandum in opposition to ASHA's tendered order that misrepresents ASHA's position on the matter. Therefore, ASHA submits this brief reply in further support of its proposed Order to ensure that the Court is fully advised of ASHA's position.

## **II. DISCUSSION**

This litigation is and has always been about a single declaratory judgment question: what is the scope of the right of inspection of documents afforded to members of a nonprofit association under KRS §273.233.<sup>1</sup> The parties have spent significant time, money and other resources briefing and arguing this one legal issue to the Court. The Court considered all arguments and rendered its interpretation of KRS §273.233 on December 2, 2010 ("December 2 Opinion"), declaring that the statute entitles members of a non-profit association to inspect and copy any and all books and records and that the nonprofit association must make copies thereof at a reasonable expense.

When reviewing the December 2 Opinion and considering its appellate options, ASHA realized the Court had only disposed of the declaratory judgment action, leaving Counts II and III of Defendants' Counterclaim for breach of contract and promissory estoppel pending before the Court. ASHA therefore moved for entry of a final and appealable order, not to delay or subvert the judicial process as unfairly suggested by Defendants, but to obtain an order that a three-judge panel of the Kentucky Court of Appeals would accept as proper and ripe under Rule

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<sup>1</sup> See Complaint for Declaratory Judgment, ¶¶ 35-41, and Defendants' Answer to Complaint for Declaratory Judgment and Counterclaim, Count I – Declaratory Judgment, ¶¶ 28-35.

54 of the Kentucky Rules of Civil Procedure in the event ASHA's governing members chose to appeal.

The purpose of ASHA's tendered proposed final order is simple: to avoid further wasteful and unnecessary court proceedings and to provide time for ASHA's governing members to decide whether to (1) file its notice of appeal within thirty (30) days of service of the final judgment or (2) forgo an appeal and comply with the Court's final judgment after the 30-day statutory period expires. Although no injunctive relief has been requested in this case, it bears mentioning that the Court is well within its discretion to issue an order "that the status existing immediately before the entry of the final judgment shall be maintained for a specified limited time to protect a party wishing to proceed promptly" with an appeal.<sup>2</sup> Indeed, such an order is clearly just in this case when the interpretation of the scope of a non-profit member's inspection rights under KRS §273.233 is both an issue of first impression for the Kentucky courts and the only appellate issue to be raised. Any injunction compelling ASHA to produce documents before the appellate process runs its course would cause irreparable harm to ASHA and effectively deprive ASHA of all appellate relief in this case. Thus, the proposed final judgment ASHA tendered on December 20, 2010 best protects the rights of all parties during the 30-day period following entry of the Court's final judgment and serves the interests of judicial economy in this case.

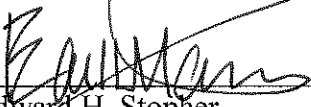
### **III. CONCLUSION**

WHEREFORE, Plaintiff, American Saddlebred Horse Association, respectfully requests the Court enter the proposed order tendered by Plaintiff.

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<sup>2</sup> CR 65.08.

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COUNSEL FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and correct copy of the foregoing was served via first class mail and electronically on this 27<sup>th</sup> day of December, 2010 to the persons and addresses listed below.

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