

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO.: 48-2008-CF-015606-O

DIVISION: 16

JUDGE: STAN STRICKLAND

CASEY MARIE ANTHONY,

Defendant.

EMERGENCY MOTION TO RECUSE

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, hereby moves this Honorable Court to enter an Order for recusal. In support thereof the Defendant would allege that:

1. A defendant's 6th Amendment right to counsel of their choice has been held to apply to a state criminal trial through the 14th Amendment Due Process clause of the United States Constitution. See Gideon v. Wainwright, 372 U.S. 335 (1963), where it was said that "this right, fundamental to our system of justice, is meant to assure fairness in the adversary criminal process." *supra*, 372 U.S. at 344.

2. It is well set forth in law that government agents interfering with a 6th Amendment Right to Counsel constitutes a violation of a criminal defendant's constitutional rights. See Herring v. New York, 422 U.S. 853, 857 (1975).

3. In addition thereto, any government conduct or egregious behavior on behalf of government agents to interfere with effective counsel of a defendant's choice is so prejudicial that a court must fashion a remedy that while preserves society's interest in the administration of criminal justice must protect the defendant's 6th Amendment Right to Effective Assistance of Counsel and a fair trial. See discussion in United States v. Morrison, 449 U.S. 361 (1981), where the United States Supreme Court failed to

dismiss an indictment where federal agents visited a defendant in absence of a counsel, and/or disparaged defendant's counsel, the court held that lower courts must fashion remedies for egregious behavior and if such remedy by the government has injured a defendant, then dismissal of an indictment may be appropriate.

4. Here, on January 26, 2009, it was reported that the Florida Bar Association has "told Eyewitness News (www.wftv.com) that 'someone from the State Attorney's Office forwarded the news releases (about Jose Baez related to alleged remarks made about the prosecutor and/or entertainment deals going into the pocket of Baez) and that's why the Bar opened an investigation.'" This Court has the authority to order the Prosecutor to confirm and to produce to both the Court and to the defense all communications made by them, directed to be made on behalf of them, or otherwise associated aided or abetted the making of such an allegation by a third party agent.

5. This Prosecutor's Office anonymously reporting if true, as if it were a private citizen, allegations of misconduct concerning statements allegedly made about one of its own, is egregious behavior.

6. The anonymous reporting procedure was set up to protect citizens who felt they may have witnessed or have knowledge of violations of ethics rules. It was not set up for a prosecutor's office who is in an adversarial relationship in an active criminal murder case to attempt to have the attorney for the defendant tainted by an investigation, be under press criticism for alleged misconduct which inures to the detriment of the defendant, be required to retain counsel to defend such allegations, and/or have the disclosure and constant repetition of such allegations infect a prospective jury pool.

7. This office's attempt to interfere with defendant's 6th Amendment Right to Counsel in such a way has effectively attempted to taint not only the jury pool in Orlando but throughout the entire State of Florida. While it may be too early, unless there is

another indication of misconduct that occurs in this case to dismiss such an indictment, a remedy must be fashioned to prohibit the behavior of the State at this juncture. The interest of justice that society seeks can be balanced against defendant's 6th Amendment right by ordering a recusal of the Orange County Prosecutor's Office from this case and referred to the Office of the State Attorney General with an Order to supersede them.

8. This is especially true in light of the number of leaks, "sources close to the investigation say," and other prosecutorial spins that have been put on law enforcement leaked evidence that has been consistent in this matter. The court may take judicial notice of the fact that the news media had reports of alleged chloroform in the trunk of the car before discovery was turned over, duct tape allegedly around the mouth of the decedent in this matter before any discovery had been given, and other issues that only go to inflame the emotions of the jury pool, and prevent this defendant from obtaining a fair trial with counsel of her choice.

9. If the Court feels it does not have enough *prima facie* materials to order recusal at this point, it has the authority to further order a hearing and allow the agents of the Prosecutor's Office to be placed on the stand under oath and be cross-examined on this matter.

10. The defendant reserves all ability to request further remedies both now and in the future as it relates to misconduct, whether through the reporting of complaints about Mr. Baez or otherwise.

WHEREFORE the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel, prays that this Honorable Court enter an order for recusal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished to the Office of the State Attorney, 415 North orange Avenue, Orlando, Florida 32801, the Orange County Sheriff's Office, 2500 W. Colonial Dr, Orlando, FL 32804, by facsimile delivery on this 27th day of January, 2009.



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