

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

STATE OF FLORIDA
Plaintiff,

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

DIVISION: 16

vs.

CASEY MARIE ANTHONY
Defendant.

MOTION TO DETERMINE POTENTIAL CONFLICT OF INTEREST AND WAIVER

COMES NOW the State of Florida and moves this court to make inquiry to determine the existence of any potential conflict of interest and establish the Defendants knowledge of and waiver of any such potential conflict of interest. As grounds therefore the State would request the court to take Judicial Notice of the following facts as established by prior proceedings before this Court or matter contained in the Court's file.

1. The Defendant was arrested on July 16, 2008 for charges that would later be included in CF08-10925.
2. The Defendant later filed a Motion to Set Bond that was heard before this court on July 22, 2008.
3. At that hearing, the court heard extensive testimony as to financial status of the Defendant and her parents George and Cindy Anthony, which established little, if any, net worth on the part of George and Cindy Anthony and none on the part of the Defendant.
4. In the months since that hearing, according to pleadings, approximately eight different lawyers have been retained to represent the Defendant in different aspects of this case and numerous experts have been announced as having been retained in this matter.
5. On October 14 2008 the Defendant was indicted by the Grand Jury of Orange County Florida on the charges in the instant case.

Based upon the forgoing facts, logic dictates that certain conclusions must be drawn. First and foremost among those conclusions is that the Defendant's seeming conversion from pauper to princess did not come from the sale of some tangible asset available to her prior to her initial arrest on charges related to this case. The only asset that appears available to the Defendant is her story or otherwise valueless items, such as photographs or video tapes, which have value only because of her story. The second conclusion that logic dictates is that, based upon the Defendant's present circumstances, it would be virtually impossible for her to be personally managing those assets. The only person who appears to be in a position to do so is her counsel Jose Baez.

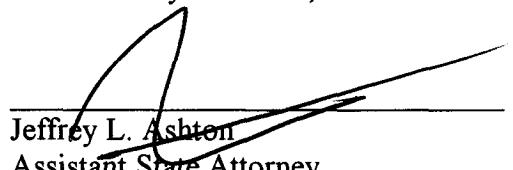
Such precarious financial relationships are fraught with potential for claims of conflict of interest. Hypothetically, Mr. Baez' retainer agreement establishes as his payment for services and fees, the rights to sell some aspect of the Defendant's "story". Since the value of her "story" may change based upon the outcome of this case, such an arrangement could easily be argued by the Defendant, in the inevitable post conviction motion, as giving the attorney an incentive to advise his client in a manner that increased the value of the property he held, as opposed to advising her as to the course that was in her best interest. This case would not be the first to entertain such claims. See Brown v. State 894 So. 2d 137 (Fla. 2004) and Neeley v. State 642 So. 2d 494 (Ala. 1993).

The State is not requesting that, based upon the findings of this inquiry, the court block counsel's representation of the Defendant. We have no interest in interfering with the Defendant's right to counsel of her choice. It is important at this juncture that the court establish on the record the nature of the financial arrangements, the exact source of funds, the Defendant's knowledge of those facts, the existence of any potential conflict of interest, and the Defendant's knowing and intelligent waiver of any such conflict. To fail to make this inquiry at this time is to invite future claims, whether spurious or not, of conflict of interest. The resulting lengthy and costly hearing years down the line, when memories and loyalties have changed, is an unnecessary risk that can be avoided by a prompt and thorough inquiry now.

Should the Court be concerned that the matters to be the subject of this inquiry might be covered under the umbrella of attorney client privilege, please see U. S. v. Horn, 976 F. 2d 1314 (9th Cir. 1992); Reiserer v. U.S., 479 F. 3d 1106 (9th Cir. 2006); Finol v. Finol, 869 So.2d 666 (4th DCA 2004), Brown Distributing Company, v. Marcel, 866 So.2d 160 (4th DCA 2004).

Therefore, the State would request that the Court set a hearing. The State has no objection to an in camera hearing with only the State and the Court present should the Defendant so request. At that hearing, counsel for the Defendant should be ordered to produce the following items: 1) Any retainer agreements or correspondence that references payment, promise, anticipation of the transfer of anything of value to counsel for the Defendant from the Defendant; 2) Any document or notation that references the transfer of any literary, publication or licensing rights of any kind related to this case including but not limited to book, movie, video or photographs; 3) Any document or notation that references payment, promise, anticipation of the transfer of anything of value to counsel for the Defendant from any source other than the Defendant; 4) all records of deposits made to the business, trust, or personal accounts of counsel for the Defendant in relation to this case. The State has no objection to an appropriate order limiting the use of such documents for other purposes. In addition to the production of the aforementioned, the Court should order that counsel for the Defendant and the Defendant answer questions propounded by the Court and the State as to these matters. Once the inquiry is completed, the Court should explain any potential conflict of interest issues to the Defendant and assure her complete understanding of and waiver of any such conflict.

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to Jose A. Baez, 522 Simpson Road, Kissimmee, FL 34744 on this 9th day of March, 2009.



Jeffrey L. Ashton
Assistant State Attorney
Florida Bar # 318337
415 N. Orange Avenue, P.O. Box 1673
Suite 400
Orlando, FL 32802