

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

STATE OF FLORIDA,

CASE NO.: 2008-CF-15606

Plaintiff,

vs.

CASEY MARIE ANTHONY,

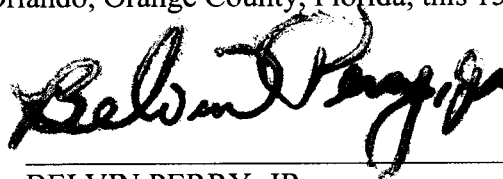
Defendant.

NOTICE OF HEARING

Please take notice that the Honorable Belvin Perry, Jr., one of the Judges of the above court has set the defenses Motion For Clarification on DNA Testing on the above styled case for **Thursday, November 18, 2010 at 1:30 pm**. The hearing will take place at the Orange County Courthouse, 425 North Orange Avenue, Room 2000.01 (20th Floor), Orlando, Florida 32801.

Both the defense counsel and Justice Administrative Commission counsel will be appearing by telephone for this hearing.

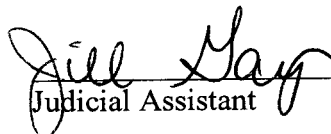
DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 15th day of November, 2010.



BELVIN PERRY, JR.
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail, to all parties listed below, this 15th day of November, 2010.


Judicial Assistant

-Jose A. Baez, The Baez Law Firm, 522 Simpson Road, Kissimmee, FL 34744

- Bradley R. Bischoff, Assistant General Counsel, Justice Administrative Commission,
P.O. box 1654, Tallahassee, FL 32302

)	In the Circuit Court of the
)	Ninth Judicial Circuit, in and for
)	Orange County, Florida
STATE OF FLORIDA)	
)	Case No.: 482008-CF-0015606-O
v.)	Division 16
)	
CASEY MARIE ANTHONY,)	Hon. BELVIN PERRY JR.
)	
Defendant.)	

MOTION FOR CLARIFICATION ON DNA TESTING

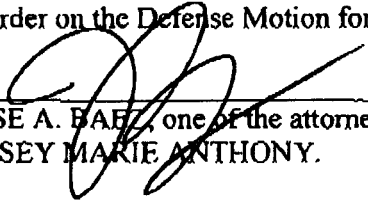
COMES NOW, The Defendant CASEY MARIE ANTHONY, hereby moves this Honorable Court by asking for clarification of it's ruling on the 28th Day in September and in support thereof states the following:

1. On September 27th 2010, the Defense filed a Motion for DNA testing on two items of evidence in the possession of the Orange County Sheriffs Office.
2. After being heard on the matter this Honorable Court granted said motion and appointed National Medical Services laboratories to conduct said testing.
3. The Defendant, Miss Anthony has been declared indigent for costs.
4. The JAC in paying vendors relies on paying the rates of the specific judicial circuit when an expert is appointed, or the established rates as set out in their contract for services.
5. Neither the JAC or the Ninth Judicial Circuit has set rates for DNA testing, and in order for the vendor to receive payment a set order with specific rates must be outlined in the order.
6. National Medical Services Labs rates for DNA testing are as follows:
 - a. \$1,042 per sample.

b. There are 2 items to be tested as outlined in the defense motion which makes the total \$2,084. (This fee covers the complete examination, testing and report if one is requested)

7. The Defense requests that the Court order outline the rate listed above, so that the vendor may receive payment.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to clarify the previously filed order on the Defense Motion for DNA Testing.



JOSE A. BAEZ, one of the attorneys for
CASEY MARIE ANTHONY.

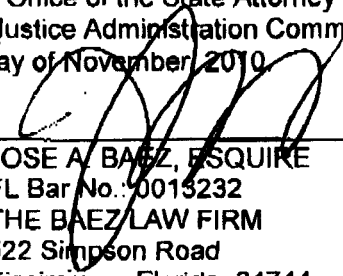
Dated: 11/8, 2010

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Jose A. Baez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail, Fax, hand and/or email delivered to the Office of the State Attorney at 415 North Orange Avenue, Orlando, Florida 32801; and Justice Administration Commission via pleadings@justiceadmin.org, on this the 9th day of November, 2010.



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

STATE OF FLORIDA,

CASE NO.: 08 CF 15606

v.

CASEY MARIE ANTHONY,

JUDGE: PERRY

Defendant.

_____ /

**JUSTICE ADMINISTRATIVE COMMISSION'S RESPONSE TO
DEFENDANT'S MOTION FOR CLARIFICATION ON DNA TESTING
HEARING PARTICIPATION REQUESTED**

COMES NOW, the Justice Administrative Commission ("JAC"), by and through the undersigned attorney and files this response to the Defendant's Motion for Clarification on DNA Testing as follows:

1. Jose Baez (Counsel) has filed a motion to clarify the rates for previously-approved DNA testing. Counsel asserts that he filed a motion for such services on September 27, 2010, and that on September 28, 2010, this Court approved DNA testing by National Medical Services Laboratories. It appears that National Medical Services Laboratories is a company based in Pennsylvania.

2. JAC objects to the appointment of an out of state provider where there are competent DNA specialists in Florida. JAC also objects because JAC was not provided with a copy of the September 27, 2010 motion and was not provided notice of the hearing and the opportunity to be heard. The Court's September 28 Order must therefore be vacated.

3. **As to the appointment of an out-of-state expert, JAC objects.**

While an indigent defendant has a due process right to the assistance of experts in his or her defense, that right is not unfettered. See Lavender v. State, 889 So.2d 882, 885 (5th DCA 2004). The right is limited to experts that are relevant and necessary to the defense of the case. See id. The defendant is not entitled to a specific expert or one of his or her "personal liking", but is only entitled to the services of a competent expert. See Walls v. State, 926 So.2d 1156, 1177 (Fla. 2006). The use of out of state providers is unnecessary and unreasonable where there are competent experts in the field available within the state.

The JAC Agreement for Attorney Services specifically addresses this issue. Paragraph III(15) provides as follows:

Attorney shall not seek authorization from the court for out-of-state experts, investigators, or mitigation specialists, absent a showing that there are no such providers with appropriate skills or expertise available, first, in the county in which the case was filed and, second, in any other county in the State of Florida. If Attorney obtains an out-of-state due process provider without making such a showing, Attorney agrees not to request reimbursement for any travel expenses including compensation for travel time on behalf of the due process provider. In order to obtain reimbursement, the order must contain a finding that a provider with appropriate skills or expertise was not available in the State of Florida.

See also §27.5305, Fla. Stat. (2010). As directed by the JAC Agreement and section 27.5305, absent a showing that there are no competent experts available within Florida, this Court should not authorize the retention of an out-of-state expert.

4. Based on past experience, DNA experts located in Florida work within or near to the rates established by law. The use of out-of-state experts may be a wasteful use of limited state resources where there are competent experts located in Florida. The additional costs associated with out-of-state experts such as travel time and travel expenses can dramatically increase the amount incurred for the expert services.

5. As directed by section 27.425, Florida Statutes (2010) and the General Appropriations Act, all due process services should be subject to the Florida Statutes and the JAC contract, policies and procedures. **JAC objects to any compensation rate in excess of established rates.**

6. The rates for experts other than medical doctors and psychologists are as follows:

- | | |
|--|--|
| a. Out-of-court services
less;
(includes initial review of records,
testing, writing reports, depositions,
and other appropriate services) | \$131.00 for first hour or
thereafter
\$32.75 per quarter hour
thereafter |
| b. In-court testimony
less; | \$158.00 for first hour or
thereafter
\$39.50 per quarter hour
thereafter |
| c. Waiting to testify in court | \$79.00 per hour |
| d. Waiting to testify at deposition | \$65.50 per hour |
| e. Travel time | \$65.50 per hour |

JAC objects to any rates in excess of the established rates. JAC notes that testing is included in this rate schedule.


7. Because Counsel is seeking an hourly rate in excess of the established rates, Counsel has the burden to show diligent efforts to locate an

expert within the correct rate structure. If Counsel makes such a showing, the Order should contain specific findings as to the efforts made by Counsel.

8. JAC requests this matter be set for hearing. JAC respectfully requests to participate telephonically and may be reached toll-free at (866) 355-7902.

WHEREFORE, the JAC requests this Court, should it grant the Defendant's motion, also include in its order the specific due process services authorized, as well as hourly or per unit rates and maximum fees approved, and that the provider be paid in accordance with the rates, terms, and conditions approved by the 9th Judicial Circuit's Indigent Services Committee (ISC), Florida Statutes, local administrative orders, JAC contract, and JAC policies and procedures.

Respectfully submitted,


Bradley R. Bischoff
Assistant General Counsel

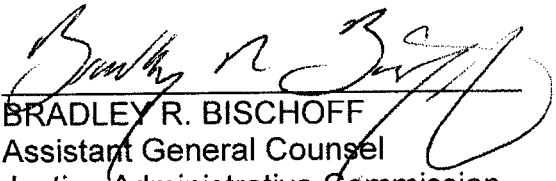
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by electronic means where indicated and U.S. Mail on this 10th day of November, 2010 to:

Honorable Belvin Perry, Jr.
Chief Judge
425 N. Orange Avenue
Orlando, FL 32801
Fax: 407-835-5162

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Orlando, FL 32801

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