

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 FOR SANCTIONS FOR FAILURE TO COMPLY WITH ORDER
GRANTING STATE'S MOTION FOR CLARIFICATION/ TO COMPEL
COMPLIANCE WITH ORDER FOR ADDITIONAL DISCOVERY**

COMES NOW the State of Florida and request that the court fashion sanctions for the material non-compliance with the court's order of December 10th 2010. This court, in its oral and written orders of December 10th 2010, in clear and unequivocal terms ordered defense counsel to provide, as to each expert, certain specific information by 12:00 PM on December 14th, 2010. On December 15th, 2010 the Defense provided to the court a document in response to that order. For the reasons stated herein the state would contend that the Defendant is in deliberate non-compliance with the court's order as to certain of their listed experts and that sanctions to address the non-compliance are necessary .

1) AS TO DR. HENRY LEE- In their pleading, their response as to the "specific subjects upon which the expert will testify and offer opinions" is adequate in stating " that he will render opinions on...crime scene analysis, collection and preservation as well as recovery". As to the final, and most important, issue however, the Defendant completely disregards the order in stating

he would “rebut any false claims raised by CSI investigators”. Numerous crime scene investigators have been listed by the State and have been deposed by the Defense. The claim that the Defense cannot summarize the “false statements” which Dr. Lee’s opinion will rebut is disingenuous and just plain laughable. If Dr. Lee has no opinions that would impeach the testimony of any witness then compliance with this court’s order would require a statement to that effect, if he has relevant opinions the court’s order requires that they be listed and the facts supporting them be clearly stated.

2) AS TO WITNESS DR. WERNER SPITZ- The report of Dr Jan Garavaglia was been provided to the Defendant long ago and her deposition was held on September 28th 2010. There is absolutely no reason for the failure of the Defense, in paragraph 5 of their response as to Dr. Spitz, to specify what opinions Dr. Spitz will offer and if they differ from the opinions expressed by Dr. Garavaglia in compliance with the courts order.

3) AS TO WITNESS DR. KATHY REICHS AND DR. WILLIAM RODRIGUEZ- The report of the states forensic anthropologists, Drs. Warren and Schultz, were provided in discovery within a few months of the discovery of the remains. Both of the experts have been deposed by the Defense. As with Dr. Lee the Defense has attempted to circumvent this courts order by the claim that they will “rebut false claims raised by the State’s forensic anthropologists” which cannot be known until they testify. Again a disingenuous and laughable claim.

With years to examine the reports of these experts and months to mull over their depositions it is inconceivable that they would claim an inability to know what “false claims” they will be rebutting. The intent of the defense to defy the authority of this court to issue orders of discovery is crystal clear. The response as to Drs. Reichs and Rodriguez is deliberately insufficient and in violation of this courts order.

4) AS TO WITNESS RICHARD EIKELENBLOOM- Apparently this witness claims expertise in a variety of fields and it is represented that he will “rebut false claims raised by the State’s forensic experts dealing with DNA, crime scene analysis or trace recovery”. Once again it is impossible to determine which of the over thirty experts and a dozen crime scene technicians that the witness will allegedly rebut. The reports of the various experts have been available for months, in some cases years, and all have been deposed by the defense. As previously stated the excuse provided is laughable and indicative of the deliberate attempt to flaunt the rules and intent of discovery and this courts order.

The State of Florida is willing to do it’s best to deal with the minimal compliance with the court’s order reflected in the information provided as to the experts not referenced above. As to the experts referenced above however the information provided is in fact no information at all. It is impossible for the State to properly depose and prepare for the testimony to be provided by these witnesses with the information currently provided by the Defense.

F.R.C.P. 3.220 (n) reads as follows:

(1) If, at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued pursuant to an applicable discovery rule, the court may order the party to comply with the discovery or inspection of materials not previously disclosed or produced, grant a continuance, grant a mistrial, prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

(2) Willful violation by counsel or a party not represented by counsel of an applicable discovery rule, or an order issued pursuant thereto, shall subject counsel or the unrepresented party to appropriate sanctions by the court. The sanctions may include, but are not limited to, contempt proceedings against the attorney or unrepresented party, as well as the assessment of costs incurred by the opposing party, when appropriate.

The State will reserve its request for specific sanctions for the time of hearing but would suggest that the court consider that whatever sanction is imposed be fashioned to achieve three goals 1) to enable to state to adequately prepare the case for trial in a timely manner 2) to ensure that defense counsel personally will refrain from future violations of discovery and 3) to protect the Defendant's right to a fair trial and an adequate defense.

I DO CERTIFY that a copy hereof has been furnished to Jose A. Baez, 522 Simpson Road, Kissimmee, FL 34744 by e-mail on this 22nd day of December, 2010.

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