

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

STATE OF FLORIDA,

CASE NO.: 2008-CF-015606-0

DIVISION: 16

Plaintiff,

HON. BELVIN PERRY JR.

vs.

CASEY MARIE ANTHONY,

Defendant.

**DEFENDANT'S EMERGENCY MOTION TO APPOINT SPECIAL MAGISTRATE DURING
INSPECTION OF DISCOVERY WITH EXPERT WITNESSES**

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through the undersigned counsel, and respectfully moves this Honorable Court to appoint a Special Magistrate during the inspection of evidence under the control of the Orange County Sheriff's Office. In support thereof, the Defendant would allege that:

1. The Orange County Sheriff's Office has in its possession several items of evidence material in this case.
2. The Defendant, by and through the undersigned counsel, has arranged for several expert witnesses to fly in from all parts of the world to assist counsel during the inspection, testing copying, and photographing of these items of evidence.
3. The inspection of this evidence is scheduled for July 13 and July 14 of 2010. These are the only two days that all expert witnesses could meet together with the undersigned counsel.
4. The State wishes to have officials from the Orange County Sheriff's Office present during the inspection of evidence in control and possession of the Sheriff's Office.

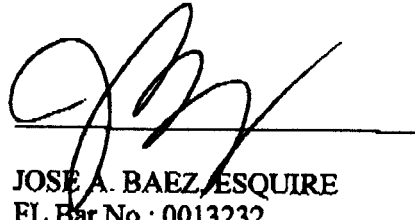
5. The undersigned counsel believes that allowing the officials from the Sheriff's Office to be present while counsel and expert witnesses inspect the items of evidence would unfairly subject statements made between counsel and the expert witnesses to discovery, creating an unfair prejudice against the Defendant in her preparation for trial.
6. It is critical to the Defense that the undersigned counsel is allowed to consult with expert witnesses during the inspection of evidence within the control and possession of the Orange County Sheriff's Office without officials from the Orange County Sheriff's Office present.
7. The undersigned counsel believes these communications are real time work product; therefore, the statements are protected by the work product doctrine. In support of counsel's belief, counsel notes the holding made in *Hickman v. Taylor*. In *Hickman*, the Supreme Court of the United States was faced with the issue of whether oral communications between witnesses and attorney's were subject to discovery. *Hickman v. Taylor*, 329 U.S. 495 (1941). The Supreme Court held that "written statements could be made discoverable but only upon a showing of necessity. But as to oral communications made by witnesses to [the attorney], whether presently in the form of mental impressions or memoranda, we do not believe that any showing of necessity can be made under the circumstances of this case as to justify production." *Id.* at 512.
8. Furthermore, "although its genesis is found in a civil action, the work-product doctrine has since been held to apply to criminal cases. *State v. Rabin*, 495 So. 2d 257, 261 (Fla. 3rd DCA 1986). In *Olson v. State*, the court held that "[t]he oral and unrecorded statements of witnesses to a state attorney are privileged as work product and not discoverable." *Olson v. State*, 705 So. 2d 687, 690 (Fla. 5th DCA 1998).

9. Under Rule 3.220(b)(1) of the *Florida Rules of Criminal Procedure*, the State has an obligation to permit the defendant to inspect, copy, test, and photograph the following material within the state's possession or control. Fla. R. Crim. P. 3.220(b)(1). In *Olson*, the court noted that "the clear implication of *Florida Rule of Criminal Procedure* 3.220(b)(1)(B) provides that statements [between witnesses and attorneys] not written or recorded are not discoverable." 705 So. 2d 687 at 690.

WHEREFORE, the Defendant CASEY MARIE ANTHONY prays that this Honorable Court enter an Order to appoint a Special Magistrate to be present during the inspection of evidence in control and possession of the Orange County Sheriff's Office.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Appoint a Special Magistrate During the Inspection of Discovery with Expert Witnesses has been furnished to the Office of the State Attorney, 415 North Orange Ave, Orlando, Florida 32801 by facsimile delivery on this 1st day of July, 2010.



JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0013232
MICHELLE MEDINA, ESQUIRE
FL Bar No.: 0064380
THE BAEZ LAW FIRM
522 Simpson Road
Kissimmee, Fl 34744
407.705.2626
407.705-2625