

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

CASE NUMBER 2008-CF-15606

STATE OF FLORIDA,
Plaintiff,

v.

CASEY MARIE ANTHONY,
Defendant.

ORDER GRANTING STATE'S MOTION
FOR SANCTIONS / MOTION TO COMPEL

This matter came before the Court for consideration of the state's Motion for Sanctions for Failure to Comply With Order Granting State's Motion for Clarification / To Compel Compliance With Order for Additional Discovery, filed December 22, 2010.

Background: The defense did not ask its experts to prepare written reports. However, on November 19, 2010, the State requested additional discovery, which the Court granted on December 3, 2010.¹ In response, defense counsel sent an e-mail to the state with the name of each expert, followed by a one or two-word reference to the expert's area of specialization and the expert's address. On December 1, 2010, the state filed a Motion for Clarification / To Compel Compliance with Order for Additional Discovery, which the Court granted in an Order filed on December 13, 2010, finding the list did not comply with its intent as expressed at the November 29, 2010 hearing. The defense filed a Response on December 15, 2010 and the instant Motion followed.

¹ Nunc pro tunc November 29, 2010

The state alleges that defense counsel is in deliberate non-compliance with the Court's Order Granting State's Motion for Clarification / To Compel Compliance With Order for Additional Discovery, signed December 10, 2010 and filed December 13, 2010, wherein the Court set forth a list of specific information to be provided with regard to both state and defense experts, including (but not limited to) the following:

3. A statement of the specific subjects upon which the expert will testify and offer opinions;
4. The substance of the facts to which the expert is expected to testify; and
5. A summary of the expert's opinions and the ground for each opinion.

The December 15, 2010 Response filed by defense counsel lacks this information, making only the conclusory assertion that each expert would "rebut any false claims" raised by the state's experts. For example, regarding Dr. Henry Lee, defense counsel claims that until the witness is called to testify, "it is difficult to give a complete summary of his opinions and the grounds for those opinions." *See* Response, a copy of which is attached to this Order as Exhibit A. The state seeks the sanction of civil contempt and a fine of \$500 per day, with defense counsel Jose Baez as the responsible party, until the Court is satisfied that there has been compliance with the Order.

At the hearing on January 3, 2011, defense counsel Cheney Mason argued the defense team has received numerous pages of additional discovery and taken over 130 depositions, and is still trying to catch up with the state's belated filing of discovery. However, he failed to provide a direct, or sufficient, response to the question of why the defense has failed to comply with the very specific instruction in the Court's Order.

Defense counsel Jose Baez argued he filed the document one day late because he needed to obtain the experts' curriculum vitae and acknowledged that he did not ask for an extension of time. He, too, failed to explain the non-compliance with the Order.

It is highly unlikely that defense counsel has no idea of the substance of the testimony of these witnesses, who have been retained at taxpayer expense and deposed by defense counsel, or that the experts are unable to provide a specific summary of their testimony, including the information the Court has previously directed the defense to file. While it is indeed the right of defense counsel not to require these experts to produce full written reports, counsel cannot disregard the Court's specific instruction to provide the information set forth in paragraphs 3, 4, and 5 of the Order Granting State's Motion for Clarification / To Compel Compliance With Order for Additional Discovery

It is hereby ORDERED AND ADJUDGED:

1. The Court finds that defense counsel Jose Baez has committed a willful violation of the Order to provide additional discovery regarding expert witnesses.
2. The defense shall provide written reports to the state from all expert witnesses, which shall include the following information: a complete statement of opinions the witnesses will express and the reasons for those opinions, and any data or other information considered by the witnesses in forming their opinions or conclusions.
3. Following the hearing on January 5, 2011, the parties agreed to recommend the following schedule for the production of these reports: the report of Dr. Kenneth Furton

shall be filed within 10 days of the date of this Order, and the reports of the remaining experts shall be filed within 20 days.²

4. Opinions that are not expressed in a written report or at depositions taken during discovery will not be allowed at trial.

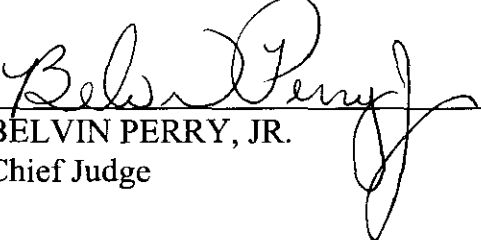
5. The Court will assess costs incurred by state in bringing this motion, including time and reasonable attorney's fees, against lead counsel Jose Baez, in the amount of \$583.73 pursuant to the State's Affidavit of Attorney's Fees.

6. Mr. Baez shall have 5 days to contest the amount; otherwise, this Order will become final and Mr. Baez shall deliver the check, made payable to the "State of Florida" to assistant state attorney Jeff Ashton within 7 days of the date of this Order.

7. Mr. Baez shall provide the Court with a copy of his check.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida this

6th day of January 2011.


BELVIN PERRY, JR.
Chief Judge

² The State acknowledges possession of a report prepared by Dr. Jane Bock and anticipates receipt of a report from Dr. Tim Huntington next week.

Certificate of Service

I certify that a copy of the foregoing Order Granting Motion for Sanctions for Failure to Comply With Order Granting State's Motion for Clarification / To Compel Compliance With Order for Additional Discovery has been provided this 6th day of January 2011 to the following:

- Linda Drane Burdick, Jeffrey L. Ashton, and Frank George, Assistant State Attorneys, 415 North Orange Avenue, Orlando, Florida 32801
- Jose Baez, Esquire, The Baez Law Firm, 522 Simpson Road, Kissimmee, Florida 34744
- J. Cheney Mason, Esquire, J. Cheney Mason, P.A., 390 North Orange Avenue, Suite 2100, Orlando, Florida 32801


Judicial Assistant