

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

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO.: 48-2008-CF-015606-O
DIVISION: 16

JUDGE: STAN STRICKLAND

CASEY MARIE ANTHONY,

Defendant.

EMERGENCY MOTION FOR PROTECTIVE ORDER AND OTHER RELIEF

COMES NOW the Defendant, CASEY MARIE ANTHONY, by and through undersigned counsel and moves this Honorable Court to enter a Protective Order prohibiting the State and its various law enforcement agencies from: 1) Monitoring and/or disclosing any communications between Casey Anthony and her attorneys or attorneys agents; 2) saving any video or audio taping the Defendant and Defendant's counsel while meeting; 3) disclosing to anyone anything that occurred in the meetings; 4) turning over all video or audio tapes or reports or other methods of memorializing meeting between the attorney and client; 5) conducting a full testimonial hearing to determine who authorized that the communications, tapes be saved, reported on, or otherwise authorized all discussed herein; 6) order that any discovery which has as a part communications with the attorney not be disclosed to the public; 7) order a testimonial hearing on the issue if it deems necessary; 8) any and all other relief that is within the power of this court. In support thereof the Defendant would allege that:

1. The Defendant is currently incarcerated in the Orange County Jail.
2. On or about December 11th, 2008 as has been done many times in the past, the Defendant met with the counsel to discuss matters regarding this case, at the Orange County jail.
3. All meetings with client are protected by the attorney client privilege, even though the jail has done so in the past in the location they want us to meet in. Most times it has been in a vacant classroom.
4. At no time was it revealed that meetings with client would have saved video tapes (when the ordinary procedure is to tape over these security tapes.)
5. At no time has it ever been disclosed that conversations would be monitored and turned over to the prosecution.
6. The release of discovery not yet disclosed to the public reveals that BOTH have occurred

on at least one date.

7. It is yet unknown if other violations of both the Constitution and law have occurred.
8. It is clear hornbook case law that every person who acts “under color of state law” that monitoring of such conversations violates this basis prohibition. See discussions. For instance, regarding automated phone conversations that if the attorney and client are notified may be taped under certain circumstances if the opt out procedure is not too burdensome.

" The use of monitored telephone calls of a pre-trial detainee violates the Constitution in certain circumstances. Prison officials may tape a prisoner's telephone conversations with an attorney only if such taping does not substantially affect the prisoner's right to confer with counsel. *Dreher v. Sielaff*, 636 F.2d 1141 (7th Cir.1980); see also *Martin v. Tyson*, 845 F.2d 1451, 1458 (7th Cir.1988), certiorari denied, 488 U.S. 863, 109 S.Ct. 162, 102 L.Ed.2d 133. Clearly, taped attorney-client conversations cannot be used in any fashion unless possibly with prior court authority based on probable cause."

In Broward County, Fla., the sheriff's department settled in or around 2008 a class-action lawsuit filed after several inmates discovered their protected calls were inadvertently uploaded during a two-week test of a new \$18 million recording system in 2006.

9. In other words, a Search Warrant is needed to do what has apparently been done here involving the jail personnel, the Orange County Sheriff's Office, and other parties who may or may not have had knowledge of same before the fact. The question of who asked for, ordered, directed, consented to, arranged, facilitated, or gave authority to needs also be looked into further through an testimonial hearing in front of this court.
10. Recently a judge in Broward County, Judge Susan Lebow, booted a whole prosecutor's office off a murder case because the prosecutors listened to several automated taped phone conversations between an attorney in a murder case and his client. See <http://www.miamiherald.com/news/5min/story/839179.html>.
11. Here the prosecutor(s) have listened to not only now private medical confidential information, but also to Lt. Tammy Uncer relating to the Orange County Sheriff's Office, which has been given to detectives, a synopsis of a communication between her attorney and her. Since no conversations between the client and her attorney occur in front of any jail personnel – the means by which this communication was obtained is highly questionable to say the least. If there is any other proffer made by any party made to the court in an attempt to softball these violations, the court must engage in a fact -finding hearing with cross-examination and cannot accept any proffer that attempts to justify these actions.
12. While surveillance cameras to monitor for security purposes do exist, it has never been

disclosed that a taping that will be saved has been made, and given to the Orange County Sheriff's Office, and that previous arrangements had been made with the Orange County Department of Corrections to have the jail's video cameras set up to record the Defendant's meeting with the undersigned counsel.

13. The Defendant and her counsel were not made aware that they were being video taped in a tape that would be saved while discussing issues regarding the present case. (As opposed to a security tape that is monitored and destroyed and not turned over to another agency).
14. The video footage obtained by the Orange County Department of Corrections and/or the Orange County Sheriff's Office, of the Defendant meeting with her Defense counsel, violates the Defendant's right to counsel.
15. The Defense requests a stay on the release of said video, the tape of Lt. Tammy Uncer until a hearing can be held on its merits.
16. Additionally new discovery further reveals a more egregious violation of the patient's medical records. The tape of Uncer discusses the whole medical history of the defendant while at the jail.
17. While the court has given us fifteen days to yet brief the specific issue of taping appearance in a medical facility being released to the public, this issue as different and extremely serious, the interview of Lt. Tammy Uncer discusses **her medical state in a medical facility and also her medical history at that facility.**
18. Another interview with Lt. Billy Richardson is recorded where he says "I got a call that they wanted to do an interview with her in the medical facility." A medical facility cannot be used as subterfuge to violate inmate rights, in fact, this statement also implicates a violation of her Fifth Amendment rights, along with her medical rights to privacy. Again is it unclear at this stage who orchestrated all this and a hearing is asked on this issue.
19. The court should be aware that unlike "law" being espoused by the talking media heads, there is a clear right of privacy in jail medical matters. Not only is there a right of privacy for a criminal proceeding which will be addressed later in a suppression hearing (this motion seeks to prevent this information from being released to the public as it is not news), anyone who participated in such AND the release of such even if the court allows at this stage can be the subject of a federal civil rights suits by Casey Anthony in the next two years. For any and all involved both compensatory and punitive damages can be individually assessed. In fact, the court ordering the release of such information to the public may increase the damages Casey Anthony would suffer for any alleged misconduct.
20. The United States Supreme Court has ruled that prison inmates do not shed all

fundamental protections of the Constitution at the prison doors. *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974). For instance, they retain rights under the First Amendment. *O'Lone v. Shabazz*, 482 U.S. 342, 348 (1987); due process rights under the 14th Amendment, *Wolff*, 418 U.S. at 555; protection against racial discrimination; *Lee v. Washington*, 390 U.S. 333, 334 (1968); protection against cruel and unusual punishment under the Eight Amendment. *Wilson v. Seiter*, 501 U.S. 294, 297 (1991).

21. So does an inmate's constitutionally protected right to privacy remain under the First, Fourth and Fourteenth Amendment. An inmate's constitutional right may be curtailed **only** by a policy or regulation that is shown to be "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).
22. As noted, certain privacy rights are not extinguished under the Fourth Amendment. The right to privacy in his medical procedures and information is clearly one of them. See, e.g., *Powell v. Schriver*, 175 F.3d 107, 112 n.3 (2d Cir. 1999) (noting right to confidentiality of medical information is distinct from right of privacy in a jail cell implicated in *Hudson*); *Anderson v. Romero*, 72 F.3d 518, 522 (7th Cir. 1995) (same). Obviously any state enacted public "right to know" law cannot trump a constitutional right to privacy.
23. This Honorable Court needs to understand that there is a fundamental difference between seeking a privacy interest under the First and Fourth Amendment as it applies to the states through the Fourteenth Amendment procedural due process, or the Fourteenth Amendment substantive due process right of privacy versus the Fourth Amendment rights of privacy to be free from search and seizure. Generally, there is no right under the Fourth Amendment to privacy in their cells, see *Hudson v. Palmer*, 468 U.S. 517, 529 (1984), because it would be impossible to prevent the introduction of weapons, drugs and other contraband in jails otherwise.
24. It is improper, for instance, to monitor activity in a cell in a way they may determine an inmate's psychological state, then use that activity to discuss whether an inmate has a valid medical or psychological problem in court without obtaining a search warrant for those records. The log could be may be able to monitor for suicide inclination for the jail to medically treat the person and or protect against suicide only. In other words treatment for the health of the inmate cannot be turned into a law enforcement weapon.
25. In addition, Anthony is asserting her Fourteenth Amendment right to privacy in her medical information. The right to nondisclosure of one's medical information emanates from different sources and protects it from release. In fact, the jail under both regulation and accreditation through the ACA (American Corrections Association) is required to have proper inmate medical facilities, and policies and procedures in order to receive accreditation and comply with the Eighth Amendment of the Constitution. In fact, the

Orange County Jail website boasts; "In addition to the new accreditations announced today, the OCCD Jail System is also nationally accredited by the American Correctional Association, as well as the Florida Corrections Accreditation Commission, and is routinely inspected by independent auditors to ensure compliance with Florida Model Jail Standards."

26. This court should be aware that we are not at this time in this particular motion asking for a suppression based on either the Fourth or Fifth Amendment and regardless of the judge's ruling, law enforcement takes all the risks inherent in their actions if it continues this conduct of violating privileges of Casey Anthony, as that comes later in this process . But we are asking for the relief set forth below to mitigate the past violations and prevent continued violations of law and constitutional (both federal and state) rights.
27. In the meantime, the interviews with Uncer and Richardson and any other documents or videos that mention her medical history including on December 11, 2008 should not be disclosed to the public.
28. While Fourth Amendment prohibits the government from conducting unreasonable searches and seizures, U.S. Const. Amend. IV. The Supreme Court has clarified that the Fourth Amendment "protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all." *Katz v. United States*, 389 U.S. 347, 350 (1967).
29. One of the leading cases dealing with this is in a civil arena where a prisoner sued for violations including having an open door policy on exams, such as calling out names etc., which is mild compared to what is done and disclosed here, and clearly sets forth the right to medical privacy in jail. *Doe v. DeLie*, 257 F.3d 309 (3d Cir. 2001)
30. We agree that an inmate's constitutional right, is subject to substantial restrictions and limitations in order for correctional officials to achieve legitimate correctional goals and maintain institutional security. But they do not lose this in order to implement "investigative techniques."

WHEREFORE the Defendant, CASEY MARIE ANTHONY, prays that this Honorable Court enter a protective order prohibiting the State and its various law enforcement agencies, including but not limited to the Orange County Department of Corrections and/or the Orange County Sheriff's Office and the office of the State Attorney, prohibiting the State and its various law enforcement agencies from: 1) Monitoring and/or disclosing any communications between Casey Anthony and her attorneys or attorney's agents; 2) saving any video and/or audio taping the Defendant and Defendant's counsel while meeting; 3) disclosing to anyone anything that occurred in the meetings or communications with counsel; 4) turning over all video or audio tapes or reports or other

methods of memorializing meeting between the attorney and client that occurred on any other dates besides those already turned over for December 11,2008; 5) conducting a full testimonial hearing to determine who authorized that the communications, tapes be saved, reported on, or otherwise authorized all discussed herein; 6) order that any discovery which has as a part communications or images between Casey Anthony with the attorneys not be disclosed to the public; 7) order a testimonial hearing on the issue if it deems necessary; 8)any and all other relief that is within the power of this court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S. Mail and or Fax/hand delivered to the Office of the State Attorney at 415 North Orange Avenue, Orlando, Florida 32801, Orange County Sheriff's Office, 2500 W. Colonial Dr, Orlando, FL 32804, and Orange County Corrections, c/o the Orange County Attorney's Office, on this the _____ day of March, 2009.

JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0013232
JOSE L. GARCIA, ESQUIRE
FL Bar No.: 0026020
LINDA KENNEY BADEN, ESQUIRE
FL BAR: PRO HOC VICE
THE BAEZ LAW FIRM
522 Simpson Road
Kissimmee, Florida 34744
T: (407) 705-2626
F: (407) 705-2625

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CASEY MARIE ANTHONY,

Defendant.

ORDER DISPOSING OF MOTION TO STAY THE RELASE OF DISCOVERY

THIS CAUSE having come to be heard this ____ day of _____, 2009, the Court,
having reviewed the Motion to Stay the Release of Discovery, and being otherwise fully advised,

ORDERS ADJUDGES AS FOLLOWS:

1. The Defendant's Motion for Protective is hereby,

_____ **GRANTED**

_____ **DENIED**

Other:

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida on this the ____
day of _____, 2009.

HONORABLE STAN STRICKLAND, JUDGE
CIRCUIT CRIMINAL DIVISION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
mail/hand/facsimile delivery to Jose A. Baez, Esquire, 522 Simpson Road, Kissimmee, Florida
34744; the Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801; on this

the ____ day of _____, 2009.

DONNA MORRIS
JUDICIAL ASSISTANT