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-15606-O
Division: 16

CASEY MARIE ANTHONY,

Defendant.
_____/

MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF OPPOSING DEFENDANT'S STANDING OBJECTIONS OF ABUSE OF FLORIDA STATUTES CHAPTER 119.01

Orlando Sentinel Communications Company, publisher of the *Orlando Sentinel* ("Sentinel") moves to intervene in this action for the limited purpose of opposing the Defendant's Notice of Standing Objection of Abuse of Florida Statue Chapter 119.01, Renewed Notice of Standing Objection of Abuse of Florida Statute Chapter 119.01 and Second Renewed Notice of Standing Objection of Abuse of Florida Statute Chapter 119.01 (collectively referred to as "Standing Objections"), the Sentinel states as follows:

Background

1. On countless occasions, defendants in high profile cases have asked Florida courts to entertain orders limiting information that may be released to the public. This case is no exception.

2. The Sentinel, a daily newspaper, is a news organization that has covered the disappearance and death of young Caylee Anthony and the arrest and prosecution of her mother Casey Anthony, and it continues to do so. In its role as a surrogate to the public and keeping the

public informed about this case, the Sentinel attends court proceedings and relies upon state, county and local public records, as well as judicial records, as part of its newsgathering process.

3. To be sure, this case has garnered significant local and national attention. The nation and, most significantly, the citizens of Orange County have grieved over the death of Caylee Anthony. This case already has had a significant impact on the public and the community has a strong need to keep informed on the progress if this prosecution.

4. The Defendant has three Standing Objections of Abuse of Florida Statute Chapter 119.01 complaining of the release of public records in this case. The Standing Objections ask the Court to either reverse its prior rulings regarding the right of access to public records or "Sua Sponte" prevent the release of public records.[1] However, the Defendant does not even attempt to meet her burden or provide a single legitimate basis for this Court to implement such a harsh remedy.

5. As shown below, an agency's release of public records, required by Florida Statutes and Florida's Constitution, is not an "abuse" of Florida's Public Records Act. The only "abuse" of the Act, is the Defendant's attempt to shut it down.

Procedural Issues

6. It is well settled in Florida that the media has a right to challenge closure of judicial and public records. See, e.g., Fla. R. Jud. Admin. 2.420; Florida Freedom Newspapers, Inc. v. McCrary, 520 So.2d 32 (Fla. 1988); Miami Herald Publ'g Co. v. Lewis, 426 So. 2d 1, 7 (Fla. 1982).

[1] Although the defense now complains about the public's "so called right to know," defense counsel are no strangers to the media in this case – often speaking to the media and garnering significant media attention themselves.

7. The Standing Objections filed by the Defendant directly affect the media and the public's right to monitor this important proceeding. Indeed, the Defendant objects to the public's "so called right to know" found in Florida's Public Records Act, Chapter 119, and specifically provided for in Florida's Constitution, Article I, Section 24, and essentially asks the Court to shut down the media and the public's statutory and constitutional right to public information.

8. Before the Court can even consider such a drastic measure, the Sentinel is entitled to notice and an opportunity to be heard on this issue. As such, the Sentinel has standing to intervene and oppose the Defendant's Motion. See, e.g., News-Press Publ'g Co. v. State, 345 So. 2d 865 (Fla. 2d DCA 1977).

9. The Sentinel would like to be heard in this matter and asserts that the motion should be denied.

Analysis

10. The Defendant objects to what she classifies as "abuse" of Florida's Public Records Act. The Standing Objections cite three instances of such "abuse":

- A website article that reported that the Defendant ordered crackers and cocoa while in jail. See Notice of Standing Objection of Abuse of Florida Statue Chapter 119.01.
- A website article that reported there was a "shift of blame" in the defense. See Renewed Notice of Standing Objection of Abuse of Florida Statue Chapter 119.01.
- A website article that reported the Defendant met with a psychologist. See Renewed Notice of Standing Objection of Abuse of Florida Statue Chapter 119.01.

The Defendant alleges that this type of coverage has caused her prejudice and maintains that the only purpose for release of public records in this case is to embarrass, harass and humiliate the accused.

11. Contrary to the Defendant's assertion, the mere compliance with Florida's public disclosure laws does not amount to an "abuse" under Article I, Section 24 or Chapter 119.

12. Although the public has a significant interest in these proceedings, neither the public nor the media are required to show a legitimate interest or purpose in order to obtain public or judicial records. See, e.g., Timoney v. City of Miami Civilian Investigative Panel, 917 So. 2d 885, 886 n.3 (Fla. 3d DCA 2005) ("generally, a person's motive in seeking access to public records is irrelevant"); Curry v. State, 811 So. 2d 736, 742 (Fla. 4th DCA 2002) ("The motivation of the person seeking the records does not impact the person's right to see them under the Public Records Act."); Tedesco v. State, 807 So. 2d 804, 806 (Fla. 4th DCA 2002) (no requirement that any person show a "need" in order to obtain public records of the judicial branch). Therefore, the "purpose" for disclosure of public records regarding the Defendant is irrelevant.

13. Application of Florida's Public Records Act is actually fairly straightforward. In responding to a public records request, a government agency considers two issues: (1) does the document meet the definition of a public record; and (2) if so, is the public record exempt from disclosure. Hill v. Prudential Ins. Co., 701 So. 2d 1218, 1219 (Fla. 1st DCA 1997). If a document meets the definition of a public record and is not subject to an exemption, it *must* be disclosed to the public pursuant to Article I, Section 24, Florida Constitution and Chapter 119, Florida Statutes.

14. Therefore, to the extent that the Defendant's Standing Objections request that public records be sealed because of public perception or policy considerations, such justifications cannot create an exemption to shield public records from disclosure. See, e.g., Wait v. Fla. Power & Light Co., 372 So. 2d 420, 425 (Fla. 1979) (Public Records Act "excludes any

judicially created privilege of confidentiality;" only the Legislature may exempt records from public disclosure). If a public agency did deny a public records request based public perception or policy, the only "abuse" would be the flagrant violation of Florida's Sunshine Laws.

15. The Defendant also makes the conclusory assertion that she has been prejudiced in this case and that the media's First Amendment rights should yield to her fair trial rights. However, in making this argument, the Defendant carries a heavy burden – one that she has not even attempted to satisfy.

16. Before public records may properly be closed on fair-trial grounds, this Court must specifically identify the factors that threaten the administration of justice and weigh all reasonable alternatives to mitigate the perceived threats. Only then, after development of a full record on these issues, may a court narrowly fashion a remedy that accommodates the public's interest alongside that of the criminal justice system.

17. Specifically, this Court must apply the three-part test referenced in Florida Freedom Newspapers v. McCrary, 520 So. 2d 32 (Fla. 1988), and established in Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1 (Fla. 1982). "A finding of cause to restrict or defer disclosure of such records cannot rest in air." McCrary, 520 So. 2d at 35.[2] Such findings can only be made after a careful analysis of the following factors:

a. Restricting public access to discovery material is necessary to prevent a serious and imminent threat to the administration of justice;

b. No alternatives, other than a change of venue, would protect the defendant's right to a fair trial; and

c. Closure would be effective in protecting the rights of the accused, without being broader than necessary to accomplish this purpose.

[2] Because any such order impacts the *public's* right of access, these findings must be made regardless of whether the requested closure is opposed. Indeed, litigants before the Court cannot bargain away the public's constitutional right to government and judicial records.

Lewis 426 So. 2d at 6; McCrary, 520 So. 2d at 35. The Defendant has not even addressed, much less attempted to meet, this burden.

18. The fact that this case is a high profile case does not provide the Defendant with a unique privilege to shut down public information. As the Florida Supreme Court has noted, pretrial publicity in topical criminal cases is inevitable. Rolling v. State, 695 So. 2d 278, 285 (Fla. 1997). Therefore, media attention alone is not a sufficient basis for secrecy. See, e.g., Provenzano v. State, 497 So. 1177, 1182 (Fla. 1986).[3]

19. If extensive news coverage alone warrants closure of public records, the constitutional and statutory rights of access do not exist in the very cases the public is most interested in following. Indeed, heightened public attention only increases the need for the "appearance of fairness so essential to public confidence in the system." Press Enterprise Co. v. Superior Court of Cal., 464 U.S. 501, 508 (1984).

20. To be sure, publicity is vital to an open and accountable judicial system – especially in a capital case in which there exists the imposition of the ultimate penalty. As former Supreme Court Chief Justice Berger wrote: "Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account." Id. at 509.

21. Albeit selectively, the defense may not like the publicity this case receives when it doesn't suit them, but it is the basis of our judicial system. Therefore, rather than making conclusory accusations of prejudice, if the defense really wants to protect the Defendant's fair trial rights, it should come to this Court on narrow and specific issues that could violate such

[3] Jurors need not be totally ignorant of the facts of the case. They only need to be free from any preconceived notion. Rolling, 695 So. 2d at 285. And, Florida courts routinely successfully seat juries in even their most high profile cases. Indeed, careful measures in jury selection, including individualized voir dire, avoid prejudicial effects of even pervasive adverse publicity. See Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 563-64 (1976); Lewis, 426 So. 2d at 8.

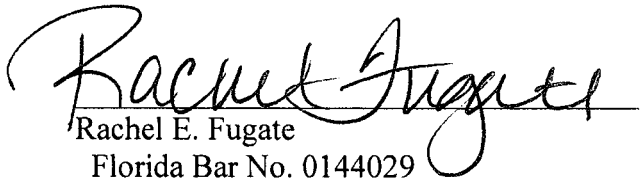
rights and establish the prejudice that would ensue. Then the Court could properly perform its function, analyze the prejudice, consider alternatives and narrowly fashion a remedy, if warranted.

22. The Defendant's Standing Objections seek an extreme remedy of essentially shutting down Florida's Public Records and the constitutional right of access found in Article I, Section 24. Such a drastic remedy can only be ordered when there is a manifestly overwhelming threat to the Defendant's right to receive a fair trial. And even then, alternatives must be considered and restrictions must be narrow. Because the Defendant's Standing Objections do not even come close to meeting these high standards, they should be denied.

WHEREFORE, the Sentinel respectfully requests that it be allowed to intervene for the limited purpose of opposing the Defendant's Standing Objections of Abuse of Florida Statute Chapter 119.01 and that the Standing Objections be denied.

Respectfully submitted,

THOMAS & LOCICERO PL



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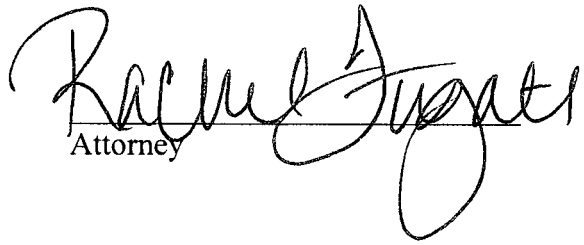
CERTIFICATE OF SERVICE

I CERTIFY that on August 27, 2010, true and correct copies of the foregoing have been furnished via facsimile and overnight delivery to **Jose A. Baez, Esq.**, The Baez Law Firm, 522 Simpson Road, Kissimmee, Florida 34744 (Fax: 407-705-2625); **J. Cheney Mason, Esq.**, 390 N. Orange Ave., Suite 2100, Orlando, Florida 32801 (Fax: 407-422-6858); **Linda Drane Burdick, Esq.**, State Attorney's Office, 415 N. Orange Avenue, Orlando, Florida 32801 (Fax: 407-836-2330).



Attorney