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Unsealed pursuant to 2/16/05 Court order

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA BARBARA**

**SANTA MARIA DIVISION**

| | |
|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA,<br>Plaintiff,<br>v.<br>MICHAEL JOE JACKSON,<br>Defendant. | No. 1133603<br>PLAINTIFF'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY WILLIAM DICKERMAN<br>DATE: February 10, 2005<br>TIME: 8:30 a.m<br>DEPT: TBA (Melville<br>~~UNDER SEAL~~ |

TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND HIS COUNSEL:

PLEASE TAKE NOTICE that on February 10, 2005, Plaintiff will move the court for its order forbidding counsel to inquire about or comment on Jane Doe's assertion of her privilege not to comment on or discuss the content of her confidential conversations with and communications to Attorney William Dickerman and other lawyers she may have contacted concerning matters unrelated to Michael Jackson.

The motion will be based on this notice and the accompanying Memorandum of Points and Authorities.

DATED: January 31, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR.
District Attorney

By: _____
Ronal J. Zonen, Senior Deputy

Attorneys for Plaintiff

## MEMORANDUM OF POINTS AND AUTHORITIES

I

## AN INDIVIDUALS CONFIDENTIAL COMMUNICATIONS WITH HER LAWYER ARE PRIVILEGED, AND SHE OUGHT NOT TO BE REQUIRED TO ASSERT THE PRIVILEGE BEFORE THE JURY IN ORDER TO AVAIL HERSELF OF ITS PROTECTIONS WITHOUT PREJUDICE. REFERENCE TO JANE DOE HAVING RETAINED COUNSEL IN UNRELATED MATTERS, AND HER REFUSAL TO WAIVER HER PRIVILEGE CONCERNING HER COMMUNICATIONS WITH COUNSEL, OUGHT NOT TO BE COMMENTED UPON IN OPENING STATEMENTS OR IN THE COURSE OF CROSS-EXAMINATION

A. Introduction

This motion is based on Attorney Mesereau's examination of Jane Doe in the course of the litigation of defendant's motion to suppress evidence seized from the office of Investigator Bradley Miller, in which he inquired of her concerning her having retained the services of lawyers in connection with civil and domestic matters unrelated to Michael Jackson.

B. Background

Jane Doe was called by the defense to testimony in court in September, 2004. Attorney Mesereau questioned her about the lawyers she had previously retained.

Some of Attorney Mesereau's questions were plainly disingenuous, such as why Jane Doe stated on her Waiver form that she had consulted a particular attorney to "help her with Michael Jackson" before she ever met Mr. Jackson, when he knew she had consulted that lawyer for an entirely different reason.

C. Argument

Whether Jane Doe retained counsel to assist her in her successful litigation against JCPenney is not relevant to any issue at bench, even if the fact that she retained counsel was made public by court filings by an attorney on her behalf. Nor is it relevant that she was represented by Michael Manning or Sandra Polin in her family law disputes with her former husband. Unless Defendant can show that retaining lawyers to represent oneself in civil

actions and in divorce and child custody proceedings somehow constitutes a character flaw, he ought not to be allowed to question her about why she retained those lawyers and should not be allowed to discuss the subject in opening statement.

II

JANE DOE'S WILLINGNESS TO WAIVE ATTORNEY/ CLIENT CONFIDENTIALITY AS TO HER COMMUNICATIONS WITH SOME OF HER FORMER LAWYERS DOES NOT MAKE HER REFUSAL TO WAIVE HER PRIVILEGE AS TO HER CONFIDENTIAL COMMUNICATIONS WITH OTHER OF HER LAWYERS EITHER RELEVANT OR ADMISSIBLE IN THIS PROCEEDING. TO THE EXTENT A PRIVILEGE OF CONFIDENTIALITY CONTINUES TO PROTECT HER COMMUNICATIONS WITH CERTAIN LAWYERS, HER REFUSAL TO WAIVE THAT PRIVILEGE IS NOT RELEVANT AND IS NOT A PROPER SUBJECT FOR INQUIRY OR COMMENT BY THE DEFENSE IN THIS PROCEEDING

To assist the Santa Barbara Sheriff's investigation of the pending matter, Jane Doe waived the attorney/client privilege concerning her communications with some but not all of her prior attorneys. She specifically declined to waive her privilege concerning her communications with Attorney William Dickerman.

The confidentiality that attaches to the communications between lawyer and client is statutory and absolute. (Evid.Code, § 954; *Solin v. O'Melveny & Meyers, LLP* (2001) 89 Cal.App.4th 451, 457.) Jane Doe is the holder of the privilege concerning her communications with one or another of her lawyers, and she is the only one entitled to waive that privilege. (Evid. Code, § 953.)

If Jane Doe has asserted her privilege of confidentiality in her communications with an attorney, neither court nor counsel may comment upon her exercise of that privilege. (Evid. Code, § 913.) There are no exceptions to the rule that prohibits comment on the exercise of a privilege (*Buehler v. Sbardellati* (1995) 34 Cal.App.4th 1527, 1541.)

Defense counsel should be admonished to resist the temptation to comment adversely on Jane Doe's engagement of counsel to represent her in matters that are extraneous and irrelevant to the issues in this criminal prosecution. He should be instructed not to comment at all on Jane Doe's exercise of her absolute privilege of confidentiality concerning her communications with counsel on any matter.

DATED: January 31, 2005

THOMAS W. SNEDDON, JR.
District Attorney

By: _____
Ronald J. Zonen, Senior Deputy

Attorneys for Plaintiff

## PROOF OF SERVICE

STATE OF CALIFORNIA )
) SS
COUNTY OF SANTA BARBARA )

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 31, 2005, I served the within PLAINTIFF'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY WILLIAM DICKERSON on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to the attorney representing Defendant in the jury selection proceedings in court. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Maria, California on this 31st day of January, 2005.

## SERVICE LIST

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