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Legal feud in Hollywood case goes to state Supreme Court

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In scathing attacks, each side in the high-profile Jesse James Hollywood murder trial laid out arguments in motions filed Friday concerning the dispute over who should prosecute the death penalty case -- a legal feud now in the hands of the state's highest court.

At issue is an appellate court's landmark ruling to remove a veteran prosecutor from the case for overstepping legal and ethical boundaries by providing material to the entertainment industry on the pending matter.

The result was the making of "Alpha Dog," a one-sided fictional account based on the prosecution's version of the August 2000 slaying of 15-year-old Nicholas Markowitz in the Santa Barbara hills. The film was released Jan. 12, despite defense arguments that it would prejudice the jury pool against Mr. Hollywood.

Challenging the 2nd District Court of Appeal's ruling, the Santa Barbara County District Attorney's Office wants Ron Zonen -- who successfully prosecuted Mr. Hollywood's four co-defendants -- back on the case, insisting that he did nothing wrong and that the reasoning for his removal doesn't hold water.

However, defense lawyer James Blatt not only wants Mr. Zonen kept from prosecuting his client, but he also wants the whole office removed, asserting that with such a small office and such a monumental conflict of interest, there is no way to ensure that the prosecution of the case would proceed untainted.

In a harshly worded opinion, released in October, the appellate justices noted that even though Mr. Zonen says he shared the files with the hope of capturing Mr. Hollywood -- who remained at large until March 2005 -- "It is the consequences of his action that prompt our decision. His actions allowed 'show business' to cast an unseemly shadow over the case."

The Supreme Court review is significant because it will set an unprecedented statewide standard on whether attorneys need to keep the practice of law separate from entertainment enterprises on pending cases. While the state's highest court receives about 10,000 petitions requesting review each year, it agrees to review less than 5 percent of them. A date for oral arguments has not been set.

On behalf of the District Attorney's Office, Senior Deputy District Attorney Gerald Franklin took the appellate justices to task in the 34-page document, stating that they had no basis to remove Mr. Zonen: "The Court of Appeal did not identify what it was about Mr. Zonen's assumed but unidentified 'conflict of interest' that made it 'so grave as to render it unlikely that defendant will receive fair treatment during all portions of the criminal proceedings.' "

Mr. Franklin added: "Conclusions alone are not enough. To be understood as more than merely an expression of the reviewing court's attitude or opinion, they must be supported by evidence in the record."

He continued: "Mr. Zonen's own reason for cooperating in the production of a film about a youngster's murder that would be made with or without his assistance -- the capture of the individual believed to be the moving force behind that murder -- was entirely public-spirited, and it does not warrant his recusal."

However, Mr. Blatt lashed out against the prosecutors in his 24-page legal brief: "Repeatedly throughout these proceedings, Mr. Zonen and his office have brashly defended indefensible conduct, providing the courts with unbelievable explanations and incredulous justifications. . . . Mr. Zonen and his office's refusal to accept the notion that even the slightest error may have been committed speaks volumes.

"They cannot and will not act even-handedly and impartially in the case," he continued. "There must be wholesale recusal of the Santa Barbara District Attorney's Office. . . . Mr. Zonen's conduct is like an infectious disease which will travel to every part of the body in this case. Replacing Mr. Zonen with another prosecutor from his office is no cure."

Mr. Blatt concluded: "A fair review of the disabling conflict indicates secrecy, concealment, collusion, and conspiratorial activities. These are joined by an awareness of wrongdoing, fabrication, and convenient memory loss. An order which permits the (DA's office) to simply 'hand off' this case to another one of their prosecutors does little, if anything, to curb the appetite of others similarly inclined."

In a related matter, the Supreme Court justices, on their own initiative, also decided to review the Appellate Court's decision to recuse Senior Deputy District Attorney Joyce Dudley from prosecuting Massey Haraguchi for rape by intoxication because she had been promoting her book "Intoxicating Agent," involving a similar charge, throughout the county.

In that case, the appellate justices noted that Ms. Dudley was thereby "potentially infecting the jury pool with her views on the righteousness of cases prosecuted by the (Santa Barbara County District Attorney's) office," and concluded that she had a "disabling conflict," agreeing with defense lawyer Robert Sanger.

It is unclear why the Supreme Court justices decided to review the Haraguchi case at the same time they are reviewing the Hollywood matter.

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