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Local Recusals have Statewide Impact

By Dawn Hobbs, News-Press Staff Writer

Landmark Court of Appeal decisions this week recusing members of the Santa Barbara County District Attorney's Office from two criminal matters -- including the high-profile death penalty trial of Jesse James Hollywood -- send a clear message to prosecutors statewide to keep the practice of law separate from entertainment enterprises, legal experts say.

The harshly worded decisions published Thursday had rippled through the legal community by the next day, prompting the state Attorney General's Office to address the matter at an upcoming conference. Meanwhile, the California District Attorneys Association plans to inform its members about the unprecedented opinions.

"A recusal is a pretty extraordinary event," said Dave LaBahn, the association's executive director. "We will certainly brief this in our bimonthly legal update and make sure all of our prosecutors throughout the state are well aware of it."

The opinions, he added, "set a statewide standard and will provide clarity as we go forward." Legal experts interviewed by the News-Press Friday noted that the stinging opinions should serve as a cautionary tale to prosecutors statewide about mixing pending cases with media or entertainment projects.

Senior Deputy District Attorney Ron Zonen was removed from the Hollywood murder trial because he gave case material to a filmmaker. Senior Deputy District Attorney Joyce Dudley was booted from a rape-by-intoxication trial because she was promoting her fictional, self-published book that focused on the same type of offense. The appellate justices concluded that both of these situations were conflicts of interest. Those interviewed noted there were no guidelines to follow before these rulings.

"It would be unfair to say 'shame on you, you didn't follow the rules' because the rules had not yet been established," said Laurie Levenson, a former federal prosecutor and professor at Loyola School of Law. "But now the court has ruled loud and clear. In other cases, the courts are tightening up on the conflict of interest standards. The public's perception is that the prosecutor's objectivity may be compromised -- and, quite frankly, why take the chance?"

Thomas Mesereau, who went up against Mr. Zonen in the Michael Jackson trial, noted that his opponent was "an outstanding lawyer" and then said: "We live in a media-driven society where

journalists and the entertainment industry repeatedly try to corrupt lawyers. Unfortunately, it appears this prosecutor's office has allowed itself to be victimized by these types of pressures.

"Prosecutors are held to a very high standard in our justice system," Mr. Mesereau added. "They never should have allowed the lure of Hollywood to interfere with their responsibilities as prosecutors." The Attorney General's Office echoed the same sentiment.

"Prosecutors, as government lawyers, are held to a higher standard than other attorneys and are expected to behave according to the highest ethical standards established by the California State Bar," said Nathan Barankin, spokesperson. "Prosecutors have enormous power to take away individual liberties. They have to exercise great caution with carrying out their duties. "This decision will add a new chapter to those obligations and responsibilities."

The appellate justices stated they recused Mr. Zonen because he shared "virtually the entire file" with a filmmaker with hopes, he said, that the major motion picture, "Alpha Dog," would help nab the suspect accused of orchestrating the kidnapping and murder of a 15-year-old boy.

Mr. Zonen's "well-intentioned motives are beside the point," the justices concluded. "It is the consequences of his action that prompt our decision. His actions allowed 'show business' to cast an unseemly shadow over the case."

Ms. Dudley was recused from prosecuting Massey Haraguchi for rape-by-intoxication, the justices said, because she had been promoting her book, "Intoxicating Agent," involving "the identical charge" throughout the county.

The 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."

Officials at the District Attorney's Office on Friday were discussing what route to take in assigning other attorneys to the two cases and whether they'd be challenging the Appellate Court's decision with the state Supreme Court.

Shortly after the defense recusal motions were filed with the trial court in April, the District Attorney's Office decided to issue a policy requiring prosecutors to receive approval prior to becoming involved in any books, movies, magazines or any other project. The policy also states prosecutors must avoid any conflict of interest, or even the appearance of a conflict of interest.

"The book and movie issue was such that it was our wake-up call long before these opinions were issued," said Assistant District Attorney Patrick McKinley. "We took the step to see to it that problems would not arise in the future -- and, in my opinion, it won't arise again."

"I've been here 36 years and this has never come up before. It's never been a problem in the past and when it obviously did come up, with both of them running side by side at the same time, we attempted to deal with it to prevent it from happening again," said Mr. McKinley.

The San Luis Obispo District Attorney's Office requires approval before prosecutors engage in any media or entertainment project. "It would not be a matter of discretion for an individual prosecutor in our office," said Chief Deputy District Attorney Stephen Brown, adding that his office is frequently approached by law and justice television programs.

However, the issue apparently hasn't come up yet in Ventura County. "I don't believe we've ever had to deal with anything like that," said Assistant District Attorney Mike Schwartz. "But there are already prohibitions in place that would prohibit a conflict of interest situation like they describe in Haraguchi."

In Los Angeles County, where high-profile cases are common, there's an entire media relations division devoted to dealing with such situations. "Show business is my life," said spokeswoman Sandi Gibbons. "I've worked with many documentary makers, filmmakers, and I'm called by screenwriters all the time. I turn down a lot of these requests, quite frankly, because the case is still pending."

If an attorney wants a second career in writing fictional books about sex crime cases, for instance, Ms. Gibbons said that person would not be allowed to work in that unit while composing the book. Once a case has concluded, however, Ms. Gibbons said many of the Los Angeles prosecutors have written books or gotten involved in documentaries or movies.

"We do so many high-profile cases," Ms. Gibbons said. "This is where celebrities live, get arrested, get murdered or what have you. We're used to dealing with this type of thing and that's why we have a media relations bureau. Every district attorney's office everywhere should have at least one person handling this type of stuff. A lot can't afford it, but we can't afford not to."