

Councilmen ask judge to decide their case | Prosecution must agree to request by defense

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Author: Kelly Thornton

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Two San Diego city councilmen charged with corruption want their cases to be decided by a judge, not a jury -- a rare maneuver that prompted speculation that turmoil at City Hall was behind it.

The lawyer for Councilman Michael Zucchet told the federal judge in the case yesterday that he and his client "agonized" but decided late Monday night against a trial by jury, believing a judge would focus solely on legal -- rather than emotional -- matters.

"For lots of reasons, my advice was that this case (should be) tried by your honor so it could be handled in a most precise and discrete way," attorney Jerry Coughlan told U.S. District Judge Jeffrey T. Miller.

The councilmen cannot have a bench trial unless the prosecution and the judge agree. A decision may not be made until Tuesday, when the trial is scheduled to begin.

Neither Coughlan nor the attorney for Councilman Ralph Inzunza would elaborate on their decisions. Legal and political experts suggested the lawyers were concerned that jurors would be influenced by the city's legal, financial and political troubles, punctuated by Mayor Dick Murphy's resignation Monday.

"Clearly the fact that these events have received substantial publicity over the last several months or year had to be part of the equation that the lawyers used in reaching the decision to request a bench trial," former San Diego U.S. Attorney Charles La Bella said.

Murphy, who presides over a city steeped in state and federal investigations, said he would step down July 15 to allow the city to make a "fresh start."

Zucchet, who holds the title of deputy mayor, went on radio and television programs almost immediately after Murphy's morning announcement to discuss the likelihood that he would serve as interim mayor. He told one interviewer he was hoping for "smart jurors" so they could get to the heart of the case and exonerate him in time to take the helm.

"The chaos at City Hall might just slop over into the trial," said Glenn Sparrow, professor emeritus of public administration and urban studies at San Diego State University. "Therefore the judge, one would assume, is going to have a more neutral position."

Zucchet and Inzunza are accused of accepting money from lobbyist Lance Malone, his boss, strip-club owner Michael Galardi, and club manager John D'Intino in an effort to abolish no-touch rules in strip clubs. David Cowan, a council aide, is accused of making a false statement to the FBI.

Galardi and D'Intino have pleaded guilty and are cooperating with the government. The councilmen and Malone have pleaded not guilty and say any money received was in the form of legally reported campaign contributions.

The defense appears to be worried about outside factors affecting the jury, La Bella said. "People have strong feelings about politics, politicians, campaign financing, lobbying and the adult-entertainment industry."

That concern may be well-founded. According to a survey conducted for The San Diego Union-Tribune in the days leading up to the mayor's resignation, nearly three-quarters of respondents said city officials breached the public trust in their handling of the \$1.4 billion pension system deficit, and more than half disapproved of the way the City Council is handling its job.

Jury selection in the corruption case is to begin Tuesday. Potential jurors cannot be sent home unless the parties agree to a bench trial. A defendant has a constitutional right to trial by jury, but not to a trial by judge.

A bench trial would likely mean a shorter trial, which is expected to last 10 weeks with a jury. That would mean the trial would end just about the time Murphy steps down.

It's possible, but highly unlikely, the judge would allow a bench trial if the remaining defendants do not agree to waive their right to a jury trial as well.

The judge has repeatedly ruled against defense requests to split the case in two, with the councilmen tried separately from Malone. A combination jury-trial and bench-trial would be confusing as both sides present different cases to a different audience, law professors and lawyers said.

Prosecutors told Miller yesterday the defense request caught them unaware, and they were not prepared to respond.

Malone's lawyer, Dominic Gentile, said he had yet to discuss the matter with his client. Michael Crowley, who represents David Cowan, said he was surprised by the development and needed to ponder the matter.

Legal observers said the move could indicate the defense is confident in its legal position, but worried that potentially embarrassing statements secretly recorded by the government could offend or inflame a jury. A judge, they said, could sort out the legal from the emotional.

A request for a bench trial is "highly unusual and really quite remarkable," said Michael Attanasio, a San Diego attorney and former federal prosecutor who handled public corruption cases in Washington, D.C., from 1991 to 1999.

"But (it) does signal they think there is a defect or hole in the government's ability to prove at least one of the critical elements of the case, and they probably feel that they have a better chance making that case to the judge than they would to a jury," Attanasio said.

Legal experts noted the defendants could benefit from a bench trial because they would have an experienced legal mind deliberating the case. Miller is highly respected among defense attorneys and prosecutors alike as a fair, independent jurist who would not be influenced by public opinion.

"A judge is less likely to be confused, he's trained in analytical thinking and does it everyday," La Bella said.

Conversely, Miller has heard a lot of inadmissible evidence that a jury wouldn't hear. The defendants would be placing their fates in the hands of just one person instead of 12. And with a jury, it just takes one person to deadlock the panel and cause a mistrial.

Bench trials are unusual, but Miller conducted a high-profile one in a civil case in 1999.

He ordered the Navy to pay \$2.83 million to a family whose baby suffered severe birth defects at the hands of doctors at the San Diego Naval Medical Center in Balboa Park.

In the first San Diego County bench trial involving a capital case, Judge J. Morgan Lester convicted LaTwon Weaver of murdering a Vista jewelry store owner in March 1993. Lester sentenced Weaver to death.

Coughlan, Zucchet's lawyer, indicated he was persuaded to request a bench trial because of the complex nature of the evidence, and his concern that the jury would have to make sense of complicated instructions on how to apply -- or not apply -- evidence to multiple defendants.

Of particular concern to Coughlan is the matter of the bribery of an undercover San Diego vice detective, who was paid by Galardi in exchange for warnings of vice inspections at Cheetahs, his Kearny Mesa strip club.

Despite the government's arguments to the contrary, Coughlan has repeatedly argued that the councilmen were not involved in or aware of the bribery of the police officer, and that aspect of the case would unfairly prejudice the jury against the councilmen.

"We think it would be too difficult for a jury with the extraneous issues involving Malone, Galardi, Las Vegas and the police officer bribery that didn't concern our clients," said Michael Pancer, attorney for Inzunza.

Gentile, Malone's attorney, said the move makes sense for the councilmen, because they are not disputing the facts of the case. What they are disputing is whether the actions of the councilmen constitute a crime.

"They're looking at this as a matter of law and I think they're right. . . . I think from a strategic standpoint if you want to eliminate the bias and have no factual issues it makes perfect sense for a bench trial."

However, Gentile said there are factual disputes with the government regarding Malone and disputes that may rest on the credibility of Galardi. Gentile also said a bench trial might not be benefit his client.

"When it comes to making decisions with respect to credibility, it's not something judges are well suited to do," Gentile said. "That's something a jury is suited to do. . . . When it comes to credibility issues, I certainly have a preference for the wisdom of the ordinary guy on the street as compared to someone who lives an insulated life."

Kelly Thornton: (619) 542-4571; kelly.thornton@uniontrib.com

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Abstract (Document Summary)

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