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## Benno trial hits roadblock; mistrial may be declared

By Jim Schultz , Record Searchlight

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James Benno, center, sits in court with his sons Logan, left, and Jacob, right.

**A** Shasta County Superior Court judge presiding over the criminal trial for outspoken medical marijuana activist James Benno and his two sons is expected to declare a mistrial Tuesday after issuing an order Friday afternoon disqualifying himself from the case.

In his order, Superior Court Judge Stephen Baker said he would declare the mistrial and the case would then be sent back to Superior Court Judge Dan Flynn for reassignment to another judge for re-trial.

His order caught the attorneys in the case totally by surprise.

“We’re still up in the air.” Shasta County Senior Deputy District Attorney Ben Hanna said Monday. “This is kind of an unusual thing.”

Defense attorney Joseph Tully of Martinez, who represents the elder Benno, echoed those statements.

“It’s pretty weird,” he said,

adding he would be filing a motion on Tuesday seeking to have the case dismissed.

Both said they are unaware of why Baker disqualified himself, noting the trial was near to being finished after being underway for about four weeks.

“We were very close to the end,” Tully said, adding he has “no idea” of the reason why Baker is stepping down.

In Baker’s order, received Friday by Hanna, Tully and defense attorneys Ashley Bargaquast and Randall Schram, both of Martinez, he said he became aware late Thursday of information about the case that might warrant his disqualification.

After further research and contacting the California Judges’ Association for an independent opinion, Baker said his stepping down from the case was “appropriate” and in “the best interest of justice.”

But, he said in his order, he would not disclose specific information on why he disqualified himself to ensure a fair trial, or retrial, in this case.

A spokeswoman for the California Judges’ Association was unavailable Monday to try to shed some light on Baker’s disqualification.

Baker said in his order he

“regrets the obvious and substantial inconvenience to jurors, counsel and the parties” for his decision to disqualify himself.

“However, judges are required to abide by strict rules designed to ensure that all parties receive a fair trial without actual or perceived bias, no matter at what stage of a trial information leading to a recusal might be learned,” he wrote.

He also said the information that caused his disqualification “could not reasonably have been made known” at an earlier time.

Tully said although attorneys in the case could possibly agree Tuesday to a new judge and carry on with the existing jury, he noted that he was told Monday a possible replacement judge would not be available until March 14.

He said jurors, which have not yet been told of Baker’s disqualification because the courtroom was dark on Friday, have been told the trial would be over by then and have taken steps to rearrange their work and personal schedules accordingly.

Tully said Hanna was “about an hour away” from resting the prosecution’s case Thursday when the jury was sent home at the end of the day for the weekend.

He said the defense case would take about four days.

Shasta County Superior Court Executive Officer Melissa Fowler-Bradley said Monday she does not know why Baker disqualified himself. But, she said, there are many reasons why a judge might want to recuse himself or herself from a case.

A variety of law-related websites bear her out, detailing a long list of reasons of why judges disqualify themselves.

Among those many reasons include when a judge’s impartiality might reasonably be called into question, if a judge has a personal or financial interest in the outcome of a case and if a judge has a family member who is a party to the case.

Other possible reasons, but not all, include if a judge has a close social relationship with a lawyer or witness in the case and if the judge has prior personal knowledge of disputed facts in the case.

The trial, which began nearly three years after the arrests of the now 51-year-old Benno and his sons, Logan, 22, and Jacob, 25, on illegal marijuana and weapon charges, saw opening statements delivered on Feb. 22 after jury selection began around Feb. 8.

Benno and his sons, out of jail custody on bail bonds, were arrested in a May 2014 raid at their 100-plant garden in Happy Valley and subsequently charged with a series of felonies mostly related to the cultivation of cannabis or concentrated cannabis.

Tully said in his opening statement that Benno and his sons legally grew medicinal marijuana to share among qualified medical marijuana patients, including sick children. And, he has said, there was absolutely no evidence of illegal sales or anyone making a profit.

The felony charges involving growing and sales of marijuana have since been reduced to misdemeanors due to the recent passage of Proposition 64, which legalized recreational cannabis use.

But that did not affect other charges, including manufacturing a controlled substance, conspiracy, allowing drug sales on the premises and carrying a loaded firearm with intent to commit a felony.

Until the passage of Prop. 64, the elder Benno had been facing about 17 years in prison if convicted of all the counts against him. His sons had faced a maximum of approximately 12 years in prison.

Due to the changes in the law, prosecutor Hanna has said all three are looking at about eight or nine years if convicted of the

charges against them. ■