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Schmitz judge declares mistrial

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Jury can't agree on verdict after 4 days of deliberations

DECATUR - A mistrial was declared Monday in the federal fraud case of state Rep. Sue Schmitz when the jury reported it was still unable to reach a unanimous verdict after four days of deliberations.

About 4:30 p.m., the one-woman, 11-man jury sent a note to U.S. District Judge R. David Proctor that said it was unable to render a verdict. It was the third such note since the jurors began trying to decide the case Wednesday.

"I think we're at the point where we need to declare a mistrial," Proctor said, granting a defense motion.

He asked Assistant U.S. Attorney Bill Athanas if the government intends to retry Schmitz.

"Absolutely, your honor," Athanas said.

Schmitz was hugged by her husband, John, family members and others after the announcement. On advice from her attorneys - who pointed out the case is not over - she had no comment.

"I just don't believe it's appropriate to say anything at this point," said defense attorney Buck Watson.

Schmitz, D-Toney, was on trial for eight federal fraud charges, including allegations she used her position to arrange for a public job and then did little or no work. She was paid a total of more than \$177,000 from January 2003 to October 2006 as program director for community and external affairs for the Community Intensive Treatment for Youth (CITY) Skills Training Consortium.

The program for youths who have been in trouble with the law is administered under Central Alabama Community College and funded by state and federal money.

Her attorneys, the father-son team of Buck and Jake Watson, say Schmitz did work for those paychecks but received little or no direction from CITY supervisors after she was hired.

The trial began Aug. 18 and proceeded, with weekend and holiday breaks, over more than seven days of testimony and arguments before going to the jury Wednesday afternoon. The jury deliberated a total of about 24 hours.

Thursday and Friday, the jury sent notes to the judge indicating they were having difficulty reaching a unanimous verdict, and that some jurors were not participating.

On Monday, Proctor told them to continue their work and carefully consider their opinions about the case. He also said he wanted to be told immediately if any member of the jury failed or refused to participate in the deliberations.

"Let me remind you of your obligations as a juror," Proctor said, giving them additional instructions known as a modified "Allen Charge."

He told them this case is no more or less important than any other; that it had been costly in terms of both money and emotional investment by the parties, and, if they could not reach a verdict, the case may be tried again but there is no reason to believe another trial or other jurors would in any way be better.

In granting the mistrial, Proctor said there was no further word about any jurors not participating, they had worked all day again, and he had no reason to believe they hadn't tried their best.

No date was set for a new trial. The judge and attorneys indicated it could be as early as November, though more likely it would be after the new year.

Schmitz was indicted and arrested in January on four counts of mail fraud - because documents concerning her job with CITY were sent through the U.S. Postal Service - and four counts of fraud involving an organization that receives federal funds.

She is the only member of the Legislature to face trial so far in the wake of a federal investigation into corruption in the state's two-year college system.

Schmitz faces a maximum penalty for each of the mail fraud counts of 20 years in prison and a fine of \$250,000; for the counts involving federal funding, the maximum is 10 years in prison and a \$250,000 fine. She also faces possible forfeiture of any money she was paid by CITY.

State law calls for a public official to be removed from office upon sentencing for a felony conviction.

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