

Prosecutors willing to drop fraud indictment against Datres

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Suffolk County prosecutors are willing to drop the current fraud indictment against three members of the Datre family as long as a judge allows them to present some of the evidence to a new grand jury.

Edward Heilig, the Suffolk County district attorney office division chief, said in paperwork filed Friday that his office agreed with the Datres' motion filed earlier this week to dismiss the current indictment in the prevailing wage case -- provided the prosecutors are allowed to seek new indictments against the Datres in the future.

"The people do not object to the dismissal of the indictment . . . as requested by defendants in open court as well as in their moving papers" as long as state Supreme Court Justice Fernando Camacho rules to allow prosecutors to again present evidence to a new grand jury, Heilig wrote.

Heilig also wrote that prosecutor Leslie Stevens, who prosecutors admitted in court to having used pencil to change the dates and/or work order numbers on three of 225 certified payrolls shown to the grand jury, has been removed from the case. The documents were included in the exhibits attached to the indictment. Stevens later erased the markings.

Sixteen counts in the current indictment, which may be directly or indirectly affected by the marked certified payrolls, would not be presented to a new grand jury, Heilig wrote.

The defense in Tuesday's 31-page motion called for a mistrial, dismissal of the indictment, dismissal of Stevens from the case and costs and sanctions related to the mistrial.

Robert Clifford, spokesman for Suffolk County District Attorney Thomas Spota, said Spota's office will look to present evidence to a new grand jury if Camacho agrees with the prosecutions' answer.

"This way we can move forward," Clifford said. "We removed the issues that were raised by the markings, [so we can] proceed with jury selection and have the trial.

Defense firm Barket Marion Epstein & Kearon, in a news release, called the prosecution's actions "unethical and likely criminal."

"From day one, the Datres have vehemently denied any wrongdoing, maintained that the prosecution against them was political in nature, biased, and unscrupulous," the statement said. "The fact the indictment was obtained after critical documents were altered by prosecutors, proves the Datres were correct. This prosecution should now end and we will fight as long as necessary to clear the Datre family's name."

Camacho in court Tuesday granted the defense's motion for a mistrial, but without prejudice, allowing prosecutors to retry the case, because there is "much more litigation to be done" before it heads to trial. Eleven jurors had been sworn in on the case before Camacho's ruling. Opening statements were to have been delivered that day.

Defense attorneys for Clara Datre, her company Daytree at Cortland Square Inc., her son Thomas Datre Jr., and her daughter, Gia Gatien, will now have an opportunity to respond to the prosecution before Camacho makes his ruling on the status of the indictment.

It is unclear how, if Camacho agrees to dismiss the indictment, the timeline of this case will affect a separate case involving Datre Jr., who is charged along with five others and four companies in an alleged illegal dumping scheme in and around Islip Town. In July, Camacho decided the financial case would precede the dumping case, which was set to start shortly after the new year.

In the financial case, the defendants are alleged to have stolen \$148,504 from the Town of Islip through cleanup work billed after superstorm Sandy, as well as an additional \$100,000 by failing to pay state-mandated prevailing wages for tree-trimming work done for Islip Town on another contract. All have pleaded not guilty.

In their statement, the defense called for a special prosecutor to investigate the Suffolk district attorney's office: "The public is entitled to know how many prosecutors were involved or had knowledge of the wrongdoing and remained silent. Only an independent investigation will answer these questions."

The case is due back in court Oct. 29.