

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 07 2004

GARY M. BLAIR, Executive Officer

BY Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

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16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

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PLAINTIFF'S MOTION TO
CONTINUE HEARING OF
DEFENDANT'S MOTION TO
RECUSE THE DISTRICT
ATTORNEY'S OFFICE
(Pen. Code, § 1542)

DATE: October 14, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Mcville)

~~FILED UNDER SEAL~~

20 TO: THE CLERK OF THE SUPERIOR COURT, AND TO DEFENDANT AND
21 HIS COUNSEL:

22 PLEASE TAKE NOTICE that on October 14, 2004, the People will move the Court
23 for its order continuing the hearing of Defendant's Motion to Recuse the District Attorney's
24 Office, currently calendared for hearing on October 14, 2004, to a date that will afford
25 Plaintiff's counsel and the Attorney General of California the time allowed them by Penal
26 Code 1424 (i.e., 10 court days from service on each of them of the recusal motion) to respond
27 to the motion.

28 This motion will be based on the ground that (1) the District Attorney was served by

1 facsimile with the pending motion on October 4, 2004 – eight court days before the calendared
2 hearing, and (2) the Attorney General of California was not served at all (the copy intended for
3 him having been mistakenly addressed and mailed to the office of the United States Attorney in
4 Los Angeles).

5 This motion will be based on this Notice and the accompanying Memorandum of
6 Points and Authorities.

7 DATED: October 7, 2004

8 Respectfully submitted,

9 THOMAS W. SNEDDON, JR.
10 District Attorney

11 By: 

12 Gerald McC. Franklin, Senior Deputy

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 THE PENDING MOTION WAS NOT TIMELY SERVED
4 FOR HEARING ON OCTOBER 14, 2004

5 Penal Code section 1424, subdivision (a)(1), commences: "Notice of a motion to
6 disqualify a district attorney from performing an authorized duty shall be served on the district
7 attorney and the Attorney General at least 10 court days before the motion is heard."

8 The pending Motion for Recusal is dated October 4, 2004, and a facsimile copy of
9 the motion was received by the District Attorney's Office at 3:05 p.m. that afternoon.

10 The tenth court day from October 4, 2004 is Monday, October 18th.

11 Hearing on the pending motion must be continued to or beyond a date that affords
12 both the District Attorney and the Attorney General the mandatory minimum time to respond
13 provided by Penal Code section 1424.

14 II

15 THE ATTORNEY GENERAL OF CALIFORNIA WAS
16 NOT SERVED WITH NOTICE OF THE PENDING
17 MOTION FOR RECUSAL

18 The Proof of Service attached to the pending Motion to Recuse the District
19 Attorney, the original of which evidently was prepared in the offices of Katten Muchin Zavis
20 Rosenman and presumably was executed by an employee of Worldwide Network, Inc., 1533
21 Wilshire Blvd., Los Angeles, recites that "personal service" of the Motion to Recuse was made
22 on the "Attorney General, 300 North Los Angeles Street, Los Angeles, CA 90012."

23 The Court may take judicial notice of the fact that the Los Angeles Office of the
24 Attorney General of California is located at 300 South Spring Street, Los Angeles, California
25 90013.

26 There are several federal offices located at 300 North Los Angeles Street in Los
27 Angeles, including the Civil and Tax Divisions of the United States Attorney for the Central
28 District of California.

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1 The Attorney General of California invariably appears in response to a motion to
2 recuse the entire office of the elected district attorney for a given county. We anticipate that
3 the Attorney General, whose Los Angeles office was given informal notice of the pending
4 motion by the District Attorney, will move the court for a continuance to a date on or after the
5 elapse of ten court days from service upon it of a copy of the Motion to Recuse.

6 DATED: October 7, 2004

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10 By: 
11 Gerald McC. Franklin, Senior Deputy

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PROOF OF SERVICE

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STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On October 7, 2004, I served the within PLAINTIFF'S MOTION TO CONTINUE HEARING OF DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY'S OFFICE on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorneys Mescreau and Cochran, and by causing a true copy thereof to be mailed to each of them (Mr. Sanger excepted), first class postage prepaid, at the addresses shown on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 7th day of October, 2004.


Gerald McC. Franklin

SERVICE LIST

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