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## **JUROR'S CONDUCT ALLEGEDLY IMPROPER COURTS: ATTORNEYS SAY MCCLURE V. L.B. PANELIST DID NOT DISCLOSE BUILDING-CODE DISPUTE.**

*Wendy Thomas Russell , Staff writer*

Attorneys have asked a judge to set aside a \$22.5 million verdict against the city of Long Beach based on allegations that one juror committed serious misconduct during deliberations in a federal discrimination case.

The 53-year-old juror allegedly failed to disclose that he was involved in a building-code dispute with the city of Pico Rivera and then talked about the dispute at length during deliberations, according to a motion filed this week in Los Angeles' U.S. District Court in the case of Shirley and Jason McClure v. the city of Long Beach.

The McClures alleged that city officials used building-code violations as an excuse to prevent them from opening a series of homes for Alzheimer's patients in upscale Long Beach neighborhoods.

"The magnitude of this is difficult to overstate," attorney Russell Petti wrote in the city's motion.

Meanwhile, the McClures' counsel has filed a claim for attorney's fees in the amount of \$19 million, which would subject the cash-strapped city to costs and reparations in excess of \$41 million.

The city's biggest payout on record is about \$11 million, City Attorney Robert Shannon said Thursday. That case involved a woman paralyzed when the car she was riding in was struck by a domestic violence suspect being pursued by Long Beach police.

Both motions were filed in anticipation of a scheduled hearing Feb. 4, when U.S. District Court Magistrate Judge Charles F. Eick is expected to hear arguments for and against a new trial.

A settlement conference between the McClures and the city is also scheduled, although the outcome will likely be influenced by Eick's ruling.

A Press-Telegram story last month detailed the unorthodox behavior of many jurors on the panel.

Several jurors interviewed revealed that they

drank alcohol with their lunches during the trial, took weekend vacations together and ran up lunch tabs on the court's dime. To relieve tension and boredom in the jury room, jurors slept, read, chatted and joked around, rather than deliberate. Juror Steven Ortiz told the newspaper that he once called in sick so that he and a few others on the panel could attend a horse race.

While disturbing, none of this behavior rose to the level of juror misconduct, said Kristin Pelletier, another attorney representing the city. Generally, misconduct must involve behavior that directly influences a verdict.

"There are only a narrow set of circumstances that qualify (as misconduct), and we believe we have one now," Pelletier said.

Ortiz, an Albertsons' truck driver, is at the center of the misconduct charge.

Ortiz appeared for jury selection in the McClure case less than a month after code-enforcement officials with the city of Pico Rivera tried to take action against him for erecting a non-permitted carport at his house, according to the city's motion.

Not only did Ortiz keep the information from the judge during jury selection, but he allegedly compared his situation with the McClures' during deliberations.

"Defendants were clearly deprived of this fundamental right to be tried by an impartial jury, and on the evidence presented in court," the motion stated.

Trial transcripts show that, during jury selection, Judge Eick asked potential jurors if anyone had ever obtained a development permit, or had a dispute with a city or public agency.

To both questions, Ortiz remained silent, indicating that he had not.

But, according to the motion, Ortiz "later told the jury that he had significant experience obtaining permits" and that he "spoke repeatedly of his

experiences with the city of Pico Rivera as examples of what a city should and should not do when enforcing the building codes."

The information came from three other jurors, two of whom have signed sworn declarations that Ortiz's experience had an impact on deliberations, according to the motion.

Neither Ortiz nor the McClures' attorney, Barrett Litt, could be reached for comment Thursday, although Litt has said previously that he believed jurors did the best job they could under trying circumstances.

### **Attorney's fees**

In his own motion for attorney's fees, Litt claimed he and his associates were due some \$19 million. He noted that the case, originally filed in 1992, has required constant work. Attorneys and paralegals - including both Jason and Shirley McClure -- analyzed and cataloged about 200,000 pages of materials, Litt said, and numbered 35,000 pages of exhibits.

The legal team also interviewed hundreds of people in anticipation of the trial and spent thousands of hours researching and preparing the case.

Shirley McClure, who owned a car-leasing firm before she tried to open the Alzheimer's homes in 1990, put more than 23,000 hours in her case over a period of 11 years, according to Litt's documents.

If accurate, that's an average of more than 40 hours a week, every week, for 11 years, at a rate of \$174 an hour.

Pelletier called the fees ``obviously excessive."

``I'm stunned and amazed," she said, adding that part of the damages awarded to Shirley McClure were based on the fact that the city's wrongdoing aggravated her lupus and prevented her from working.

``We're confident that we're going to be able to slash that (number) substantially," Shannon said.

The McClure case has become infamous in some Los Angeles legal circles and particularly in the downtown federal courthouse where it was tried between September 2003 and August 2004. Deliberations in the case lasted for four and a half months, widely considered a state record.