

DEVER HELPED SUE DEMOCRATS 5 YEARS AGO

# Prosecutors support judge in Black case

*They argue that cases he tried as lawyer won't affect impartiality now*

BY DAVID INGRAM

dingram@charlotteobserver.com

RALEIGH — Federal prosecutors want to keep the judge who has overseen Jim Black's public corruption case.

Black, former speaker of the N.C. House of Representatives, requested a week ago that the judge, James Dever III of U.S. District Court, step aside from the case. As a private lawyer for the N.C. Republican Party five years ago, Dever helped sue Black and other Democrats in a high-profile lawsuit over legislative redistricting.

The request questioned whether a reasonable person could continue to view Dever as impartial. It forced a delay in Black's sentencing for accepting thousands in illegal payments.

In papers filed Friday, prosecutors disagreed with the request. They described part of Black's argument, in which his lawyer Ken Bell quotes court papers from the GOP's case, as "absurd."

"The logical extension of this argument," wrote Assistant U.S.

Attorneys John Bruce and Dennis Duffy, "is that any trial judge who had ever, while in private practice, represented Republican litigants against Democrat litigants would be forever barred from sitting in a criminal case in which the defendant was a Democrat."

Black, 72, faces up to 10 years in prison and \$250,000 in fines. Dever has indicated that he's considering a long prison sentence, and Black faces sentencing in state court, too.

The federal sentencing, once scheduled for Friday, has been delayed while Dever considers whether to step aside. He could issue a decision soon or hold a hearing. His ruling could later be appealed.

Bruce and Duffy questioned the timing of Black's request for Dever to step aside, noting that it was filed after Black pleaded guilty and after the sentencing of another former lawmaker, Michael Decker, to a relatively long prison term. In the request, Bell indicated that he had learned of Dever's history only recently.

"The court may want to require affidavits from Black and

his counsel establishing when and how they learned of the facts on which they purport to base their motion," they wrote.

Citing a 2004 request for U.S. Supreme Court Justice Antonin Scalia to recuse himself from a case where Vice President Cheney was named, the prosecutors also downplayed the role of Black in the redistricting lawsuit. They argued Black was not a central figure.

"The redistricting lawsuit sought no damages or other redress against Black personally," Bruce and Duffy wrote.

Dever was not the lead lawyer for Republicans in that lawsuit, in which they successfully argued that Democrat-drawn districts were unconstitutional. He became a federal judge in 2005 after nomination by President Bush and confirmation by the Republican-controlled U.S. Senate.

Bell, adding to his argument in more court papers filed Friday, cited Dever's answers to a Senate questionnaire. Dever listed two redistricting cases, including the one that began in 2001, as the most significant of his career.

Black, a Matthews optometrist, was speaker for a record-tying eight years. He left office in February just before pleading guilty to state and federal corruption charges.



Black

## Bittersweet graduation for mom

Son from 1B

less," she said.

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sage hit home: Everyone has to go through struggles to reach their blessings.

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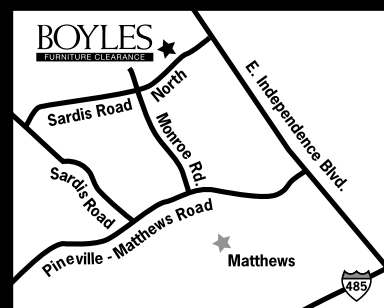
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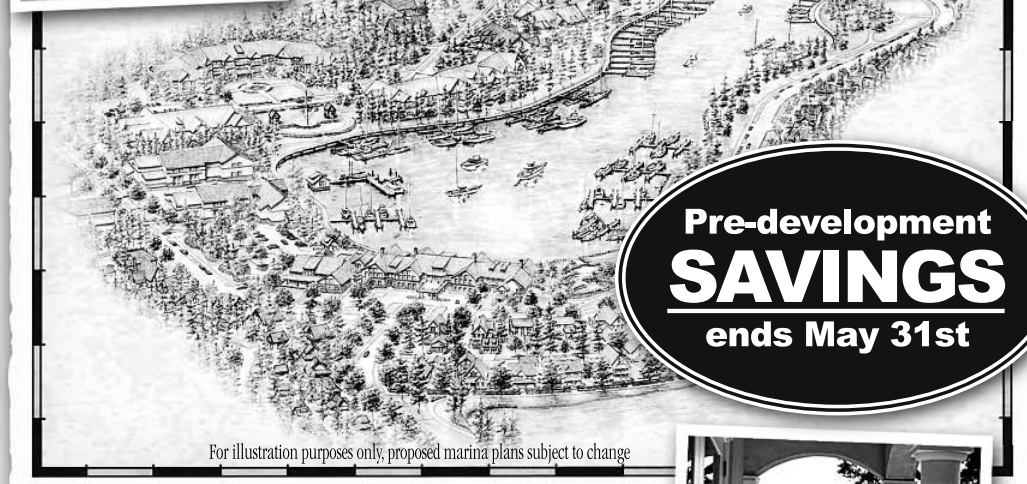
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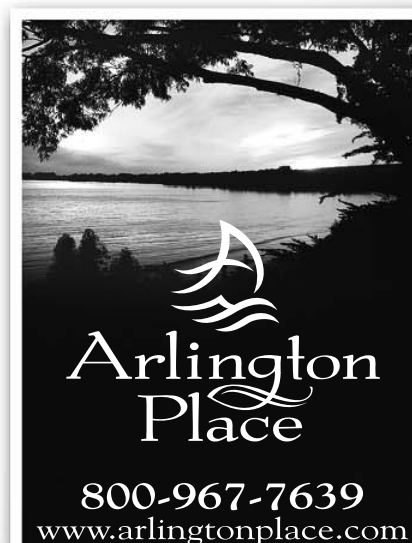
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