

Prosecutor's Exit May Reflect Legal Stumbles In Baldwin Case

By Phillip Bantz

Law360 (March 16, 2023, 4:37 PM EDT) -- A New Mexico lawmaker's decision to resign as special prosecutor in the "Rust" case against actor Alec Baldwin and a movie armorer could help the local district attorney's office move on from legal missteps and controversies that have dogged the prosecution, experts said.

State Rep. Andrea Reeb stepped down as special prosecutor because she didn't want to be a distraction and would "not allow questions about my serving as a legislator and prosecutor to cloud the real issue at hand," according to a statement she issued on Tuesday.

The move came about a week after District Attorney Mary Carmack-Altwies defended her decision to hire Reeb, a former district attorney, to help prosecute Baldwin and armorer Hannah Gutierrez-Reed for involuntary manslaughter in the 2021 shooting death of cinematographer Halyna Hutchins on the set of "Rust." Baldwin and Gutierrez-Reed have pled not guilty.

In a February motion to disqualify Reeb as special prosecutor, Baldwin and his defense team argued that her dual role violated the separation-of-powers provision of New Mexico's constitution and could "taint prosecutorial decision-making."

Reebe was campaigning for the New Mexico House seat when she was named to the case. She subsequently won the November election.

In response, Carmack-Altwies contended that Reeb's role was constitutional and called Baldwin's argument "based on a novel theory that has no support in New Mexico statutes or case law."

Baker Botts LLP white collar partner Andrew George, who is closely following the "Rust" case, described the timing of Reeb's decision to step down as "strange." He said he believes she resigned because of prosecutorial missteps, including charging Baldwin and Gutierrez-Reed with a firearm enhancement that wasn't in effect when the shooting occurred.

"The DA's office filed a substantial brief a week ago arguing that her [dual role] was fine," he told Law360. "The dual role never struck me as a serious legal issue. Many state prosecutors are elected, after all."

Rebecca Brodey, a member of Cozen O'Connor's white collar defense practice group, wasn't as skeptical of the explanation Reeb gave for her decision to step aside.

"If Reeb were to stay in the case, that could cause a lot of delay in the trial moving forward. It could be a distraction," Brodey said. "Maybe she was trying to save face. But even if you're trying to save face, there are many, many individuals who in a similar situation would not have stepped down."

Reeb's departure is widely seen as another early win for Baldwin, whose attorneys in February convinced Reeb and Carmack-Altwies to drop a five-year sentencing enhancement against Baldwin and Gutierrez-Reed. Baldwin's attorneys simply pointed out that the enhancement law was enacted nearly seven months after Hutchins' death.

In an email exchange included as an exhibit in court filings, Reeb told Baldwin's attorneys that she agreed "100 percent" with their assertion that pursuing the enhancement was an error.

"I will have our documents drafted to amend the criminal information to take off the firearm enhancement and file something withdrawing the firearm enhancement," Reeb wrote in a Feb. 12 email.

But in a subsequent public statement, New Mexico First Judicial District Attorney spokesperson Heather Brewer asserted that prosecutors dismissed the enhancement "to avoid further litigious distractions by Mr. Baldwin and his attorneys," adding that the "prosecution's priority is securing justice, not securing billable hours for big-city attorneys."

Such a fiery response caught George's attention.

"That was such an outrageous thing to say against Mr. Baldwin's team for asserting a very basic constitutional right," George said. "I suspect that this exchange may have more to do with [Reeb's] withdrawal."

He suggested that Reeb stepped down because the "prosecutor's office was caught making improper, arguably dishonest statements to the media about Mr. Baldwin and his counsel," which he said likely hurt Reeb's credibility "before the case even started."

Carmack-Altwies has "no further comment at this time," Brewer said in an email. Reeb did not respond to a message seeking comment.

Jason Crawford, a white collar partner at Crowell & Moring LLP, said he found the timing of Reeb's decision "notable" in light of Carmack-Altwies' staunch defense of her appointment as special prosecutor. But he added that he also believed that Reeb had become a distraction.

"Whether Reeb stepped down because of statements made to the press or because of the questions about her dual role, it seems likely that her continued involvement would have been an unwelcome distraction in a high-profile case," he said.

Attorneys for Baldwin and Gutierrez-Reed declined to comment on Reeb's decision to step down.

Baldwin is represented by Luke Nikas and Alex Spiro of Quinn Emanuel Urquhart & Sullivan LLP, and Heather LeBlanc of LeBlanc Law.

Gutierrez-Reed is represented by Jason Bowles of the Bowles Law Firm.

The state is represented by Mary Carmack-Altwies of the First Judicial District of the State of New Mexico.

The cases are State of New Mexico v. Baldwin, case number D-0101-CR-2023-0039, and State of New Mexico v. Gutierrez-Reed, case number D-0101-CR-2023-0040, in the Santa Fe County First Judicial District Court.

--Editing by Marygrace Anderson.

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