

# Fezell revising protocol

## Court policy to change after lawyer's accusation

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Tribune-Herald staff writer

A Waco attorney has accused McLennan County District Attorney Vic Fezell of ethical violations for his refusal to negotiate plea bargains for clients of at least eight attorneys in criminal cases.

In a letter to Fezell, Russ Hunt threatened to file a grievance against him if his office does not change its policy of "black-listing" certain attorneys by not accepting plea agreements for their clients.

"If your office policy does not change within the next week, it will be obvious that you are intentionally and knowingly violating your duty and responsibility in spite of your current conditions of probation," Hunt wrote. "It will then be necessary for me to file a formal grievance against you. I would certainly prefer not to be forced to file such a grievance which could cost you your law license."

Hunt, whose rivalry with Fezell began in 1984 when Hunt represented convicted murderer David Wayne Spence, also sent copies of the letter to Waco attorney Larry Brady, chairman of the local State Bar grievance committee, and to 54th State District Judge George Allen.

He said he sent the copy to Brady so Fezell would know he was serious. Brady said he expects no action by the grievance committee based on Hunt's letter.

Fezell, who denied his office has ever had a blacklist against certain attorneys, said that he is formulating a new "limited plea-bargain" policy to ensure that all attorneys are treated equally in negotiations with his office.

He declined to give specific details about the new policy but said it should be unveiled June 1.

"I want to praise Vic for reconsidering his policy and deciding to modify it in an appropriate manner," Hunt said. "I think Vic reconsidered his policy because he got the letter. It was a hard-and-fast policy before he got the letter, and after he got the letter, it was no longer policy. It makes me think that the letter prompted the change in policy."

Fezell told Hunt by return letter that his office had a different plea bargain policy only for those attorneys he thought he could not trust after they cooperated with federal authorities in the prosecution of Fezell on bribery and racketeering charges. He said he has been formulating the new policy since December but



McLennan County District Attorney Vic Fezell (above) reworks procedure after being threatened with a grievance by lawyer Russ Hunt (below).



### LOCAL / NATION

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was forced to postpone it during his preparation for the capital murder trial of Edward E. Graf Jr.

Fezell was acquitted of all charges but was placed on probation suspension for two years after the local bar grievance committee found "just cause to believe that Fezell received funds from lawyers representing criminal defendants and expecting leniency for their clients," and for calling Allen a liar.

Fezell wrote to Hunt, "As you are aware, the present plea-bargain policy was adopted by this office after consultation with my attorney and staff.

"We researched the issues involved and found no legal or ethical impediment to implementing a policy which would protect members of this office ..." Fezell wrote.

Such a policy would mean certain individuals "could be dealt with at arms length in a manner which would not cause a hardship upon their clients," Fezell wrote, "... for the protection of myself, my staff and for the public good ..."

Hunt said the policy whereby his clients and those of the other attorneys affected must plead guilty in open court without benefit of a prosecutor's recommendation on punishment is too risky, especially in first-degree felony cases where the range in punishment is from five to 99 years or life in prison.

"I can't sign a blank check for a client and could not in good faith plead him in an open plea to the court. It is borderline, if not an ethical violation, for the DA's office to put my client in such a position," Hunt said.

Fezell said he would not respond to allegations of ethical violations because "it is obvious what his intentions toward me are."

In his letter to Hunt, Fezell wrote, "In addition to your letter being a threatening and coercive ultimatum, it also smacks of insin-

cerity. You and I both know that you would like nothing better than to see me lose my law license, unless it would be to see me go to prison, die or be sold into slavery."

Waco attorneys Ron Moody and Ken Crow, who were involved in the federal investigation of Fezell and who were said to be on Fezell's "blacklist," said the list has not interfered with their abilities to represent criminal clients.

Waco attorney Gary Butler, a former Fezell assistant who testified against him at his trial in Austin, said the list has forced him to take his "game to another ballpark" by practicing civil law almost exclusively.

"As long as I knew that I was excluded from the plea-bargain process, which is an integral part of the criminal justice system, I was hesitant to accept a criminal representation, because it took any plea advantage away from handling any potential client. After all, 90 to 95 percent of all cases are handled by plea bargain," Butler said.

Fezell, who said the new plea-bargain policy will not be "anything earth-shattering," encourages attorneys to plead all the cases they can before the new policy goes into effect in June.

"It is not that this is a new policy, necessarily, but it is the first time that everything has been reduced to writing, so my office and the defense bar will understand our philosophy and policies on plea bargaining," Fezell said.

"It will promote consistency and severely limit the types of cases we will engage in plea bargaining," he said. "Everybody is being treated the same as of March 1, and we are encouraging all defense attorneys to plead as many of their cases as possible between now and the time we institute this new limited plea bargain policy."

"It will help reduce the backlog and allow some of the defense attorneys to negotiate on their cases presently pending rather than being suddenly blindsided by the new policy," Fezell said.

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state history contest. This year's contest will be held in the student union of the University of Texas on May 6-7.

Complete results in the competition were not available late Saturday.

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