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## Weinberg to lead lobbyist appeal

**State House News Service**

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Richard McDonough, the longtime Beacon Hill lobbyist convicted alongside House Speaker Salvatore DiMasi in June on a string of corruption charges, has tapped veteran defense attorney Martin Weinberg to lead his appeal through the federal court system, the News Service learned Monday.

"I'm going to be helping him on the appeal and arguing about pending appeal motions and we think that –

obviously, we believe that there are substantial issues that have been raised for both McDonough and DiMasi regarding the still-uncertain scope of honest services law," Weinberg said in a phone interview.

During the seven-week trial that resulted in convictions for DiMasi and McDonough, Weinberg represented DiMasi's accountant Richard Vitale, a third defendant and the only one to win acquittal on all charges. McDonough's attorney, Thomas Drechsler, will continue to represent McDonough as well, Weinberg said.

DiMasi and McDonough face sentencing on Sept. 8, although both have filed motions to dismiss their convictions. They were convicted in June on a count of conspiracy, two counts of honest services mail fraud and three counts of honest services wire fraud. DiMasi was also convicted on an extortion charge. Prosecutors are seeking a 12.5-year sentence for DiMasi and a 10-year sentence for McDonough.

Weinberg, a federal appeals specialist, said he intends to join McDonough at next week's sentencing hearing to argue that any sentence be stayed while DiMasi and McDonough pursue appeals. In particular, Weinberg contends that a 2010 U.S. Supreme Court ruling in the matter of former Enron executive Jeffrey Skilling has sharply narrowed prosecutors' ability to bring honest services charges and may in fact invalidate the charges leveled against DiMasi and McDonough.

U.S. District Court Chief Judge Mark Wolf, who presided over the DiMasi trial, suggested that issues raised by the defense team may ultimately be settled by the Supreme Court.

Weinberg said he expects prosecutors to fight any efforts to allow DiMasi and McDonough to remain free while their appeals are pending, and prosecutors have indicated their opposition in filings with the court, arguing that the issues in play are unlikely to result in seeing the convictions overturned on appeal.

The two defendants were convicted of engineering an elaborate kickback scheme, using DiMasi's power as speaker to push through legislation and contracts benefiting a Canadian software company. Prosecutors say DiMasi, who was speaker from 2004 to 2009, steered a pair of taxpayer-funded contracts – a \$4.5 million deal in 2006 and a \$13 million deal in 2007 – to the company, Cognos Corp., in exchange for \$65,000 payoffs. Prosecutors say DiMasi concealed the payments as part of a fee-sharing arrangement with a law associate.

McDonough, according to the indictment, received \$250,000 for his role in the deals, although he's argued that the funds were part of a legitimate lobbying arrangement.

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DiMasi and McDonough have publicly maintained their innocence since the seven-week trial that forced dozens of Beacon Hill's most powerful players – including Gov. Deval Patrick – to take the stand throughout May and June. He and his lawyers, Thomas Kiley and William Cintolo, have argued that prosecutors presented no proof that DiMasi acted on Cognos's behalf in exchange for financial gain.

But Weinberg called the Skilling ruling a “seismic change in the honest services jurisprudence.” The ruling required that prosecutors prove that DiMasi took an official action as a result of a payment, not simply that payments from Cognos coincided with actions that benefited the company’s interests. Weinberg and other defense lawyers in the case suggested that prosecutors failed to offer evidence of an express “quid pro quo” arrangement.

Prosecutors countered that even with the shifting case law, their evidence painted an overwhelming portrait of corruption. They also repeatedly noted that conspiracies are often intentionally elaborate, carried out by surrogates and lack an explicit written or recorded arrangement, making it essential that juries be permitted to infer such crimes from evidence.

McDonough is also facing state ethics allegations that he violated state conflict of interest law by obtaining a salaried job from a special education collaborative that made him eligible for a pension and benefits despite lobbying for the agency and not working full time.

Although he was acquitted of federal charges, Vitale is also facing state charges that he violated campaign finance and lobbying laws by failing to report his work on behalf of ticket brokers lobbying for scalping legislation. The Boston Globe reported Monday that Vitale is negotiating with prosecutors on a plea deal, with a hearing set for Sept. 7.

Weinberg declined to confirm the report, saying, “There’s no finality and it’s really a non-story until September seventh.”

Vitale previously pleaded not guilty to the misdemeanor charges, which could carry fines in the tens of thousands of dollars and up to two years in prison.

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