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Christian J. Menard, right, with client Henry Hardy Jr., says no one knows where Kathy Hardy's money went.

Judge Raises Doubts on Efforts to Seize House

■ **Courts:** Prosecutors are trying to take a couple's Oxnard home on grounds it was purchased with proceeds from prostitution.

By GARY GORMAN
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There is no doubt that Henry Hardy Jr. ran a house of prostitution in Oxnard that earned him an estimated \$295,000 during the past four years, a Ventura County judge said Thursday.

"Every dime of Mr. Hardy's is ill-gotten gain," Judge Steven Z. Perren said.

But several other issues must be resolved, Perren said, before he will allow Ventura County to seize Hardy's house on the grounds that it was purchased with proceeds from his prostitution enterprise.

Attorneys on both sides had expected Perren, who is hearing the forfeiture case without a jury, to decide the issue Thursday after hearing four days of testimony.

But saying that Hardy's attorneys had raised a number

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of significant issues, Perren asked the attorneys to submit written arguments and said he will make a ruling Jan. 24.

At issue is a \$265,000 house in Oxnard that Henry and Kathy Lynn Hardy purchased in January.

The next month, sheriff's deputies shut down Henry Hardy's Stardust Modeling Agency, charging that it was a front for a major prostitution ring. On Dec. 4, a Superior Court jury convicted Hardy of 11 prostitution-related charges. He faces up to six years in prison when he is sentenced next month.

Now, in a trial that began last Friday, Deputy Dist. Atty. Michael K. Frawley is trying to seize Hardy's house on the grounds that it was purchased with illicitly obtained money.

Under the seizure law, Frawley must prove that Hardy was convicted of the crimes, that he engaged in "a pattern of criminal profiteering" and that the house was acquired with the proceeds of those crimes.

Perren indicated that the first two elements had been proven. "This is a criminal enterprise designed to realize illegal profits," he said. "This was an illegal operation from start to finish."

And if the standard of proof were lower, he said, there would be enough evidence to prove the third element. "Frankly, if the standard was preponderance of evidence, it would be easy as pie," Perren said.

But the law requires Frawley to prove all the elements *beyond a reasonable doubt*, and the judge appeared troubled by Frawley's failure to account for Kathy Hardy's income.

According to tax and income records presented at the four-day trial, Kathy Hardy earned nearly \$80,000 between 1986 and 1990 through her job with Clairol Inc. That would be more than enough

to account for the \$59,800 in down payment and closing costs that the couple paid before taking title to the house, according to Christian J. Menard, one of two attorneys representing the couple.

Menard said many two-income couples set aside one spouse's paycheck toward major goals such as buying a house. Citing the prosecution's evidence that Hardy earned \$133,000 in cash in 1990 alone, Menard said there was no need for Kathy Hardy to spend a dime of her earnings.

"The bottom line," Menard said, "is where did her money go? Nobody knows. There's the doubt."

Perren agreed that the prosecution's failure to trace what Kathy Hardy did with her income "is a problem."

Frawley said it was impractical and unnecessary to trace the wife's income.

"I would have to subpoena every bank on the planet," he said, to determine where Kathy Hardy kept her money. But Perren suggested that investigators at least could have determined through her employer whether the paychecks were deposited or cashed.

Frawley said the unusual way in which the couple provided the

down-payment money proves that they knew they were dealing with "dirty money."

Before escrow closed on the house, Henry Hardy went to different banks and, using cash, purchased four cashier's checks for \$9,600 each, another for \$6,800 and another for \$5,000, according to bank records introduced at the trial. Kathy Hardy purchased another \$9,600 check, also with cash, according to the evidence. Frawley said the couple's "implicit deviousness" was aimed at skirting government rules that require banks to report cash transactions of more than \$10,000.

"It seemed obvious to us that when you have about \$60,000 in closing costs and the cashier's checks are purchased with cash, then the money must have come from the business," Frawley said. "This money was clearly dirty."

Perren agreed that it was "ludicrous" to suggest that Kathy Hardy had saved the total down payment from her income. "But it is not unreasonable that some portion of her income went to the property," he said.

The judge also suggested that the prosecution was obliged to show that Kathy Hardy knew that

her husband was engaged in an illegal enterprise. Frawley insisted that he needed only to show that the money paid toward the house was obtained illegally.

"There can be no reasonable doubt that the entire amount came from the business," he said. "She has no interest in the fruits of an illegal business."

Steve Powell, another attorney representing the Hardys, said the double-jeopardy clause should prevent the state from seizing Henry Hardy's interest in the house. He said the same evidence used in the seizure action had been used to convict Henry Hardy on the criminal charges. To take his house as well as his freedom, Powell said, would amount to "multiple punishments" for the same conduct.

Perren called the double-jeopardy argument "an interesting issue" and gave Powell until Tuesday to cite case law supporting his view.