

Fleiss Lawyers Blame Jurors, Seek Retrial

Courts: Five from the panel have said they had improper conversations about the case. The judge must decide if their conduct affected the verdict.

December 15, 1994 - NORA ZAMICHOW, TIMES STAFF WRITER

Attorneys for convicted Hollywood madam Heidi Fleiss on Wednesday asked for a new trial for her, contending that jury misconduct occurred because jurors had wrongly discussed the case outside court before reaching a verdict and had improperly talked about sentencing.

Armed with sworn statements from five jurors briefly detailing accounts of out-of-court discussions, lawyers Anthony Brooklier and Donald Marks filed a motion asking that Superior Court Judge Judith L. Champagne overturn the verdict.

One of those affidavits was from jury forewoman Sheila Mitrowski, who said, "I do not feel justice was served with the verdict." State law prohibits jurors from deliberating outside of court. They also are forbidden to consider possible penalties outside a jury deliberation room. But according to the affidavits, five jurors said they had participated in "informal gatherings" outside the downtown Los Angeles Criminal Courts Building, in a cafeteria or walking to the parking lot.

Four jurors said they "briefly discussed" the penalties for pandering during those meetings. They said they "presumed" that Fleiss' sentence would be lighter if she was convicted of pandering rather than of the one cocaine-related charge levied against her.

"There were juror irregularities that occurred during the course of the trial which deprived our client of a fair trial and a true verdict," Brooklier said. "Though inadvertent, a real injustice has unfolded."

Fleiss, arrested after an elaborate 1993 police sting operation, was convicted of three counts of pandering earlier this month. The jury deadlocked on two other pandering counts and acquitted her of a cocaine-related charge. Unbeknown to the jury, however, pandering carries a mandatory term.

Had she been convicted of the drug-related charge, Fleiss would have been eligible for probation, Marks said. Because the jury is supposed to focus on determining an individual's guilt or innocence, details of punishment are not mentioned during the course of trials.

Champagne will now decide whether misconduct occurred and whether it adversely affected the judicial proceedings, according to legal experts. "There appears to be a meritorious claim that some form of misconduct occurred, but the critical question is whether the misconduct prejudiced Heidi Fleiss' trial," said Peter Arenella, a UCLA law professor.