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Complaint filed against Gorcyca over Perry case

By Jeremy Selweski
C & G Staff Writer

OAKLAND COUNTY — Oakland County Prosecutor David Gorcyca faces potential professional discipline for his handling of the case of former Oak Park kindergarten teacher James Perry after a formal ethics complaint was filed against him by the Michigan Attorney Grievance Commission.

The nine-page complaint charges Gorcyca with professional misconduct for “engaging in conduct that is prejudicial to the administration of justice” and “engaging in conduct that is contrary to justice, ethics, honesty or good morals.”

Gorcyca released the following statement: “I look forward to defending all the actions and statements of my office at an appropriate time and in front of the proper tribunal. I have always taken great pride in abiding by the rules of professional conduct.”

According to the complaint, Gorcyca may have unfairly influenced last month’s retrial with public statements that he made following Perry’s first trial in September 2006.

On Nov.1, 2006, in an interview on WJR-AM 760, Gorcyca called Perry a “pedophile” and discussed evidence against Perry that had been excluded by the court.

Later that month, during a phone interview with a reporter from the Detroit Free Press, Gorcyca called Perry a “freak” and again discussed some of the excluded evidence, the complaint said.

Then, in February 2007, following the judge’s order for a new trial, Gorcyca issued a press release mentioning that Perry had refused to take a polygraph test, the results of which are not admissible in Michigan courts.

Legal experts believe Gorcyca may have crossed the line. According to Larry Dubin, a law professor at the University of Detroit Mercy who served on the MAGC for eight years, “The ethics rule indicates that a prosecutor is a minister of justice, not an advocate of justice.”

“The prosecutor should not make statements that have a likelihood of publicly condemning a defendant,” he continued. “He should not make public statements that prevent jurors from knowing things they would be able to learn in the courtroom.”

Michael Schwartz, a Farmington Hills lawyer who served as administrator of the MAGC for 10 years, also expressed concern with Gorcyca’s behavior. He said that Gorcyca seems “confused to how the system of justice works,” particularly with his choice of language in describing Perry.

“The term ‘freak’ is not something that’s going to be useful,” Schwartz said. “That’s the kind of word that a schoolyard child would use to another. It’s very unprofessional. I’ve never used that word in 35 years as an attorney.”

Perry, 34, of Ferndale was charged with sexually assaulting two boys at Key Elementary in Oak Park in October 2005. Perry was originally found guilty, but following the discovery of new exculpatory evidence, the judge threw out the conviction and ordered a new trial. The second trial ended as a mistrial on April 1

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following the declaration of a hung jury. Of the 12 jurors, 11 voted to acquit Perry of the charges, while one held out for a conviction.

Next up for Gorcyca is a hearing on May 28 with the Attorney Discipline Board, a branch of the state Supreme Court that hears cases against lawyers accused of professional misconduct.

According to John Van Bolt, executive director of the board, Gorcyca will go before a panel of three attorneys, who will examine the evidence to determine whether the charges in the complaint are valid. If they find that misconduct took place, Gorcyca will then face a separate panel that will determine the proper course of discipline. He could then face punishment ranging from a public reprimand to suspension to disbarment.

However, Van Bolt pointed out that about 50 percent of the board's cases are resolved by consent, which is similar to a plea bargain. The board conducted a little more than 200 public hearings last year, he said.

Schwartz believes the punishment should be on the more severe end of the spectrum. "This is a very serious charge that should result in more than just a slap on the wrist," he said. "If it's proven, it's not unreasonable to expect a suspension or even something more strict."

He argued that as county prosecutor, Gorcyca should be held to a higher ethical standard. County prosecutors, he said, take an additional oath when they are sworn into office for just that reason.

"The prosecutor's job is to be fair, to seek justice — not just to win at any cost," he said. "The prosecutor has such power: He can be helpful to people but can be extremely harmful as well. People's lives can be destroyed."

However, Dubin does not feel that Gorcyca's behavior warrants such harsh punishment. "Assuming that he is disciplined at all, the nature of his offense would most likely be a reprimand, or a minor suspension at most."

Dubin also stressed that although it is inappropriate for a prosecutor to make demeaning statements about a defendant, since Gorcyca's comments were made after Perry's original conviction, he may have been unaware at the time that a new trial had been granted.

But Schwartz said that scenario is highly unlikely. "He would have at least known there was a motion (for a new trial)," he said. "He would have known there was a possibility that a new trial would be granted, and you don't want to have future members of the jury tainted (by those statements)."

For Schwartz, it ultimately comes down to one universal truth that he has continually found during his experience as an attorney and law ethics expert.

"Basically, there are two kind of prosecutors," he said. "There's the law enforcement prosecutor, who shows absolute allegiance to the law, who has no personal agenda, no grand ambitions. They're just there to do their job. ... Then there is the other kind of prosecutor, the political prosecutor, who comes into office looking to promote themselves and do things beyond what their job is meant to do. Those are the people you have to worry about."

"The question is," he concluded, "what type of prosecutor is Mr. Gorcyca?"

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