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Saturday, April 5, 2008

Pontiac

Gorcycya case called serious

Oakland prosecutor's comments could lead to discipline, experts say.

Mike Martindale / The Detroit News

PONTIAC -- Two former members of the attorney grievance commission said Friday that an ethics complaint filed against Oakland County Prosecutor David Gorcycya is a serious matter that could lead to discipline or ultimately disbarment.

Gorcycya, who has 21 days to respond to the formal complaint, finds himself the target of a grievance probe because of statements he allegedly made to a newspaper editor, on a radio show, and in a press release regarding James Norman Perry in 2006, in the weeks after Perry's conviction on charges of sexually assaulting two boys at an Oak Park grade school.

Perry's initial conviction was tossed out, and his second trial ended in a mistrial this week.

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The complaint against Gorcycya alleges the statements "had a substantial likelihood" of prejudicing court proceedings. The complaint said that in each situation Gorcycya made inflammatory statements while explaining his office's decision to prosecute Perry.

"I would assume he will defend himself against the charges; no attorney wants even a reprimand on their record," said attorney Lawrence Dubin, a University of Detroit Mercy School of Law professor who sat on the attorney grievance commission for eight years and chaired the body, which monitors attorneys across Michigan.

Gorcycya could not be reached for comment Friday. In a statement earlier this week, he said he looked

forward to defending himself "in front of the proper tribunal."

The attorney grievance commission investigates about 1,500 petitions a year about lawyers. Only about one-tenth are actually prosecuted by the attorney discipline board, which Dubin likened to "a non-jury trial" made up of a three-attorney panel.

"It takes a majority vote to substantiate the allegation and if not, it is dismissed."

A separate hearing is then held to determine sanctions, which can range from reprimand to a five-year disbarment from practicing law.

Dubin said attorneys are rarely investigated or brought up on the rule at issue, 3.6 of the Michigan attorneys rule of proper conduct, regarding public pretrial comments.

"But it is a very important rule that all attorneys, especially prosecutors, need to keep in mind at all times," said Dubin.

Dubin, who hadn't read the formal complaint, said the time element of when the statements were made by Gorcycya could prove to be a factor in the months ahead.



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Gorcycya

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"I expect that will be part of his defense," said Dubin. "If such statements were made just before jury selection, it would be much more clear cut. But coming as they did, months after the first conviction, and before a new trial had been approved, there could be a case made that he (Gorcycya) did not have any reasonable belief that there would be a new trial."

Attorney Michael Alan Schwartz, who was the attorney grievance administrator from 1979-88, disagreed. Schwartz had read the eight-page complaint and said he found it "stunning" and "offensive."

"You don't have to be an attorney to be concerned about some of the allegations," said Schwartz, an adjunct professor at Wayne State University and University of Detroit law schools. "As a lawyer I'm offended. I assume that if this is proved -- and that shouldn't be hard since it concerns public statements -- it could result in severe disciplinary action. Even disbarment."

Schwartz noted some of Gorcycya's comments were made in November 2006, around the same time as Oakland Circuit Court Judge Denise Langford-Morris was hearing defense arguments for a new trial. Schwartz noted a Feb. 8, 2007 press release issued by Gorcycya's office after Langford-Morris ordered a new trial. The final sentence in the release was the statement: "We are still confused by the defendant's professed innocence and his continued refusal to take a state-offered polygraph."

The statement was later reported by news media.

"No one is compelled to plead guilty and polygraph examinations are not admissible in court and to pose that he declined to take one is wrong, so wrong," Schwartz said. "It suggests he has something to hide."

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