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16 prosecutors left misconduct rebukes off judicial bids

By Maurice Possley
Tribune Staff Writer
March 1, 2000

After the revelation last fall that Associate Judge John J. "Jack" Hynes had failed to disclose on his 1998 judicial application that a higher court had accused him of prosecutorial misconduct, legal groups called for a full investigation, with one demanding his removal.

Now, a Tribune analysis shows that Hynes' case was not an isolated incident. Sixteen current and former Cook County prosecutors, one of whom is now an associate circuit court judge, failed to disclose on their application to become a judge that they had been accused of prosecutorial misconduct in court opinions that reversed the convictions of 20 defendants.

A Tribune review of more than 600 judicial applications filed since 1997 shows that 16 individuals, including Associate Circuit Judge Neil Linehan, administrative law judge Bruce Lester and nine current assistant state's attorneys, did not reveal that the Illinois Appellate Court had determined that they broke courtroom rules in obtaining convictions.

The documents show that the 16 did not disclose conduct that included racial discrimination in jury selection, failing to turn over documents to defense lawyers, failing to disclose the identity of witnesses and making improper comments during closing arguments.

Related links & information

- [Trial & Error](#), Chicago Tribune investigation of prosecutorial misconduct.
- [Center for Judicial Accountability](#). (These links will take you out of chicagotribune.com.)
- [Chicago Bar Association](#).
- [Chicago Council of Lawyers](#).
- [Cook County Bar Association](#), 188 W. Randolph St., Suite 720, Chicago 60601-3005; 312-630-1157.
- [Illinois Attorney Registration and Disciplinary Commission](#), One Prudential Plaza, Suite 1500, 130 E. Randolph St., Chicago 60601.
- [Illinois Judges Association](#).
- [Illinois State Bar Association](#).

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Reasons for their failure to report the findings were varied. Some of the 16 said they couldn't recall the decision and others said they were unaware that the convictions had been reversed. Still others said they did not report the decisions because they interpreted the opinions as criticisms of the trial judges who permitted them to engage in what was later labeled improper conduct.

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The Tribune review also disclosed dozens of other applicants who responded to the application question by disclosing a wide range of conduct that was the subject of judicial comment, ranging from serious instances that resulted in convictions being reversed to extremely minor infractions, many of which were virtually untraceable.

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Applicants for associate circuit court judge, which are chosen by publicly elected circuit court judges, are required to reveal such findings on the application, which asks: "Has your professional conduct or ability been the subject of comment, favorable or unfavorable, in a written opinion of any judge, court or other tribunal?"

Although misconduct findings do not automatically bar applicants from becoming judges, some of the 16 applicants, when confronted with their failure to reveal the reversals, said they now fear their chances of becoming judges will be doomed by the perception that they tried to hide them.

Donald O'Connell, chief judge of Cook County Circuit Court, said the Tribune's findings "will go a lot further toward making sure there is full disclosure than any disciplinary agency. Full disclosure goes to the essence of professional responsibility, whether it be a lawyer or a sitting judge."

The issue of disclosure first emerged in November, when the Tribune reported that Hynes, who was elected last September to his position as associate court judge, had failed to reveal on his 1998 judicial application that the murder convictions of two men had been reversed because he had discriminated during jury selection.

The article prompted calls by the Cook County Bar Association, the Chicago Council of Lawyers, and the Chicago Bar Association for an investigation of Hynes and a public explanation of his failure to disclose the 1991 court decision. The Cook County bar group also unsuccessfully sought Hynes' removal in a petition filed with the Illinois Supreme Court.

It also triggered debate over who should investigate

Hynes, who was a lawyer when he filled out the application but a judge when the omission was discovered. The Illinois Attorney Registration and Disciplinary Commission polices lawyer conduct, and the Illinois Judicial Inquiry Board examines judicial conduct. The disciplinary commission is investigating Hynes, but questions remain as to whether any action affecting Hynes' law license would result in forfeiture of his judgeship.

The Tribune study examined only cases of prosecutorial misconduct and did not include whether defense attorneys may have been found by higher courts to have engaged in improper conduct. The study was aided by a Tribune compilation of Illinois Supreme Court and Illinois Appellate Court opinions over 20 years, beginning in 1979.

The Tribune analysis revealed that the tactics and trial work of the 16 lawyers, while working as assistant Cook County state's attorneys, had been criticized by reviewing courts. In each case, the defendants were convicted but their convictions were set aside on appeal and new trials ordered.

The applications were obtained from O'Connell, the presiding judge, whose office removed certain personal and medical information from the files before turning them over to the Tribune.

Prosecutors Demetrios Kottaras and Alphonse Tomaso, both involved in cases overturned after findings of discrimination against African Americans in jury selection, were contrite.

"I should have included it. I never intended to mislead," Kottaras said.

"It was not my personal practice to exclude African Americans from juries," Tomaso said. "I'm not aware my conduct was called into question. I have nothing to hide. . . . If there is a re-application, I will report it. I'm sorry; I apologize."

Tomaso's professed ignorance of the decision underscores how information regarding prosecutorial misconduct can be elusive. Decisions often are issued years after a conviction has occurred and prosecutors have moved on, frequently to private practice. In addition, appellate courts only rarely specifically name prosecutors in their opinions, and many of the decisions are released in unpublished orders that are not listed in legal databases or law books.

None of the 16 was mentioned by name in the decisions, and at least five of them--Assistant State's Attys. Randy Roberts, John Ouska and Lawrence

Lykowski and two lawyers now in private practice, Thomas Dwyer and William Walters--said they did not report them for that reason.

"I heard the case was reversed, but I thought it was for something else," said Dwyer, who is campaigning for judge as a Democrat in the March 21 primary in a southwest suburban judicial district.

"Now that you have brought it to my attention, I would seek some guidance as to how that question (on the application) should be answered in regard to that opinion. If somebody says, 'Yeah, include it,' I would attach a copy of the opinion," Dwyer said.

Walters said he did not see his name in the reversal decision. "How am I supposed to know they've made a comment about an argument I made when I'm not named?" he said.

Lykowski said that he searched an on-line database before he filled out his application. "My name not appearing, at that point, I filled out the application. I didn't know it had been reversed, much less the grounds for the reversal," he said.

A remedy to such situations was advocated last September by Illinois Supreme Court Justice Charles Freeman. He submitted a proposal to the full court that would require appellate courts to more frequently name any lawyer found to have engaged in misconduct.

That proposal, which was tabled until later this year, also called for a special file to be created to hold all published and unpublished orders in which attorneys--named or unnamed--were accused of misconduct. Attorneys would be notified of the ruling, as would the attorney disciplinary commission. The file, Freeman said, would be kept open for 20 years from the dates of the decisions.

"We have a problem" with disclosure, Freeman said in an interview last week. "And it really does not surprise me."

Freeman said that keeping track of allegations of misconduct would put attorneys on notice that "there is conduct that is serious and they ought to get a handle on it."

Three of the applicants--Linehan and current prosecutors Frank Marek and Ellen Mandeltort--took issue with an interpretation that the rulings were a comment on their conduct, contending that the trial judge had approved their actions.

Linehan, who became an associate circuit judge in

1998, said he did not report the reversal of the murder conviction in a case where the court found that closing arguments by him and his trial partner were improper.

"When I read that (opinion), I thought it criticized the judge's conduct," Linehan said. "We were allowed to argue that evidence by the judge. The trial court ruled in our favor and we proceeded accordingly and the appellate court reversed it."

Marek disputed the court's finding that final arguments in a murder case were improper. "I believed then, I believe now, that argument was based upon the evidence. And that the opinion was critical of the trial judge for allowing the prosecution to make the argument."

Until last week, prosecutor Catherine Sanders was a Republican candidate for judge, running in the same district as Dwyer, but she was removed from the ballot after a successful challenge to signatures on her nominating petition.

A finalist along with Hynes for associate judge last fall, Sanders conceded that she did not report two cases that were reversed, one in which the appellate court found that the prosecution had intimidated a defense witness in a drug case and the other a reversal of a capital murder case for failure to disclose the statements of a witness to the defense.

"I guess I didn't factor them in," Sanders said. "I don't want my reputation, which I've worked very hard at for 15 years, to be damaged by one perhaps poorly written question on one application. If I misunderstood, it was certainly nothing intentional on my part."

"I don't want to hide anything," Sanders said. "I don't want any problem like Jack Hynes had."

She added that she had resubmitted her credentials to the bar groups in January in preparation for the March primary and had attached the opinion in the drug case. She did not include the murder case, she said, because the opinion had quoted her trial partner, Adrienne Mebane, by name. "I took that as they were excluding me," Sanders said.

Mebane, who also applied for associate judge, did report the decision.

Bruce Lester, an administrative law judge for the Illinois Department of Children and Family Services, as well as Richard Kaplan and John Eannace, attorneys in private practice, declined to comment. Efforts to reach two other applicants, Robert Buckley, director of intergovernmental

affairs for the Chicago Police Department, and Assistant State's Atty. Sophia Lopez, were unsuccessful.

Peter Fischer, a former assistant state's attorney, was among a number of applicants who reported instances in which they were criticized, even when they were not named. In Fischer's case, he made the disclosure even though the appellate court had deemed the conduct "harmless" and upheld the conviction.

"I was just being careful," Fischer said. "It was a criticism. I knew it was me. It was painful, but I understand what the appellate court was saying."

Steven Drizin, supervising attorney at the Children and Family Justice Center at Northwestern University School of Law, reported a criticism of a case even though he was not in the courtroom when the action occurred. It involved a case that was reversed due to ineffective work done by law students working under him at the center.

"It's always painful to admit you made a mistake and to do it publicly," Drizin said. "But to me it's information that is relevant to the question of whether or not I am qualified to be a judge. I didn't feel it was right to hold myself to any lesser standard than I would hold a judge up to."

Perhaps the ultimate disclosure came from Roy Pechous, who recently retired as an administrative law judge for the Illinois Civil Service Commission.

Pechous noted on his application that he had been court-martialed and discharged from the Army in 1955 when, as an 18-year-old, he arrived late for a detail.

In an interview, he said he had no doubt about whether to report it, even though there was little likelihood anyone would ever discover it.

"If you're honest about it, it can't come back to bite you," he said.

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Elena Ruth Sassower, Coordinator

TRANSMITTAL to LARRY COHLER / DAILY NEWS: April 4, 2000

Article 78 proceeding: *Elena Ruth Sassower, Coordinator of the Center for Judicial Accountability, Inc., acting pro bono publico v. Commission* (NY Co. #99-108551)

Clay Tiffany judicial misconduct complaint (914-941-5124)

- 5/21/99 Tiffany complaint
- 6/1/99 Commission acknowledgment ltr
- 6/16/99 Commission ltr
- 9/14/99 Commission dismissal ltr

Article 78 proceeding: *Doris L. Sassower v. Commission* (NY Co. #95-109141) (914) 997-8105

- Ex. "C": 10/5/89 Doris L. Sassower complaint
- Ex. "D": 10/24/91 Ninth Judicial Committee complaint
- Ex. "E": 1/2/92 Ninth Judicial Committee complaint
- Ex. "F": 12/4/92 Ninth Judicial Committee complaint
- Ex. "G": 9/19/94 Ninth Judicial Committee complaint
- Ex. "H": 10/5/94 Ninth Judicial Committee complaint
- Ex. "I": 10/26/94 Ninth Judicial Committee complaint
- Ex. "J": 12/5/94 Ninth Judicial Committee complaint
- Ex. "K": Commission acknowledgment ltrs
- Ex. "L": Commission dismissal ltrs
- Ex. "M": 1/22/93 DLS ltr pertaining to 12/4/92 complaint
- Ex. "N": 5/20/86 DLS judicial misconduct complaint,
Commission acknowledgment ltr & dismissal ltr

Affirmation of George Alessio, Esq., with judicial misconduct complaint
(315-424-0300):

- Ex. "A": 11/11/93 Alessio judicial misconduct complaint
- Ex. "B": Grand Jury Report - 8/16/93
- Ex. "C": 6/21/94 Commission dismissal
- Ex. "D": 6/27/94 Alessio ltr
- Ex. "E": 7/15/94 Commission ltr