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Report finds many prosecutors in California have committed misconduct

A law school study discovers 707 cases in which state, U.S. and appellate courts found misconduct in opinions between 1997 and 2009. The authors criticize the State Bar for disciplining only 6 prosecutors.

By Jack Leonard, Times Staff Writer

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Hundreds of prosecutors in California — including many in Los Angeles County — have committed misconduct with near impunity as authorities failed to either report or discipline them, according to a report released Monday.

The misconduct ranged from asking witnesses improper questions during trial to failing to turn over evidence that could help a defendant and presenting false evidence in court, according to the report, which was issued by an innocence project at the Santa Clara University School of Law.

The researchers discovered 707 cases in which state and federal courts and appellate courts found prosecutorial misconduct in opinions issued between 1997 and 2009. Of those, 67 prosecutors committed misconduct in more than one case, including three who committed misconduct four times and two who did so five times.

The authors of the report said most prosecutors follow the law and act ethically, but they criticized the State Bar for disciplining only six prosecutors during the period covered by the study.

"Prosecutors aren't held accountable," said Maurice Possley, an award-winning journalist who worked on the study by the Northern California Innocence Project. "Absent that, why should they change their habits?"

The researchers called for legal reform to require that courts forward all findings of misconduct to the State Bar, which investigates allegations of attorney misconduct. Courts are not currently required to forward cases in which they decide the misconduct was harmless.

Scott Thorpe, chief executive of the California District Attorneys Assn., criticized the report for exaggerating the scale and severity of prosecutorial misconduct.

He noted that courts found that prosecutorial misconduct was serious enough to reverse a case or take some other significant action in 159 instances — a small fraction of the more than 4,000 appeals that alleged misconduct. In the remaining cases where misconduct was found, appellate courts concluded that the prosecutor's actions did not undermine a defendant's right to a fair trial.

Thorpe said his association and district attorney's offices around the state put on regular ethics training seminars for prosecutors.

"I'm not in any way implying that prosecutors have not been guilty of misconduct," Thorpe said. But he said the report was "just not an accurate reflection."

In response to the report, State Bar officials said discipline is not always appropriate when appellate courts find misconduct. Misconduct can occur when prosecutors act unintentionally or where their errors were relatively minor, Russell Weiner, the agency's deputy chief trial counsel, said in a statement.

The agency also has the option of sending prosecutors warning letters or private reprimands for first-time offenders in cases that are not egregious, Weiner said.

But the report's authors said that district attorneys and the State Bar should be more open with the public about the actions they take — if any — against prosecutors who commit misconduct.

"Transparency is critical," said Cookie Ridolfi, a Santa Clara University School of Law professor and executive director of the innocence project.

She and Possley faulted appellate courts for frequently omitting the names of attorneys found to have committed prosecutorial misconduct. The innocence project researched the names of prosecutors in 600 cases and has included them with summaries of the cases on its website, veritasinitiative.org.

The report said courts found misconduct by Orange County prosecutor Mike Flory on five occasions. In one case, an appeals court ruled that he improperly used race as a criteria for selecting jurors. In another, he was criticized for noting in his argument to the jury that the defendant was not present in court — despite the judge telling Flory not to.

Flory said he never intended to exclude jurors based on their race and regretted his comment about the absent defendant, which occurred more than a decade ago. He noted that the appeals court found that four of the five cases involved "harmless error."

"I am an aggressive prosecutor," Flory said. "Does that mean that I purposely set out to conduct misconduct? I don't think so."

The report singled out Los Angeles County Deputy Dist. Atty. Grace Rai as "a striking example of repeat prosecutorial misconduct that has not been publicly disciplined."

In 2008, an appeals court overturned a murder conviction after finding that the prosecutor disobeyed a court order, asked improper questions and committed other misconduct. Two years earlier, an appeals court concluded that Rai probably intentionally violated a court order in another murder case but that the conduct did not prevent the defendant from receiving a fair trial.

Rai did not return calls for comment Monday.

The report found that prosecutorial misconduct has far-reaching consequences, including the

conviction of the innocent, new trials for the guilty and a large cost to taxpayers who foot the bill for new trials and legal settlements.

Among the cases the report's authors highlighted as egregious was that of Mark Sodersten, whose 1986 murder conviction in Tulare County was overturned in 2007, months after he died in prison. An appellate court ruled that the prosecutor, Phil Cline, failed to give the defense audiotapes of interviews he conducted with a 5-year-old witness that could have shown her testimony was unreliable.

The appellate court found that "those whose duty it was to see justice done neglected or ignored that duty." The innocence project faulted the State Bar for not taking action against Cline.

Cline, now the district attorney of Tulare County, said the courts never found he intentionally withheld the tapes. He insisted he did provide them to the defense but was unable to prove it because he had not kept records of doing so.

"Hooking us into prosecutorial misconduct is just wrong," he said.