

Prosecutor's office has family ties to Stockton U., but says it won't impact rape investigation

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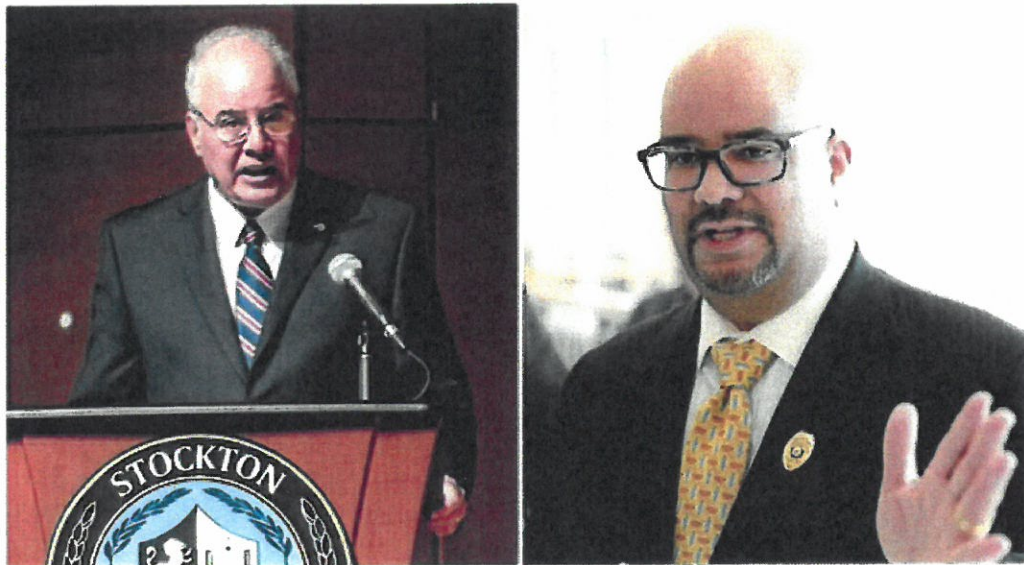
The Atlantic County Prosecutor's Office, which is prosecuting at least one person named in lawsuits alleging sexual assaults at Stockton University, said in a statement Tuesday that the office has two potential conflicts of interest, but they will not affect the investigation.

Stockton University President Harvey Kesselman's oldest daughter, Danielle Buckley, has worked for years as an assistant prosecutor in the office. She was promoted July 2 to chief assistant prosecutor of the Special Victims Unit -- which handles sexual assault cases.

"Chief Assistant Prosecutor Buckley has NEVER participated in these matters and during her tenure with the office has never participated in other matters that involved Stockton University," the prosecutor's office said in the statement. The office also noted that Assistant Prosecutor Aaron Witherspoon, the attorney handling the criminal case that stemmed from one incident at Stockton, is not under Buckley's supervision.

The second conflict is that Prosecutor Damon Tyner's wife, Nicole Milan-Tyner, is associate director of Stockton's Career Center.

"As a result Prosecutor Tyner has not had any involvement in the investigation or charging decision in these matters," the prosecutor's office said in the statement. "Matters that have been identified as conflicts for Prosecutor Tyner are handled by First Assistant Prosecutor Cary Shill."



Stockton University President Harvey Kesselman, left, and Atlantic County Prosecutor Damon Tyner.

NJ Advance Media asked about the two conflicts of interest on Monday after discussing the familial connections with legal experts. The prosecutor's office responded by issuing the public statement Tuesday.

The prosecutor's office said it informed the state Attorney General's Office and the state Division of Criminal Justice of the potential conflicts of interest, but didn't say when.

The attorney general's office declined to say when the conflicts were reported by the prosecutor's office. "A review is being conducted, in accordance with standard practice," said AG spokesman Peter Aseltine.

Pi Kappa Phi lost its charter in 2010, but students kept using the name and hosting parties that drew students from campus

Robert R. Fuggi Jr., the Toms River attorney who filed the four lawsuits from young women claiming they were raped when freshmen at Stockton, said he wasn't shocked to hear from NJ Advance Media about the conflicts. He said it makes sense given the lack of sexual assault charges against one of the accused: Zachary Madle, 25.

"If there's an inherent conflict with the prosecutor's office, I think the AG's office should step in and look at it and reopen these cases," he said.

Two law professors who specialize in attorney ethics said Monday that while these are not obvious, direct conflicts -- because the two attorneys are not directly involved in the case -- it is a kind of gray area that could need closer scrutiny.

"These kinds of conflicts are sort of institutional conflicts," said Rebecca Roiphe, a law professor at New York Law School who has written extensively about prosecutorial ethics.

"My personal opinion is not enough attention is paid to these connections. They can really affect how a prosecutor acts... These kinds of things can be insidious and make their way into decisions," she said.

Before the prosecutor's office issued the statement, both Roiphe and John Leubsdorf, a law professor at Rutgers Law School in Newark, said that Buckley's connection is more problematic than Tyner's and it could be wise for her to officially recuse herself, if just for the sake of transparency.

"If you represent the public, you may want to go above the law," Leubsdorf said Monday. "It's not like she is prosecuting the university, but the university has an interest in it and she has an interest in being on good terms with her father."

Stockton University is being sued by four young women who argue that the university did not do enough to protect them from or investigate sexual assaults. Leubsdorf said that it's possible charges or convictions of any of the young men who've been accused could affect those civil cases.

Plus, sexual assault charges are never good for a university's image. "Schools have an interest in covering these things up," Roiphe said.

Fuggi's first lawsuit claimed Madle, of North Wildwood, had raped a freshman twice when she was blacked out or drugged in February of 2015.

The second suit accused Madle of violently raping a woman, and the plaintiffs in the other two suits said male students raped them when they were incapacitated by alcohol or date-rape drugs, which may have been used at parties thrown by a rogue frat. Each suit named the university and Pi Kappa Phi -- the national organization that says it has no connection to the group that used its name in Galloway.



The bruises on a former Stockton student who said in the fourth lawsuit that she was raped twice by a student. (Provided photo)

None of the men have been charged with rape, but Madle was charged in April with invasion of privacy for posting videos on SnapChat of him touching the "intimate parts" of the "barely conscious" freshman on Feb. 15, 2017, according to authorities. His attorney, Steve Scheffler, said nothing inappropriate happened between Madle and his accusers.

Police had the videos and, according to Fuggi, DNA evidence from a rape kit, but no sexual assault charges have been filed. Asked why last week, Tyner said only that the invasion of privacy charge was "appropriate" given "the investigation thus far."

In its statement Tuesday, the prosecutor's office said that it took 14 months for Stockton police to file the invasion of privacy charge because the office was waiting on buccal swabs and DNA lab reports.

"The matter is still being actively investigated and a decision will be made as to what charges will be presented to the Grand Jury in the near future," the office said.

The prosecutor's office has declined to say whether it is leading any investigations into the other rape allegations. "Of the four, the two most recent matters are being investigated by Galloway Twp. Police Department. One incident was never reported to any law enforcement agency," the office said.

Roiphe said that most prosecutors do a good job at making sure that obvious personal or financial conflicts are handled appropriately, by assigning the case to another lawyer. But when the conflict is more abstract -- like an association with an institution -- it's more complicated.

Both Roiphe and Leubsdorf said they don't think that reassigning those cases to another prosecutor's office is necessary, except maybe in extreme circumstances.

Roiphe said she'd rather see internal safeguards within all prosecutors' offices -- like a review panel that would check on possible conflicts and, if they exist, keep a close eye on any decisions made in those cases.

"The smaller the community the more often this arises, because prosecutors are generally active, they're active in the community," she said of institutional conflicts.

After the prosecutor's statement Tuesday, Kesselman said in a statement that he was proud of his daughter and calling Milan-Tyner is a "valued member of the Stockton community."

"We are confident in the ability of the Atlantic County Prosecutor's Office to properly and thoroughly investigate all complaints and we will continue to cooperate in any way we can," he said.