



E15 The Independence of Medical Examiners and Forensic Pathologists in the Criminal Justice System

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After attending this presentation, attendees will understand some of the inappropriate influences that can be put on expert witnesses, and how the defense attorneys involved may respond.

This presentation will impact the forensic science community by presenting one of the challenges to adequate access to expert witnesses and demonstrating how one group responded to this threat.

For a number of years there have been attempts by certain prosecutors and law enforcement officials to restrict forensic pathologists in the state of Minnesota from testifying for the defense, including subtle and overt intimidation tactics. These have included requests to terminate the employment of forensic pathologists who testify for the defense, delays in signing medical examiner contracts until there is acquiescence to an agreement agreeing that medical examiner staff would not testify for the defense in Minnesota, and withdrawal of support [what kind of support?], for a medical examiner's re-appointment. These efforts intimidation tactics have largely been by come from county attorneys, and sheriffs, and state law enforcement personnel. As a result of this climate of hostility and intimidation, forensic pathologists in Minnesota have been reluctant to assist defense attorneys. This and this has led to increased costs for defendants and the public, sinceas defense experts from out of state have had to be consulted in several cases.

The Minnesota Regional Medical Examiner's Office (MRMEO) acts as medical examiner for eight Minnesota counties. In 2008, an MRMEO assistant medical examiner began consulting with defense attorneys on a case in another county which is not served by MRMEO. During the trial in November 2008,, thet assistant ME's Chief received an email from the county attorney of one of their counties served by MRMEO, who had no involvement whatsoever in the pending case. This email stated, stating, "If you continue to do so [consult with and testify for defense attorneys], I am giving you the courtesy of letting you know that neither the Sheriff or I will be in a position to continue to support your appointment [as county medical examiner]." Additionally, t The email also stated, "there are many other forensic experts out there who do not have the added credibility of being a sitting medical examiner in another jurisdiction who can assist in the criminal defense of persons charged with a crime. Refer these requests to them." At this point in the trial, the assistant medical examiner forensic pathologist was serving as an in-courtroom consultant and was likely to be a rebuttal witness. As the result of this threatening email, which was forwarded to the defense attorneys involved, the assistant medical examiner forensic pathologist withdrew from the case. Shortly thereafter the county attorney who sent the email sent an second email directly to the presiding judge, as a "Clarification of Earlier Email" stating, "it was not my intent to stop her from doing so [testifying for the defense] or to influence or affect her testimony in this case in any respect."

After the trial, the state public defender submitted a complaint to the Minnesota Office of Lawyer's Professional Responsibility. They That office investigated the complaint and ultimately determined that the County county Attorney attorney had violated Rule 8.4(d) of the Minnesota Rules of Professional conduct, which prohibits a lawyer from "engaging in conduct that is prejudicial to the administration of justice". By stipulation, he the county attorney admitted the allegations of the petition. As a result, the Minnesota Supreme Court issued; there was a public reprimand and imposed a \$900 fine.

As a direct result of this case, several changes have occurred in the state of Minnesota. Wwhile the Professional Responsibility case was pending before the Supreme Court, the board of the Minnesota Coroners' and Medical Examiners' Association authored a letter stating their its positions on the independence of medical examiners; these will be discussed during the presentation, but the conclusion was, "for preservation of a fair and just judicial system, it is imperative that medical examiners remain independent officials, and be available for consultation for both prosecuting and defense attorneys in Minnesota."

There are also on-going discussions with other involved organizations, including the MN Minnesota County Attorneys Association, the Minnesota Association of Criminal Defense Lawyers, the Minnesota state chief judges, Innocence Projects, the Minnesota Attorney General's Office, and others.

This presentation seeks to share the Minnesota experience and the changes in the culture which stemmed from the case. This presentation takes a careful look at how the adversarial system hostility of certain prosecutors, the limited resources of the public defender's office, the need for available defense experts, and the lack of an abundance of qualified forensic pathologists collided to create a "perfeperfect storm" for change in the way defense consulting is done in Minnesota.

Independence, Expert, Influence