



E19 The Independence of Medical Examiners and Forensic Pathologists — Redux

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After attending this presentation, attendees will understand some of the pressures placed on forensic pathologists and medical examiners and how that may affect the ability of defense attorneys to appropriately understand and possibly counter claims of state witnesses.

This presentation will impact the forensic science community by describing the outcome of a case in Minnesota and the response of that state's Supreme Court, addressing the issue of independence of medical examiners.

In 2008, a county attorney in Minnesota sent a threatening email to that county's medical examiner, stating that neither he nor the Sheriff would support her appointment as the county medical examiner if she or others in her office consulted with or testified for defense attorneys. The county attorney was subsequently publically reprimanded by the Minnesota Supreme Court for "engaging in conduct that is prejudicial to the administration of justice."¹ The trial that led to his sending the email was in a different and unaffiliated Minnesota county and the outcome resulted in a young woman being found guilty of pre-meditated murder for the stabbing death of her newborn baby. She was 17-years-old at the time of her baby's death, and was sentenced to life imprisonment without the possibility of release.

After a post-conviction hearing held before the trial judge, postconviction relief was denied. The case was then appealed directly to the Minnesota Supreme Court. The court exercised its supervisory powers and reversed the conviction in the interests of justice, due to the conduct of third-party state actors which undermined "the defendant's constitutional rights, contravened clear legislative intent, and interfered with the statutorily-mandated independence of medical examiners."²

The decision of the Supreme Court included clear guidelines regarding the role of medical examiners, stating "It is not a conflict of interest for a medical examiner to consult with criminal defense attorneys or testify at a criminal defendant's request. Indeed, such activity is authorized and protected by law."³ They also found that "It should be undisputed that the quality of forensic investigation improves when medical examiners operate free from the influence of law enforcement and prosecutors."⁴ Particularly heartening was the affirmation that "It is not disloyal for a medical examiner, who may testify as a State expert in the future, to consult with defense counsel or testify as a defense witness. Good medical examiners do not choose sides."⁵ In conclusion, the opinion stated, "If Minnesota's law enforcement and prosecutorial communities believe that medical examiners are not independent, autonomous, and neutral actors, we now state clearly that such a belief has no place within Minnesota's criminal justice system."⁶

It remains to be seen if this ruling will have a practical effect on the access of criminal defense attorneys in Minnesota to local forensic pathologists. Many forensic pathologists are reluctant to consult with or testify for defense attorneys. Reasons include the unfortunate competition in Minnesota between medical examiner offices for counties and the perception that county attorneys in the counties being pursued prefer forensic pathologists who do not work with defense attorneys. Additionally, there are few forensic pathologists in the state and concern has been expressed that disagreeing with one another may lead to tension and conflict within this mostly close-knit group. Financial issues, including the perception that a forensic pathologist is "doing it for the money" discourage others from consulting.

This presentation seeks to share the experience in Minnesota and to continue the discussions between forensic pathologists and attorneys on how best to achieve just results in criminal proceedings.

References:

- ¹ *State v. Beecroft*, 813 N.W.2d 814, 864 (Minn. 2012) (quoting, Minn. R. Prof. Conduct 8.4); see also, *In Re Backstrom*, 767 N.W.2d 453, 453 (Minn. 2009).
- ² *State v. Beecroft*, 813 N.W.2d 814, 820 (Minn. 2012).
- ³ *Id.* at 832.
- ⁴ *Id.* at 833 (citing, Nat'l Research Council of the Nat'l Acad., *Strengthening Forensic Science in the United States: A Path Forward* 241 (National Academies Press 2009) available at <http://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>).
- ⁵ *Beecroft*, 813 N.W.2d at 848.
- ⁶ *Id.* at FN 19.

Independence, Expert, Influence