



Meeting with the Prosecutor to Prepare to Testify

Clinicians may have to testify at trial, preliminary hearings, pre-trial hearings, depositions, or before a grand jury. Regardless of the type of hearing, clinicians should meet with the prosecutor (and/or attorney calling the clinician as a witness) to ensure they have a thorough understanding of the purpose of the hearing, what questions will be asked, and how the hearing will be conducted.

The more preparation the better; a subpoena does not have to prompt preparation. Rather, prosecutors and clinicians should meet early in the lifespan of an investigation. This will give the prosecutor an opportunity to learn about the clinician's findings and take additional investigative steps if necessary. Typically, prosecutors will request to meet with a clinician because a clinician may not know that case has been charged until they hear from the prosecutor. If a prosecutor contacts a clinician prior to the issuance of a subpoena, clinicians should meet with the prosecutor because they or the investigator may have questions as an investigation progresses or as charges are being considered. Moreover, depending on the jurisdiction, attorneys may have to provide notice to opposing counsel of their intent to call expert witnesses (which can include calling the clinician). Some jurisdictions have more stringent requirements for these expert notices. Prosecutors may want to meet with clinicians well before a scheduled trial in order to adhere to the jurisdiction's notice requirements.

Clinicians should not hesitate to ask prosecutors all questions they have. Prosecutors may prefer to discuss questions or concerns orally rather than in writing; Written communications with the prosecutor may be discoverable, and therefore may have to be provided to the defense attorneys.



The Clinician's Documentation

Medical forensic exams are well-documented. Clinicians should be familiar with the exam and their own documentation, but testimony is not meant to test the clinician's memory. When preparing for testimony, the clinician should review their documentation both before and while speaking with the prosecutor. Accuracy is paramount and therefore, if needed, clinicians can use their documentation to refresh their recollection during testimony.

Clinicians should discuss with the prosecutor the process for refreshing recollection and whether they should bring a copy of their report with them to court or whether the prosecutor will have a copy available. It is not advisable to a clinician to create their own notes for the purpose of testimony.

The clinician should ensure that the prosecutor fully understands the meaning and significance of each notation in their report and other medical records and discuss with the prosecutor any medical or forensic issues that the clinician views as important, even if the prosecutor does not specifically ask about it. The clinician should not assume that the prosecutor understands the entire report, nor should the clinician presume the areas on which the prosecutor wants to focus. The clinician and prosecutor should also review any associated photographs, consistent with the discussion above.

Topics to Discuss

- The process of direct examination, cross-examination, re-direct examination, and re-cross examination (if applicable) and how best to answer the defense attorney's questions: by carefully ensuring the clinician understands the question and then answering the question being asked.
- The process of qualifying the clinician as an expert, which includes the clinician's educational and professional background and whether the clinician has previously been qualified as an expert in a legal proceeding and the scope of such qualification.



- The prosecutor's anticipated questions and the clinician's anticipated answers, including questions for identifying evidence collected during the medical forensic exam, chain of custody, and expert opinions.
- The mechanics of trial objections: Clinicians should pause and wait for the judge to rule. If overruled, the clinician can answer. If sustained, the clinician should not respond.
- Relevant pre-trial rulings that impact the clinician's testimony, i.e., whether there are areas of testimony that the clinician is not permitted to discuss during testimony.
- The patient's medical history and whether there are any areas which the prosecutor will not discuss.
- Whether the prosecutor will enter photographs and/or the clinician's report into evidence and the process for doing so. Note that whether the report is entered into evidence is jurisdiction-specific.
- Whether demonstrative aids or other evidence, e.g., sketches of the anatomy or diagrams, unused sexual assault kits, samples of disposable speculums, will help the jury understand the clinician's testimony.
- Potential defenses and how the clinician's testimony may rebut those defenses in the context of other evidence; the questions that the prosecutor anticipates the defense attorney will ask and strategies to incorporate answers to those questions into direct examination.
- Any concerns that the clinician may have, especially regarding questions by the defense attorney about the medical record, the clinician's report, statements made by, or demeanor of the patient-victim during the examination, or the clinician's personal concerns related to their own prior experiences when testifying.