



The National Association of Medical Examiners®

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Re: Position Statement, Forensic Pathologist Courtroom Testimony In Out-of-Jurisdiction Legacy Cases. This Position Statement replaces the Position Statement published October 2, 2015.

The National Association of Medical Examiners (NAME) confirms that forensic pathologists are expert witnesses who need to be accommodated for out-of-jurisdiction legacy cases. This position statement addresses persistent legal mischaracterizations of forensic pathology testimony and affirms the proper treatment of forensic pathologists under constitutional law and evidentiary rules.

1. Since the issuance of the *Smith v. Arizona* opinion by the U.S. Supreme Court in 2024, the tendency for litigants to claim forensic pathologists are “fact witnesses” has increased. The “fact witness” designation is used to justify mandatory appearance of the forensic pathologist who conducted the autopsy pursuant to the constitutional protections of the defendant’s Sixth Amendment right to confront witnesses. The claim that a forensic pathologist is simply a “fact witness” if the forensic pathologist conducted the autopsy is also used to refuse expert witness compensation for forensic pathologists. The increasing practice of labeling forensic pathologists as “fact witnesses” misapplies Confrontation Clause jurisprudence, conflicts with longstanding expert-witness law, and imposes substantial professional and operational burdens on medicolegal death investigation systems nationwide.

2. Forensic pathologists are not fact witnesses. They are expert witnesses, as the autopsy findings require medicolegal interpretation and analysis used to provide a medical opinion regarding cause and manner of death.

Forensic pathologists who provide expert testimony outside the course of their immediate employment and salary must be recognized as experts to satisfy legal rules of evidence and disclosure. Of note, courts in the states of Michigan, Texas, Mississippi, Georgia, Pennsylvania, and Tennessee have held that a second forensic pathologist who did not perform the autopsy, but who testifies based on independent review, does not violate the Confrontation Clause.

Neither *Smith v. Arizona*, nor the many Confrontation Clause cases preceding *Smith*, convert expert testimony to fact testimony. If a trial judge requires that the forensic pathologist who conducted the autopsy appear and testify to satisfy the Confrontation Clause, they are still medical doctors providing expert medical opinions based on specialized education, training, experience, and knowledge.

3. NAME affirms that forensic pathologists embrace courtroom testimony as part of their vocation regardless of their location at the time a subpoena is issued for testimony. NAME expects courts and litigants to provide reasonable advance notice and scheduling accommodations that recognize the essential public safety functions performed by forensic pathologists and the nationwide shortage of forensic pathologists.

When a forensic pathologist is improperly classified as a “fact witness” for purposes of compensation or scheduling, NAME supports seeking supervisory and judicial review to ensure appropriate expert designation and treatment. Accurate medicolegal death investigation, including cause and manner of death determination, depends on the ability of forensic pathologists to provide independent medical opinions grounded in specialized training and scientific analysis. Courts and litigants should treat such testimony accordingly.

NAME requests the following on behalf of its members:

- Provide assistance with air travel, lodging, accurate estimates of appearance date and time, trial preparation, and discussion of virtual testimony possibilities.
- Compensate the forensic pathologist at going expert witness rates in the jurisdiction as determined by the court based on fees charged in criminal and civil litigation as appropriate.
- Offices are encouraged to work with a staff forensic pathologist who is required to return for testimony and create a policy for handling out-of-town jurisdictional testimony. This may include, but is not limited to, the office seeking compensation from the litigant or prosecution for the forensic pathologist's time or the forensic pathologist taking personal time and seeking compensation from the litigant or prosecution directly through a fee agreement.

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