

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary
Action against JAMES C. BACKSTROM,
a Minnesota Attorney,
Registration No. 3797.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility, hereinafter Director, files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility. The Director alleges:

The above-named attorney, hereinafter respondent, was admitted to practice law in Minnesota on September 29, 1978. Respondent currently practices law in Dakota County, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

1. Nicole Beecroft was charged with first degree murder in connection with the death of her newborn child. The criminal charges against Beecroft were venued and tried in Washington County District Court. Beecroft was represented in the criminal proceedings by public defenders Luke Stellpflug and Christine Funk.

2. The prosecution alleged that Beecroft stabbed her newborn child to death. Stellpflug and Funk asserted in Beecroft's defense that her child was stillborn and, thus, Beecroft could not be guilty of first degree murder.

3. In preparing their defense of Beecroft, Stellpflug and Funk consulted with several forensic pathologists, including Susan Roe, M.D. Dr. Roe works for Regina Medical Center and also is an Assistant Medical Examiner for Dakota County. Dr. Roe was appointed to serve as Assistant Medical Examiner by Lindsey Thomas, M.D., who serves as the Medical Examiner for Dakota County as well as other Minnesota counties. Dr. Roe's consulting with Stellpflug and Funk was not undertaken in her official capacity as an Assistant Medical Examiner.

4. Stellpflug and Funk intended to utilize Dr. Roe's services at the Beecroft trial as both a consultant to assist them in understanding and responding to the prosecution's expert witnesses and as a possible rebuttal witness to testimony that might be offered by the prosecution.

5. On or about November 3, 2008, during the course of the Beecroft trial, Assistant Washington County Attorney Richard Hodsdon, acting nominally in his capacity as counsel to the Minnesota Sheriff's Association, sent an e-mail to all Minnesota sheriffs. That e-mail read:

I have been contacted by a few law enforcement people in a quiet in (sic) way that have heard rumor that Washington County may be the venue of a dispute between a few medical examiners and seeking some more data. In this posting I will be limited in my comments but if anyone is looking for more information you can call or contact me off list.

The County attorney is currently prosecuting a baby murder case in which the ME for Washington Ramsey County, Dr. McGee, that has been the ME for the County for a very long time will testify that the baby was born alive and stabbed to death with over 100 stab wounds. The ME office for two different counties have been disclosed and are scheduled to testify as defense witnesses to contradict the county's ME. I will leave it at that at this point.

6. Dakota County Sheriff Donald Gudmundson received Hodsdon's e-mail and, on November 3, 2008, forwarded it to respondent. That same day, respondent

replied to Gudmundson by email, stating that he (respondent) was disturbed by Thomas' and Roe's involvement in the matter and would discuss it with Thomas the next morning when he would see her at their budget hearings. However, respondent did not have the opportunity to discuss the matter with Dr. Thomas at the budget hearings on November 4.

7. On November 5, 2008, after first sending a draft to Sheriff Gudmundson for review and comment, respondent sent the following e-mail to Dr. Thomas, with copies to Sheriff Gudmundson and Dakota County Administrator Brandt Richardson:

-----Original Message-----

From: Backstrom, Jim [<mailto:Jim.Backstrom@CO.DAKOTA.MN.US>] Sent:

Wed 11/5/2008 4:38 PM

To: Thomas, Dr. Lindsey

Cc: Gudmundson, Don; Richardson, Brandt

Subject: medical examiners in dispute with each other- sensitive information

Lindsey:

I once again have received information about the testimony of you or a member of your office as a defense expert in a prosecution being conducted by one of my colleagues. I do not find this acceptable, particularly where the testimony being offered is in direct contradiction of the Ramsey County Medical Examiner (as is the case in the Washington County murder prosecution currently underway). My Office deals with the Ramsey County Medical Examiner's office on a routine basis - in fact Dr. McGee testified just two weeks ago in a grand jury case here in Hastings. By undermining the credibility of Dr. McGee, you are directly and adversely impacting the work of my Office. As I previously told you in my earlier email below relating to the Nicollet County case, I view this practice as a conflict of interest and inappropriate. The testimony of you or your assistants as defense experts in cases could not only be detrimental to the prosecution of the case in question, it could possibly have detrimental impact on prosecutions in this community based upon what might be said. And when you attack the findings of a medical examiner's office I directly deal with on a routine basis and upon whom I rely with great confidence all the time, you are adversely impacting my work as Dakota County Attorney.

I do not accept your position that there is nothing wrong with this practice, nor does Dakota County Sheriff Don Gudmundson, who I have discussed this matter with. I strongly suspect that Dakota County's police chiefs would have a similar view of this issue. If you wish to be a defense expert, you should not be a public official representing Dakota County as our Coroner. You are under no obligation to accept requests to testify as a defense expert - 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.

As I mentioned to you previously, this is no different than me expressing my opinion that a crime charged by the Ramsey County Attorney (for example) was inappropriate based upon my review of all of the facts and circumstances of the case. While experts and professionals can disagree, I would never second guess the decision of one of my colleagues as you seem to be doing in reference to one of your colleagues in this case. In fact, I would never accept a request to review the matter in the first place. Nor do you have to accept these requests. If you continue to do so, 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 the Dakota County Coroner.

Jim Backstrom

8. Upon receipt of respondent's November 5, 2008, e-mail, Dr. Thomas provided a copy of the e-mail to Dr. Roe.

9. Dr. Roe, as a result of the e-mail from respondent, felt that her and Dr. Thomas's continued employment by Dakota County was being threatened and immediately thereafter told Stellflug and Funk that she would no longer be able to work with them on the Beecroft matter.

10. Minnesota Statutes § 390.011 provides, "The coroner or medical examiner is an independent official of the county, subject only to appointment, removal, and budgeting by the county board."

11. Respondent's conduct violated Rule 8.4(d), Minnesota Rules of Professional Conduct.

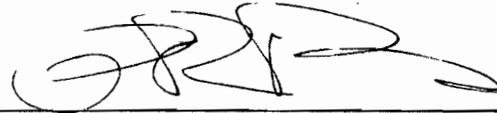
WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Dated: May 13, 2009.



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