

## **The Unique Responsibilities of Criminal Prosecutors**

by

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Lawyers who practice as criminal prosecutors, whether full-time or part-time, have unique responsibilities. Prosecutors have the discretion to determine the persons against whom to file charges, the nature of any charges to be brought and whether and how to plea bargain. With discretion comes responsibility.

Some of the unique responsibilities of criminal prosecutors are set forth in Rule 3.8 of the Minnesota Rules of Professional Conduct, which identifies a series of obligations that only apply to prosecutors.

There are also responsibilities unique to prosecutors not contained in the rules. For example, a prosecutor has certain statutory duties to crime victims as set forth in Minn. Stat. Ch. 611A. The prosecutor must make a reasonable and good faith effort to notify a crime victim of the contents of any plea agreement recommendation and must notify a crime victim of his or her right to be present at the sentencing hearing and to express to the court any objections the victim may have to the agreement or the proposed disposition. The failure to honor these responsibilities can constitute professional misconduct. An example based on a matter recently before the Office of Lawyers Professional Responsibility illustrates the point.

The lawyer prosecuted a case. After criminal charges were issued, the victim informed the prosecutor that the victim wanted the prosecutor to pursue a full conviction rather than a deferred disposition. Before trial, the prosecutor arranged to meet with the victim to discuss the victim's testimony at trial.

The day before that meeting, the prosecutor and defense counsel reached a plea agreement wherein the defendant would plead guilty to the charge in exchange for a one-year stay of adjudication conditioned upon good behavior. That same day, the prosecutor signed the plea agreement, which was then filed with the court. The prosecutor did not, however, notify the victim of the contents of the plea agreement or inform the court of the victim's opposition to any deferred disposition.

The prosecutor then met with the victim, who restated his opposition to any deferred disposition. After that meeting, the prosecutor neither attempted to contact the court to make it aware of the victim's objection to the plea agreement nor provide the victim with the opportunity to voice those objections directly to the court. The court signed and entered the plea agreement.

The prosecutor's conduct in failing either to make the court aware of the victim's objection to the plea agreement or to provide the victim with the opportunity to express his objections directly to the court violated Rule 8.4(d), which prohibits "conduct that is prejudicial to the administration of justice."

The victims' rights statutes operate not only to ensure that justice is served, but also to ensure that a crime victim has a voice in the ultimate disposition of the criminal matter. The inclusion of victims in the criminal prosecution process confers legitimacy upon the justice system and arguably helps to provide to victims a means of closure and satisfaction.

A failure on the part of a prosecutor to adhere to the victims' rights statutes can cause crime victims to lose faith in the legal system, an effect that necessarily prejudices the administration of justice.

Regardless of whether the ultimate disposition was appropriate, when a prosecutor knows that the victim of a crime does not agree with the recommended disposition, that disagreement must be made known to the court.

In short, in exercising the power of a criminal prosecutor, a lawyer must also take care to abide by the unique responsibilities of that position.