

The Role of the Prosecuting Attorney

To see that justice is done

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Prosecutors

US Attorney

ND Attorney General

States Attorney

Tribal Prosecutors

Municipal Attorneys

Special Prosecutors

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US Attorney

- Nation's principal federal litigators under the direction of the US Attorney General
- Chief federal law enforcement officer of the United States within his or her jurisdiction
- Appointed by and serve at the discretion of the President of the United States
- 93 US Attorneys

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US Attorney

- Three statutory responsibilities
 - Prosecution of criminal cases brought by the Federal Government
 - Prosecution and defense of civil cases in which the United States is a party
 - Collection of debts owed the Federal government which are administratively uncollectible

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Indian Country

The North Dakota United States Attorney's Office prosecutes all violent crimes that occur within ND reservations.

- Violent crimes include: murder, manslaughter, kidnapping, maiming, incest, assault with the intent to commit murder, assault with a dangerous weapon, assault resulting in serious injury, assault against an individual less than 16 years of age, arson, burglary, robbery, aggravated sexual abuse, sexual abuse, sexual abuse of a minor, abusive sexual contact, sexual abuse resulting in death, and other offenses as outlined in the United States Code
- Tribal prosecutors have jurisdiction over the code violations and crimes on the reservations that the US Attorney does not have jurisdiction over.

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North Dakota's Attorney General

- Highest law enforcement
- Consumer relations
- Public Safety
- Criminal Justice
- Licensing and gaming
- Alcohol/Toxicology Testing
- Numerous other roles
 - Written opinions on legal questions requested by certain parties)
 - Review every propose administrative rule /issue opinion on legality
 - Advise over 70 State agencies
 - Lots more

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State's Attorney

- Legal counsel and advisor to the County
- Provide legal guidance to the County Commissioners
- Act as prosecutor: Representing the state in criminal cases

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Chapter 11-16, NDCC (pertinent provisions) **State's Attorney**

- Attend the district court on behalf of the state
- Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses
- Grand Jury
- Draw the charging document - information and indictment
- Defend suits brought against the state or county
- Act as legal advisor of the Board of County Commissioners

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State's Attorney

- Elected therefore the political/social climate in a community can play a large role in their day-to-day activities
- Powers of the SA arise broadly from statute, case law, and procedure, and more specifically from traditions of the prior prosecutors
- Always attention paid to the most serious crimes
- Power to influence both public and private conduct, including a variety of social problems

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Rules of Professional Responsibility
Rule 3.8: Special Responsibilities of a Prosecutor
(Just a few of the provisions)

The prosecutor in a criminal case shall:

(a) **refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;**

(b) **make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;**

(c) **not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;**

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Responsibilities, con't.

(d) **make timely disclosure to the defense of all evidence or information known to the prosecutor** that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

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Responsibilities, con't

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, **refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused ...**

and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case **from making an extrajudicial statement that the prosecutor would be prohibited from making.**

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Responsibilities, con't

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

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State's Attorney Advise and Represent

- Every jurisdiction has its own customs and practices
- Every State's Attorney brings his or her own interests, skills, training and experience
- Understand the "local practice"

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Creating Successful Relationships with Partners in the Legal Process



Creating and maintaining a good working relationship with SA who is advocating your case (trust = shortcuts)



Speaking and learning each other's language



Communication!

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State's Attorney

- State's Attorney is independent and autonomous
- Instances may occur where staff/social workers and child protection team make recommendations and the SA does not follow

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Conclusion

- Their job is to see that justice is done.
 - Your role is important in support of kids and families.

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