News item

Federal Rules of Evidence update of Rule 502

Leanne N. Cupon DC

Treasurer - Council on Forensic Sciences, Roswell, GA 30076

It is prudent for the forensic examiner to review the Federal Rules of Evidence (FRE) periodically for new rules, new editions, and addendums. The rules by which a court determines what evidence is admissible at trial are called *rules of evidence*. In the United States, federal courts follow the FRE, whereas the state courts follow their own rules (generally imposed by the state legislature).

There are 11 articles with multiple rules contained in the FRE. The FRE are published as Title 28 of the United States Code and, therefore, can be found in any paper or electronic, annotated, or unannotated editions of the US Code ("United States Code"). A free, unannotated electronic version (2009) is posted on the Council on Forensic Sciences Web site at <http://www.forensic-sciences.org>.

This new FRE Rule 502 was recently signed into law and is entitled "Attorney-Client Privilege and Work Product: Limitations on Waiver" (http://www.uscourts.gov/rules/Congressional_Record_re_S2450.pdf). Rule 502 no longer allows partial or complete waiver of the attorney-client privilege and work product by intentional or inadvertent disclosures. Rule 502, Attorney-Client Privilege and Work Product: Limitations on Waiver can be found at <http://federalevidence.com/pdf/2008/10-Oct/PubLNo110-322.pdf>.

Consulting and testimonial evidence would not exist for the expert witness (forensic examiner) if there were no FRE. Under FRE, "...the expert witness performs two primary functions: 1) the scientific function—collecting, testing, and evaluating evidence and forming an opinion as to that evidence; and 2) the forensic function—communicating that opinion and its basis to the judge and jury."¹

As a forensic examiner, you should be cognizant that these 2 functions may be coupled with attorney work product (eg, writings, notes, memoranda, reports on conversations with the client or witness, research, and confidential materials that an attorney has developed while representing a client, particularly in preparation for trial), thus evoking Rule 502. Additional training (session 19, Law for the Forensic Examiner; part of the forensic requirement leading to a forensic diplomate [DABFP]) in the FRE can be found online at <http://www.ChiroCredit.com> (forensic diplomate 106-110).

Reference

1. Sapir GL. Qualifying the expert witness: a practical voir dire. Foren Mag [Internet]; 2007. Available from: <http://www.forensicmag.com/articles.asp?pid=132>.