



HENRY McMASTER
ATTORNEY GENERAL

August 11, 2010

The Honorable Gary Watts
Coroner, Richland County
P. O. Box 192
Columbia, South Carolina 29202

Dear Coroner Watts:

In a letter to this office you questioned whether your office "...is required to release a biological specimen collected from a decedent to any outside party by order of any court for the purposes of establishing paternity." You cited the "Preservation of Evidence Act", codified as S.C. Code Ann. §§ 17-28-300 et seq., in raising your question. You also questioned whether "if we are not required to release such specimen by order of the court, what procedure should be followed to inform the court of such refusal to release."

A prior opinion of this office dated July 1, 2004 stated as follows:

[w]e note at the outset certain fundamental principles governing obedience of court orders. Generally, "... a court order must be followed unless and until judicially modified or set aside on appeal." Op. S.C. Atty. Gen., March 18, 2003. As we stated in an Opinion, dated May 8, 1995, "... an order, judgment, or decree of a court having jurisdiction of the parties and the subject matter ... must be obeyed by the parties until it is reversed, modified, or vacated by direct, orderly and proper proceedings ...". In that same opinion, we emphasized that "disobedience of an order made by a court within its jurisdiction and power is contempt, although the order may be clearly erroneous, or defendant may sincerely believe that the order is ineffective and will finally be vacated, and even though the act on which the order is based is void." Id. Relief from any judicial order should be sought through the courts rather than through disobedience of the order as "[c]ourts have no more important function to perform in the administration of justice than to ensure their orders are obeyed." State v. Bevilacqua, 316 S.C. 122, 128, 447 S.E.2d 213, 216 (Ct. App. 1994).

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In the opinion of this office, these same principles apply with equal force to your situation regarding a court order requiring you to release a biological specimen to an outside party. Therefore, such order must be followed unless it is reversed, modified, or vacated by proper proceedings.

With kind regards, I am,

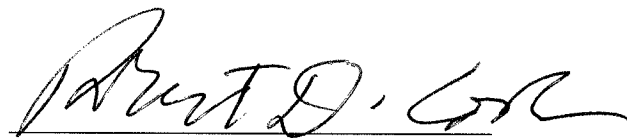
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General