



ATTORNEY GENERAL JOSH STEIN

August 2, 2017

Kimberly Robb
President of the North Carolina Conference of District Attorneys
District Attorney's Office
Post Office Box 8185
Greenville, North Carolina 27835-8185

Re: Budget Cut's Effect on Criminal Justice Matters

Dear District Attorney Robb:

The General Assembly's \$10 million budget cut to the Attorney General's office will affect the ability of the Department of Justice (DOJ) to provide legal services that protect the public and the taxpayer. While we worked hard to minimize its impact on criminal justice matters, the reduction in force will have a significant effect, forcing the DOJ to take several measures relevant to district attorneys and the court system. Our office does not want to make these changes, but we simply do not have the funding support from the legislature to maintain our current level of work.

First, the cut forces DOJ to redirect some criminal appeals to your offices. Pursuant to N.C. Gen. Stat. § 114-2(1), the Attorney General has historically appeared for the State in all Appellate Division criminal matters. However, N.C. Const. Art. IV, § 18(1) and N.C. Gen. Stat. § 7A-61 provide that a district attorney "shall . . . perform such duties related to appeals . . . as the Attorney General may require." Therefore, we ask that each district attorney handle representation of the State in direct criminal appeals arising from their district at the Court of Appeals involving (1) misdemeanors other than driving while impaired cases and (2) probation revocations. Representation by district attorneys in these cases will include briefing and appearances for oral arguments as necessary. We intend, as staffing allows, to be a resource for you as your offices begin to handle these appeals. Further details of this plan will be forthcoming.

Second, as we restructure the DOJ's Criminal Division, our reduction in staff may require us to return to the district attorneys the responsibility for representing the State on non-Racial Justice Act motions for appropriate relief filed in Superior Court in capital cases. For many years, our office has handled those at the request of a district attorney as a courtesy. Our office will continue to represent the State when a defendant seeks appellate review of any order on a motion for appropriate relief and during federal habeas corpus proceedings.

The third measure involves the work of our prosecutors who handle prosecutions of conflict or complex cases referred to our office by district attorneys. We will continue to handle some of these cases, but due to reductions in force at the DOJ, the number of such case will be reduced. We will review the current DOJ policy on referrals and share any changes with you as soon as possible.

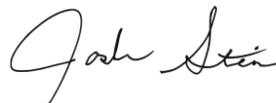
Fourth, the DOJ will no longer be able to respond to pro se petitions for extraordinary writs filed in the North Carolina Court of Appeals. There are as many as 800 such petitions filed each year, many of which are filed by prisoners seeking review after the denial of motions for appropriate relief in Superior Court. The vast majority are meritless. While we have had a long-standing practice at the Court of Appeals of responding to all such petitions, there is no requirement that the State respond and we will no longer be able to do so.

These changes will take effect on September 1, 2017. Although we hope no additional measures will be necessary, we cannot guarantee that, as we transition to a smaller staff. If we are forced to incur further reductions in force, we may have to refer to district attorneys additional criminal appeals, such as felony cases in which the defendants received a suspended sentence and other low level felonies. We also may be forced to apply an even tighter screen on requests from district attorneys for the DOJ to handle prosecutions in conflict or complex cases. We recognize and regret that it is challenging to plan with this level of uncertainty and will work closely with each district attorney if and when additional changes become necessary.

The DOJ does not want to make these changes. We oppose the budget cuts that have precipitated them. Ensuring that justice is achieved at trial and that criminal convictions are preserved on appeal is essential to protecting the public. We believe that the people of North Carolina and our criminal justice system are best served when the DOJ handles all eligible referrals to prosecute and all criminal appeals in the appellate courts. Doing so enhances consistency in legal approach at the appellate level and enables district attorneys to focus their limited resources on their essential trial work.

For many decades, the district attorneys and the DOJ have had a constructive working relationship to achieve justice for crime victims. My office stands ready to continue working with district attorneys even as the budget cuts change the way we accomplish this critical objective. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Josh Stein".

Josh Stein