

NEWS RELEASE

Released by: Gordon J. MacDonald, Attorney General

Subject: Supervision of Criminal Law Enforcement Functions at the Hillsborough
County Attorney's Office

Date: Monday, June 8, 2020

Contact: Kate Giaquinto, Director of Communications
Kate.Giaquinto@doj.nh.gov / (603) 573-6103

Jane E. Young, Deputy Attorney General
Jane.Young@doj.nh.gov

Concord, NH -- Attorney General Gordon J. MacDonald today issued the attached letter to Hillsborough County Attorney Michael Conlon terminating his Office's day-to-day supervision of the criminal law enforcement functions in Hillsborough County.

###

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

June 8, 2020

County Attorney Michael Conlon
Hillsborough County Attorney's Office
300 Chestnut Street
Manchester, NH 03101

Dear County Attorney Conlon:

This letter describes the efforts we have jointly undertaken since September 6, 2019, to improve the prosecutorial functions of the Hillsborough County Attorney's Office. Based on those efforts and a continued commitment to working together to build on those improvements that have been made, the Attorney General's day-to-day supervision of the criminal law enforcement functions in Hillsborough County by this Office is hereby terminated effective immediately.

A. Background

1. Authority of the Attorney General

The New Hampshire Attorney General has ultimate responsibility for all criminal prosecutions in the state. *See* RSA 7:6 ("The attorney general shall have and exercise general supervision of the criminal cases pending before the supreme and superior courts of the state, and with the aid of the county attorneys, the attorney general shall enforce the criminal laws of the state."). This responsibility has roots in the historic, common law authority of the Attorney General, an office that has existed in New Hampshire since 1683. *See Fletcher v. Merrimack County*, 71 N.H. 96, 100 (1901) ("Among the powers and duties of the office [of Attorney General] by the common law was the prosecution of persons for crimes and misdemeanors.").

In the late 1700s, counties were created and an office known as the "county solicitor" emerged. *Id.* at 99. County solicitors were later renamed "county attorneys," *see* N.H. Const. part II, art. 71, but it has long been clear that they operated subject to the direction of the Attorney General, *see Fletcher*, 71 N.H. at 101-02 (county solicitors are considered the Attorney General's "deputies as so far as local criminal proceedings are concerned"). Current statutory law restates these basic principles: "The county attorney of each county shall be under the

direction of the attorney general, and, in the absence of the latter, he or she shall perform all the duties of the attorney general's office for the county." RSA 7:34.

2. Historic Relationship Between Attorneys General and County Attorneys

As a general matter, the Attorney General is not directly involved in the day-to-day operations and prosecutorial decisions made by county attorneys or their assistants. However, the Attorney General's Office has a long tradition and practice of collaboration with county attorneys on a variety of cases and matters. The Attorney General convenes regular meetings of the county attorneys. On a more informal basis, lawyers in the Attorney General's Office serve as a daily resource for county prosecutors. The Attorney General represents the State in all criminal appeals before the Supreme Court, *see* RSA 7:6, the overwhelming majority of these cases are prosecuted at the county level. There is a recently created position within the Attorney General's Office dedicated to implementing and establishing a training program for county and local prosecutors. RSA 21-M:8, III.

Notwithstanding this collaboration, the ultimate supervisory authority of the Attorney General over county prosecutions is an essential element of the criminal justice system in New Hampshire. As you know, upon request, the Attorney General will review county cases to ensure that prosecutorial discretion was exercised in conformance with the law and applicable standards. The Attorney General will assume prosecution of cases that may outstrip the resources of a county attorney as, for instance in the case involving events at the former Youth Development Center in Manchester. And, when circumstances have warranted, the Attorney General has, over the years, provided direct supervision and significant day-to-day prosecutorial support in Carroll, Grafton and Rockingham Counties and, since September 2019, in Hillsborough County.

3. Issues Involving the Hillsborough County Attorney's Office

I became Attorney General in April 2017. My concerns about the prosecutorial functions of the Hillsborough County Attorney's Office began to develop soon thereafter. First, there were concerns raised about the Manchester City Solicitor's Domestic Violence Prosecution Unit. The Hillsborough County Attorney was the first level of supervision responsible for the integrity of prosecutions at the local level. Despite this oversight responsibility, the County Attorney did not exercise the requisite oversight, and this Office was forced to investigate and address the allegations of mismanagement and mishandling of domestic violence cases. Second, in August 2018, key stakeholders, including members of law enforcement, the judiciary, and advocates for victims of crime contacted this Office about serious and sustained shortcomings of the County Attorney's Office. In response, this Office initiated a review. These concerns and this review obviously arose before you were elected as County Attorney in November 2018.

The results of the review were set forth in a letter to you dated March 1, 2019. The review concluded that the County Attorney's Office lacked a functional organizational structure

and was devoid of office policies and procedures specific to the prosecutorial function of the office. We recommended that you:

- Hire experienced prosecutors to assist with management of the office and to supervise, train and assist prosecutors in the office with pretrial litigation and trial practice;
- Create effective, prosecution-specific policies and procedures;
- Implement a case assignment and management system;
- Implement an effective organizational structure; and
- Implement a system for oversight and approval of sentencing recommendations.

Because you were new to the office and had no prior criminal law experience, I felt it was important to give you an opportunity to address these recommendations. You did make progress on some fronts, particularly with respect to advocating for more resources. Nonetheless, by September 2019, it became apparent to me that systemic issues within the office – many of which predated your tenure – were undermining the prosecutorial function to a very significant extent. I determined that my statutory and common law duties described above required the Office of Attorney General to assume the prosecutorial function in Hillsborough County.

B. The Role of the Attorney General's Office Since September 9, 2019

On September 9, 2019, this Office assumed day-to-day responsibility for the prosecutorial functions in Hillsborough County. Broadly speaking, the objectives were twofold: first, to provide ongoing supervision, support, training and mentoring to your assistant county attorneys as they continued to discharge their day-to-day responsibilities, and; second, to work collaboratively with you to address the systemic issues that had long been undermining the prosecutorial function of your office. I will describe those efforts in more detail below.

1. Attorney Resources Assigned to Hillsborough County

I immediately assigned Senior Assistant Attorney General Benjamin Agati and Assistant Attorney General Erin Fitzgerald to your office to provide leadership and support to the highly dedicated assistant county attorneys, victim advocates, and legal assistants. Attorneys Agati and Fitzgerald are prosecutors in this Office's Criminal Justice Bureau. Earlier in their careers, they had both worked in county attorney offices. I note that this assignment came at a time of unprecedented demands in this Office driven in significant part by a large increase in homicides (a crime exclusively prosecuted by the Attorney General's Office) in 2019.¹

¹ Unfortunately, the Executive Council denied my request to appoint a highly respected and qualified attorney who would have been exclusively dedicated to this function. Undeterred, Attorneys Agati and Fitzgerald continued in

They were later joined by Senior Assistant Attorney General David Rotman who, in late September, began work as this Office's first prosecutor dedicated to the training and professional development of county and local prosecutors under a newly enacted statute. *See* RSA 21-M:8, III. Prior to joining this Office, Attorney Rotman had spent more than twenty years as a prosecutor in Merrimack and Strafford Counties. Attorney Rotman has been in Hillsborough County on a full-time basis since September.

In addition, Associate Attorney General Jeffery Strelzin, who serves as the Director of Public Protection, has met with you one-on-one on multiple occasions to discuss prosecution and office issues and to assist with criminal practice and procedure. He has made himself available on a 24/7 basis to assist you. Attorney Strelzin has decades of experience in prosecuting some of the most serious crimes in our state. He, too, spent part of his career as an assistant county attorney.

2. Development of Policies and Procedures

This Office reviewed and revised prosecution-specific policies and procedures specifically for the Hillsborough County Attorney's Office. Those policies and procedures are approved for immediate implementation.

3. Development of Case Intake and Assignment Procedures

This Office worked with you and leaders of the law enforcement community to establish new procedures for case intake, assignment, and tracking. Those procedures are approved for immediate implementation.

4. Implementation of Ongoing Training and Professional Development for Assistant County Attorneys

This Office has provided ongoing training for assistant county attorneys. Specifically, Attorney Rotman has provided countless one-on-one training sessions to various assistant county attorneys. In addition, through the National Attorney General Training and Research Institute, we have made national training opportunities available to you and to your first assistant. This training will continue to be provided by Attorney Rotman.

5. Implementation of Plea Agreement Review

Beginning in October 2019, this Office implemented a system for the review and approval of plea offers "in cases with a Class A felony charge and/or a charge of violence with a victim, i.e., sexual/physical assault." Almost all of the assistants have readily discussed their

this assignment – while simultaneously managing their significant caseloads in this Office – all at great personal sacrifice. I thank them for their extraordinary efforts.

cases and plea offers and sought approval from members of this Office for plea recommendations. This review policy must remain in effect with you and/or a first assistant county attorney approving any such plea prior to an offer being extended.

6. Implementation of Liaison with the Manchester Police Department

This Office facilitated establishing a liaison with the Manchester Police Department. Manchester is the largest community in Hillsborough County, and its police department is the largest law enforcement agency with which the Hillsborough County Attorney's Office works. In order to enhance case coordination and follow-up on requests for additional investigation as well as discovery issues, your office must continue this relationship with the Manchester Police Department. You are strongly encouraged to consider if this model should be implemented with other police departments. I encourage you to discuss this at the next Hillsborough County Chiefs' meeting occurring on June 18, 2020.

7. Assistance with Prosecutions

This Office worked with you and your assistants to address a myriad of issues raised by law enforcement agencies and crime victims in numerous cases. We also assisted in presenting indictments to the grand jury.

C. Future Steps

In light of the progress made to date and in anticipation of future progress, I am terminating this Office's day-to-day supervision of the prosecutorial functions in Hillsborough County effective immediately. However, I will remain engaged with your office in order to build on the substantial progress that has been made. I look forward to working collaboratively on the following issues:

- 1. Continued Refinement and Enhancement of Policies and Procedures**
- 2. Continued Implementation of Training and Professional Development Programs**
- 3. Continued Engagement with Law Enforcement Agencies Regarding Communication on Cases and Legal Guidance**
- 4. Continued Implementation and Improvement with Respect to Case Assignment, Tracking, and Management**
- 5. Continued Assistance with Case Specific Issues, Including Charging and Plea Decisions**

County Attorney Michael Conlon

June 8, 2020

Page 6 of 6

In addition to the foregoing five points, Associate Attorney General Strelzin will continue to be available to you at any time – day or night – to assist with issues relating to prosecution or office management. I hope you will continue to draw on Attorney Strelzin's exceptional experience and expertise. Attorney Rotman will be present in your offices at least two days per week to provide ongoing support and training to your assistants.

I strongly encourage your ongoing efforts to address staffing shortages by filling vacancies as quickly as possible. I also encourage and support any effort to advocate for additional personnel, including prosecutors in your office. We continue to encourage you to hire an experienced prosecutor to assist with the management of the office on a day-to-day basis as well as to supervise, train and assist the assistant county attorneys with pretrial litigation and trial procedure. If I can be personally helpful in advocating for these additional resources, I stand ready to assist you.

D. Conclusion

I am confident that we share the objective of doing all we can to protect the people of Hillsborough County. Your office serves a vital role in advancing that objective. You have a team of highly dedicated assistants, advocates, investigators and legal assistants and I appreciate their efforts.

Thank you for your cooperation and assistance over the last ten months. I look forward to continuing our work to build upon the improvements that have been made and to ensure that justice is achieved for the people of Hillsborough County.

Sincerely,



Gordon J. MacDonald
Attorney General

cc: Deputy Attorney General Jane E. Young
Associate Attorney General Jeffery A. Strelzin
Senior Assistant Attorney General Geoffrey W.R. Ward
Hillsborough County Commissioner Toni H. Pappas
Hillsborough County Commissioner Roland H. Rowe
Hillsborough County Commissioner Paul G. Bergeron
Carolyn M. Kirby, Legal Counsel, Hillsborough County

#2727986