

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

September 6, 2019

VIA ELECTRONIC MAIL (MConlon@hcnh.org)

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

***Re: Attorney General's Assumption of the Control, Direction, and Supervision of
Criminal Law Enforcement Functions in Hillsborough County***

Dear County Attorney Conlon:

Thank you for meeting with Deputy Attorney General Jane E. Young and me on Tuesday, September 3, 2019, to discuss this Office's most recent concerns regarding your handling of the prosecutorial functions of the Hillsborough County Attorney's Office and in particular, the recent pleas in *State v. Christen Gelinias* and *State v. Joshua Garvey*.

RSA 7:6 provides in part:

The attorney general shall have and exercise general supervision of the criminal cases pending before the . . . superior courts of the state, and with the aid of the county attorneys, the attorney general shall enforce the criminal laws of the state.

Furthermore, RSA 7:11 provides in part:

Nothing [in this statute] shall relieve any officer or person of any duty prescribed by law relative to the enforcement of any criminal law, but such officer or person, in the enforcement of such law, **shall be subject to the control of the attorney general whenever in the discretion of the latter he shall see fit to exercise the same.**

(Emphasis added).

Lastly, RSA 7:34 provides in part:

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.

Based on these legislative directives concerning the plenary authority of the Attorney General to enforce the criminal laws, the New Hampshire Supreme Court has held:

The three sections of RSA ch. 7 which have been quoted above all add up to more than the power of advice, recommendation and exhortation. The power of general supervision given by RSA 7:6 has existed at least since 1881 (Laws 1881, c. 82, s. 1); the authority to control criminal law enforcement officers under RSA 7:11 has existed since 1911 and the provision that [...] county attorneys, shall be under the direction of the Attorney General has likewise been in effect for more than half a century. Construed together they demonstrate a legislative purpose to place ultimate responsibility for criminal law enforcement in the Attorney General, and to give him the power to control, direct and supervise criminal law enforcement by the county attorneys in cases where he deems it in the public interest.

Wyman v. Danais, 101 N.H. 487, 490 (1958). As the forgoing authorities make clear, the Attorney General has the authority to control, direct, and supervise the law enforcement functions of your Office.

During our conversation on Tuesday, we reviewed our concerns with respect to your handling and oversight of several critical matters as the ultimate authority within your Office, including the recent *Garvey* and *Gelinas* cases, as well as the prior cases of *State v. Christopher Ahearn* (see letter of March 14, 2019 enclosed), and *State v. Damien Seace* (see letter of July 25, 2019 enclosed), among others. As you acknowledged, prosecutors in your office have made critical decisions with respect to the disposition of these matters without your involvement or knowledge, without consulting with the investigating agency, and in some instances, without informing the victim(s).

These ongoing issues evidence systemic failures in the leadership of the prosecutorial function of your Office. Despite my Office's repeated efforts to provide any assistance necessary to enable you to effectively execute the responsibilities of your Office, there has been no improvement. The administration of justice and the protection of the people of Hillsborough County requires swift action to ensure there is adequate leadership and oversight of prosecutorial functions.

Given these repeated failures, I conclude that it is necessary to assume control, direction, and supervision of the day-to-day criminal law enforcement functions of your Office.


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Consequently, I will be designating an Assistant Attorney General to discharge this responsibility. Today, I am beginning the process of appointing David Mara as an Assistant Attorney General for the purpose of this assignment. Attorney Mara is a former Chief of Police in Manchester, a former Interim Chief of Police in Portsmouth and, most recently, the Governor's Advisor on Addiction and Behavioral Health. During his nearly 30-year career with the Manchester Police Department, Attorney Mara served as a prosecutor and supervisor of the legal division of the Manchester Police Department.

Attorney Mara will report directly to me or, in my absence, Deputy Attorney General Young. Pending his appointment, Deputy Attorney General Young, Senior Assistant Attorney General Benjamin Agati, and Assistant Attorney General Erin Fitzgerald will be dispatched to the Hillsborough County Attorney's Offices to discharge these duties, to conduct an assessment of the needs of the Office, and to provide leadership and support to the dedicated assistant county attorneys, advocates, and professional legal assistants. Deputy Attorney General Young will be at your office on Monday, September 9, 2019. This assignment will continue until I notify you otherwise.

I trust you will be cooperative with this process.

Sincerely,



Gordon J. MacDonald
Attorney General

Enclosures

cc: *Sent via electronic mail to:*

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

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GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 14, 2019

**SENT VIA ELECTRONIC MAIL (MCONLON@HCNH.ORG)
AND REGULAR U.S. MAIL**

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

Re: State of New Hampshire v. Christopher Ahern

Dear County Attorney Conlon:

Thank you and Assistant County Attorney Andrew Ouellette for meeting with Deputy Attorney General Jane E. Young, Associate Attorney General Jeffery Strelzin, Senior Assistant Attorney General Geoffrey Ward, Chief Bradley Osgood, other members of the Concord Police Department and me on March 1, 2019, to discuss the above-captioned case. I appreciate the frank and open exchange of information during the meeting. Nonetheless, I write to express three concerns about the handling of this case and its consequences.

First, we are unaware of any legal authority that would permit making the conditional *not pros* agreement in this case confidential. It is an essential component of our criminal justice system that the public is aware of the crimes charged and the disposition of those cases. Entering into the confidentiality provision based on the facts of this case violated a core tenet of our obligation to inform the public of the work we do as prosecutors.

Second, the victim was not notified of the confidentiality provision. It was represented during the meeting that the victim was consulted prior to entering into the agreement where the charges were conditionally *not pros*sed. However, Assistant

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County Attorney Ouellette stated during our meeting that he failed to consult the victim prior to agreeing that the terms of the agreement were confidential.

It was only after the agreement was signed and the charges were *not proessed* that the victim was told about the confidentiality provision and was directed not discuss the terms of the agreement with any third parties. Those present at the meeting from the Concord Police Department represented that based on their subsequent conversations with the victim, she indicated that she would not have been in agreement with the conditional *not pros* disposition had she been aware that the terms of the agreement would be confidential.

This failure to inform the victim about this provision prior to entering into the agreement violated the victim's rights as set forth in RSA 21-M:8-k, which provides in part:

- II. To the extent that they can be reasonably guaranteed by the courts and by law enforcement and correctional authorities, and are not inconsistent with the constitutional or statutory rights of the accused, crime victims are entitled to the following rights:
 - (f) The right to confer with the prosecution and to be consulted about the disposition of the case, including plea bargaining.

Third, particularly in light of the confidentiality provision, this agreement lacks any meaningful method of enforcement. A confidentiality agreement such as this requires a victim to remain silent and is, in essence, protecting the defendant from the public knowing what conditions he must abide by pursuant to the conditional *not pros*. The confidentiality provision will stymie law enforcement's ability to respond to violations of the agreement. It also has potential long-term impacts on the victim with respect to the victim's ability to discuss the terms during other court proceedings where they may be relevant, including, but not limited to, matters related to child custody, restraining orders, or divorce.

In light of these concerns, I ask that you take the following steps:

1. Ensure that the conditional *not pros* agreement in this matter conforms to the law, including the public's right to know;
2. Ensure that there is an effective mechanism to enforce this conditional *not pros* agreement; and
3. Ensure that the prosecutors in your office are fully aware of the obligations pursuant to RSA 21-M:8-k.

County Attorney Michael Conlon
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Sincerely,



Gordon J. MacDonald
Attorney General

cc: Deputy Attorney General Jane E. Young
Associate Attorney General Jeffery Strelzin
Senior Assistant Attorney General Geoffrey Ward
Chief Bradley Osgood, Concord Police Department
Lieutenant Sean Ford, Concord Police Department

#2322124

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GORDON J. MACDONALD
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

July 25, 2019

*Sent via electronic mail (mconlon@hcnh.org)
and facsimile 603.627.5627*

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

Re: Damien Seace

Dear County Attorney Conlon:

Thank you for providing your files on Damien Seace. When you spoke with Deputy Attorney General Jane Young yesterday, you stated to her that you were not aware that the charges against Mr. Seace stemming from his arrest on October 29, 2019, had been *nol prossed* by your office on February 13, 2019. Those charges were as follows:

- Charge 1557952C: Second Degree Assault-Strangulation
- Charge 1557953C: Obstructing Report of Crime
- Charge 1557954C: Criminal Threatening-Terrorize (telling victim he was going to murder and bury her)
- Charge 1557955C: Simple Assault Domestic

The prosecution of domestic violence cases requires working with some of the most vulnerable victims in the criminal justice system. These cases also provide unique challenges. Victims often engage in counterintuitive behaviors, can be reluctant witnesses, and frequently recant due to both the direct and indirect pressures applied on victims by perpetrators. That is why it is important that the cases are carefully reviewed prior to any charges being *nol prossed*. In order to ensure that a *nol pros* is the only available option, effective immediately, I am directing that you personally approve the

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nol pros of any charge within your office. Any such approval must be accompanied by an explanation in the file outlining the reasoning for the *nol pros*. Your analysis must include a determination of whether the particular case can be proven without the testimony of the victim.

I am also directing that, within thirty days, you implement a protocol which establishes an internal process for approving any *nol pros* in your office. Please provide me with a copy of that protocol once it is in effect.

We stand ready to assist with the implementation of these directives. If you have any questions, please contact me.

Sincerely,



Gordon J. MacDonald
Attorney General

cc: Deputy Attorney General Jane E. Young
Senior Assistant Attorney General Geoffrey Ward
Lynda Ruel, Director of the Office of Victim/Witness Assistance

#2455671