

Arkansas Public Defender Commission

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Governor Sarah Huckabee Sanders
State of Arkansas
500 Woodlane Ave.
Room 250
Little Rock, AR 72201

RE: Arkansas Public Defender Commission

Dear Governor Sanders:

I can think of so many other actions pertaining to my position I would rather be performing than writing this letter. Unfortunately, the situation the attorneys and staff of the Arkansas Public Defender Commission necessitates I come directly to you seeking assistance.

In 2012, the Board of my Commissioners who are appointed by the Governor's Office, conferred upon me the honor of becoming the Executive Director of the Arkansas Public Defender Commission. Having practiced criminal law since 1987 as a deputy prosecutor, public defender or private practitioner, I knew I could bring the perspective of an attorney who has seen both sides of our criminal justice system. While our system is duly one of an adversarial nature, it also requires both prosecution and defense have a professional working relationship based upon the sheer volume of cases we encounter. It is a difficult concept for many to understand as to how opposing sides, namely attorneys, can have that type of relationship in representing their clients. And regrettably while there are times it may occur, we strive to keep personal opinions and innuendos from having any place in legal discussions.

The Arkansas Public Defender Commission became a state agency in 1998. The State of Arkansas assumed the responsibility of paying salaries while leaving the obligation for maintenance and operation with local county government which remains today pursuant to A.C.A.

§16-87-302. With the assistance of the Bureau of Legislative Research, I have been able to determine through SB313 of 1997, we were allotted approximately 104 attorney positions for our offices throughout the state in 1998. Looking forward, Act 1007 of 2021 provided for the total of 179 attorney positions for an increase of 75 positions over a 25-year period. I must also point out this figure includes myself and approximately fifteen (15) attorney positions within my office who handle capital murder cases statewide involving the death penalty, appeals, research, and assistance to our county offices. So, in essence, since 1998, the Commission has seen an increase in attorney positions which basically equates to less than one (1) additional attorney per county despite the technological advances society has developed as well as the dramatic increase in arrests.

I was present at your swearing-in ceremony, and upon learning of the pending hiring freeze, I immediately sent an email to OPM asking if an exception could be sought forthwith for the Commission. We acquired a similar exception under Governor Hutchinson due to the number of frequent and continuous requests we submitted to fill positions. Being short just one (1) attorney who is responsible for representing 100's of clients at any given moment impacts our court system immensely.

Since January 10, 2023, I have had several communications with OPM and no less than four (4) conversations with members of your staff seeking assistance in this endeavor. All have been attentive to my concerns and more than courteous. I was told to expect an addition to your Executive Order, and when I received the updated Memorandum from Kay Barnhill on January 24, 2023, I was hopeful the Commission could begin filling its vacant positions. However, I felt it necessary to confirm that our funding, State Central Services, is different from General Revenue before beginning to post any vacancies. Regrettably, Ms. Barnhill promptly advised State Central Services positions and General Revenue positions have been treated the same.

The Commission presently has eighteen (18) vacant attorney positions with notice from three (3) additional attorneys of their intention to vacate their position. Two (2) of these will occur next week, and the third on February 24, 2023, bringing the total to twenty-one (21). This does not include the additional eleven (11) investigator, mitigation, IT, and legal support positions.

Yesterday, I was notified that a District Court Judge, in a district where we currently have two (2) attorney vacancies, appointed me to represent clients she found to be indigent. The location of the Court is 173 miles from Little Rock. I have no reservations about appearing in court, and presently, have taken on two (2) capital murder cases myself due to the extreme caseload our public defenders are carrying as well as to ensure our clients' 6th Amendment rights are protected. However, I am confident there are cases of which I have no knowledge where defendants' protections afforded them by the Arkansas and U.S. Constitutions are incarcerated hoping an attorney can meet with them. I make this assertion based upon the phone calls I receive daily from public defenders, judges and clients. I have no illusions in asserting that time is definitely a precious commodity when you are a public defender.

For your review, I am enclosing a pamphlet I had prepared in November, 2021. I acknowledge it is approximately 14 months old, but the basic information such as positions, location, and salaries has changed very slightly for public defenders. Page 18, which details the salary differentials between public defenders, reflects a total of approximately \$10m disparity. There are numerous instances you will find where the deputy prosecuting attorney working part time in a low-grade position is making a higher salary than a full-time public defender in a higher graded position, both with comparable service and experience. In essence, the State of Arkansas is providing a financial incentive for experienced public defenders to become deputy prosecutors, all to the detriment of our indigent clients, and I estimate over the past year, we have lost in excess of ten (10) experienced public defenders to prosecutor offices. Please allow me to add the pamphlet does not include any positions from funding which prosecutors and the Commission received in ARPA funds.

The information representative of our Prosecuting Attorney offices was provided with the cooperation and assistance of the Arkansas Prosecutor Coordinator Bob McMahan. We likewise shared our information with him.

Because of the aforementioned, there are many counties within our state where no public defender is present. Speaking from personal experience, when I was the manager in the 13th Judicial District, I can personally attest having court in three (3) of the six (6) counties within the district on the same day for this very reason. Travel for public defenders remains a constant to this day in any judicial district having three (3) or more counties although on a smaller scale as we are unable to find attorneys who live within the county of need willing to take on the caseload for the salary offered.

Our state has set the foundation for an outstanding Public Defender agency, and with the obstacles we face daily, I am extremely proud of the effort and perseverance of our attorneys despite being morally bankrupt, insulted by unappreciative clients, and rarely given the respect due an officer of the court. We engage our clients in locations which are less than ideal, routinely visit jails where we encounter mentally ill clients who lack the ability to care for themselves, encounter clients who throw feces, and then suffer the allegation in open court that we are working with our counterpart to insure incarceration. I will also mention I could detail much worse situations which have been recorded on video that posed an immediate safety issue for our attorneys, but we recognize we are the guardians and protectors of the rights granted to every citizen by our forefathers.

An adequately funded and staffed public defender system does not mean we care more about an accused rights than we do those of a victim. It is an indication we recognize the oath we took to uphold the Arkansas and U.S. Constitutions, neither of which exempts the 6th Amendment. It is an indication that we remember *Gideon v. Wainwright*, a decision which turns 60 later this year, which set the stage for appointed counsel. It is also an acknowledgement that a poor person, despite his/her crime, is afforded the same constitutional protections as the person with enormous wealth and assets who might be charged with the same crime. Public defenders are a vital component of our criminal justice system. Conservative estimations show we represent a minimum of 80% of all criminal defendants charged with a felony. In my conversations with an

elected prosecutor last week at the Capitol, he opined when his deputy prosecutors engage with good public defenders, it strengthens his office and the entire criminal justice system. After all, justice in whatever form it arrives, is what we should all be seeking.

When I met with Ms. Conger and Mr. Ritchie shortly before the transition, I made mention of several items I felt your administration should be made aware of from day one. I feel one of those items is worth repeating.

For the past few years, a national study has been ongoing which involves prosecutors, public defenders, private attorneys, district court judges, law enforcement and many other participants within the criminal justice system. The Rand Corporation, as I understand, has actively funded the study which involves 19 states. From the input of everyone involved, the findings of the study are expected to be published in February, 2023. This study is meant to replace the 1973 NAC findings as to a proper caseload for defense attorneys. I am advised this study will place emphasis on the average amount of time expected to be spent on a case by a defense attorney as opposed to the number of cases an attorney should handle annually. Obviously, the type of case will determine the average amount of time expected. I have very strong concerns once public defenders review this study, combine it with the ethical opinion on caseloads by the Arkansas Office of Ethics Counsel, a copy of which I have also enclosed, it opens the possibility of public defenders asserting they cannot accept additional appointments as it would violate their ethical obligation, and subject them to complaint(s) with the Committee on Professional Conduct which could have an impact on their attorney license. Should this occur, the impact could have devastating consequences.

These are just a few of the issues public defenders are facing over which they have no control. These are the same issues I am on record raising with our legislators since I became Executive Director and will continue to do so every opportunity that arises. *But my immediate plea is to seek an exemption to the hiring freeze so that I can begin to find attorneys to represent indigent clients across our state.*

Thank you for your time in reviewing this correspondence, and your consideration of my request. I apologize for its length, but these are not simple issues. Should you or a member of your staff desire to meet with me, I am always available. Several members of your staff, including your receptionist, have my cell number.

Sincerely,

Gregg E. Parrish

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Enclosures