



# MISSOURI STATE PUBLIC DEFENDER OFFICE OF THE DIRECTOR

August 2, 2016

The Honorable Jay Nixon  
Governor of Missouri  
P.O. Box 720  
Jefferson City, Missouri 65102

Dear Governor Nixon:

Seven years ago, your office vetoed Senate Committee Substitute for Senate Bill No. 37, which would have provided caseload relief to an overburdened public defender system. In denying that relief, you acknowledged that MSPD was operating "under significant stresses" and committed to working with the General Assembly to fix the problem, but never did.

Instead, you have repeatedly cut funding for an indigent defense system that continues to rank 49<sup>th</sup> in the U.S., with a budget that the consumer price index indicates has less value now than it did in 2009. After cutting \$3.47 million from public defense in 2015, you now cite fiscal discipline as reason to again restrict MSPD's budget, this time by 8.5%. However, and despite claims that revenues are considerably less than expected, you did not restrict a single dollar from your own budget, and the average withhold from 12 of your executive agencies does not even add up to one half of one percent (.47%).

This action comes even after the Civil Rights Division of the Department of Justice found that poor black children are being systematically deprived of their rights in Missouri due in large part to the lack of public defenders. Choosing in the wake of that report to further debilitate the very organization that ensures an equal system of justice only adds to the escalating sentiment that the poor and disenfranchised do not receive a fair shake in Missouri's criminal justice system.

As Director of the Public Defender System, I can only hire attorneys when I have the funding to do so. Because you have restricted that funding, MSPD must hold a significant number of vacant positions open to have the necessary funds to make it through the fiscal year, a task which is exacerbated by a 12% increase in cases over the year prior. To avoid having to close one or more offices, the remaining option is to consider the use of Section 600.042.5, which gives the Director of the Public Defender System the authority to "[d]elegate the legal representation of any person to any member of the state bar of Missouri."

As of yet, I have not utilized this provision because it is my sincere belief that it is wrong to reassign an obligation placed on the state by the 6<sup>th</sup> and 14<sup>th</sup> Amendments to private attorneys who have in no way contributed to the current crisis. However, given the extraordinary circumstances that compel me to entertain any and all avenues for relief, it strikes me that I should begin with the one attorney in the state who not only created this problem, but is in a unique position to address it.

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Therefore, pursuant to Section 600.042.5 and as Director of the Missouri State Public Defender System tasked with carrying out the State's obligation to ensure that poor people who face incarceration are afforded competent counsel in their defense, I hereby appoint you, Jeremiah W. (Jay) Nixon, Bar No. 29603, to enter your appearance as counsel of record in the attached case.

Very truly yours,



Michael Barrett  
Director

Attachment

cc: The Honorable Patricia Joyce  
Presiding Judge  
19<sup>th</sup> Judicial Circuit Court

Dawnel Davidson  
Cole County Circuit Clerk  
19<sup>th</sup> Judicial Circuit Court

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