

D 2010-018

EXECUTIVE ORDER

Requiring the Attorney General to Prosecute All Criminal Actions and Proceedings in the Seventh Judicial District

By the authority vested in the Office of the Governor of the State of Colorado pursuant to C.R.S. § 24-31-101(1)(a), I, Barbra O'Brien, Lieutenant Governor and Acting Governor of the State of Colorado pursuant to Article IV, Section 13(5) of the Colorado Constitution, hereby issue this Executive Order requiring the Attorney General of the State of Colorado to prosecute all criminal actions and proceedings in the Seventh Judicial District, and otherwise assume the powers of the Office of District Attorney for the Seventh Judicial District.

I. Background and Purpose

On Thursday, September 30, 2010, Myrl Serra, District Attorney for the Seventh Judicial District, was arrested for alleged criminal conduct, which allegedly took place, at least in part, in the course of Mr. Serra performing his official duties. While Mr. Serra is presumed innocent of any and all alleged criminal conduct, Mr. Serra's arrest has compromised his ability to effectively carry on the functions of his office. Therefore, in my judgment, it is necessary that I take action to assure the continued functioning of the office of the district attorney in the Seventh Judicial District.

Colorado Revised Statutes § 24-31-101(1)(a) provides that the Attorney General "shall appear for the state and prosecute and defend all actions and proceedings, civil and criminal, in which the state is a party or is interested when required to do so by the governor" Under this provision, the Attorney General must prosecute criminal matters when required to do so by the Governor.

An assistant attorney general who prosecutes a case under the authority of C.R.S. § 24-31-101 is exercising the district attorney's powers: "[W]hen the Governor or the General Assembly requires the Attorney General to prosecute a criminal case in which the state is a party, he becomes to all intents and purposes the district attorney, and may in his own name and official capacity exercise all the powers of such officer, for he is then, and in that case, the public prosecutor." *People v. Gibson*, 53 Colo. 231, 244 (1912); *see also People ex rel. Witcher v. District Court*, 190 Colo. 483, 485 (1976). Thus, a special

assistant attorney general is empowered to prosecute criminal matters with the same authority as the district attorney, when required to do so by the Governor.

Moreover, as provided by C.R.S. § 24-31-101(3), the Attorney General may appoint the existing deputy district attorneys in the Seventh Judicial District as special assistant attorneys general to assist with the performance of the duties required by this order: “The attorney general may appoint such deputies and assistants as are necessary for the efficient operation of his office”

By the authority cited above, I, as Acting Governor, am requiring the Attorney General to prosecute all criminal matters in which the State is a party in the Seventh Judicial District until such time as the Governor or I, as Acting Governor, rescind or modify this order.

II. Directive

Pursuant to C.R.S. § 24-31-101(1)(a), I, as acting Governor, hereby require the Attorney General to appear for the State and prosecute all criminal actions and proceedings in which the State is a party in the Seventh Judicial District.

III. Duration

This Executive Order shall remain in force until modified or terminated by further Executive Order.

GIVEN under my hand and the
Executive Seal of the State of
Colorado this thirtieth day of
September, 2010.

Barbra O'Brien
Lieutenant Governor and Acting Governor