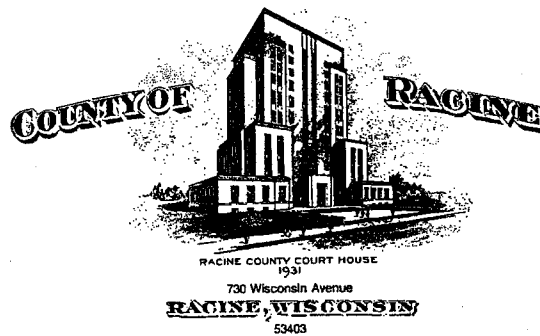


MICHAEL E. NIESKES  
DISTRICT ATTORNEY



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July 17, 2009

Attorney General J.B. Van Hollen  
Attorney General's Office  
P.O. Box 7857  
Madison, WI 53707-7857

Dear Attorney General Van Hollen,

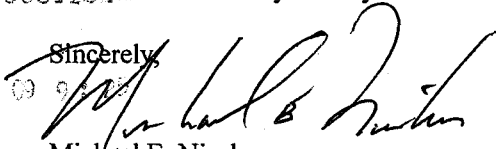
As you are well aware Executive Order 285, as modified by the Association of State Prosecutors contract, is requiring Assistant District Attorneys to be laid off/furloughed for 5 days prior to July 1, 2010. During discussions regarding various lay-off/furlough plans that this District Attorney's Office is required to submit to OSER for approval, issues have been raised with regards to certain additional legal ramifications of the lay-off/furloughs. One question deals with at what point the furlough day begins or ends in regards to liability of ADAs.

As you are aware from the time you spent as a District Attorney, Assistant District Attorneys are on call after the normal work day ends and may be called upon by law enforcement officers to answer questions about search and seizure, charging decisions and numerous other areas as well as draft and/or approve search warrants. Currently an Assistant District Attorney would be covered by prosecutorial immunity and represented by the Attorney General's Office in any lawsuit filed by anyone affected by a decision rendered as part of that process. If an Assistant District Attorney gives advice during the furlough period, it is my belief that their actions would not be covered by prosecutorial immunity. If that is so, then when does the furlough day start: 5:00 p.m. the day before when they leave work, midnight the day the furlough starts or 8:00 a.m. the day of the furlough. Likewise, when does the furlough day end: 5:00 p.m. when the work day would normally end, midnight of the furlough day or the beginning of the next paid day of work? If the furlough day is on a Friday, does that mean that the Assistant District Attorney would not be able to act under the cloak of prosecutorial immunity, with representation provided by your office, and the State of Wisconsin ultimately responsible for any damages until the start of work on Monday?

The guidelines promulgated by OSER indicate that a furloughed/laid off employee is not to be in work status on the day of the furlough/layoff. Because crime does not take a holiday, my ADAs are routinely contacted in after-hours situations for advice and assistance. Given the fact that the 325 ADAs in the state face up to 8 days of furloughs/layoffs in each of the next 2 years, there are literally thousands of potential liability questions that could arise. I ask that you render an opinion of the status of the ADAs during a furlough/layoff period regarding prosecutorial immunity, representation by your office, and if the ADAs would be personally liable for any advice or action they would take in that time period, along with the question when does the time period begin and end. I

DEPT. JUSTICE would like to thank you for your assistance in this matter.

Sincerely,

  
Michael E. Nieskes  
Racine County District Attorney