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OPINION 24-0115

Mr. Rémy Voisin Starns
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90-A-4 GENERAL CONTRACTS - State

La. R.S. 15:170

The right to a hearing and an investigation under La. R.S. 15:170 is limited to instances in which the district public defender is disciplined or has his contract terminated early. There is no right to a hearing or investigation if the annual contract is simply not renewed.

Dear Mr. Starns:

This office has received your request for an Attorney General's opinion seeking an interpretation of La. R.S. 15:170 as amended by Act 22 of the 2024 Second Extraordinary Session. Specifically, you have asked whether the statute provides a district public defender with a right to a hearing and an investigation simply when their annual contract is not renewed.

Question: Does a district public defender have a right to a hearing and an investigation under La. R.S. 15:170 when his annual contract is not renewed or is the right to a hearing limited to instances in which the district public defender is disciplined or has his contract terminated early?

Conclusion: The right to a hearing and an investigation under La. R.S. 15:170 is limited to instances in which the district public defender is disciplined or has his contract terminated early. There is no right to a hearing or an investigation if the annual contract is simply not renewed.

The Office of State Public Defender (OSPD)¹ is a state agency within the Office of the Governor. The office shall provide for the supervision, administration, and delivery of a statewide public defender system for the delivery of public defender services. La. R.S. 15:146(A)(1). To that end, the OSPD contracts with district public defenders to provide for the delivery and management of public defender services in the various judicial districts throughout the state.

You have provided us with a copy of a standard contract between the OSPD and a district defender. According to the contract, the district defender is to be hired for a one-year term. Specifically, the contract provides, "Unless terminated sooner as provided for herein, this contract shall commence on July 1, 2024, and end on June 30, 2025." In

¹ Prior to the passage of Act 22 of the 2024 Second Extraordinary Session, the OSPD was known as the Louisiana Public Defender Board.

addition, either party may terminate the contract for convenience, with thirty-days' written notice, or for cause. The district defenders are considered independent contractors for tax purposes and they are not considered agents of OSPD.

Louisiana Revised Statute 15:170(A)(1) authorizes the OSPD to take corrective or disciplinary action against any district public defender for failure to adhere to the standards and guidelines for rendering indigent defender services as provided by rules adopted pursuant to La. R.S. 15:148 and in accordance with the Administrative Procedure Act. "Corrective or disciplinary action" includes, but is not limited to mean, any of the following: (a) issuance of a warning or reprimand; (2) issuance of a sanction; (3) suspension from rendering public defender services with or without compensation; (4) demotion; or (5) termination. La. R.S. 15:170(A)(2).

In addition, a district public defender may be demoted or terminated for just cause. La. R.S. 15:170(A)(3). Louisiana Revised Statute 15:170(B) lists the following actions, which constitute just cause: (1) the willful refusal to comply with mandatory training and education requirements; (2) the willful refusal to comply with mandatory performance standards and guidelines as required by rule adopted by the office; (3) the conviction or nolo contendere plea to any felony, participation in a pretrial diversion program pursuant to a felony charge, or conviction of any misdemeanor involving moral turpitude or public corruption; (4) the willful failure to correct consistently ineffective practices to the detriment of clients; (5) the willful failure to document communications with clients as required by the office; (6) the willful failure to cooperate with the office in any matter; (7) the willful failure to submit to periodic review of their work against the performance standards and guidelines; (8) the willful failure to submit requested documentation on any matter as requested by the office; and (9) knowingly making any false statement to the office.

If a district public defender believes that he has been demoted or terminated without just cause as defined above, he may, within fifteen days of the action, demand in writing a hearing and investigation by the Board. La. R.S. 15:170(C). All parties shall be afforded an opportunity to appear before the hearing committee, either in person or with counsel, and present evidence to show that the action was or was not taken in good faith for cause as defined above. La. R.S. 15:170(D)(7).

A plain reading of La. R.S. 15:170 demonstrates that a district public defender may only request a hearing when he believes that he has been *demoted or terminated* without just cause.² The statute does not provide for a hearing simply when the district public defender's contract is not renewed after it has ended. We note that § 5 of Act 22 states, "Subject to a satisfactory performance and compliance evaluation, a public defender who has an existing contract with the Louisiana Public Defender Board for Fiscal Year 2023-2024, shall have the option to renew the contract with the [Office of the State Public

² The rules of statutory interpretation are well known. See, e.g., *Red Stick Studio Dev., L.L.C. v. State ex rel. Dep't of Econ. Dev.*, 2010-0193 (La. 1/19/11), 56 So.3d 181, 187-88 (quoting *M.J. Farms, Ltd. v. Exxon Mobil Corp.* 2007-2371, p. 13 (La. 7/1/08), 998 So.2d 16, 27 (internal citations omitted)).

Defender] for Fiscal Year 2024-2025, subject to appropriation.” However, those contracts have already been renewed, and this provision does not create a right to renewal in future years.

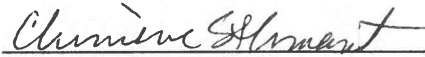
We further point out that, in general, contracts for legal services may be terminated at any time. See Rules of Professional Conduct, Rule 1.16. Here, Act 22 has provided more rights to the public defenders; however they are still bound by the one-year term of the contract. Once that term has ended, there is no right to renewal and no right to a hearing on the issue of renewal.

Accordingly, it is the opinion of this office that the right to a hearing and an investigation under La. R.S. 15:170 is limited to instances in which the district public defender is disciplined or has his contract terminated early. There is no right to a hearing or an investigation if the annual contract is simply not renewed.

We trust that this adequately responds to your request and the issues that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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