



Tuesday, July 12, 2016

Governor Mark Dayton
116 Veterans Service
Building
20 W 12th Street
St. Paul, MN 55155
mark.dayton@state.mn.us

Lori Swanson
Minnesota Attorney General
1400 Bremer Tower
445 Minnesota St.
St. Paul, MN 55101
Attorney.General@ag.state.mn.us

John Choi
Ramsey County Attorney
345 N Wabasha St #120
St Paul, MN 55102
john.choi@co.ramsey.mn.us

VIA EMAIL AND U.S. MAIL

Dear Governor Dayton, Attorney General Swanson and County Attorney Choi,

The police killing of Philando Castile has again raised serious questions about policing in Minnesota, particularly with regard to racial profiling, police use of force, training received by officers, the policies and procedures governing their conduct and police adherence to those policies and procedures. Most importantly, Philando Castile's death has again raised the community's concern that police will not be held accountable for their misconduct. In Minnesota and throughout this nation, communities have been demanding that police misconduct be investigated and prosecuted by people who are truly independent of the police and the prosecutors who work daily with the police. The ACLU of Minnesota believes that an independent prosecutor is necessary in this case in order to assure the community that justice and police accountability will be vigorously pursued by somebody who is outside the state's prosecutorial system. Therefore, we respectfully urge you to take the steps needed to move the investigation and prosecution of the officers involved in Mr. Castile's killing to an independent special prosecutor. Those steps are twofold. First, the matter should be transferred to Attorney General Swanson. Second, Attorney General Swanson should appoint a Special Assistant Attorney General who is qualified to prosecute cases of this magnitude but who is not currently employed in the Attorney General's office or as a prosecutor for another agency.

Minn. Stat. §8.01 provides two avenues for the attorney general to assume the prosecutorial responsibility:

The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in the attorney general's opinion, the interests of the state require it. Upon request of the county attorney, the attorney general shall appear in court in such criminal cases as the attorney general deems proper. Upon request of a county attorney, the attorney general may assume the duties of the county attorney

AMERICAN CIVIL
LIBERTIES UNION OF
MINNESOTA FOUNDATION
2300 MYRTLE AVENUE
SUITE 180
SAINT PAUL, MN 55114
T/651.645.4097
F/651.647.5948
support@aclu-mn.org
www.aclu-mn.org



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in sexual psychopathic personality and sexually dangerous person commitment proceedings under chapter 253D. Whenever the governor shall so request, in writing, the attorney general shall prosecute any person charged with an indictable offense, and in all such cases may attend upon the grand jury and exercise the powers of a county attorney.

Minn. Stat. §8.01 (emphasis added). It is also within the attorney general's authority to appoint a Special Assistant Attorney General. *See Conant v. Robins, Kaplan, Miller and Ciresi L.L.P.*, 603 N.W.2d 143, 148 (Minn. Ct. App. 1999) ("The attorney general may hire special attorneys pursuant to Minn. Stat. § 8.02, Subd. 1."¹ Lastly, Minnesota law provides the Governor with broad authority to appoint special state employees not otherwise provided for by law. Minn. Stat. §4.04, Subd. 1 (2016) (The governor shall appoint and when necessary commission all officers and employees of the state whose selection is not otherwise provided for by law and, at pleasure, may remove any such appointee whose term of service is not by law prescribed").

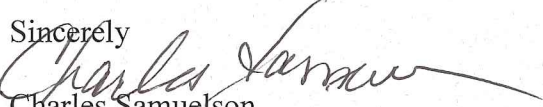
Transferring this matter to an independent special prosecutor is necessary in order to provide some measure of community trust in the process. Community distrust in the police has been steadily growing both in Minnesota and around the nation. There is a growing belief that that police are not being held accountable for their acts of excessive use of force including the killing of people that they are sworn to protect and serve. Communities of color have been particularly affected by police killings in the United States. Police in the United States took the lives of over 1000 people in 2015, 26% of whom were Black. *The Counted: People Killed by Police in the US*, Guardian, <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>. Since the year 2000, 144 people have died at the hands of Minnesota law-enforcement officers. None of those deaths resulted in criminal charges against any officer. There is a deep chasm between the police and the communities they serve and the belief that police will not be held accountable for their acts of misconduct has only served to deepen that chasm.

An independent special prosecutor will help to eliminate any questions about the objectivity and impartiality of the prosecutor. As County Attorney, Mr. Choi is responsible for prosecutions in Ramsey County and, therefore, has an interest in building and maintaining a close working relationship with the police departments that patrol in Ramsey County. In addition, as an elected official, Mr. Choi is not immune from the tremendous political pressures that are inherent in a high profile

¹ *See also* Minn. Stat. § 8.06 (2016) ("Whenever the attorney general, the governor, and the chief justice of the Supreme Court shall certify, in writing, filed in the Office of the Secretary of State, that it is necessary, in the proper conduct of the legal business of the state, either civil or criminal, that the state employ additional counsel, the attorney general shall thereupon be authorized to employ such counsel...").

case such as this. The same considerations, on a statewide level, are true for Attorney General Swanson.

For these reasons, the ACLU-MN respectfully urges the three of you to take the steps needed to put this matter in the hands of an independent special prosecutor. Please do not hesitate to contact us to discuss this request.

Sincerely

Charles Samuelson
Executive Director