Prosecuting Attorneys' Council of Georgia

State Prosecution Support Division fyi

July 11, 2014

McLaughlin v. Payne

Supreme Court of Georgia Finds That a District Attorney's Personal Interest in the Outcome of a Case Caused the Disqualification of His Entire Office

In *McLaughlin v. Payne*, S14A0220, 2014 Ga. LEXIS 576 (July 11, 2014), Payne was convicted on two counts of aggravated child molestation, three counts of child molestation, and one count of cruelty to children. Prior to trial, Payne filed a "Motion to Disqualify" the entire District Attorney's Office under Rule 3.7(a) of the Rules of Professional Conduct of the State Bar of Georgia because the District Attorney was listed as a witness for the State. The trial court denied the motion and at trial, the District Attorney appeared as a State's witness. He identified himself to the jury as the district attorney, identified the examining prosecuting attorney as his assistant, and outlined his duties as district attorney. He also testified that: his daughter was a classmate of the victim named in the indictment; his daughter told him what she had heard of the crimes; he participated in an interview of Payne early in the investigation; and, that after his interview with Payne, he realized he would likely be a witness at trial, and removed himself from Payne's prosecution.

On direct appeal, Payne's appellate counsel did not raise the conflict of interest as an issue. After his convictions were affirmed, Payne filed a habeas corpus petition alleging that his appellate counsel's failure to do so amounted to ineffective assistance of counsel. The habeas court agreed and Warden McLaughlin appealed.

The Court found that the District Attorney was disqualified under Rule 3.7(a) from acting as an advocate in Payne's trial. However, citing *Brown v. State*, 261 Ga. 66 72 (9) (1991), the Court stated that when a district attorney is precluded from acting as an advocate at a trial because he or she is a necessary witness, the district attorney's status is not automatically imputed to all the assistant district attorneys, although circumstances may leave certain assistants with their own disqualifications. Therefore, appellate counsel's failure to raise on appeal any issue regarding the District Attorney's preclusion from serving as a trial advocate under Rule 3.7(a) being imputed to the remainder of his office could not serve as a basis for a finding of ineffective assistance.

However, the Court noted, in this particular case, the habeas court further found that the District Attorney had a "personal interest" in the case. Thus, the record showed that the District Attorney testified at trial that he had a very close relationship with his daughter; his daughter's conversation with the victim was very emotional; and his daughter's concern caused him to pay particular attention to the case. His testimony also bolstered the credibility of another witness against Payne. Further, the habeas court found that although an ethical screen was erected to isolate the District Attorney from the case, the District Attorney breached that screen by involving himself in an interview with the victim. Therefore, the Court found, the habeas court did not clearly err in finding that the District Attorney was disqualified from the case because he had "acquired a person interest or stake in the defendant's conviction."

July 11, 2014

Moreover, the Court held, "[w]hen the elected district attorney is wholly disqualified from a case, the assistant district attorneys – whose only power to prosecute a case is derived from the constitutional authority of the district attorney who appointed them – have no authority to proceed." In the event a district attorney is "wholly disqualified," the law requires the district attorney to notify the Attorney General pursuant to O.C.G.A. § 15-18-5(a). Since that procedure was not followed here, the habeas court did not err in granting Payne's petition. In so holding, the Court found that *Brown* was distinguishable because in that case, the elected district attorney was unable to serve as an advocate at trial because he was appearing as a witness; it did not involve an elected district attorney who was "absolutely disqualified from any involvement in the prosecution because he had a personal conflict of interest."

McLaughlin confirms that when an elected district attorney has a personal interest in a case, that interest is imputed to his or her entire office and requires the district attorney to recuse and proceed according to the statutory requirements O.C.G.A. § 15-18-5(a). Although the "personal conflict of interest" in this case was obvious, the decision may generate a new battleground over what the term "personal interest" entails. Finally, the opinion re-emphasizes the importance of maintaining ethical screens that have been erected to isolate those individuals in an office who may have an interest in the outcome of a particular case. For further information on ethical screens, please see on the PAC website, *Screening of Disqualified Personnel within a Prosecuting Attorney's Office: How to Construct an Effective Ethical Screen or "Chinese Wall"*.

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