



JULY 1, 2016

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## State v. Mantooth

### *A Criminal Defendant Does Not Have Standing to Object to a Prosecuting Attorney's Decision to Recuse After the Prosecutor Has Determined That He or She Has an Actual or Potential Conflict of Interest*

In *State v. Mantooth*, A16A0256 (July 1, 2016), Mantooth was charged with DUI. Because of Mantooth's relationship with an employee in his office, the Cobb County Solicitor-General recused his entire office pursuant to O.C.G.A. § 15-18-65(a). The Attorney General then appointed the DeKalb Solicitor-General to prosecute the case. Mantooth filed a motion to vacate the Attorney General's Order, arguing that there was no actual conflict and that the recusal was done without a hearing or her consent. The trial court granted Mantooth's motion and the State was granted an interlocutory appeal.

The State argued that Mantooth did not have standing to contest the recusal of a solicitor-general. The Court agreed. Citing O.C.G.A. § 15-18-65 and Rule 1.7 (a) of the Georgia Rules of Professional Conduct, the Court stated that the primary responsibility for resolving questions of conflict of interest rests with the lawyer undertaking the representation.

Nevertheless, Mantooth argued, she had standing to challenge the order based on the State's alleged failure to prove any legal basis for the recusal. But, the Court stated, pretermittting whether the State can — or is even required to — prove that the Solicitor-General had a "legitimate" conflict of interest, there is no legal authority supporting the proposition that a criminal defendant has standing to object to a prosecuting attorney's voluntary recusal. In fact, the Court stated, Georgia law dictates otherwise, noting that it has held that a defendant does not have a substantive right to have his case tried by a specific prosecutor so as to make notice necessary in order to oppose the prosecutor's disqualification.

The State also argued that the trial court lacked legal authority to vacate the Attorney General's administrative appointment of a solicitor-general pro tempore following the voluntary recusal of the prosecutor's office pursuant to O.C.G.A. § 15-18-65(a). The Court again agreed. Although O.C.G.A. § 15-18-65(d) recognizes that trial courts retain the inherent authority to disqualify an attorney who is legally disqualified, that discretion is limited and trial courts must "specify the legal basis of such order" which is then subject to interlocutory appellate review. Yet, the Court observed, there is no similar language contained in subsection (a) of this statute granting trial courts any authority to intervene in the voluntary recusal and subsequent appointment of a substitute solicitor-general through the Attorney General's office. Moreover, under the plain language of O.C.G.A. § 15-18-65(a), neither the solicitor-general nor the Attorney General is required to provide a "legal basis" for the disqualification of a solicitor-general. Accordingly, the Court concluded, because the trial court lacked authority to vacate the Attorney General's appointment of a prosecuting attorney pro tempore, the trial court's order granting Mantooth's motion to vacate the recusal was reversed on this ground as well.

State Prosecution Support Division



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In so holding, the Court further rejected Mantooth’s contention that unlimited voluntary recusals by a prosecuting attorney would allow prosecutors to pick and choose who their offices elect to prosecute. The Court stated that other remedies exist to address a public official, such as a district attorney or solicitor-general, who fails to perform the duties of his or her office.