



Prosecuting Attorneys' Council of Georgia

Policies & Procedures

Approved Oct. 17, 2002

9.3

Trial Support

Temporary Assistance of Retired Prosecuting Attorney & District Attorney's Pro Tempore

1. General Provisions.
 - a. Authority. The Chapter has been adopted by the Prosecuting Attorneys' Council of Georgia pursuant to O.C.G.A. §§ 15-18-19, 15-18-30, 15-18-40(c), 45-12-81 and 50-6-7.
 - b. The Prosecuting Attorneys' Council of Georgia, as the fiscal officer for the District Attorneys, is responsible for the payment of private attorneys and retired prosecuting attorneys who are appointed as District Attorney Pro Tempore pursuant to O.C.G.A. § 15-18-5 and 15-18-30.
 - c. Definitions. As used in this Chapter, "retired prosecuting attorney" means retired district attorney, assistant district attorney, solicitor-general, assistant solicitor-general, or retired attorney from the staff of the Department of Law or the Prosecuting Attorneys' Council of the State of Georgia who is receiving benefits under Title 47 or is retired in good standing and receiving benefits from a county or municipal retirement system and who has a minimum of ten years of service in any combination of such offices.

2. Requests for Assistance of a Retired District Attorney.
 - a. The Council staff shall maintain and make available to District Attorneys and Solicitors-General upon request, a list of retired prosecuting attorneys who are willing and available to provide assistance pursuant to O.C.G.A. §15-18-30.
 - b. A district attorney may request the temporary assistance of a retired prosecuting attorney, if temporary assistance is not available from other prosecuting attorneys, the Council staff or the Attorney General¹ to:
 - i. Clear a backlog of pending cases which cannot be processed in a reasonable time using the permanent legal staff of the office and

¹ Because of the limited amount of state funds which are available, it is expected that a District Attorney will first attempt to use resources which are available in other district attorney's offices, *Floyd v. State*, 182 Ga. 549, (1936), a solicitor-general's office, O.C.G.A. § 15-18-66(b)(8), the Council, *Cook v. State*, 172 Ga. App. 433 (1984), the Attorney General or other public agencies, Unif. Super. CtR. 42.1; O.C.G.A. § 35-9-15, before a request is made for funding of a retired prosecuting attorney.



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- ii. Provide special expertise required for the prosecution of a case which is beyond the scope of the permanent legal staff of the office or other resources.²
- c. Format & Content.
 - i. Requests for the temporary assistance of a retired prosecuting attorney shall be submitted in writing on official letterhead addressed to the Chairman of the Prosecuting Attorneys' Council of Georgia at the Council offices not less than 30 days prior to the date when the district attorney desires the retired prosecuting attorney to commence work.
 - ii. Each request must contain:
 - (1) The name of the state or local government retirement system from which the individual is receiving benefits.
 - (2) The court in which assistance is needed;
 - (3) The county or counties in which the assistance will be performed;
 - (4) An estimate of the amount of time for which assistance will be needed;
 - (5) The specific case or cases for which assistance is sought;
 - (6) An estimate of any travel expenses which will be required; and
 - (7) The reason that assistance is needed; and
 - (8) An explanation why resources which may be available from other prosecuting attorneys, the Council or other public agencies cannot meet the needs of the office.
 - iii. Requests for assistance will be faxed or mailed to the Council office.

² Paragraph (2) is derived from Standard 8.2 of the Nat. Prosecution Standards.



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- iv. A sample form for submitting such requests may be obtained from the Council offices.
- d. Upon receipt of a request for assistance, the staff will review the request for budgetary impact and, based on funds which are available for the fiscal year for such purpose, prepare a proposed budget. As soon as the budget is prepared, the staff will forward the request and the proposed budget to the Chairman. A copy of the proposed budget will be provided to the requesting district attorney.
- e. Upon receipt of the request and the budget, the Chairman shall review the same and, if funds are available, approve or deny the request in writing.
 - i. The Chairman may require the requesting district attorney to provide such additional information as the Chairman deems necessary, may direct the staff to revise the proposed budget, or may refer the request to the Council for their consideration.
 - ii. If the request is approved, the Chairman shall specify the amount of time during which the retired prosecuting attorney will be authorized and the maximum amount of funds which may be expended.
 - iii. The Chairman may require periodic reports to be made showing what progress has been made toward achievement of the authorized objective of the request.
 - iv. In no case shall the authorized time extend beyond the end of a fiscal year.³
- f. If the request is approved, the Executive Director shall notify the requesting district attorney and the retired prosecuting attorney in writing and provide them with a copy of the approved budget, and such administrative instructions concerning the submission of reports of time worked and expenses as may be necessary.
- g. Following approval of the request, the Executive Director shall prepare and submit a contract for services to the retired prosecuting attorney and the district attorney who

³ Ga. Const. 1983, Art. III, Sect. IX, Para IV; O.C.G.A. § 45-12-89; Ga. Op. Att'y Gen. No. 74-115; 1978 Op. Att'y Gen. p. 267.



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submitted the request. The contract shall specify the duration of the services, the general nature of the services to be performed. The contract shall include a provision which:

- i. Incorporates by reference the provisions of this Chapter; and
 - ii. Provides that such contract is subject not only to the availability of public funds but is subject to their availability pursuant to funds being appropriated.⁴
- h. At any time prior to the end of the time specified in the approval or the end of the fiscal year, whichever occurs first, a district attorney may request in writing an extension of the time during which a retired prosecuting attorney will be available. A request for extension of time shall include a detailed explanation why the matters being handled by the retired prosecuting attorney could not be concluded within the time period which was approved.
- i. Information contained within a request for temporary assistance or any periodic reports, which relates to an on-going criminal investigation or prosecution shall not be subject to public disclosure as provided in O.C.G.A. § 50-18-72.

3. District Attorneys Pro Tempore.

- a. Upon receipt of an order appointing a private attorney as a district attorney pro-tempore, the Executive Director shall review the order for completeness. If the order is missing any elements required by O.C.G.A. §§ 15-18-5 and 15-18-30, the Executive Director will contact the Attorney General and the attorney so appointed and request that the order be amended.
- b. An order appointing a private attorney or a retired prosecuting attorney as district attorney pro-tempore must contain the following information:
 - i. The identity of the court (i.e., Superior Court for the ___ Judicial Circuit);
 - ii. The county or counties in which the order applies;

⁴ *Busbee v. Georgia Conf., Amer. Assoc. of University Professors*, 235 Ga. 752, 761 (1975).



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- iii. The time period covered;
- iv. The specific case or cases to which the appointment applies, including the defendant's name, if known, and the assigned case number. If the matter has not resulted in the return of a True Bill or filing of an accusation, provide as complete a description of the matter as is possible under the circumstances;
- v. The reason why a district attorney pro-tem is being appointed;
- vi. The name, bar number and mailing address of the attorney being appointed;
- vii. Whether the attorney will serve as district attorney pro tem on a full-time basis or part-time basis.
 - (1) If on a full-time basis, that he or she "shall receive the same compensation from the state at the same rate as the district attorney during the term of such appointment;"
 - (2) If the attorney is to serve part-time for a particular case or case(s), that he or she "shall receive the same hourly compensation from the state at the same rate as the district attorney during the term of such appointment;"⁵
- viii. That the attorney "shall incur the same penalties in the discharge of his duties as the District Attorney."
- ix. It is recommended that the order specifically provide the attorney being appointed with notice of the following:
 - (1) In the case of a full-time appointment, that the attorney may not engage in the private practice of law during the period of the appointment. O.C.G.A. § 15-18-11(d).

⁵ Under Art. III, Sect. VI, Para. VI(a) of the Georgia Constitution, the State can only pay a private attorney serving as a district attorney pro-tem for services actually rendered. Thus, if an attorney is appointed to serve as a pro tem for certain cases, he or she can only be paid for time actually spent on those cases.



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- (2) In the case of a part-time appointment, the attorney must take such action as may be necessary and required under the Ga. Rules of Professional Conduct as a result of this appointment which may adversely affect his judgment on behalf of any clients whose interests may be conflicting, inconsistent, diverse or otherwise discordant with the interests of the State of Georgia and in particular shall provide the Court with a list of all criminal cases pending in this Circuit in which (he) (she) is attorney of record for the accused. Rule 1.7 of the Ga. R. of Professional Conduct.⁶
- x. Any order appointing a retired district attorney as a district attorney pro tem must also include the following:
 - (1) The jurisdiction from which the retired district attorney retired;
 - (2) The position from which the individual retired;
 - (3) The name of the state or local government retirement system from which the individual is receiving benefits.
- c. Estimate of Expenditures.
 - i. In order that the Council can comply with its responsibilities as fiscal officer for the prosecuting attorneys of this state pursuant to O.C.G.A. § 15-18-40(c)(1) and to prepare and submit such budget estimates as required by O.C.G.A. §§ 15-18-40(c)(2) and 45-12-78, if expenditures under the order appointing such district attorney-pro-tempore continue beyond 90 days of the date of the order, the Executive Director may require a district attorney pro-tempore to prepare and submit to the Council staff an estimate of the total expenditures that will be required during a fiscal year in order to complete the matter for which such district attorney pro-tempore was appointed.

⁶ The Council staff has been advised by the Office of General Counsel of the State Bar of Georgia that, as minimum, the attorney must notify any clients who have criminal cases pending in the circuit of the appointment and obtain waivers of any conflicts before continuing with the representation.



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- ii. If a district attorney pro-tempore fails to submit such estimate within 30 days of the request, the Executive Director shall notify the Attorney General and request assistance in requiring the submission of the budget estimate.
- iii. The provisions of this subsection shall apply to any district attorney who is appointed as district attorney pro-tempore in another circuit.

4. Payment of Fees and Expenses.

- a. The Executive Director shall provide a retired prosecuting attorney or district attorney pro-tempore with instructions concerning:
 - i. Information that must be submit to the Council in order to receive compensation from the State and comply with State and Federal law;
 - ii. The manner and forms to be used to request payment for services rendered and expenses incurred are to be reported to the Council staff in order to conform to and comply with all rules, regulations, and forms devised, promulgated, and installed by the state auditor pursuant to Chapter 6 of Title 50 of the official Code of Georgia Annotated.
- b. Reimbursement of expenses is limited to those expenses which are reimbursable under O.C.G.A. § 15-18-12 and Chapter 6 of these Rules.
- c. The Council staff will review all requests for payment of fees or expenses to insure that the activities fall within the scope of the appointment.
- d. No payments from state funds shall be made to any retired prosecuting attorney or district attorney pro-tempore who fails to comply with the requirements of this subsection.