

Rules of the Prosecuting Attorneys' Council of Georgia

Chapter 3 State Paid Employees of District Attorneys

3.1. General Provisions.

- a. Authority. This Chapter has been adopted by the Prosecuting Attorneys' Council of Georgia pursuant to O.C.G.A. § 15-18-19.
- b. Status of District Attorney Personnel; Intent of Chapter.
 - (1) All state paid personnel employed by a district attorney:
 - (A) Are employees of the judicial branch of state government in accordance with Article VI, Section VIII of the Constitution of Georgia
 - (B) Are in the unclassified service of the State Merit System of Personnel Administration;
 - (C) Have such authority, duties, powers, and responsibilities as are authorized by law or as assigned by the district attorney; and
 - (D) Serve at the pleasure of the district attorney.
 - (2) Nothing in this Chapter is intended to confer any rights, substantive or procedural, enforceable at law by any person in any civil or criminal action beyond those which are expressly established by law. No limitations are hereby placed on otherwise lawful actions that a district attorney or the Council may undertake.
- c. Purpose. The purpose of this Chapter is to implement and give effect to the provisions of O.C.G.A. § 15-18-19, as enacted by Ga. L. 1997, p. 1319, and to further the legislative intent of said Code section to establish uniform rules for state paid personnel of district attorneys.
- d. Non-discrimination. No person shall be appointed, transferred, promoted demoted or dismissed from any position subject to the provisions of this Chapter or in any way favored or discriminated against with regard to employment because of race, color, sex, religion, age between 40 and 70 years, disability or national origin.
- e. Forms. The Council staff, in conjunction with the payroll office, shall be responsible for the development and distribution of any standard forms required by this Chapter.

Authority: O.C.G.A. §§ 15-18-19, 45-20-2, 45-20-6; ratified 12/10/1999, effective 7/1/2000.

3.2. Definitions.

As used in this Chapter:

State Paid Employees of District Attorneys

- a. "Active Practice of Law" means experience as an attorney engaged in the private practice of law or an attorney employed in the capacity of a lawyer by a corporation, partnership, or government agency or an attorney employed on a full-time basis as a law clerk for a judge of a court of record. Any period during which such attorney was disbarred, resigned, suspended or in an inactive status within the jurisdiction or jurisdictions in which such attorney was admitted to practice shall not constitute active practice of law. In the event that it is not clear from the records submitted whether or not a particular employment constituted the active practice of law, the Executive Director shall make the determination.
- b. "Anniversary of such employee's appointment" shall mean the first day of the month following the date on which the employee was appointed or promoted to a position under the provisions of these rules.
- c. "Attorney" means a person who has been admitted to the practice of law in this State, any of the several States, the District of Columbia, or the territories, dominions or possessions of the United States, or a foreign nation whose legal system is based on Anglo-American Common Law. In the case of an attorney applying for credit based on practice in a foreign nation, the executive director shall determine whether or not the legal system of that country is based on Anglo-American Common Law.
- d. "Break in service" means a separation from service on a full-time basis as a prosecuting attorney, employee of a district attorney, or as an employee of the State of Georgia for a period of six months or more. Any separation for a period of less than six months shall not constitute a "break in service" nor shall any periods when the employee is absent in leave status.
- e. "Certified peace officer" means an employee who has been certified as a peace officer in accordance with Chapter 8 of Title 35 of the Official Code of Georgia Annotated and the rules of the Peace Officers Standards and Training Council and has met the annual training requirements required by O.C.G.A. § 35-8-21.
- f. "Compensation of the District Attorney" means the annual salary of the district attorney paid from state funds, excluding any local supplements to the state salary.
- g. "Court of Record" means a court established under the Constitution or laws of the United States, its territories, dominions or possessions or any of the several States or of the District of Columbia which by law are required to maintain permanent records of its acts and proceedings.
- h. "Headquarters" or "official headquarters" means the office where the employee is assigned to work.
- i. "LL.M. or S.J.D. degree" means a master's in law or doctorate in jurisprudence awarded:
 - (1) By a law school recognized by the State Bar of Georgia from which a graduate or student enrolled therein is permitted to take the bar examination; or
 - (2) By a law school accredited by the American Bar Association or the Association of American Law Schools;

provided, however, that the course of study in law schools described in subparagraph (1) of this paragraph shall at least be equivalent in terms of hours and subject matter as the course of study offered in law schools described in subparagraph (2) of this paragraph, and the course of study offered

in all law schools described in this paragraph shall have been approved by the Prosecuting Attorneys' Council of Georgia in accordance with Chapter 4 of these Rules.

- j. "Peace officer" means any person who, by virtue of his office or public employment, is vested by law with a duty to maintain public order, to make arrests for offenses, or to investigate violations of criminal law, whether that duty extends to all crimes or is limited to specific offenses, and has been certified or registered in accordance with the provisions of O.C.G.A. § 35-8-1, et seq.
- k. "Personnel officer" means:
 - (1) A person designated in writing by the district attorney to assist in the preparation, and maintenance of personnel files required under these Rules.
 - (2) Personnel employed by the Council to administer these Rules.
- l. "Prosecuting attorney" means:
 - (1) A district attorney;
 - (2) An assistant district attorney, deputy district attorney, or other attorney appointed by a district attorney of this state;
 - (3) A solicitor-general or assistant solicitor-general of a state court;
 - (4) A solicitor or assistant solicitor of a juvenile court of this state or any political subdivision thereof;
 - (5) An attorney employed by the Attorney General of this state;
 - (6) An attorney employed by the United States Department of Justice, including but not limited to United States Attorneys and Assistant United States Attorneys;
 - (7) An attorney who holds elected or appointed office as or is employed by a public official of any of the several states, any political subdivision thereof, a territory, dominion or possession of the United States, or a foreign nation whose legal system is based on Anglo-American Common Law having responsibility for the prosecution of violations of the criminal law;
 - (8) An attorney employed by the Prosecuting Attorneys' Council of Georgia;
 - (9) An attorney employed as an assistant district attorney, pursuant to a contract with the Department of Human Resources, under Code Section 19-11-23 of Article 1 of Chapter 11 of Title 19, the "Child Support Recovery Act," Code Section 19-11-53 of Article 2 of Chapter 11 of Title 19, the "Uniform Reciprocal Enforcement of Support Act," and Article 3 of Chapter 11 of Title 19, the "Uniform Interstate Family Support Act";
 - (10) A third-year law student under the authority of Code Section 15-18-22 or as otherwise provided for by Ga. S. Ct. R. XV, or XVI, who is employed or works without pay for a prosecuting attorney and who assist in the prosecution or appeal of cases for the prosecuting attorney;
 - (11) A law school graduate authorized to assist in legal proceedings as if admitted and licensed to practice law in this state pursuant to the Rules of the Georgia Supreme Court, who is

State Paid Employees of District Attorneys

employed or works without pay for a prosecuting attorney and who assists in the prosecution or appeal of cases for a prosecuting attorney; or

- (12) An attorney serving on active duty with the armed forces of the United States, including the United States Coast Guard, with responsibility for the prosecution of offenses under the Uniform Code of Military Justice, as amended.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19, 45-20-2, 45-20-6; ratified 12/10/1999, effective 7/1/2000; amended 8/5/02, effective 8/30/02; amended 2/22/08, effective 7/1/08.

Note: The amendment approved 8/5/02 amended subsections (a) (c) and (k) and provided that it applied only to personnel appointed after the effective date of the amendment. The 2008 amendment amended the definition in paragraph (c) added paragraph (e) and re-lettered the following paragraphs.

3.3. Duties of the District Attorney - Delegation of Certain Tasks.

- a. Chapter 18 of Title 15 of the Official Code of Georgia Annotated makes the district attorney responsible for all personnel decisions regarding both state and non-state paid personnel.
- b. The district attorney may authorize members of his or her staff to perform any ministerial act concerning state-paid personnel which may be required under these Rules provided that the district attorney retains the decision making responsibility.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19, 45-20-2, 45-20-6; ratified 12/10/1999, effective 7/1/2000.

3.4. [Reserved].

3.5. Compensation Plan.

- a. Adoption of Salary Schedules.
 - (1) Pursuant to O.C.G.A. § 15-18-19 (e) (1), the Council shall establish salary schedules for each state paid position governed by these rules. Salary schedules adopted by the Council are not subject to ratification by the district attorneys.
 - (2) The salary schedules shall be similar to the salary schedules adopted by the State Merit System of Personnel Administration and shall provide for a minimum entry step and not less than ten additional steps, not to exceed the maximum allowable salary. In establishing the salary schedule, all amounts shall be rounded off to the nearest whole dollar.
- b. Revision of Salary Schedules. Pursuant to O.C.G.A. § 15-18-19(e)(1), the Council may, from time to time, revise the salary schedules.
- c. Overtime.
 - (1) Positions which are subject to the provisions of the Fair Labor Standards Act (FLSA) either must be compensated or receive compensatory time off for each hour worked which is in excess of the 40 hours of work in a seven day work period, exclusive of time off for meals, State holidays and approved leave.

- (2) Except when payment of overtime has been specifically authorized in advance by the Council, a district attorney shall grant compensatory time to the employee as provided in Section 18 of these Rules in lieu of overtime pay.
- (3) When circumstances (i.e., death, unexpected resignation) make it impossible for a district attorney to request payment of overtime in advance, the district attorney shall notify the Council in writing as soon as possible of the facts and circumstances of the situation, the name of the employee and the number of hours of overtime worked.
- (4) The payment of overtime compensation is dependent on appropriated funds being available. Unless the payment of overtime is authorized in advance by the Council, overtime payments will be charged against any vacancy which may exist in the number of authorized state-paid personnel for the circuit and will result in the district attorney being unable to fill the vacant position for a period of time determined by the Council.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19, 45-20-2, 45-20-6; 29 U.S.C. § 207(o); 29 C.F.R. § 553.20.; ratified 12/10/1999, effective 7/1/2000.

3.6. Appointment.

a. General Provisions.

- (1) These provisions apply to the appointment of state paid employees of district attorneys appointed pursuant to O.C.G.A. § 15-18-19.
- (2) All personnel actions involving state paid employees shall be made by the district attorney in writing in accordance with the provisions of these rules.
- (3) The number of state paid personnel which a district attorney is authorized to appoint is determined by the legislature or by contract between a county governing authority and the payroll office.
- (4) Except as specifically authorized by the Council in accordance with O.C.G.A. § 15-18-14(b)(3), no person shall be appointed to a state-paid position unless a vacancy exists for that position. A vacancy is not deemed to exist if:
 - (A) the person previously holding the position is granted annual leave, sick leave or compensatory time for any period of time immediately prior to the effective date of such person's resignation or retirement;
 - (B) the person previously holding the position is receiving terminal leave pay for unused annual leave for the number of days of accrued leave for which the person is paid.

b. Pre-employment Requirements.

- (1) Application for employment.
 - (A) Each district attorney may develop an employment application form to be used by all applicants for employment.
 - (B) In lieu of developing a unique application form, the district attorney may utilize the common employment application form for applicants for state employment or a

State Paid Employees of District Attorneys

similar form developed by any of the county governing authorities within the circuit.

(C) Any such application form shall not require the applicant to disclose information concerning any medical condition or disability.

(2) Drug Testing. Applicants for state paid positions must comply with Chapter 5 concerning Pre-Employment Drug Testing.

(3) Job qualifications.

(A) As part of the application process, the district attorney shall determine whether or not the applicant meets the minimum requirements for appointment to the position as provided by Article 1, Chapter 18 of Title 15, Article 1 of Chapter 2 of Title 45 of the Official Code of Georgia, Annotated and these Rules.

(B) Each district attorney shall develop written job descriptions for each authorized state-paid position allocated to the judicial circuit.

(i) Each job description must include the essential functions for each position as they relate to the judicial circuit.

(ii) In developing these job descriptions, the district attorney may use job descriptions which have been developed by county human resources managers for similar non-state paid positions in the district attorney's office.

(C) All personnel employed by a district attorney for a position created by statute (assistant district attorney, district attorney investigator, victim assistance coordinator, legal secretary) shall meet the following minimum qualifications:

(i) Be not less than 21 years of age;

(ii) Be a citizen of this State;

(iii) Not be the holder of any public funds due the State of Georgia or any of its political subdivisions;

(iv) Not have been convicted of a felony under the laws of this state or any other state or of the United States unless all rights of citizenship have been restored by pardon;

(v) Does not hold any office of profit or trust under the government of the United States, or any other state or any foreign state other than:

a) Postmaster;

b) Membership in the reserve components of the armed forces of the United States or any of the several states or any foreign state;

c) Membership on federal commissions, boards or panels;

- (vi) Is not of unsound mind or bodily infirmity such that the person is unable to discharge the essential duties of the position; and
 - (vii) Reside within the State of Georgia.
- (D) Subject to the provisions of Article 1, Chapter 18 of Title 15 and these rules, each district attorney may establish additional qualifications for each state-paid position which the circuit is authorized.

(4) Verification of eligibility.

As part of the application process, each district attorney shall verify employment eligibility of the applicant in accordance with the Immigration Reform and Control Act of 1986 and document such eligibility on INS Form I-9.

(5) Interviews.

Interviews of applicants will be at the discretion of the district attorney. It is the responsibility of the district attorney to insure that any interviews which are conducted comply with the Americans With Disabilities Act and the regulations issued pursuant thereto.

(6) Conditional offer of employment.

(A) All offers of employment shall be subject to:

- (i) A background investigation (see Rule 3.6.b(7)); and
- (ii) Drug Testing (see Chapter 5).

(7) Background investigation.

(A) New hires.

All applicants for state-paid positions shall undergo a background investigation for applicants as described in subparagraph (7)(C) of this part. An offer of employment may be made prior to completion of the full background investigation and the employee may be placed on the state payroll on a probationary status, pending successful completion of the background investigation.

(B) Transfers.

- (i) Any person who is transferred from a non-state paid to a state-paid position within a district attorney's office who underwent a background investigation as part of the initial hiring process and who has been continuously employed by a district attorney since the initial appointment may be transferred to a state-paid position without a new background investigation.
- (ii) A person who transfers from a position with a law enforcement agency who underwent a full background investigation which meets the

State Paid Employees of District Attorneys

requirements of subparagraph (7)(C) of this part, as part of the initial hiring process may be employed in a state paid position without a new background investigation if the original background investigation was completed within three years of the date such person will be employed by the district attorney and a copy of the background investigation is made available to the district attorney.

- (C) A background investigation **must** include at a minimum:
 - (i) Driver's license check through the Georgia Department of Public Safety;
 - (ii) NCIC-GCIC-LEDS criminal history and name check; and
 - (iii) GBI Intelligence index file check.¹
- (D) A credit history and rating may be required by the district attorney.
- (E) Upon receipt of the report of the background investigation, the fact will be noted on the Administrative Order. The report of the background investigation will be filed in the personnel file of the appointing district attorney.
- (F) Neither the report of the background investigation nor the contents of the report will be disclosed to any person or agency other than the district attorney's office and the law enforcement agency that prepared the report.

c. Appointment Orders.

- (1) The district attorney shall appoint each state paid employee subject to the provisions of these Rules by an Administrative Order consistent with these Rules.
- (2) All appointments shall be to the entry grade in the appropriate class except as otherwise provided by law or Sections 3.9, 3.10, 3.11 or 3.12 of this Chapter.
- (3) The order shall include the name of the individual and the effective date of the appointment. Sample formats for Administrative Orders are found in the Appendix.
- (4) If the appointment is subject to any additional special conditions, the special conditions shall be reduced to writing signed by the district attorney and attached to the administrative order.
- (5) For investigators the order should also specify:
 - (A) Whether the investigator shall report directly to the district attorney;

¹ The district attorney may request another law enforcement agency, such as the GBI, to conduct the background investigation.

- (B) Whether the investigator is authorized to carry a weapon in the performance of the investigator's official duties pursuant to O.C.G.A. § 16-11-130 (a) (5);
 - (C) Whether the investigator is authorized by law to perform any of the powers of a peace officer and, if so, cite the appropriate authority (i.e. local Act, cross-designation as a deputy sheriff, etc.).
- (6) For assistant district attorneys designated as Special Drug Prosecutors, the appointment order shall designate the position as "Assistant District Attorney - Special Drug Prosecutor."
 - (7) A copy of the appointment order shall be sent to:
 - (A) The payroll office; and
 - (B) Prosecuting Attorneys' Council of Georgia.

d. Oath of Office.

- (1) Each attorney appointed as an assistant district attorney and each district attorney investigator shall take and subscribe to the oaths prescribed by O.C.G.A. §§ 15-18-2, 45-3-1 and 45-3-11.
- (2) The oath may be administered by "any officer authorized by law to administer such oaths." O.C.G.A. § 45-3-3. Traditionally, a judge of superior court has been used to administer the oath of office to assistant district attorneys.
- (3) Copies of the oath of office shall be filed as follows:
 - (A) With the Office of the Governor;
 - (B) The payroll office;
 - (C) In personnel file maintained by the district attorney;
 - (D) The person taking the oath;
 - (E) In single county circuits, the Clerk of Superior Court.

Note: A copy of the oath should be attached to the appointment order.

- (4) If other personnel are administered an oath it should conform to the requirements of O.C.G.A. § 45-3-1 and 45-3-11.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19, 15-18-21, 45-2-1, 45-2-4, 45-3-4, 45-3-5; 8 U.S.C. § 1324a, 42 U.S.C. §§ 12112 (c), 12132. ratified 12/10/1999, effective 7/1/2000.

e. Temporary Vacancies:

- (1) If a state paid employee, other than the district attorney, is placed on leave without pay due to ordered military duty or family leave and it is anticipated that such employee will not be

State Paid Employees of District Attorneys

returning to work for a period of at least thirty days, the Chairman of the Prosecuting Attorneys' Council may authorize a district attorney to appoint a temporary replacement for such employee.

- (2) In selecting a temporary employee, the district attorney may contract with a temporary employment agency for such person or may hire an individual as a temporary replacement, provided, however, the total compensation paid to either an agency or individual shall not exceed the compensation, including fringe benefits, which would have been paid to the employee who is being temporarily replaced.
- (3) Any person who serves as a temporary employee shall be required to undergo the same background investigation as new employees.
- (4) Any contract for services of a temporary employee shall terminate upon the incumbent employee's return to work.

Authority: O.C.G.A. §§ 15-18-19(c); 38-2-279; 38 U.S.C. §§ 4301 et seq. (Effective date: November 1, 2000)

3.7. Transfers.

a. Application. The provisions of this section apply to the following:

- (1) Any attorney, investigator, victim assistance personnel or secretary who is transferred from a non-state paid position within a district attorney's office to a state-paid position within the same office, or,
- (2) Any person, who transfers from either a state or non-state paid position in one district attorney's office to a state-paid position in another district attorney's office.

b. Transfer from Non-State Paid to State-Paid Within the Same District Attorney's Office.

- (1) Any person who is employed in a non-state paid position within a district attorney's office may be transferred to a state paid position. Such transfer shall be to the appropriate class at a salary step which is based on the number of years the person has served in the position as if the person had been initially appointed to the state paid position.
- (2) If the person being transferred from a non-state paid position to a state-paid position would have been eligible for appointment to a salary step above the entry step had such person been initially appointed to a state-paid position rather than a non-state paid position, the appropriate class and step shall be determined as if such person had been appointed to the higher step.
- (3) Not less than thirty (30) days prior to the effective date of a transfer, the district attorney must determine the appropriate class and step to which the employee will be transferred and submit the appointment order to the payroll office for review along with the following documents:
 - (A) The original of the appropriate Personnel Form;

- (B) A copy of the administrative order originally appointing such person as a non-state paid employee;
- (C) A copy of the oath of office (if required for the position).

c. Transfers Between District Attorneys Offices.

- (1) State paid to State paid.

Any state paid employee who transfers from a state paid position in one district attorney's office to a state paid position in another district attorney's office, without a break in service may be appointed to the same salary step as such employee would have been eligible to hold if the employee had remained employed by the same district attorney's office.

- (2) County paid to State Paid.

Any person who transfers from a non-state paid position in one district attorney's office to a state paid position in another district attorney's office, without a break in service, shall be appointed as provided in subsection (b) of this Section.

- d. In computing elapsed time, any period of less than twenty-four hours shall count as one day.
- e. If the payroll office cannot determine with certainty the correct class and step, they will refer the matter to the Director for a determination. The Director may request that the district attorney's office submit additional documentation.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.8. Re-employment.

Any person who was employed by a district attorney in a position subject to the provisions of these Rules, who separated from such position for a period of not more than four years, may be appointed to the same position at the same grade and step as such person held on the date such resignation became effective.

Authority: O.C.G.A. § 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.9. Assistant District Attorneys.

a. Qualifications.

In addition to the minimum qualifications set forth in para. 3.6, Assistant District Attorneys must meet the following qualifications:

- (1) Membership in the State Bar of Georgia. All assistant district attorneys must be active members in good standing of the State Bar of Georgia prior to the effective date of their appointment.
- (2) Admission to practice before the Georgia Supreme Court and Georgia Court of Appeals.
 - (A) Assistant district attorneys are required to be admitted to practice before the Georgia Supreme Court and Court of Appeals.
 - (B) [Reserved].

State Paid Employees of District Attorneys

b. Additional Qualifications for Specific Pay Grades.

(1) Assistant District Attorney I.

No additional qualifications beyond that provided by O.C.G.A. § 15-18-21 and subsection (a) of this Section.

(2) Assistant District Attorney II.

Meet the qualifications for Assistant District Attorney I and has been engaged in the active practice of law for not less than three years; or has served as a prosecuting attorney for not less than two years.

(3) Assistant District Attorney III.

Meet the qualifications for Assistant District Attorney I and has been engaged in the active practice of law for not less than four years; or has served as a prosecuting attorney for three years.

(4) Assistant District Attorney IV.

Meet the qualifications for Assistant District Attorney I and has been engaged in the active practice of law for not less than six years; or has served as a prosecuting attorney for five years.

Authority: O.C.G.A. §§ 15-18-14, 15-18-15, 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000; amended 8/5/2002, effective 8/30/2002.

Note: The amendment approved 8/5/02 amended paragraphs (1) (2) (3) and (4) and provided that it applied only to personnel appointed after the effective date of the amendment.

c. Appointment Of Attorneys Above the Entry Grade of Class I.

(1) Generally.

(A) The intent of this Rule is to provide the district attorney with the flexibility to hire experienced attorneys.

(B) Whenever more than one provision of this section applies to an attorney, the provisions will be construed together so as to allow the appointment to be made to the highest authorized class and step.

(C) The provisions of this section apply to transfers under Section 3.7.

(2) Prosecutorial Clinic.

(A) Any person who shall have successfully completed a prosecutorial clinic established at a law school accredited by the American Bar Association, which has been

approved by the Prosecuting Attorneys' Council, may be appointed as an Assistant District Attorney I at the salary step which is one step above the entry step.

- (B) In order to qualify under the provisions of this paragraph, the individual must submit a certificate, signed by the dean of the law school, attesting that the attorney successfully completed an approved prosecutorial clinic.
- (C) The standards for approval of prosecutorial clinics are set forth in Chapter 4.
- (D) If an individual is a graduate of a prosecutorial clinic which is pending approval by the Prosecuting Attorneys' Council on the effective date of his or her appointment, such individual will be initially classified at the entry grade. If the clinic is subsequently approved, the individual will be advanced one step, said advancement to be retroactive to the initial date of appointment.

(3) Former Peace Officers or Forensic Scientists

- (A) Any person who shall have served as a peace officer of this state or of the United States on a full-time basis or shall have served as a forensic scientist of the Division of Forensic Science of the Georgia Bureau of Investigation or a comparable agency of the United States may be appointed as an Assistant District Attorney I at the salary step which is one step above the entry grade.
- (B) Persons who serve as a peace officer of this State must submit certification of their prior service from the Peace Officers Standards and Training Council.
- (C) Persons who served as a forensic scientist in the Division of Forensic Science of the Georgia Bureau of Investigation (GBI) must submit certification of their prior service from the personnel officer of the GBI.
- (D) Persons who served as peace officers or forensic scientists in an agency of the Federal Government must submit certification of their prior service from the personnel officer of the employing agency.
- (E) Pending receipt of certification of prior service, a person who is eligible for appointment under O.C.G.A. § 15-18-14 (f)(2)(D) shall be appointed to the entry step. Upon receipt of the certification required by this section, the individual will be advanced one step, the advancement will be retroactive to the date of the initial appointment.

(4) Former Employee of the Attorney General, U. S. Department of Justice or Prosecuting Attorneys' Council of Georgia.

- (A) Any person employed as a prosecuting attorney by the Attorney General of this state, the Prosecuting Attorneys' Council of Georgia, or the United States Department of Justice who is appointed to an attorney position without a break in service may be appointed to the appropriate class at the salary step which is one step above the annual salary received by such person on the last day of employment immediately preceding said appointment.
- (B) Persons having prior service as an attorney with the Attorney General of this State, the Prosecuting Attorneys' Council of Georgia or the U.S. Department of Justice, must submit certification of their prior employment, their annual salary for the year

State Paid Employees of District Attorneys

immediately prior to their appointment as an assistant district attorney and the last day of employment from the appropriate personnel officer.

- (5) Former Employee of a Solicitor-General.
 - (A) Any person employed as a prosecuting attorney by a solicitor-general of this state on a full-time basis may be appointed to the appropriate class at a salary step which is based on the number of years the person has served in the position as if the person had been employed in a district attorney's office.
 - (B) Persons having prior service as a prosecuting attorney with a solicitor-general of this state must submit certification of their prior employment from the appropriate personnel officer.

- (6) Attorneys With More Than 10 Years Experience.
 - (A) Any person who is eligible for appointment as assistant district attorney IV who has been engaged in the active practice of law for more than ten years may be appointed at a salary step above the entry level on the basis of one step for every three years of experience over ten years.

Authority: O.C.G.A. §§ 15-18-12, as amended by Ga. L. 2000 p. ___ (Act No. 899); 15-18-19(c) (Effective date: July 1, 2000.)

- (7) Any person who has served as a law assistant to a Justice on the Supreme Court of Georgia or a Judge on the Court of Appeals of Georgia may be appointed at a salary step above the entry level on the basis of one step for every year of service to a Justice on the Supreme Court of Georgia or a Judge on the Court of Appeals of Georgia.

Authority: O.C.G.A. §§ 15-18-19; 15-18-45(b). (Effective September 1, 2000)

- (8) Former Prosecuting Attorneys from Another State.
 - (A) Any person employed as a prosecuting attorney in another state on a full-time basis may be appointed to the appropriate class at a salary step which is based on the number of years the person has served in the position as if the person had been employed in a district attorney's office.
 - (B) Persons having prior service as a prosecuting attorney in another state must submit certification of their prior employment from the appropriate personnel officer.

Authority: O.C.G.A. §§ 15-18-14, 15-18-15, 15-18-19; original rule ratified 12/10/1999, effective 7/1/2000; amended 8/5/2002, effective 8/30/2002.

Note: The amendment approved 8/5/02 added paragraph (7) and provided that it applied only to personnel appointed after the effective date of the amendment.

d. Special Drug Prosecutors.

- (1) Generally.

(A) Not later than June 1 of each year, the Chairman of the Prosecuting Attorneys' Council will notify each district attorney whether funds will be available for the appointment of a Special Drug Prosecutor for the following fiscal year.

(B) Except as otherwise provided in this subsection, all rules applicable to state paid assistant district attorneys apply to the position of Special Drug Prosecutor.

(2) Training.

(A) Any person appointed to the position of Special Drug Prosecutor shall complete the training requirements prescribed by the Council in accordance with Chapter 7 of these Rules.

(B) Any person appointed Special Drug Prosecutor who fails to meet the training requirements for such position shall be transferred to another state paid position within the same office (if available) or removed from the payroll.

e. Initial Training Requirements.

[Reserved]

Authority: O.C.G.A. §§ 15-18-14, 15-18-19, 15-18-21; original Rule ratified 12/10/1999, effective 7/1/2000; amended Rule ratified 6/15/2000 effective 7/1/2000; amended rule ratified 6/4/2003, effective 6/4/2003.

3.10. District Attorney Investigators.

a. Generally.

(1) Unless otherwise provided by law or these rules. each district attorney may appoint one district attorney investigator who shall be compensated by state funds as provided by O.C.G.A. § 15-18-14.1.

(2) If funds are available. a district attorney may appoint such additional state-paid district attorney investigators as may be authorized by the Council.

(3) The Council shall adopt job descriptions and promotional criteria for district attorney investigators which shall specify the qualifications and training requirements for each grade of district attorney investigator. Such job descriptions and promotional criteria may be amended from time to time by the Council.

(A) Except as provided in paragraph b of this Section, any employee who is classified as a state-paid investigator on July 1, 2008 shall be classified in accordance with the job descriptions adopted in accordance with these Rules based on his or her qualifications and training. provided. however. that the salary and benefits of such employee shall not be reduced as a result of such classification.

(B) Any employee who was classified as a state-paid investigator prior to July 1, 2008 without having been certified as a peace officer in accordance with Chapter 8 of Title 35 of the Official Code of Georgia and the Rule of the Georgia P.O.S.T. Council. and does not become certified within 12 months of July 1, 2008, shall be eligible to continue in such position. The salary and benefits of such employee shall not be reduced. Such employee shall be classified in accordance with the job descriptions adopted in according with these Rules based on his or her qualifications and training as if such employee were P.O.S.T. certified. Such

State Paid Employees of District Attorneys

employee must, however, meet all of the qualifications and training requirements required for promotion beyond the initial placement.

- (C) The provisions of this Section do not apply to district attorney investigators who are compensated by the state using funds provided by a local government pursuant to the provisions of O.C.G.A. § 15-18-20.1 unless the terms of the contract specifically provide that this Section applies to such positions.

b. Minimum Qualifications.

(1) POST Certification.

- (A) Except as provided in subsection a(4) of this Rule, a state-paid district attorney investigator shall be certified as a peace officer in accordance with the provisions of O.C.G.A. § 35-8-8 and the Rules of the Ga. P.O.S.T. Council.
- (B) The district attorney may appoint as a district attorney investigator an individual who meets the minimum qualifications for appointment as a peace officer but who has not yet been certified. Such individual shall be classified as a district attorney investigator I and must complete all of the requirements for certification within 18 months of such appointment.
- (C) When an applicant for the position of district attorney investigator I is not certified or registered with P.O.S.T., the district attorney's office is responsible for the completion and submission of all documents required for certification as a peace officer to P.O.S.T. A copy of such documents shall be provided to the payroll office. No person will be placed on the State payroll until such time as all of the preemployment requirements for appointment as a peace officer of the P.O.S.T. Rules have been met.
- (D) The appointment order shall include certification that the employee is P.O.S.T. certified or meets all of the pre-employment requirements for a peace officer.
- (E) Except as provided in subsection a.(4) of this Rule, within 18 months of the date of employment as a district attorney investigator, the individual must submit evidence of satisfactory completion of the Basic Course to the payroll office or the individual will automatically be removed from the State payroll. A three (3) month extension of this requirement will be granted upon receipt of evidence by the payroll office that P.O.S.T. has granted the individual an extension. This extension will run concurrent with the extension granted by P.O.S.T. If an individual is removed from the State payroll due to a failure to timely notify the payroll office of satisfactory completion of the Basic Course, the individual must be re-appointed and will not be compensated by the State for the period of time between the date when the individual is removed from the payroll and the start of the pay period following his or her re-appointment.

c. Appointment of Active or Former Peace Officers.

When the person to be employed as an investigator is an active or former peace officer, a new POST Form 1 is not required. Instead, the district attorney is required to submit a POST Form C-11 to

P.O.S.T. and the payroll office on or before the first day of employment. The POST Form C-11 provides the authority to place the individual on the State payroll as an investigator.

d. Investigators who are not POST Certified.

Any person who is appointed as a state-paid district attorney investigator who, on or after July 1, 2008, does not meet the employment qualifications for a Georgia peace officer set forth in O.C.G.A. § 35-8-8 shall be certified as a peace officer as provided in subsection c of this Rule within 18 months of July 1, 2008.

e. Appointment Of District Attorney Investigator Above the Entry Grade.

(1) Generally.

(A) The intent of this Rule is to provide the district attorney with the flexibility to hire experienced investigators.

(B) Whenever more than one provision of this section applies to an investigator, the provisions will be construed together so as to allow the appointment to be made to the highest authorized Grade.

(C) The provisions of this section apply to transfers under Section 3.7.

(2) Transfer From a Peace Officer Position with a State of Georgia Law Enforcement Agency.

(A) Any person who is employed as a peace officer by an agency of the executive branch of state government who is appointed as an investigator pursuant to this section without a break in service, may be appointed to the Grade for which such person qualifies based on the qualifications and training requirements adopted by the Council at a salary which is not less than the salary such person received on the last day of employment immediately preceding said appointment.

(B) Persons having prior service as a peace officer by an agency of the executive branch of state government, must submit written documentation from the appropriate personnel officer of their prior employment, their annual salary for the year immediately prior to their appointment in the district attorney's office, and the last day of employment. A cover letter signed by the personnel officer must certify that the information contained therein is true and correct.

(3) Prior Service as Peace Officer.

(A) Any person who was a certified peace officer employed on a full-time basis by this state, the United States or any of the several states, or a political subdivision or authority thereof, may be appointed to the level step above the entry level based on one level for every three years experience as a full-time certified peace officer.

(B) For officers certified by the Georgia P.O.S.T. Council, the Peace Officer Profile Report from the P.O.S.T. Council shall be considered sufficient evidence of the prior service.

f. Promotions.

State Paid Employees of District Attorneys

- (1) An employee may be promoted at any time the employee meets the minimum qualifications set forth in the job description for such position, provided that:
 - (A) Funds have been budgeted to compensate the employee at the higher rate;
 - (B) The person to be promoted has served not less than 12 months in the position from which the person is to be promoted.
- (2) Any promotion shall be effective for pay purposes on the first day of the month following the district attorney approving such promotion.

g. Failure to Meet Qualifications.

Except as provided in subsection a.(4) of this Rule, any person who is appointed as a state-paid district attorney investigator who fails to meet the P.O.S.T. certification requirements for such position as provided in subsection b of this Rule shall be removed from the state-payroll or reclassified to a position for which such employee is qualified in accordance with Rule 3.12.

Authority: O.C.G.A. §§ 15-18-14.1, 15-18-19, 15-18-21 35-8-8; original Rule ratified 12/10/1999, effective 7/1/2000; amended Rule ratified 2/22/08, effective 7/1/08.
Note: The 2008 amendment revised Rule 3.10 in its entirety.

3.11. Victim Assistance Personnel.

a. Generally.

- (1) Based on the availability of funds appropriated or otherwise available to provide victim assistance personnel to the district attorneys offices, each district attorney is authorized to appoint, transfer or promote such personnel in accordance with the staffing plan and budget adopted by the Council for victim assistance services.
- (2) The Council shall adopt job descriptions for each type of position allocated to the district attorneys' offices for support of the victim assistance functions in each office in order to comply with the requirements of Chapters 15, 17, and 18 of O.C.G.A. Title 17 relating to the rights of victims of crime or other laws of this state relating to the rights of victims of crimes. Such job descriptions may be amended from time to time by the Council.

b. Qualifications.

- (1) Victim assistance personnel appointed to positions authorized by this section and O.C.G.A. § 15-18-14.2 must meet the minimum qualifications set forth in the job description for the position.
- (2) In addition to meeting the qualifications set forth in the job description for such position, a victim assistance coordinator must meet the qualifications prescribed by O.C.G.A. § 45-2-1 and Section 3.6 b of these Rules.

c. Training.

(1) Initial training.

(a) The Council's Office of Victim Advocacy shall be responsible for developing or approving an initial training program for victim assistance personnel employed pursuant to O.C.G.A. § 15-18-14.2 within 12 months of being employed on such position.

(b) Any person employed in a position authorized by this section who fails to meet the training requirements for such position shall be removed from the payroll. The Executive Director or his or her designee may, for good cause shown, may grant a person employed pursuant to this section an extension of not more than twelve (12) months in which to complete the initial training.

(2) In-service training.

Periodic training courses shall be conducted by the Council's Office of Victim Advocacy for the benefit of victim assistance personnel employed pursuant to OCGA 15-18-14.2.

d. Promotions.

An employee may be promoted at any time the employee meets the minimum qualifications set forth in the job description for such position, provided that:

(a) Funds have been budgeted to compensate the employee at the higher rate;

(b) The person to be promoted has served not less than 12 months in the position from which the person is to be promoted.

Authority: O.C.G.A. § § 15-18-14.2, 15-18-19; original Rule ratified May 15, 2006, effective May 15, 2006.

3.12. Administrative, Clerical and Paraprofessional Personnel.

a. Generally.

(1) Unless otherwise provided by law or these rules, each district attorney may appoint two individuals to perform administrative, clerical, and legal support functions for the office and will be compensated by state funds as provided by O.C.G.A. § 15-18-17.

(2) If state funds are available, a district attorney may appoint such additional administrative, clerical and paraprofessional personnel as may be authorized by the Council.

(3) The Council shall adopt job descriptions for administrative, clerical and paraprofessional personnel which shall specify the qualifications and training requirements for such position. Such job descriptions may be amended from time to time by the Council.

b. Qualifications.

The following are the minimum qualifications for administrative, clerical and paraprofessional personnel:

(1) Be not less than 18 years of age;

State Paid Employees of District Attorneys

- (2) Have a high school diploma or its recognized equivalent;
 - (3) Meet the minimum qualifications established by these Rules and the job description for such position; and
 - (4) Be able to perform the essential functions of the position as set forth in the job description for the position.
- c. Appointment of Administrative, Clerical and Paraprofessional Personnel above the Entry Grade.
- (1) Generally.
 - (A) The intent of this Rule is to provide the district attorney with the flexibility to hire experienced administrative, clerical and paraprofessional personnel.
 - (B) Whenever more than one provision of this section applies to an administrative, clerical and paraprofessional position, the provisions will be construed together so as to allow the appointment to be made to the highest authorized step.
 - (C) The provisions of this section apply to transfers under Section 3.7.
 - (2) Transfer From a Non-State Paid to State Paid Position.

Any person who is employed in a non-state paid administrative, clerical and paraprofessional position within a district attorney's office may be transferred to a state paid position. Such transfer shall be to the salary step which is based on the number of years the person has served in the secretarial position as if the person had been initially appointed to a state paid position.
 - (3) Transfer of Judge's Secretary to district attorney's Office.

Any person who is employed as a state paid secretary to a superior court judge pursuant to Chapter 6 of this title and who is appointed to an administrative, clerical and paraprofessional position pursuant to this Rule section without a break in service may be appointed to the salary step which is equal to or greater than the compensation such person received as a secretary for said judge.
 - (4) Transfer of Secretary from Another State Agency.
 - (A) A person employed in a comparable clerical or secretarial position by another agency of this state who is appointed to an administrative, clerical and paraprofessional position pursuant to this Rule without a break in service may be appointed to the salary step which is one step above the annual salary received by such person on the last day of employment immediately preceding said appointment.
 - (B) Persons having prior service with another state agency must submit written documentation from the appropriate personnel officer of their prior employment their annual salary for the year immediately prior to their appointment in the

district attorney's office and the last day of employment. A cover letter signed by the personnel officer must certify that the information contained therein is true and correct.

d. Promotions.

An employee may be promoted at any time the employee meets the minimum qualifications set forth in the job description for such position, provided that:

- (1) Funds have been budgeted to compensate the employee at the higher rate;
- (2) The person to be promoted has served not less than 12 months in the position from which the person is to be promoted.

e. Paraprofessional Positions.

(1) Law School Graduates.

(A) Conditions for Appointment.

Individuals who have graduated from either a Georgia law school or an accredited law school who have not yet received the results of the first taking of any bar examination who have been certified in accordance with the Rules of the Supreme Court of Georgia may be appointed as a Law School Graduate and compensated by the State subject to the following conditions:

- (i) There must be a vacancy in a state-paid assistant district attorney position within the judicial circuit;
- (ii) The district attorney must submit a written request to appoint a law school graduate in lieu of filling the vacant assistant district attorney position and agreeing not to fill such vacant position while the law school graduate is so employed;
- (iii) A copy of the law school graduate certificate issued by the Georgia Supreme Court together with the appointment order and oath of office must be submitted to the payroll office with the request for the appointment; and
- (iv) The individual shall be removed from the state payroll at the end of the month in which the results of the first Georgia Bar examination given after the petitioner's graduation are published.

(B) Compensation.

The salary of a law school graduate shall be set by the Council but will not exceed the starting salary for an assistant district attorney I.

(C) Restrictions.

- (i) A law school graduate shall comply with the limitations on the practice of law established by the Georgia Supreme Court for law school graduates.

State Paid Employees of District Attorneys

- (ii) A law school graduate shall not use the title assistant district attorney or any other title that implies that he or she has been admitted to the practice of law in Georgia.
- (2) Former non-POST certified district attorney investigator.
 - (A) Except as provided in subsection a of Rule 3.10, an employee who is appointed as a district attorney investigator on or after July 1, 2008 who does not become certified within 18 months of July 1, 2008, or 12 months after being employed as a district attorney investigator, whichever is later, shall be reclassified as a paraprofessional in accordance with the job descriptions established by the Council.
 - (B) The salary and benefits of an employee who is reclassified in accordance with this Rule shall not be reduced and such employee shall be eligible for promotion as if such employee had been originally appointed as a paraprofessional.
 - (C) If an employee initially appointed as a district attorney investigator pursuant to O.C.G.A. § 15-18-14.1 and Section 3.10 of these Rules is reclassified, there must be an authorized state-paid position available within such circuit. If there is no such position vacant, the district attorney may waive the right to appoint an investigator on the part of the district attorney and such employee shall be reclassified as a paraprofessional. Such district attorney shall not be eligible to appoint a district attorney investigator pursuant to O.C.G.A. § 15-18-14.1 so long as the paraprofessional is compensated by the state.

Authority: O.C.G.A. §§ 15-18-17, 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000; amended rule ratified 2/22/08, effective 7/1/08.

Note: The 2008 amendment revised this Rule in its entirety. The original Rule was entitled Legal Secretaries.

3.13. Appointment Procedures Applicable to All Positions.

- a. In order for a person to be placed on the State payroll, the following must be submitted to the payroll office:
 - (1) Appointment Order;
 - (2) Oath of Office, where applicable;
 - (3) For investigators, POST Form 2 or POST Form C-11;
 - (4) A letter or memorandum signed by the district attorney or the personnel officer for the district attorney to the payroll office with the following information for the employee²:

² The Governors' office is responsible for notifying the payroll office in the event of the election or appointment of a new district attorney.

- (A) Name;
- (B) Residence address (including street name and county);
- (C) Date of Birth;
- (D) Social Security Number;
- (E) Effective date of appointment;
- (F) A statement indicating whether or not the background check has been completed and if not, that the appointment is subject to completion of the background check;
- (G) A statement that the drug test has been completed and if not, that the appointment is subject to the results of the drug test.
- (H) If the person is filling a position previously held by another person, the name of the person who the appointee is replacing.

[A sample of this letter or memorandum may be obtained from the Council office]

b. Upon receipt of the above information, the payroll office will forward the following to be completed and returned:

- (1) District Attorney Personnel Data Form;
- (2) INS Form I-9;
- (3) I.R.S. Form W-4;
- (4) Georgia Dept. of Revenue Form G-4;
- (5) Flexible Benefits Option Statement;
- (6) State Merit System Form MS66-001a (Health Insurance);
- (7) State Charity Contribution Form.

Authority: O.C.G.A. §§ 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.14. [Reserved]

Authority: O.C.G.A. § 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000; repealed and reserved by amendment ratified July 22, 2013.³

3.15. Performance Based Salary Increases.

a. Subject to the provisions of this Rule, the district attorney may adjust the salary of an employee who meets or exceeds performance expectations to a higher increment the first of the calendar month

³ The original Rule 3.14 was entitled Performance Evaluations.

State Paid Employees of District Attorneys

following the anniversary of such employee's appointment. A salary adjustment may not exceed the maximum of the paygrade applicable to the job to which the employee's position is assigned.

- b. The Council shall determine, commensurate with the intent and appropriations of the General Assembly, when increases are to be available to employees and the manner in which such increases shall be applied to employees' base salary. Performance based increases for those employees who meet, exceed, or far exceed performance standards will include two components:
- c. A market adjustment to increase competitiveness with the outside job market, based on availability of state funds; and
 - (1) A variable award amount, based on level of performance.

| Performance Levels | Increase Components* |
|-------------------------------|---|
| Meets expectations (M) | market amt + M award |
| Exceeds expectations (E) | market amt + M award + E award |
| Far exceeds expectations (FE) | market amt + M award + E award + FE award |

Authority: O.C.G.A. § 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.16. Demotions or Reductions.

- a. Any reduction in salary shall be made in accordance with steps in the salary schedule provided for by these rules.
- b. Written notice of any demotion or reduction shall be given to the employee and the payroll office. The notice shall contain the effective date of the action, the step within the class and the period of time that the demotion or reduction shall be effective.
- c. The district attorney shall have the discretion to restore the employee to the step which the employee held prior to the demotion or reduction. Any restoration shall become effective on the first day of the month following receipt of the order from the district attorney restoring the employee to the former step.

Authority: O.C.G.A. § 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.17. Removal of Personnel from Payroll.

- a. Generally.
 - (1) The district attorney shall timely notify the Council and the payroll office in the event that any state paid employee is to be removed from the payroll for any reason.
- b. Resignation. [TBP]
- c. Retirement. [TBP]

- d. Death. [TBP]
- e. Termination. [TBP]

Authority: O.C.G.A. § 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.18. Application of the Fair Labor Standards Act.

a. Generally.

- (1) The provisions of this section do not apply to assistant district attorneys who are exempt from the Fair Labor Standards Act.
- (2) Non-attorney employees are exempt from the provisions of the Fair Labor Standards Act (FLSA), if certain requirements are met.
 - (A) An employee may be exempt if:
 - (i) The employee is appointed directly by an elected public official as a member of the public official's personal staff; and
 - (ii) The employee is directly supervised by the elected public official; and
 - (iii) The employee is holds a "bona fide executive, administrative or professional" position.
 - (B) A determination that a position (other than an assistant district attorney) is exempt should be made only after consultation with the U.S. Department of Labor.
- (3) If an employee does not qualify as an exempt employee under 29 U.S.C. § 212 and 29 C.F.R., the employee is subject to the provisions of 29 U.S.C. § 207 and 29 C.F.R. § 553.1, et seq., concerning the maximum hours which an employee may work during the applicable work period.
- (4) The FLSA distinguishes between government employees and "employees ... in law enforcement activities," (hereafter referred to as "sworn employees" (i.e., investigators).
- (5) It is the responsibility of the district attorney to maintain records on employees who are subject to 29 U.S.C. § 207.
- (6) Specific guidance concerning the applicability of the FLSA, 29 U.S.C. § 201, et seq., is available from:

Personnel Affairs Division
Georgia Department of Law
40 Capitol Square
Atlanta, Georgia 30334
(404) 656-4585

b. Non-Exempt, Non-Sworn Employees

State Paid Employees of District Attorneys

- (1) Under FLSA, a nonexempt, unsworn, employee either must be compensated or receive compensatory time off for each hour worked which is in excess of 40 hours of work in a seven day work period, exclusive of time off for meals, State holidays and approved leave.

Note: The State of Georgia has not specifically authorized or appropriated funds for the payment of overtime compensation to district attorneys' employees. The payment of overtime compensation is dependent on appropriated funds being available. Unless the payment of overtime is authorized in advance by the Council, overtime payments will be charged against any vacancy which may exist in the number of authorized state-paid personnel for the circuit and will result in the district attorney being unable to fill the vacant position for a period of time determined by the Council.

- (2) Each district attorney is required by 29 C.F.R. § 553.23(c) to establish an "agreement or understanding concerning compensatory time off between the public agency and the individual employee and must be reached prior to the performance of work." While this agreement or understanding is not required to be in writing, *id.*, the district attorney is required to keep a record of the agreement or understanding.

Note: It is recommended that each district attorney establish a written policy governing compensatory time and that a copy of that policy be provided to each nonexempt, unsworn, personnel at the time of employment.

c. Non-Exempt, Sworn Employees.

- (1) Non-exempt, sworn employees either must be compensated or receive compensatory time off for each hour worked which is in excess of 160 hours of work in a 28 day work period, exclusive of time off for meals, State holidays and approved leave.
- (2) Non-exempt sworn employees who complete 160 hours of work within the 28 day work period may be placed on administrative leave by the district attorney or his/her designee to control the accumulation of compensatory time or overtime.
- (3) Non-exempt sworn employees must work a minimum of 171 work hours in a 28 day work period before compensatory time or overtime payments are authorized.

d. Record Keeping Requirements.

- (1) The district attorney is required to maintain records of the number of hours worked by nonexempt personnel, the number of hours of compensatory time earned, the number of compensatory hours used, and any compensation paid for overtime.
- (2) Compensatory time is earned at the rate of "not less than one and one half hours for each hour of employment for which overtime compensation is required by section 7 of the FLSA." A nonexempt, unsworn employee can accrue up to 240 hours of compensatory time.
- (3) If the employee works additional hours over the 240 hour limit, **overtime compensation must be paid.** If a district attorney anticipates that a nonexempt employee will exceed the 240 hours of accrued compensatory time limit, the payroll office must be contacted in advance

Note: An employee does not begin to accrue compensatory time under FLSA until the employee exceeds the 40 hour work week. Thus, for example, if a secretary works 5 hours on Sunday to help get ready for a case being tried on Monday, but then is given 5 hours off during that same week so that the total hours worked does not exceed 40 hours, compensatory time under FLSA does not accrue. However, if due to the workload, the secretary works 10 hours on Monday, Tuesday, Wednesday, Thursday and Friday, the individual will accrue compensatory time at the rate of 1 ½ hours for each hour worked on Friday.

- (4) A nonexempt employee must be paid for any unused compensatory time remaining when employment is terminated. The rules for determining the amount which must be paid are at 29 C.F.R. § 553.27. If a state paid employee who has accrued compensatory time is terminated from state service (including transfer to a county payroll), the district attorney must provide copies of the records required to be kept on the employee by 29 C.F.R. § 553.50 to the payroll office.
- e. Failure to comply with the provisions of FLSA or the regulations issued pursuant to the FLSA can result investigations by the U.S. Department of Labor, injunctions, loss of federal funds, civil damages or criminal prosecution.

Authority: O.C.G.A. § 15-18-19; 29 U.S.C. § 201, et seq.; original Rule ratified 12/10/1999, effective 7/1/2000.

3.19. State Holidays.

- a. The State of Georgia recognizes and observes as public and legal holidays:
 - (1) All days designated by the federal government as public and legal holidays designated as of January 1, 1984 as public and legal holidays; and
 - (2) All other days designated and proclaimed by the Governor as public and legal holidays or as days of fasting and prayer or other religious observance.
 - (3) The Council staff will provide each district attorney's office with a list of all public and legal holidays which have been designated by the Governor.
- b. Observance of Holidays.
 - (1) A holiday will normally be observed on the date designated in the Governor's proclamation.
 - (2) Because the Superior Courts are in session on many state holidays, the district attorney may require state paid personnel to work on state holidays. An employee who is required to work on a day proclaimed as a holiday, shall be granted equivalent time off as soon as practicable.
 - (3) If one or more counties in the judicial circuit observe a public holiday which is in addition to or in lieu of a State holiday, the district attorney may authorize state paid personnel to observe said holiday.

State Paid Employees of District Attorneys

- (4) An employee scheduled to work on a holiday who fails to report for any portion of the scheduled duty and whose absence is not authorized, shall not be granted additional time off for the holiday.

c. Requests to Observe Other Religious Holidays.

- (1) An employee, upon request to the district attorney or his or her designee at least seven (7) days in advance, shall be given priority consideration for time away from work for observance of religious holidays not provided for in subsection (a) of this Rule.
- (2) Any paid time for such religious holiday observance shall be charged to compensatory time or accrued annual leave available to the employee at the time of the holiday observance.
- (3) No employee may claim priority consideration for more than three (3) workdays in each calendar year. A request by an employee for time away from work to observe a religious holiday shall not be denied unless:
 - (A) the employee has inadequate compensatory time or accrued annual leave to cover such period of absence; or
 - (B) the duties performed by the employee are urgently required and the employee, in the judgment of the district attorney, is the only person available who can perform the duties.

Authority: O.C.G.A. § 1-4-1, 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.

3.20. Annual, Sick, and Miscellaneous Leave; Administrative Time.

a. General Provisions.

- (1) A state paid employee of a district attorney who is in pay status for eighty (80) hours or more (inclusive of holidays) during a calendar month earns annual and sick leave for that month. An employee in pay status for less than eighty (80) hours during a calendar month earns no leave for that month.
- (2) Except as otherwise provided in these rules, the administration of Annual, Sick and other leave will be in accordance with the provisions of Rule 478-1-.18 of the State Personnel Board; provided, however, that the district attorney shall be vested with the full and exclusive authority to make any decision concerning Annual, Sick or other leave which is granted by said Rules to the appointing authority, the Commissioner of Personnel Administration, or both, and any such decision shall not be appealable to the State Personnel Board, the Council or the payroll office.
- (3) For the purpose of this section, 'immediate family' means the employee's spouse, child, parent, brother and sister. Immediate family also includes any other person who resides in the employee's household and is recognized by law as a dependent of the employee.

Authority: O.C.G.A. § 15-18-15, 15-18-19, 21-2-404, 34-1-3, 38-2-279, 328-3-90, et. seq., 45-7-9, 45-20-30, 45-20-31; original Rule ratified 12/10/1999, effective 7/1/2000.

b. Annual Leave.

- (1) For employees with less than five years of uninterrupted service, annual leave is accrued by each employee at the rate of 1 1/4 workdays per month.
- (2) After five uninterrupted years of service to the state, the rate of annual leave accumulation increases to 1 ½ workdays per month.
- (3) After ten uninterrupted years of service to the state, the rate of annual accumulation increases to 1 3/4 workdays per month.
- (4) All accumulated leave in excess of 45 days is forfeited. Accumulated days of forfeited annual leave shall constitute creditable service for members of the Employees Retirement System if such member has at least six months of such forfeited leave at the time of the member's retirement in accordance with O.C.G.A. § 47-2-91.
- (5) Regardless of the amount of annual leave accumulation, all periods of annual leave must be approved by the district attorney or his designee.
- (6) If an employee is ill for three (3) workdays or more during a period of annual leave, the period of illness may, upon presentation of satisfactory written evidence, be charged as sick leave.

c. Sick Leave.

- (1) Employees shall earn sick leave at the rate of one and one-fourth (1 1/4) workdays per calendar month of service. Sick leave shall be cumulative for not more than ninety (90) workdays.
 - (A) In the event of illness or disability which exhausts available paid leave and compensatory time, the district attorney may restore as much sick leave forfeited and as much annual leave forfeited as is required by the circumstances of the illness or disability.
 - (B) Accumulated days of forfeited sick leave shall constitute creditable service for members of the Employees Retirement System if such member has at least six months of such forfeited leave at the time of the member's retirement in accordance with O.C.G.A. § 47-2-91.
- (2) An employee may use accrued sick leave for absence due to personal illness or disability; absence necessitated by exposure to contagious disease by reason of which exposure the health of others would be endangered by the employee's attendance on duty; absence for dental or medical care; and for absence due to dental care or medical care, illness, accident or death in the employee's immediate family which requires the employee's presence.
- (3) Disability Due to Certain Injuries.
 - (A) A full-time employee who becomes physically disabled as a result of a physical injury incurred in the line of duty and caused by a willful act of violence committed by a person other than a fellow employee shall be entitled to a leave of absence for the period that the employee is physically unable to perform the duties of the employee's position not to exceed 180 working days for any single incident.

State Paid Employees of District Attorneys

(B) Such leave of absence shall be in lieu of sick leave and the employee shall be compensated as provided by law. The employee shall be required to submit satisfactory evidence of such disability to the head of the department.

(4) An employee shall not be allowed to use accrued leave for absences due to an accidental injury or occupational disease which is compensable under the Georgia Workers' Compensation Act, until the employee elects in writing to use accrued leave in lieu of worker's compensation benefits. The leave granted for such purpose shall be credited on a day-for-day basis as compensation against any indemnity award by the State Board of Workers' Compensation. A written election to use accrued leave in lieu of worker's compensation benefits may be executed prospectively.

d. Miscellaneous Leave.

(1) Leave of Absence for Blood Donations.

Each state, county, and municipal officer and employee in this state shall be allowed a leave of absence, without loss of pay, of not more than eight hours in each calendar year for the purpose of donating blood. This absence shall be computed at two hours per donation, up to four times per year. However, any such officer or employee who donates blood platelets or granulocytes through the plasmapheresis process shall be allowed a leave of absence, without loss of pay, of not more than 16 hours in each calendar year which shall be computed at four hours per donation, up to four times per year.

(2) Leave of Absence for Kidney Donation.

(A) Each employee of the State of Georgia or of any branch, department, board, bureau, or commission of the State of Georgia serves as an organ donor for the purpose of transplantation shall receive a leave of absence, with pay, of 30 days and such leave shall not be charged against or deducted from any annual or sick leave and shall be included as service in computing any retirement or pension benefits. The employee shall not be entitled to such leave of absence with pay unless he furnishes to the payroll office a statement from a medical practitioner who is to perform such transplantation procedure or from a hospital administrator that the employee is making a organ donation as provided in O.C.G.A.. § 45-20-31.

(B) Each employee who serves as a bone marrow donor for the purpose of transplantation shall receive a leave of absence, with pay, of seven days and such leave shall not be charged against or deducted from any annual or sick leave and shall be included as service in computing any retirement or pension benefits. The employee shall not be entitled to such leave of absence with pay unless he or she furnishes to the payroll office a statement from a medical practitioner who is to perform such transplantation procedure or from a hospital administrator that the employee is serving as a bone marrow donor as provided in O.C.G.A. § 45-20-31.

(C) If the organ or bone marrow donation does not occur, the provisions of this paragraph shall not be applicable.

(3) Leave of Absence for Military Duty.

- (A) Employees shall be entitled to military leave in accordance with O.C.G.A. § 38-2-279.
- (B) Employee shall be paid his or her salary or other compensation as for any and all periods of absence while engaged in the performance of ordered military duty and while going to and returning from such duty, not exceeding a total of 18 days in any one federal fiscal year and not exceeding 18 days in any one continuous period of absence.
- (C) In the event the Governor declares an emergency and orders any public officer or employee to state active duty as a member of the National Guard, any such officer or employee, while performing such duty, shall be paid his or her salary or other compensation as a public officer or employee for a period not exceeding 30 days in any one federal fiscal year and not exceeding 30 days in any one continuous period of such state active duty service.
- (D) In the event the period of ordered military duty exceeds the time limits for paid military leave, the employee may elect to apply accumulated annual leave to such additional period of time. If the employee does not have accumulated annual leave or elects not to use annual leave, the employee will be placed on Leave Without Pay status.
- (E) If the district attorney shall be absent for a period of more than 30 days as a result of ordered military duty, as defined in Code Section 38-2-279, the chief assistant district attorney shall be designated acting district attorney. If no chief assistant has been designated, the district attorney shall designate a chief assistant district attorney pursuant to subsection (a) of this Code section prior to entering ordered military service. Should the district attorney fail to designate a chief assistant district attorney prior to entering ordered military duty, the assistant district attorney senior in time of service shall be designated the acting district attorney. The designation of an acting district attorney shall terminate upon the district attorney's release from ordered military duty.
- (F) An acting district attorney, shall be compensated at the same rate as is authorized by general or local law for the district attorney. The acting district attorney shall retain such other benefits and emoluments as an assistant district attorney, including, but not limited to, membership in the Employees' Retirement System of Georgia and coverage under the State Employees Health Benefit Plan.
- (G) The acting district attorney shall be authorized to appoint an additional assistant district attorney who shall be compensated in the same manner and from the same source or sources as the acting district attorney was compensated prior to being designated acting district attorney. Said appointment shall be temporary and shall terminate upon the district attorney resuming the duties of his or her office.

(4) Court Leave.

State Paid Employees of District Attorneys

- (A) Leave to Serve as Juror or Witness.
 - (i) An employee shall be entitled to leave of absence from duties, without loss of pay or time and without effect on any report of performance, on all days during which the employee shall be subpoenaed to serve as a juror or witness or for other proceedings for which an employee is subpoenaed or summoned to appear by any federal, state or local court.
 - (ii) The time allowed for court leave shall include the time that the employee's presence is actually required by the court, plus such additional time as is reasonably necessary in the opinion of the district attorney for the employee to prepare for or recuperate from the court duty.
 - (iii) an employee shall not be granted court leave for any case or proceeding in which the employee is litigant, defendant or other principal party, or if the employee has any other personal or familial interest in the proceeding.
 - (B) The district attorney shall require the employee to submit a copy of the subpoena, summons for jury duty or other court order or process as a prerequisite for approval of court leave. Appropriate certification of service may also be required.
- (5) Temporary Emergencies.
- (A) If employees are absent from duty because of severe weather conditions or other emergencies, the district attorney, at personal discretion, may:
 - (i) permit the employees to make-up the time lost from work; provided, however, that the make-up time shall be completed no later than fifteen (15) workdays after the absence;
 - (ii) permit the employee to charge the period of absence to accrued compensatory time;
 - (iii) permit the employee to charge the period of absence to accrued annual leave; or
 - (iv) place the employee on leave without pay for the period of absence if none of the above options is available.
 - (B) A district attorney who believes that existing or imminent weather conditions or other appropriate circumstances warrant the closing of an office or facility may excuse from duty the employees directly affected by such conditions for such time as may be necessary. Such excused time shall be without loss of pay.
- (6) Disaster Volunteer Leave.
- (A) An employee who is a certified disaster service volunteer of the American Red Cross may be granted a leave of absence to participate in specialized disaster relief services for the American Red Cross.

(B) Disaster Volunteer Leave shall:

- (i) Not be charged against annual leave, sick leave, personal leave, or compensatory time;
- (ii) Be authorized only if the employee's services are requested by the American Red Cross;
- (iii) Be at the discretion of the district attorney and coordinated through the director of emergency management;
- (iv) Be granted only for services related to a disaster occurring within this state or in a contiguous state which has a reciprocal statutory provision; and
- (v) Not exceed fifteen (15) workdays in any twelve (12) month period.

(7) Voting Time.

Each employee shall, upon reasonable notice to the district attorney be permitted to take any necessary time off from employment without loss of pay to vote in any municipal, county, state or federal political party primary or election for which the employee is qualified and registered to vote, on the day on which the primary or election is held; provided, however, that such time off shall not exceed two (2) hours; and provided further that if the hours of work of the employee commence at least two (2) hours after the opening of the polls, or end at least two (2) hours prior to the closing of the polls, the time off for voting as provided in this paragraph shall not apply. The district attorney may specify the hours during which the employee may be absent as herein provided.

e. Terminal Leave.

- (1) Terminal leave is accrued annual leave for which payment is due an employee or his estate upon separation from employment by death, retirement, resignation, dismissal, abandonment or separation in any manner.
- (2) Terminal leave shall be paid for all accrued unused annual leave which has not been forfeited up to a maximum of forty-five (45) days. Terminal leave shall not act to extend the date of an employee's separation from employment.

f. Leave Without Pay.

- (1) The district attorney may place an employee on voluntary leave without pay as provided by Section B.400 of Rule 478-1-0B of the State Personnel Board. See also Ga.Op.Att'y Gen. U83-44.
- (2) The district attorney shall notify the payroll office in writing that an employee has been granted leave without pay. The notice will contain the employee's name, social security number, position title, and the starting and ending dates for the leave without pay.

g. Family Leave.

- (1) After an employee has worked for State government for at least 12 months, the employee is eligible for family leave.

State Paid Employees of District Attorneys

- (2) Family leave can be used for the following reasons:
 - (A) The birth of a child;
 - (B) The placement of a child for adoption or foster care;
 - (C) Caring for your child, parent, or spouse's parent who has a serious health condition.
 - (D) A personal health condition.
- (3) The length of family leave is determined by the medical facts for which the leave is needed, but is limited to a total of 12 weeks within a 12-month period.
- (4) Family leave is leave without pay. If the employee has paid leave available (sick leave, annual leave, personal leave, compensatory time), they may use paid leave. The district attorney may require an employee to use paid leave before placing the employee on Family Leave.
- (5) Whenever possible, an employee shall give at least 30-days advance notice to the district attorney that the employee anticipates needing family leave.

h. Administrative Time.

- (1) Each district attorney shall establish, in writing, policies governing administrative time for employees. A copy of these policies shall be given to the employee and filed in the employee's personnel file.
- (2) If the employee's position does not qualify as exempt employee under 29 C.F.R. § 553.11, the policies governing administrative time must meet the requirements of 29 C.F.R. Part 553.

Note: For non-exempt unsworn employees, the work period is defined as 40 hours of work in a seven day work period, exclusive of time off for meals, State holidays and approved leave. For non-exempt sworn employees, the work period is defined as 171 hours of actual work in a twenty-eight day period, exclusive of time off for meals, State holidays and approved leave.

i. Forfeiture of Leave.

Upon the effective date of separation from employment, for whatever reason, any unused sick or administrative leave shall be forfeited except as provided in paragraph 3.e of these Rules.

j. Conversion of Leave From Non-State Paid Position to a State Paid Position.

- (1) If a non-state paid employee is transferred to a state paid position, the district attorney may authorize the employee to convert such accrued leave earned as a non-state paid employee to compensatory time subject to the following conditions and limitations:
 - (A) The employing entity had a written policy authorizing the employee to accrue annual and sick leave which provided that the employee would be paid for any unused leave upon termination of employment;
 - (B) Records were kept by the employing entity in the ordinary course of business which documented the employee's annual and sick leave;
 - (C) In lieu of paying the employee for such leave, the employing entity transfers sufficient funds to the Council to cover any accrued liability for the number of days of annual or sick leave being converted; and
 - (D) The amount of leave converted does not exceed the following limitations:
 - (i) Annual Leave - not more than 30 days
 - (ii) Sick Leave - not more than 60 days
 - (iii) Administrative Leave:
 - a) For non-exempt employees not more than 40 hours.
 - b) For exempt employees, not more than 10 hours.
- (2) It is the responsibility of the district attorney to provide the payroll office with documentation establishing that the leave which is to be converted meets the criteria set forth in paragraph (1) of this section at the time the employee is transferred to the state-paid position. Failure to timely provide such documentation shall bar any transfer of leave pursuant to this section.
- (3) Annual or sick leave that is converted to compensatory time pursuant to this subsection must be used within 12 months of the employee being transferred to the state-paid position or be forfeited. Leave converted to compensatory time does not constitute creditable service pursuant to O.C.G.A. § 47-2-291 nor is the employee entitled to be paid by the Council for any such leave that is converted.

Authority: O.C.G.A. § 15-18-15, 15-18-19, 21-2-404, 34-1-3, 38-2-279, 328-3-90, et. seq., 45-7-9, 45-20-30, 45-20-31; original Rule ratified 12/10/1999, effective 7/1/2000; amended rule ratified June 1, 2002, effective July 1, 2002; amended rule ratified 6/4/03, effective 6/4/03.

k. Conversion of Sick Leave to Personal Leave.

- (1) Employees who have accumulated more than 120 hours of sick leave as of November 30 of any year, may convert up to 24 hours of the accumulation in excess of 120 hours to personal leave. Written notification of such conversion shall be provided the appointing authority no later than December 31 of that year.
- (2) Personal leave shall be available for use by an employee during the calendar year following the year of conversion.

State Paid Employees of District Attorneys

- (3) Personal leave may be used by the employee for personal reasons upon approval of the appointing authority.
- (4) Employees shall normally be required to provide a 24 hour advance notice of intent to use personal leave.
- (5) Once an employee's election to convert sick leave to personal leave has been verified by the appointing authority, such election shall be irrevocable.
- (6) Personal leave shall be forfeited and not restored to the employee if not used by December 31 of the year in which such leave was available to the employee or upon termination of the employee during such year.

Authority: O.C.G.A. § 15-18-19; ratified 10/8/2004; effective 11/1/2004.

3.21. Records

a. Personnel Files.

- (1) Each district attorney shall maintain in his principal office a personnel file on each state paid employee.
- (2) At a minimum, the personnel file maintained by the district attorney shall contain copies of the following documents:
 - (A) Application for employment;
 - (B) Report of the background investigation;
 - (C) The Personnel Data Form appropriate for the position;
 - (D) Appointment order;
 - (E) Oath of Office, where applicable;
 - (F) Any correspondence between the district attorney's office and the employee relating to employment;
 - (G) INS Form I-9 (Employment Eligibility Verification);
 - (H) PAC Form P-1, Leave Record or an approved leave record form;
 - (I) Salary Schedule;
 - (J) For employees who are not attorneys, a memorandum from the district attorney stating the time of day and day of week on which the workweek begins. See 29 C.F.R. § § 516.2, 516.3.

- (3) Files for investigators shall also include the following:
 - (A) POST Form 1; (including POST Form 1A, 3 & 4);
 - (B) POST Form C-11;
 - (C) POST Form 2;
 - (D) POST Certificate.
 - (4) The Personnel File maintained by the district attorney may contain copies of resumes, reimbursement requests, documents relating to advanced or specialized training completed by the employee and information copies of documents not listed in paragraph (1) above which are maintained by the payroll office in accordance with subsection a of this Section.
- b. Payroll Records. The payroll office will maintain a payroll file on each state paid employee. At a minimum, the payroll file will contain the following documents:
- (1) Appointment order;
 - (2) Oath of Office, where applicable;
 - (3) INS Form I-9 (Employment Eligibility Verification);
 - (4) I.R.S. Form W-4;
 - (5) Georgia Dept. of Revenue Form G-4;
 - (6) State Merit System Form MS66-001a (Health Insurance);
 - (7) Flexible Benefits Program Option Statement;
 - (8) POST Form C-11, where applicable;
 - (9) POST Form 2 (see § 6.02), where applicable;
 - (10) The Personnel Data Form appropriate to the position.
- c. Disposition of Personnel Files.
- (1) Termination of Employment.

If a state paid employee is terminated, resigns, or dies, it shall be the duty of the district attorney to:

 - (A) Promptly notify the payroll office and the Council of the termination and to forward a certified copy of PAC Form P-1, Leave Record to the payroll office within five (5) working days of the termination; and
 - (B) If the employee has died or has ceased to be employed within the district attorney's office in any capacity, the district attorney shall transfer the personnel file to the payroll office for retention in accordance with the provisions of the Georgia Records Act and records retention standards adopted pursuant thereto.

State Paid Employees of District Attorneys

- (2) Reassignment.
 - (A) If the employee has been re-assigned to a non-state paid position within the district attorney's office, the district attorney shall retain the personnel file for as long as the individual remains employed within the district attorney's office.
 - (B) At such time as the individual ceases to be employed within the district attorney's office, the district attorney shall transfer the personnel file to the payroll office for retention in accordance with the provisions of the Georgia Records Act and records retention standards adopted pursuant thereto.
- (3) Transfer to Another District Attorney's Office.
 - (A) If a state paid employee accepts an appointment in the same position in another district attorney's office, it is the duty of the district attorney to forward a copy of the personnel file to the district attorney's office where the employee will be employed.
 - (B) The district attorney accepting the transfer of a state paid employee must notify the payroll office in writing of the transfer and the effective date.

d. Confidentiality.

- (1) Personnel files maintained pursuant to this section shall not be deemed to be public records.
- (2) The Council and their designated representatives shall have access to departmental personnel and payroll records, documents and papers, in whatever form maintained, if the examination will aid in the discharge of their duties.
- (3) The district attorney and personnel officers shall have access to personnel files, applications, and other records, if the examination will aid in the discharge of their duties; provided, however, that such access shall not be so construed as to impair the confidential nature of examination records or disclose information which would constitute an invasion of personal privacy.
- (4) An employee, upon application, may review the contents of his or her payroll office personnel file and copy or duplicate all or any portion thereof during scheduled office hours.
- (5) No person shall disclose information from the files or records of an employee without the employee's consent unless such disclosure is: (1) necessary for the orderly conduct of operation; (2) required by law; or (3) in response to a properly issued subpoena.

Authority: O.C.G.A. §§ 15-18-19, 50-18-72(a)(2), (5) & (13); *Hackworth v. Bd. of Ed.*, 214 Ga. App. 17, 21 - 22 (1994).; original Rule ratified 12/10/1999, effective 7/1/2000.