

# Code of Conduct of Prosecuting Attorneys of Georgia

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## Scope

The Code of Conduct of Prosecuting Attorneys of Georgia (the Code) is promulgated pursuant to OCGA § 15-18-32, which also creates the Prosecuting Attorneys Oversight Commission. That statute applies only to District Attorneys and Solicitors General. Therefore, this Code applies to a commissioned District Attorney or Solicitor General having been elected or appointed. The Code does not apply to Assistant District Attorneys, Assistant Solicitors General, or other prosecutors, such as those employed by the Prosecuting Attorneys’ Council of Georgia, the Office of the Attorney General of Georgia, or municipal, probate, or magistrate prosecutors.

OCGA § 15-18-32 is the guide for the scope of the Code. Pursuant to this statutory authority, the Code addresses only issues which would be a proper basis for discipline under the statute. Further, the Code only defines the Conduct, that if violated, may be disciplined under OCGA § 15-18-32; it does not, however, dictate what level of discipline would be appropriate for any violation. This determination is to be made by the Hearing Panel after a finding of a violation and based on the specific facts and circumstances of each matter.

## Terminology

- **Bad Faith** means breach of known duty through some motive of interest or ill will and is not simply bad judgment or negligence. It imports a dishonest purpose or some moral obliquity, and implies conscious doing of wrong. See *Inquiry Concerning Judge Coomer*, 315 Ga. 841, 859–60 (2023).
- **Conduct Prejudicial to the Administration of Justice Which Brings the Office into Disrepute** means inappropriate actions, which are harmful to the public’s esteem of the criminal justice system or the office of prosecuting attorney, taken in good faith by the prosecuting attorney acting in their capacity as a prosecutor or taken in bad faith by the prosecuting attorney acting outside their capacity as a prosecutor. See *Inquiry Concerning Judge Coomer*, 315 Ga. 841, 859–60 (2023).
- **Commission** means the Prosecuting Attorneys Qualifications Commission.

- **Conflict of Interest** means an interest or relationship that would compel disqualification in accordance with OCGA §§ 15-18-5, 15-18-65, or the applicable provisions of the Georgia Rules of Professional Conduct.
- **Indictable Offense** means any criminal case where a grand jury could find probable cause to believe a defendant has committed a crime. *See* OCGA § 15-18-6(5) (for use of the word “indictable”).
- **Individual Case for which Probable Cause for Prosecution Exists** means any matter within the jurisdiction of the prosecuting attorney for which a judicial officer has made a formal finding of probable cause that an offender has committed a crime according to the laws of the State of Georgia. *See* OCGA § 15-18-6(4).
- **Knowingly** means actual knowledge of the fact in question. Knowledge may be inferred from the circumstances.
- **Moral Turpitude** means any crime punishable by death, by imprisonment for life, or by imprisonment for more than 12 months, or any crime involving dishonesty or the obstruction of justice, regardless of the punishment. *See* *Lewis v. State*, 243 Ga. 443 (1979); *In the Matter of Jones*, 293 Ga. 264, 265 (1) (2013); OCGA § 16-1-3(5).
- **Personal Knowledge** means knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said or written, and it denotes much more narrowly a fact or cluster of facts acquired by firsthand observation of or participation in events being inquired into, coupled with a credible degree of recollection. *Batres-Garay v. United States* AG, 748 Fed. Appx. 204, 209 (III)(A) (11th Cir. 2018).
- **Prosecute** means to take all actions taken by a prosecuting attorney related to resolving an individual case for which probable cause for prosecution exists, including but not limited to dismissal, deferment, diversion, referral to accountability courts, motions to enter nolle prosequi and dead docket, plea, trial, and post-conviction matters.
- **Prosecuting Attorney** means an appointed or elected commissioned district attorney or solicitor-general. OCGA § 15-18-32(a)
- **To Review a Case** means to consider and examine the evidence and law relevant to an alleged criminal violation of the Official Code of Georgia.
- **A Decision Based on Undue Bias or Prejudice** means a decision that has an improper basis that is unfair rather than a basis in evidence specific and relevant to the decision. *See* *State v. Harris*, 316 Ga. 272, 279 (2) (2023) (defining “unfair prejudice”) and *U.S. v. Hooks*, 147 Fed. Appx. 956, 957 (11th Cir. 2005).
- **Willful Misconduct in Office** means actions taken by a prosecuting attorney in bad faith while acting in their capacity as a prosecutor, not actions merely taken during the term of service as a prosecuting attorney. *See* *Inquiry Concerning Judge Coomer*, 315 Ga. 841, 859–60 (2023).

## Canons, Rules, and Commentary

### Cannon 1: Prosecuting Attorneys Shall Uphold the Integrity of the Office and Shall Avoid Conduct Which Brings the Office into Disrepute

#### Rule 1.1: Misconduct in Office

- a. Prosecuting Attorneys shall not commit willful misconduct while in office. OCGA § 15-18-32 (h) (2).
- b. Prosecuting Attorneys shall not violate the Georgia Rules of Professional Conduct.
- c. Prosecuting Attorneys shall not make a prosecution decision that is based on:
  1. An undue bias or prejudice against an accused or in favor of persons with interest adverse to the accused. See OCGA § 15-18-32 (i) (2) (A).
  2. An undisclosed financial interest in the outcome of the prosecution. See OCGA § 15-18-32 (i) (2) (B).
  3. An undisclosed conflict of interest. See OCGA § 15-18-32 (i) (2) (C).
  4. Factors that are completely unrelated to the duties of prosecution. See OCGA § 15-18-32 (i) (2) (D).
  5. A stated policy, written or otherwise, which demonstrates that the district attorney or solicitor general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute. See OCGA § 15-18-32 (i) (2) (E).
- d. Prosecuting Attorneys shall not, in the performance of their duties, including the management of personnel and their office, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status.
- e. Prosecuting Attorneys shall abide by the Georgia Statewide Sexual Harassment Prevention Policy issued by the Department of Administrative Services Office of the State Inspector General, effective date of March 1, 2019. See Appendix A.
- f. Prosecuting Attorneys shall not commit a crime involving moral turpitude or any crime other than a minor traffic offense.
- g. Prosecuting Attorneys shall not knowingly violate any laws applicable to their role and office.
- h. The Rules do not preclude legitimate advocacy when age, disability, ethnicity, gender or sex, marital status, national origin, political affiliation, race, religion, sexual orientation, or socioeconomic status are issues in a case.

#### *Commentary:*

1. Prosecuting Attorneys, as all attorneys are subject to the Georgia Rules of Professional Conduct. Neither OCGA § 15-18-32, nor this Code, diminishes the authority of the Supreme Court of Georgia or the State Bar of Georgia to regulate the practice of law. However, the fact that the State Bar may seek to discipline a Prosecuting Attorney does not preclude discipline by the Commission.
2. OCGA § 15-18-32 (i) (2) limits situations when the Commission may not entertain a complaint for discipline. This is due to the wide discretion prosecutors have in making prosecutorial decisions on

individual cases. However, OCGA § 15-18-32 (i) (2) (A) – (E) lays out specific types of misconduct that fall under the authority of this Commission.

3. Rule 1.1 (c) (5) does not apply to prosecutorial decisions made as to individual and specific cases. Prosecuting Attorneys must have the discretion to make case specific decisions. However, decisions made without any consideration to the specific facts and circumstances of a specific case are not proper exercises of prosecutorial discretion.
4. Rule 1.1 (e), in contrast to Rule 1.2, does not require a conviction. See Rule 1.2.
5. Rule 1.1 (g) requires that a prosecuting attorney *knowingly* violate a law applicable to their office or their role. This would include such legal requirements as following reporting requirements of campaign finance laws. Mere negligence would not constitute a violation of this Rule. Compare Rule 1.3 (c).

### **Rule 1.2: Conviction for Crime of Moral Turpitude**

- a. Prosecuting Attorneys shall not be convicted of a crime involving moral turpitude. See OCGA § 15-18-32 (h) (5).

#### *Commentary:*

1. Rule 1.2, pursuant to OCGA § 15-18-32 (h) (5) requires a conviction of a crime involving moral turpitude. While a “conviction” does not include a sentence under Georgia’s First Offender Act, OCGA § 42-8-60, or Georgia’s Conditional Discharge Statute, OCGA § 16-13-2, Rule 1.1, which deals with misconduct in office is broader than Rule 1.2.

### **Rule 1.3: Bringing the Office into Disrepute**

- a. Prosecuting Attorneys shall not conduct himself or herself in a manner which is prejudicial to the administration of justice which brings the office into disrepute.
- b. For the purposes of this Rule, “office” means an individual office of a district attorney or solicitor general, but also in the broader sense regarding the role of the **position** of district attorney or solicitor general.
- c. Prosecuting Attorneys shall not act in a manner, including but not limited to violations of laws, rules, or regulations applicable to the prosecuting attorney and the office, that demonstrates a disrespect for the rule of law.

#### *Commentary:*

1. Rule 1.1 (f) and Rule 1.2 involve commissions and convictions of crimes of moral turpitude. Minor traffic offenses are specifically excluded from Rule 1.1 (f) and are not applicable to Rule 1.2. However, when a prosecuting attorney commits even the most minor of offenses, he or she risks clouding the integrity of the office of district attorney or solicitor general. A prosecuting attorney who is chronically violating even the most minor criminal offenses would be a concern for the Commission. Further, a prosecuting attorney who regularly or habitually avoids reporting requirements regarding campaign donations may bring the office into disrepute.

## **Canon 2: Prosecuting Attorneys Shall Fulfill Their Legal Duties**

Rule 2.1: Prosecuting Attorneys shall Fulfill Their Legal Duties:

- a. Elected and appointed District Attorneys shall not willfully and persistently fail to carry out their duties to: See OCGA § 15-18-6 (1) through (13)
  - 1) attend each session of the superior courts unless excused by the judge thereof and to remain until the business of the state is disposed of;
  - 2) attend on the grand juries, advise them in relation to matters of law, and swear and examine witnesses before them;
  - 3) administer the oaths the laws require to the grand and trial jurors and to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the courts as he may require;
  - 4) review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in [Code Section 15-18-2](#);
  - 5) draw up all indictments or presentments, when requested by the grand jury, and to prosecute all indictable offenses;
  - 6) prosecute civil actions to enforce any civil penalty set forth in [Code Section 40-6-163](#) and to prosecute or defend any other civil action in the prosecution or defense of which the state is interested, unless otherwise specially provided for;
  - 7) attend before the appellate courts when any criminal case emanating from their respective circuits is tried, to argue the same, and to perform any other duty therein which the interest of the state may require;
  - 8) advise law enforcement officers concerning the sufficiency of evidence, warrants, and similar matters relating to the investigation and prosecution of criminal offenses;
  - 9) collect all money due the state in the hands of any escheators and to pay it over to the educational fund, if necessary, compelling payment by rule or order of court or other legal means;
  - 10) To collect all claims of the state which they may be ordered to collect by the state revenue commissioner and to remit the same within 30 days after collection; and on October 1 of every year to report to the state revenue commissioner the condition of the claims in their hands in favor of the state, particularly specifying:
    - A. The amounts collected and paid, from what sources received and for what purposes, and to whom paid;
    - B. What claims are unpaid and why;
    - C. What judgments have been obtained, when, and in what court; and
    - D. What actions are instituted, in what courts, and their present progress and future prospects;
    - E. To ensure disposition information is submitted in accordance with subsection (g) of [Code Section 35-3-36](#) when a final disposition decision is made by a district attorney;
  - 11) assist victims and witnesses of crimes through the complexities of the criminal justice system and ensure that the victims of crimes are apprised of the rights afforded them under the law; and
  - 12) perform such other duties as are or may be required by law or which necessarily appertain to their office.
- b. Elected and appointed Solicitors General shall not willfully and persistently failure to carry out their duties to: See OCGA § 15-18-66
  - 1) attend each session of the state court when criminal cases are to be heard unless excused by the judge thereof and to remain until the business of the state is disposed of;

- 2) administer the oaths required by law to the bailiffs or other officers of the court and otherwise to aid the presiding judge in organizing the court as may be necessary;
- 3) file accusations on such criminal cases deemed prosecutable and, subject to OCGA § 15-18-66 (b) (10) of subsection (b) of this Code section, to prosecute all accused offenses;
- 4) ensure disposition information is submitted in accordance with subsection (g) of [Code Section 35-3-36](#) when a final disposition decision is made by a solicitor-general;
- 5) attend before the appellate courts when any criminal case in which the solicitor-general represents the state is heard, to argue the same, and to perform any other duty therein which the interest of the state may require;
- 6) perform such other duties as are or may be required by law or which necessarily appertain to their office;
- 7) review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case under oath of duty as provided in [Code Section 15-18-2](#), and, if necessary, investigate all criminal cases which may be prosecuted in state court;
- 8) when authorized by law, to represent the interests of the state in all courts of inquiry within the county in any matter wherein misdemeanor offenses are heard;
- 9) when authorized by the local governing authority, to be the prosecuting attorney of any municipal court, recorder's court, or probate court;
- 10) prosecute civil actions to enforce any civil penalty set forth in [Code Section 40-6-163](#) and when authorized by law to prosecute or defend any civil action in the state court in the prosecution or defense of which the state is interested, unless otherwise specially provided for;
- 11) reduce to judgment any fine, forfeiture, or restitution imposed by the state court as part of a sentence in a criminal case or forfeiture of a recognizance which is not paid in accordance with the order of the court. The solicitor-general may institute such civil or criminal action in the courts of this state or of the United States or any of the several states, to enforce said judgment against the property of the defendant;
- 12) prosecute on behalf of the state any criminal action which is removed from the state court to a United States district court pursuant to Chapter 89 of Title 28 of the United States Code. The expenses incurred by the solicitor-general as actual costs in the prosecution of any such case shall be paid by the county;
- 13) represent the state or any officer or agent of the county in a superior court in any habeas corpus action arising out of any criminal proceeding in the state court, except in those cases in which the commissioner of public safety is named as a party;
- 14) At the request of any district attorney or solicitor-general, to prosecute or assist in the prosecution of any criminal or civil action and when acting in such capacity a solicitor-general shall have the same authority and power as the requesting prosecutor;
- 15) request and utilize the assistance of any solicitor-general, assistant solicitor-general, district attorney, assistant district attorney, or other attorney employed by an agency of this state or its political subdivisions or authorities in the prosecution of any criminal or civil action;
- 16) enter a nolle prosequi on any accusation, citation, or summons filed and pending or on any indictment pending in the state court as provided by law. No accusation, citation, or summons shall be considered filed unless such filing has been done with the consent, direction, or approval of the solicitor-general. Further, no notice of arraignment shall be given prior to such filing without the solicitor-general's consent, direction, or approval.

Prior to the filing of an accusation, citation, or summons, the solicitor-general shall have the same authority and discretion as district attorneys over criminal cases within their jurisdiction; and

- 17) request the magistrate to schedule within a reasonable time a preliminary probable cause hearing in any pending misdemeanor case prior to the filing of an accusation and to represent the interests of the state at such hearing.
- c. Rule 2.1 (a) (4) and (b) (7) do not require the elected or appointed district attorney and solicitor general to personally review each individual case. A Prosecuting Attorney may delegate such authority. However, a Prosecuting Attorney may not delegate such authority in a manner that would cause such individual case review to not occur or with the intent that such review not occur.

*Commentary:*

1. Different statutes prescribe the statutory duty of District Attorneys and Solicitors General. Because these duties are describe in those statutes and because OCGA § 15-18-32 (h) (3) and (4) specifically reference those statutes, there is no reason to deviate from the language of those statutes.
2. Georgia 2023 SB 92 specifically added a duty for District Attorneys and Solicitors General. See OCGA §§ 15-18-6 (4) and 15-18-66 (b) (1). These duties reflect the requirement to review each individual case. This duty

## Canon 3: Prosecuting Attorneys Shall Not Knowingly Authorize or Permit Assistant Prosecutors to Do What the Prosecuting Attorney Shall Not Do

### Rule 3.1: Shall Not Authorize or Permit Others to Violate the Code of Conduct:

- a. Prosecuting Attorneys shall not knowingly authorize or permit an assistant district attorney or assistant solicitor general to commit any act which would violate any Rule or Cannon.

*Commentary:*

1. Negligence will not constitute a violation of Rule 3.1.
2. Assistant district attorneys or assistant solicitors general applies to any such assistant who is acting pursuant to law, which would also include special assistants.
3. Rule 3.1 tracks the language of OCGA § 15-18-32 (h) (7), which only applies to the knowing authorization or permission of certain conduct committed by assistant district attorneys or assistant solicitors general. However, the knowingly authorizing or permitting non-attorney personnel to commit any act which would violate any Rule or Cannon may still be a violation of other Rules.