

1                   **Georgia Code of Prosecuting Attorneys’ Conduct**  
2                   **Preamble**

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4 [1] In the criminal justice system, the prosecutor is an independent  
5 minister of justice. The Georgia Constitution, unlike the federal system,  
6 assigns the prosecutorial function to the judicial branch of government.  
7 The primary responsibility of a prosecutor is to seek justice, which can  
8 only be achieved by the representation and presentation of the truth.  
9 This responsibility includes, but is not limited to, ensuring that the guilty  
10 are held accountable, that the innocent are protected from unwarranted  
11 harm, and that the rights of all participants, particularly victims of  
12 crime, are respected.

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14 A prosecutor should zealously protect the rights of individuals, but  
15 without representing any individual as a client. A prosecutor should put  
16 the rights and interests of society in a paramount position in exercising  
17 prosecutorial discretion in individual cases. A prosecutor should seek to  
18 reform criminal laws whenever it is appropriate and necessary to do so.  
19 Societal interests rather than individual or group interests should also  
20 be paramount in a prosecutor’s efforts to seek reform of criminal laws.  
21 A prosecutor shall not be influenced by fear, favor, or affection. Nor shall  
22 the race, gender, religion, national origin, sexual orientation, or other  
23 such trait of an individual affect their decisions unless relevant to an  
24 element of an offense.

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26 [2] The Georgia Code of Prosecuting Attorneys’ Conduct establishes  
27 standards for the Prosecuting Attorneys’ Qualifications Commission  
28 regarding the duties of commissioned district attorneys and solicitors-  
29 general. Neither the Preamble and Scope nor the Commentary is  
30 intended as a statement of additional Rules. When the text uses “shall”  
31 or “shall not,” it is intended to impose binding obligations the violation of  
32 which are grounds for disciplinary action. When “should” or “should not”  
33 is used, the text is intended as an advisory statement of what is or is not  
34 appropriate conduct, and the violation of which may be grounds for  
35 disciplinary action. When “may” is used, it denotes permissible discretion  
36 or, depending on the context, it refers to action that is not covered by  
37 specific proscriptions.

## Scope

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The Georgia Code of Prosecuting Attorneys' Conduct is not intended as an exhaustive guide for the conduct of prosecuting attorneys. They should also be governed in their professional and personal conduct by general ethical standards. Prosecuting attorneys should strive to achieve the highest ethical standards, even if not required by this Code. The mandatory provisions of the Code describe the basic minimal professional requirements that should govern the behavior of all commissioned prosecuting attorneys and provide guidance to assist them in establishing and maintaining high standards of professional and personal conduct.

The Code should be applied as rules of reason consistent with constitutional requirements, statutes, other court rules, and decisional law, including formal advisory opinions issued by the Prosecuting Attorneys Qualifications Commission, as well as in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential *independence* of prosecuting attorneys in making prosecutorial decisions, or on prosecuting attorneys' First Amendment rights of freedom of speech and association.

The Code is intended to govern conduct of commissioned prosecuting attorneys, and in certain circumstances to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Code is designed to provide guidance to commissioned prosecuting attorneys and to provide a structure for regulating conduct through the Prosecuting Attorneys Qualifications Commission. It is not designed for nor intended as a basis for civil liability or criminal prosecution. It is not intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

77 In accordance with O.C.G.A. § 15-18-32(o), the Code is limited to matters  
78 of incapacity or discipline of a district attorney or solicitor-general as  
79 holder of such office. Nothing in this Code shall be construed as  
80 diminishing the authority of the Supreme Court or the State Bar of  
81 Georgia to regulate the practice of law in this state. A complaint alleging  
82 a violation of the Georgia Rules of Professional Conduct, which are  
83 applicable to all attorneys, shall not be a violation of this Code.  
84 Alleged violations of ethical rules that would be generally applicable to  
85 attorneys do not violate this Code.

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87 **Terminology**

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89 This Code hereby adopts the definitions used in the Rules of the  
90 Prosecuting Attorneys Qualification Commission.

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92 **Rules**

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94 **Rule 1. Primary Duty of the Prosecuting Attorney**

95 The primary duty of the prosecutor is to seek justice within the bounds  
96 of the law, not merely to convict. The prosecutor serves the public interest  
97 and should act with integrity and balanced judgment to increase public  
98 safety both by pursuing appropriate criminal charges of appropriate  
99 severity, and by exercising discretion to not pursue criminal charges in  
100 appropriate circumstances. The prosecutor should seek to protect the  
101 innocent and convict the guilty, consider the interests of victims and  
102 witnesses, and respect the constitutional and legal rights of all persons,  
103 including suspects and defendants.

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105 **Rule 2. Ethical obligations of prosecuting attorneys.**

106 The district attorney and solicitor-general should know and abide by the  
107 standards of professional conduct as expressed in applicable Georgia law  
108 and the Georgia Rules of Professional Conduct, including Rule 3.8, and  
109 published opinions in the appellate courts of this state. The district  
110 attorney and solicitor-general should make use of ethical guidance  
111 offered by the State Bar of Georgia.

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115 **Rule 3. Filing of criminal charges**

- 116 a) District attorneys and solicitors-general should seek or file  
117 criminal charges only if they reasonably believe that the charges  
118 are supported by probable cause, that admissible evidence will be  
119 sufficient to support conviction beyond a reasonable doubt, and  
120 that the decision to charge is in the interests of justice.
- 121 b) After criminal charges are filed, a district attorney or solicitor-  
122 general should maintain them only if they continue to reasonably  
123 believe that probable cause exists and that admissible evidence  
124 will be sufficient to support conviction beyond a reasonable doubt.
- 125 c) A district attorney or solicitor-general should not file or maintain  
126 charges if he or she believes the defendant is innocent, no matter  
127 what the state of the evidence.

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129 **Rule 4. Prosecutorial Discretion**

130 (a) In order to fully implement their functions and duties, including  
131 the obligation to enforce the law while exercising sound discretion,  
132 district attorneys and solicitors-general are not obliged to file or  
133 maintain all criminal charges which the evidence might support.  
134 Among the factors which the district attorney or solicitor-general  
135 may properly consider in exercising discretion to initiate, decline,  
136 or dismiss a criminal charge, even though it meets the  
137 requirements of Rule 3 (a), are:

- 138 (1) the strength of the case;  
139 (2) the prosecutor's doubt that the accused is in fact guilty;  
140 (3) the extent or absence of harm caused by the offense;  
141 (4) the impact of prosecution or non-prosecution on the public  
142 welfare;  
143 (5) the background and characteristics of the offender, including  
144 any voluntary restitution or efforts at rehabilitation;  
145 (6) whether the authorized or likely punishment or collateral  
146 consequences are disproportionate in relation to the  
147 particular offense or the offender;  
148 (7) the views and motives of the victim or complainant;  
149 (8) any improper conduct by law enforcement;  
150 (9) unwarranted disparate treatment of similarly situated  
151 persons;

- 152 (10) potential collateral impact on third parties, including  
153 witnesses or victims;
- 154 (11) cooperation of the offender in the apprehension or conviction  
155 of others;
- 156 (12) the possible influence of any cultural, ethnic, socioeconomic or  
157 other improper biases;
- 158 (13) changes in law or policy;
- 159 (14) the fair and efficient distribution of limited prosecutorial  
160 resources;
- 161 (15) the likelihood of prosecution by another jurisdiction; and  
162 (16) whether the public's interests in the matter might be  
163 appropriately vindicated by available civil, regulatory,  
164 administrative, or private remedies.
- 165 (b) A district attorney or solicitor-general shall not be subject to  
166 discipline for the proper exercise of prosecutorial discretion as  
167 provided for in this rule and elsewhere throughout the Code.

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169 *Commentary* - Broadly defined, the term "prosecutorial discretion"  
170 refers to the soup-to-nuts entirety of "[a] prosecutor's power to  
171 choose from the options available in a criminal case, such as filing  
172 charges, prosecuting, not prosecuting, plea-bargaining, and  
173 recommending a sentence to the court." Prosecutorial Discretion,  
174 Black's Law Dictionary (10th ed. 2014). The core of prosecutorial  
175 discretion, though—its essence—is the decision whether or not to  
176 charge an individual with a criminal offense in the first place. The  
177 United States Supreme Court has repeatedly reaffirmed the  
178 principle—which dates back centuries—that "the [Judicial] Branch  
179 has exclusive authority and absolute discretion to decide whether  
180 to prosecute a case." See generally *United States v. Nixon*, 418 U.S.  
181 683, 693, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974) (citing  
182 *Confiscation Cases*, 74 U.S. (7 Wall.) 454, 19 L. Ed. 196 (1869)).

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184 **Rule 5. Discipline, removal, and involuntary retirement of**  
185 **prosecuting attorneys**

186 **Rule 5.1 Incapacity**

- 187 (a) Incapacity means a permanent or persistent mental or physical  
188 condition that precludes, prevents, or prohibits a district attorney  
189 or solicitor-general from performance of their proscribed duties as

190 a direct consequence of its severity. Incapacity is distinguished  
191 from a disability that does not adversely affect a district attorney  
192 or solicitor-general's performance of prosecutorial functions, or  
193 that does so only on a temporary basis.

- 194 (b) A district attorney or solicitor-general may be removed from  
195 office, subject to involuntary retirement, or placed on incapacity  
196 inactive status if found to be suffering from incapacity.

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198 **Rule 5.2. Willful Misconduct**

- 199 (a) Willful misconduct means the performance of a prosecutorial  
200 action by a district attorney or solicitor-general in bad faith.  
201 Bad faith is not simply bad judgment or negligence, but it imports  
202 a dishonest purpose or some moral obliquity, and implies  
203 conscious doing of wrong, and means breach of known duty  
204 through some motive of interest or ill will. See *Inquiry Concerning*  
205 *Judge Coomer*, 315 Ga. 841, 860 (2023.) Willful misconduct may  
206 include, but is not limited to:

- 207 (1) The commission of a felony or crime of moral turpitude;  
208 (2) Successful introduction of inadmissible evidence with total  
209 disregard for its inadmissibility (see generally *Flowers v.*  
210 *State*, 842 So. 2d 531 (2003);  
211 (3) Intentional inducement of a mistrial for the purpose of  
212 securing an opportunity to retry a case (see *Roscoe v. State*,  
213 286 Ga. 325, 326 (2009));  
214 (4) Purposeful, sustained pursuit of an extended course of  
215 conduct designed to:  
216 i. deprive a defendant of criminal due process; or  
217 ii. deprive a defendant of a fair trial (see Order 06DHC35  
218 before the Disciplinary Hearing Commission of the  
219 North Carolina State Bar  
220 <https://www.ncbar.gov/orders/06dhc35.pdf>);  
221 (5) Presentation of testimony from a witness with actual  
222 knowledge that the testimony is false while asserting that  
223 said testimony is truthful (see generally *Mondy v. State*, 229  
224 Ga. App. 311 (1997));  
225 (6) Invention, development, fabrication, creation, or  
226 manufacture of facts or items with the intent to utilize it or  
227 them as evidence of the commission of a crime by a

- 228 defendant or defendant(s) (see *Greene v. State*, 303 Ga. 184  
229 (2018));
- 230 (7) Knowingly using the power of authority of his or her office  
231 to intentionally participate in or facilitate violations of  
232 criminal law (see generally O.C.G.A. § 16-10-1, et seq. and  
233 O.C.G.A. § 16-10-90, et seq.; see also *In the Matter of Mark  
234 Preston Jones*, Supreme Court of Georgia, S22Y0606 (2022));
- 235 (8) Collection or attempted collection of evidence with  
236 purposeful disregard for clearly known and well-established  
237 procedural requirements.
- 238 (b) A prosecuting attorney may be subject to discipline if found to  
239 have committed willful misconduct in office.
- 240 (c) No district attorney or solicitor-general shall be subject to  
241 discipline pursuant to this rule when there exists a colorable  
242 argument that the alleged willful misconduct was based upon the  
243 proper exercise of prosecutorial discretion as provided in Rule 4.

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245 *Commentary* – Much like judicial discipline, elected prosecutorial  
246 discipline should have equitable considerations as discussed in *Coomer*.  
247 There, the cited constitutional basis for discipline was “conduct  
248 prejudicial to the administration of justice,” to the extent that it involved  
249 “actions taken in bad faith by a judge acting outside [his] judicial  
250 capacity.” *Matter of Inquiry Concerning a Judge No. 94-70*, 265 Ga. at  
251 328 (1). Actions taken in bad faith must involve something more than  
252 mere negligence. See *State v. Bryant*, 307 Ga. 850, 854 (2) (838 SE2d 855)  
253 (2020) (“Inherent in the concept of bad faith is something more than  
254 negligence.”); see also *Greenway v. Hamilton*, 280 Ga. 652, 655 (3) (631  
255 SE2d 689) (2006) (noting in attorney fee context that “[b]ad faith is not  
256 simply bad judgment or negligence, but a breach of known duty through  
257 some motive of interest or ill will” (citation and punctuation omitted));  
258 see also *Wachovia Bank of Ga., N.A. v. Namik*, 275 Ga. App. 229, 234 (3)  
259 (b) (620 SE2d 470) (2005) (“Bad faith is not simply bad judgment or  
260 negligence, but it imports a dishonest purpose or some moral obliquity,  
261 and implies conscious doing of wrong, and means breach of known duty  
262 through some motive of interest or ill will.” (punctuation and footnote  
263 omitted)). *Coomer*, 315 Ga. at 860, 885 S.E.2d at 754 (2023).  
264 The reasonable exercise of prosecutorial discretion should not be  
265 questioned in hindsight, even if a different decision would also have been

266 defensible. See *Hughes v. State*, 296 Ga. 744 (2016), holding that a  
267 finding of probable cause is still valid, even when an alternative  
268 explanation exists. See also *State v. Henderson*, 271 Ga. 264 (1999),  
269 holding that a decision by a magistrate to issue a search warrant should  
270 be afforded substantial deference by a reviewing court.

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272 **Rule 5.3. Willful and Persistent Failure to Carry Out Duties**

273 (a) A district attorney or solicitor-general shall carry out all duties  
274 specified in Code Section 15-18-6 or Code Section 15-18-66 as  
275 applicable. However, a district attorney or solicitor-general shall  
276 be deemed to have performed his or her duties pursuant to Code  
277 Section 15-18-6(4) and 15-18-66(b)(1) when:

278 (1) he or she has assigned an assistant district attorney or  
279 assistant solicitor-general to review cases under his or her  
280 authority; or

281 (2) he or she has established a review procedure for all cases.

282 (b) A district attorney or solicitor-general may be subject to discipline  
283 if found to have willfully and persistently failed to carry out the  
284 duties provided for in subsection (a) of this rule.

285 (c) No district attorney or solicitor-general shall be subject to  
286 discipline pursuant to this rule when there exists a colorable  
287 argument that the alleged willful and persistent failure to carry  
288 out duties was based upon the proper exercise of prosecutorial  
289 discretion as provided in Rule 4.

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291 **Rule 5.4. Conviction of A Crime of Moral Turpitude**

292 (a) A crime of moral turpitude means any felony or crime involving  
293 dishonesty, as defined or interpreted by Georgia law.

294 (b) As used in this rule, the term “convicted” shall include a finding  
295 or a verdict of guilt, a plea of guilty, or a plea of nolo contendere  
296 in a criminal proceeding, regardless of whether the adjudication  
297 of guilt or sentence is withheld or not entered thereon. It shall  
298 not include any deferred prosecution or pre-trial diversion  
299 agreement.

300 (c) A district attorney or solicitor-general may be subject to  
301 discipline if found to have been convicted of a crime of moral  
302 turpitude.



303 **Rule 5.5. Conduct Prejudicial to the Administration of Justice**  
304 **Which Brings the Office Into Disrepute**

- 305 (a) "Conduct prejudicial to the administration of justice" refers "to  
306 inappropriate actions taken in good faith by the prosecuting  
307 attorney acting in their prosecutorial capacity, but which may  
308 appear to be unprofessional and harmful to the public's esteem  
309 for the office." See *In re Inquiry Concerning a Judge*, 265 Ga. 843,  
310 844 n.2, 462 S.E.2d 728, 730 (1995).
- 311 (b) For the purpose of this Rule, "disrepute" means a general feeling  
312 of low regard or disfavor by the general public. Differences of  
313 opinion over the proper exercise of prosecutorial discretion, best  
314 practices regarding utilization of resources, and political  
315 ideology shall not be treated as bringing an office into disrepute.
- 316 (c) A district attorney or solicitor-general may be subject to  
317 discipline for conduct prejudicial to the administration of justice  
318 which brings the office into disrepute.
- 319 (d) No district attorney or solicitor-general shall be subject to  
320 discipline pursuant to this Rule when there exists a colorable  
321 argument that the alleged conduct was based upon the proper  
322 exercise of prosecutorial discretion as provided in Rule 4.

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324 **Rule 5.6. Conduct of assistant district attorneys or assistant**  
325 **solicitors-general**

- 326 (a) A district attorney or solicitor-general may be subject to  
327 discipline for knowingly authorizing or permitting an assistant  
328 or assistant solicitor-general to commit any act which would  
329 violate Rules 5.1 through 5.5.
- 330 (b) No district attorney or solicitor-general shall be subject to  
331 discipline pursuant to this rule when there exists a colorable  
332 argument that the alleged conduct was based upon the proper  
333 exercise of prosecutorial discretion as provided in Rule 4.

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335 **Rule 6. Prosecuting attorney not subject to discipline; exceptions**

336 **Rule 6.1. Conduct not subject to discipline**

337 No district attorney or solicitor-general shall be subject to discipline  
338 based upon the exercise of prosecutorial discretion concerning a  
339 charging decision, plea offer, opposition to or grant of a continuance,

340 placement of a case on a trial calendar, or recommendation  
341 regarding bond.

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343 **Rule 6.2. Conduct which may be the basis for discipline**

344 Rule 6.1 shall not apply when affidavits and any documents  
345 attached to a sworn complaint against a district attorney or  
346 solicitor-general show it is plausible that discretion exercised under  
347 Rule 4 was affected by:

- 348 (a) Undue bias or prejudice against the accused or in favor of  
349 persons with interests adverse to the accused;
- 350 (b) An undisclosed financial interest in the outcome of the  
351 prosecution;
- 352 (c) An undisclosed conflict of interest;
- 353 (d) Factors that are completely unrelated to the duties of  
354 prosecution; or
- 355 (e) A stated policy, written or otherwise, which demonstrates that  
356 the district attorney or solicitor-general categorically refuses to  
357 prosecute any offense or offenses of which he or she is required  
358 by law to prosecute.

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360 *Commentary* – A categorical refusal to prosecute an offense does not occur  
361 when a district attorney or solicitor-general prioritizes the prosecution of  
362 certain offenses above others, promotes judicial economy, or treats  
363 certain offenses more or less harshly than others as a matter of policy.  
364 This Rule is not intended to limit the protected political speech of an  
365 incumbent running for re-election or other office. It refers to a policy  
366 where a district attorney or solicitor-general commits in advance to a  
367 refusal to prosecute an offense or offenses which they are required to  
368 prosecute and have the resources and/or ability to prosecute, regardless  
369 of the strength of the evidence or egregiousness of the underlying  
370 conduct. Review of allegations that involve a decision to prosecute an  
371 accused should consider the full record, including any results of hearings,  
372 trials, and appeals that have taken place.

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374 **Rule 6.3 Prosecutorial Discretion**

375 Any consideration of Rule 6.2 shall consider whether there exists a  
376 colorable argument that the district attorney or solicitor-general

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has properly exercised prosecutorial discretion as provided for in Rule 4.

PAC SB 92 Rules Committee