

1           **Rules of the Prosecuting Attorneys Qualifications Commission**  
2  
3

4 Pursuant to Article VI, Section VIII, Paragraph II of the Georgia  
5 Constitution of 1983, any district attorney or solicitor-general may be  
6 disciplined, removed, or involuntarily retired as provided by general law.  
7 O.C.G.A. § 15-18-32 creates a commission and a hearing process to review  
8 allegations of behaviors that violate subsection (h) of said Code Section.  
9 The Commission, with the assistance of the Prosecuting Attorneys' Council  
10 of the State of Georgia, is responsible for promulgating standards of  
11 conduct and rules for the commission's governance which will comport with  
12 due process and enforce the provisions of the Code.

13  
14 Pursuant to this authority, the following are the rules of the Prosecuting  
15 Attorneys Qualifications Commission as adopted by the Supreme Court.  
16 These rules are effective October 1, 2023.

PAC SB 92 Rules Committee

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PAC SB 92 Rules Committee

1 SECTION 1

2 Rule 1.1. Preamble

3 In 1897, the Georgia Supreme Court observed that a district attorney or  
4 solicitor-general has only the State for a client. *Hicks v. Brantley*, 102 Ga.  
5 264, 271 (1897). He or she cannot be employed by a private person to  
6 prosecute a case; nor to give advice on a matter. Their duty is a public one  
7 - owed to the entire public. His or her duty is proscribed by statute and  
8 guided by the discretion which he or she is entrusted by the public at large.  
9 *Id.* Thus, the regulation of prosecuting attorneys is critical to preserving  
10 the integrity of the criminal justice system and enhancing public confidence  
11 therein.

12 These Rules reflect a careful balance of a number of competing interests:  
13 the rights of prosecuting attorneys to fair treatment in the disposition of  
14 complaints against them; their interest in the confidentiality of complaints  
15 for which the Commission finds there is not reasonable cause to believe that  
16 misconduct occurred; the public’s concern that complaints against  
17 prosecuting attorneys are given serious consideration and that prosecuting  
18 attorneys are held to high standards of behavior; and the interest of the  
19 prosecuting attorneys and the public in having disciplinary complaints  
20 resolved promptly and accurately.

21 These Rules were drafted based on the American Bar Association’s  
22 Standards for the Prosecution Function, Fourth Edition, the Georgia Rules  
23 for Professional Conduct, the NDAA’s national prosecution standards,  
24 Georgia constitutional and statutory law, and the history and practice of  
25 the Judicial Qualifications Commission of Georgia. They are intended to  
26 reflect the views of the Prosecuting Attorneys Qualifications Commission and  
27 the Supreme Court of Georgia on the often complex and difficult issues that  
28 arise in the regulation of the conduct of prosecuting attorneys.

29  
30 Rule 1.2. Definitions

31 As used in these Rules:

- 32 (a) **Case or Individual Case** means the delivery of a criminal warrant  
33 or other charging document, and all papers forwarded by the clerk of

34 the court having jurisdiction over the criminal offense to the  
35 prosecuting attorney, in accordance with O.C.G.A. § 17-7-32 (b)(1). It  
36 shall also include any civil action to which the district attorney or  
37 solicitor-general is a real party in interest, as defined in O.C.G.A. §§  
38 9-11-17 or 9-11-19, or comparable federal law.

39 (b) **Censure** means a reprimand by the Hearing Panel in the form of a  
40 written decision, which shall be imposed by the Hearing Panel on the  
41 prosecuting attorney in person in open court.

42 (c) **Commission** means the Prosecuting Attorneys' Qualifications  
43 Commission.

44 (d) **Complaint** means a written allegation, that complies with Rule 3.2,  
45 which is received by the Investigative Panel that alleges or from  
46 which a reasonable inference can be drawn that a district attorney or  
47 solicitor-general committed misconduct or is incapacitated.

48 (e) **Conflict of Interest** means an interest or relationship that would  
49 compel disqualification in accordance with O.C.G.A. §§ 15-18-5 or 15-  
50 18-65, as well as applicable provisions of the Georgia Rules of  
51 Professional Conduct.

52 (f) **Deferred Discipline Agreement** means a confidential agreement  
53 between a prosecuting attorney and the Investigative Panel for the  
54 prosecuting attorney to undergo treatment, participate in education  
55 programs, or take other corrective action. It is only available as a  
56 response to misconduct that can be addressed through treatment,  
57 education, or a rehabilitation program.

58 (g) **Director** means the lawyer working for the Investigative Panel who  
59 is in charge of screening and investigating complaints, prosecuting  
60 formal charges, drafting reports, handling administrative matters,  
61 and performing other duties assigned by the Commission. This also  
62 includes special counsel selected to fill the role of Director for specific  
63 cases in which the Director recuses himself or herself. See Rule 4.

64 (h) **Discipline** means a public reprimand, censure, limitations on the  
65 performance of prosecutorial duties, suspension, involuntary  
66 retirement, or removal from office.

67 (i) **Disrepute** means a general feeling of low regard or disfavor by the  
68 general public. Differences of opinion over the proper exercise of  
69 prosecutorial discretion, best practices regarding utilization of  
70 resources, and political ideology shall not be treated as bringing an  
71 office into disrepute.

72 (j) **Formal Charges** means the document that charges the prosecuting

- 73 attorney with specific acts of misconduct or with a specific incapacity.
- 74 (k) **Hearing** means the public proceeding at which the issues of law and
- 75 fact raised by the formal charges and answer are tried. See Rule 4.8.
- 76 (l) **Hearing Panel** means the panel of the Commission that adjudicates
- 77 formal charges, makes recommendations as to disciplinary and
- 78 incapacity orders, and issues formal advisory opinions. See Rules 2.3
- 79 and 4.8; O.C.G.A. § 15-18-32 (c) (3).
- 80 (m) **Incapacity** means a permanent or persistent mental or physical
- 81 condition that precludes, prevents, or prohibits a district attorney or
- 82 solicitor-general from performance of their proscribed duties as a
- 83 direct consequence of its severity. Incapacity is distinguished from a
- 84 disability that does not adversely affect a district attorney or solicitor-
- 85 general's performance of prosecutorial functions, or that does so only
- 86 on a temporary basis.
- 87 (n) **Incapacity Inactive Status** means non-disciplinary involuntary
- 88 suspension of a prosecuting attorney from office because of mental or
- 89 physical inability to perform official functions.
- 90 (o) **Indictable** means any criminal case where a grand jury would find
- 91 probable cause to believe a defendant has committed a crime, and
- 92 where the prosecuting attorney with jurisdiction over the matter
- 93 believes sufficient evidence exists to prove the case beyond a
- 94 reasonable doubt at trial.
- 95 (p) **Interest in the Complaint** means a direct impact derived from a
- 96 prosecution, relationship to the prosecuting attorney or any person
- 97 directly involved in the case, and a sufficient connection to and harm
- 98 from said prosecution.
- 99 (q) **Investigation** means an inquiry into allegations of misconduct,
- 100 including a search for and examination of evidence concerning the
- 101 allegations, divided into two stages: a preliminary investigation
- 102 conducted by the Director after the receipt of a complaint, and a full
- 103 investigation conducted after approval by the Investigative Panel.
- 104 See Rule 4.1.
- 105 (r) **Investigative Panel** means the panel of the Commission that
- 106 determines whether full investigations will be conducted and
- 107 whether formal charges will be filed, and that is responsible for the
- 108 prosecutorial and administrative functions of the Commission. See
- 109 Rule 2.3; O.C.G.A. § 15-18-32 (c) (2).
- 110 (s) **Involuntary Retirement** means compelling a district attorney or
- 111 solicitor-general who is vested in a state or county retirement plan to

112 vacate office. An order of involuntary retirement shall not affect any  
113 vested pension rights or interests the district attorney or solicitor-  
114 general may have under the laws of this State.

- 115 (t) **Knowingly** means actual knowledge of the fact in question. A  
116 prosecuting attorney's knowledge may be inferred from the  
117 circumstances. However, a district attorney or solicitor-general only  
118 knowingly authorizes or permits the acts of an assistant when they  
119 order the action at issue or ratify it with specific knowledge of the  
120 conduct. See Georgia Rules of Professional Conduct 5.1(c); Georgia  
121 Code of Prosecuting Attorneys' Conduct Rule 5.6.
- 122 (u) **Misconduct** means any conduct by a prosecuting attorney  
123 constituting grounds for discipline. See Rule 3.1
- 124 (v) **Moral Turpitude** means any felony or crime involving dishonesty  
125 as defined or interpreted by Georgia law. See Georgia Code of  
126 Prosecuting Attorneys' Conduct Rule 5.4(a).
- 127 (w) **Personal Knowledge** means knowledge derived from personally  
128 seeing or hearing actions, statements, or events at issue, and shall  
129 not include information obtained through hearsay or other reports  
130 from any media, including social media, relaying facts or opinion  
131 about a case.
- 132 (x) **Private Admonition** means a non-public sanction imposed on a  
133 prosecuting attorney by the Investigative Panel with the consent of  
134 the prosecuting attorney. See Rule 3.1(c)(1).
- 135 (y) **Proceedings** means all steps in the discipline and incapacity system  
136 set forth in these Rules.
- 137 (z) **Prosecute** means all actions taken by a prosecuting attorney related  
138 to resolving a case, including but not limited to dismissal, deferment,  
139 diversion, referral to accountability courts, motions, plea, trial, and  
140 post-conviction matters.
- 141 (aa) **Prosecuting Attorney** – means a commissioned district attorney or  
142 solicitor-general.
- 143 (bb) **Public Reprimand** means a reprimand by the Hearing Panel in the  
144 form of a written decision, which shall be imposed in person in a  
145 public forum by the Hearing panel. See Rule 3.1(c)(3).
- 146 (cc) **Reasonable Cause** means a reasonable ground for belief in the  
147 existence of facts warranting the filing of formal charges for  
148 discipline or a petition for transfer to incapacity inactive status.
- 149 (dd) **Record** means all documents filed in the case beginning with the  
150 formal charges. The record includes a transcript of the hearing on the

151 formal charges only if a transcript is requested by the Respondent,  
152 Director, or Hearing Panel.

153 (ee) **Respondent** means a prosecuting attorney against whom formal  
154 charges have been filed.

155 (ff) **Review** means to assess a case for prosecution in accordance with  
156 O.C.G.A. §§ 15-18-6 (4) and 15-18-66 (b)(1). See Georgia Code of  
157 Prosecuting Attorneys' Conduct Rule 5.3 (a)

158 (gg) **Screening** means examination of a complaint or other information  
159 coming to the attention of the Director to determine whether the  
160 Commission has jurisdiction and whether the information would  
161 constitute prosecutorial misconduct or incapacity if true. See Rule 4.1;  
162 O.C.G.A. § 15-18-32 (o).

163 (hh) **Special Counsel** means any member(s) of the Georgia Bar  
164 designated by the Investigative Panel to assist in the investigation  
165 and prosecution of disciplinary or incapacity matters before the  
166 Investigative Panel or Hearing Panel.

167 (ii) **Supreme Court** means the Supreme Court of Georgia.

168 (jj) **Undue Bias/Prejudice** means having a strong bias or preconceived  
169 idea about someone or something without knowledge of all relevant  
170 facts.

171 (kk) **Willful Misconduct** means prosecutorial actions taken in bad faith.  
172 Bad faith is not simply bad judgment or negligence, but it imports a  
173 dishonest purpose or some moral obliquity, and implies conscious  
174 doing of wrong, and means breach of known duty through some  
175 motive of interest or ill will. See *Inquiry Concerning Judge Coomer*,  
176 315 Ga. 841, 860 (2023); Georgia Code of Prosecuting Attorneys'  
177 Conduct 5.2.

## 178 179 **Section 2. Organization and Structure**

### 180 181 **Rule 2.1. Disciplinary Authority**

182  
183 The disciplinary authority of the Commission extends to every  
184 commissioned district attorney and solicitor-general, as defined by Chapter  
185 18 of Title 15 of the Official Code of Georgia Annotated.

#### 186 187 **Commentary**

188 The Commission's authority does not extend to municipal prosecutors,  
189 prosecutors employed by the Georgia Department of Law, prosecutors

190 employed by the Prosecuting Attorneys' Council of Georgia, the director of  
191 this Commission (and his or her deputies), contract juvenile, probate, and  
192 magistrate court prosecutors, candidates for prosecutorial office, or any  
193 officer not explicitly defined by statute as an elected or appointed district  
194 attorney or solicitor-general.

195  
196 **Rule 2.2. The Prosecuting Attorneys Qualifications Commission**

- 197  
198 **A. Purpose.** The Prosecuting Attorneys Qualifications Commission shall  
199 administer the discipline and incapacity system for prosecuting attorneys.  
200
- 201 **B. Jurisdiction.** The Commission has jurisdiction over prosecuting  
202 attorneys regarding allegations that misconduct occurred during service  
203 as a prosecuting attorney and regarding allegations of incapacity during  
204 service as a prosecuting attorney.  
205
- 206 **C. Appointment of Members.** The Commission shall consist of an  
207 Investigative Panel and a Hearing Panel. The Investigative Panel shall be  
208 appointed in accordance with O.C.G.A. § 15-18-32 (d)(3). The Hearing  
209 panel shall be appointed in accordance with O.C.G.A. § 15-18-32 (d)(4).  
210 The Prosecuting Attorneys' Council of Georgia may recommend to the  
211 respective appointing authorities a list of individuals for consideration to  
212 serve as attorney members of the Commission. See O.C.G.A. § 15-18-32  
213 (d)(2).  
214
- 215 **D. Terms.** The terms of Commission members initially appointed for  
216 staggered terms beginning July 1, 2023, shall be as set forth in OCGA §  
217 15-18-32 (d). Successors to such members shall serve for a term of four  
218 years beginning on July 1 following their appointment and shall be eligible  
219 for reappointment to a second full term. A member appointed to an initial  
220 term of less than four years or to fill a vacancy may serve an additional  
221 two full terms. See O.C.G.A. § 15-18-32 (d)(5).  
222
- 223 **E. Removal.** Removal of a panel member shall be in accordance with  
224 O.C.G.A. § 15-18-32 (f)(2).  
225
- 226 **F. Vacancies.** A vacancy shall be created by operation of law as defined by  
227 O.C.G.A. § 15-18-32 (d)(6) and shall be filled in accordance with said Code  
228 Section.

229 **Commentary**

230 The composition of the Commission, including its membership, appointing  
231 authorities, terms of office, and provisions for removal or vacancy of  
232 members, is wholly determined by O.C.G.A. § 15-18-32. Each category of  
233 Commission members should be represented on the Commission and its  
234 panels in order to balance viewpoints.

235  
236 **Rule 2.3. Organization and Authority of the Commission**

237  
238 **A. Panels and Meetings.** The Commission is divided into an Investigative  
239 Panel of five members and a Hearing Panel of three members. See  
240 Rule 2.2; O.C.G.A. § 15-18-32 (c). The Investigative Panel shall meet  
241 periodically as determined by the panel. Meetings of the Investigative  
242 Panel other than periodic meetings may be called by the chairperson upon  
243 the written request of three members of that panel. Meetings of the  
244 Hearing Panel may be called by the presiding officer upon the presiding  
245 officer's own motion and shall be called by the presiding officer upon the  
246 written request of the other two members of the panel. Meetings may be  
247 conducted in person, by conference call, or electronically, except that  
248 members of the Investigative Panel must be present in person for a  
249 meeting with a prosecuting attorney pursuant to Rule 4.1.C (4) and  
250 members of the Hearing Panel must be present in person for a hearing  
251 pursuant to Rule 4.8. Further, except in situations in which the  
252 chairperson declares an emergency in his or her sole discretion, members  
253 of the Investigative Panel must be present in person or remotely using  
254 video technology at a meeting in order to vote to authorize a full  
255 investigation under Rule 4.1.B (3) or to vote on any action under the  
256 provisions of Rule 4.1.C or 4.1.D.

257 **B. Officers.** The Investigative Panel shall annually elect one of its members  
258 to serve as chairperson and another to serve as vice-chairperson. The vice-  
259 chairperson shall perform the duties of the chairperson whenever the  
260 chairperson is absent or unable to act. The elected prosecutor member of  
261 the Hearing Panel appointed by the Senate Committee on Assignments  
262 shall serve as its presiding officer. See O.C.G.A. § 15-18-32 (d)(3)(B).

263 **C. Quorum.** A quorum of the Investigative Panel shall require at least three  
264 members to be present. A quorum of the Hearing Panel shall require all  
265 members to be present. A decision by a panel shall be by majority vote of  
266 the members present except for minor procedural or administrative

267 matters assigned to the Director, chairperson, or presiding officer, as  
268 applicable, for a decision as provided by these Rules. See O.C.G.A. § 15-  
269 18-32 (f)(3).

270 **D. Compensation.** Members of the Commission shall serve without  
271 compensation but shall receive the same daily expense allowance as  
272 members of the General Assembly receive, as set forth in O.C.G.A. § 28-1-  
273 8, for each day such member is in physical attendance at a panel meeting  
274 or hearing, plus either reimbursement for actual transportation costs  
275 while traveling by public transportation or the same mileage allowance  
276 for use of a personal motor vehicle in connection with such attendance as  
277 members of the General Assembly receive. Notwithstanding the  
278 preceding sentence, no Commission member shall receive such expense  
279 allowance or travel reimbursement if he or she is entitled to receive an  
280 expense allowance, travel reimbursement, or salary for performance of  
281 duties as a state employee. Expense allowances and travel reimbursement  
282 shall be paid from moneys appropriated or otherwise available to the  
283 Commission. See O.C.G.A. § 15-18-32 (f)(4).

284 **E. Powers and Duties.**

285 (1) The Investigative Panel shall have the responsibilities as defined in  
286 OCGA § 15-18-32 (c)(2). Pursuant to said statutory authority, the  
287 Panel may:

- 288 (a) review the recommendations of the Director after preliminary  
289 investigation and either authorize a full investigation or dismiss  
290 the complaint;
- 291 (b) decide how to proceed as provided in Rule 4.1.D; and
- 292 (c) oversee the prosecution by the Director of formal charges, before  
293 the Hearing Panel and the appropriate reviewing court as  
294 defined in O.C.G.A. § 15-18-32 (m)
- 295 (d) delegate to the Director, in addition to the responsibilities  
296 assigned to him or her in Rule 2.4, the responsibility to:
  - 297 (i) maintain the Commission's records;
  - 298 (ii) maintain statistics concerning the operation of the  
299 Commission and make them available to the Commission,  
300 the Supreme Court, the General Assembly, and the public;
  - 301 (iii) prepare the Commission's budget for its approval and  
302 administer the funds;
  - 303 (iv) notify the appropriate appointing authority of vacancies on  
304 the Commission; prepare an annual report of the  
305 Commission's activities for presentation to the Commission,

306 the Supreme Court, the General Assembly, and the public.

- 307
- 308 (2) The Hearing Panel shall have the responsibilities as defined in  
309 O.C.G.A. § 15-18-32 (c)(3).

310 **F. Recusal**

- 311 (1) Each member of the commission shall be entitled to vote on any  
312 matter coming before his or her respective panel unless otherwise  
313 provided by rules adopted by the commission concerning recusal.  
314 The chairperson of the investigative panel and the presiding  
315 officer of the hearing panel shall retain a vote on all matters except  
316 those in which such chairperson or presiding officer has been  
317 recused. No commission member present at a panel meeting shall  
318 abstain from voting unless he or she is recused. See O.C.G.A. § 15-  
319 18-32 (f) (1).
- 320 (2) A member of the Investigative Panel shall recuse himself or  
321 herself from any matter in which recusal would be required of a  
322 prosecutor under Georgia law and the Georgia Rules of  
323 Professional Conduct for lawyers, treating the Commission as the  
324 member's client. A member of the Hearing Panel shall recuse  
325 himself or herself from any matter in which recusal would be  
326 required of a judicial officer under Georgia law and the Georgia  
327 Code of Judicial Conduct.
- 328 (3) A member of either panel shall recuse himself or herself from any  
329 matter involving the panel member and from any matter  
330 involving a district attorney or solicitor-general of a court in the  
331 same judicial circuit as the panel member.
- 332 (4) A party to the proceeding may file a motion to recuse a Commission  
333 member from the matter within a reasonable time after the party  
334 discovers or should have discovered the grounds for recusal. The  
335 motion and all evidence thereon shall be presented by  
336 accompanying affidavit(s) that shall clearly state the facts and  
337 reasons for the belief that bias or prejudice exists, being definite  
338 and specific as to time, place, persons, and circumstances of the  
339 status, conduct, or statements that demonstrate either bias in  
340 favor of any adverse party, prejudice toward the moving party, or  
341 that the member's impartiality otherwise might be reasonably  
342 questioned. Allegations consisting of bare conclusions and  
343 opinions shall not be legally sufficient to support the motion.
- 344 (5) Whether raised by motion to recuse or otherwise, the Commission

345 member whose impartiality is questioned shall determine  
346 individually whether or not to recuse, although the member may  
347 consult with other members of his or her panel.

348 (a) Should a Commission member decline to recuse, the  
349 prosecuting attorney shall have the right to request a  
350 hearing on the matter before the Hearing Panel. For the  
351 purpose of this hearing, the challenged member shall be  
352 replaced as provided for in subsection (d) of this Rule. The  
353 burden of proof shall be on the movant to show by a  
354 preponderance of the evidence that the member should be  
355 recused. Decisions on the motion shall be by a majority vote  
356 of the hearing panel.

357 (b) The prosecuting attorney may appeal the decision of the  
358 hearing panel by submitting a petition to the Superior  
359 Court of Fulton County or the superior court of the circuit  
360 or county where such respondent serves as a district  
361 attorney or solicitor-general.

362 (c) If a Commission member recuses himself or herself from a  
363 matter, he or she shall immediately advise the Director of  
364 that decision and shall not participate further in the matter.  
365 The recused member shall be replaced as a member for that  
366 particular matter if he or she serves on the Hearing Panel or  
367 if he or she serves on the Investigative Panel and recusal(s)  
368 on the matter will result in the Investigative Panel lacking a  
369 quorum or being unable to reach a decision on the matter due  
370 to an equal division of the votes on the matter.

371 (d) A member shall be promptly replaced by an alternate who  
372 satisfies the qualifications and requirements of the member  
373 replaced as outlined in O.C.G.A. § 15-18-32 (d). Said  
374 alternate shall be chosen by the remaining Commission  
375 members from a list of qualified nominees provided by the  
376 Prosecuting Attorneys' Council of Georgia.

377 (e) In requesting the designation of an alternate, the Director  
378 shall advise the Prosecuting Attorneys' Council of Georgia  
379 of the need for an alternate and the judicial circuit in which  
380 the Prosecuting Attorney who is the subject of the matter  
381 serves.

382 ***Commentary***

383 [1] A panel member's decision to self-recuse shall not be questioned.

- 384 [2] Although not constitutionally mandated, these Rules seek to fully  
385 separate the investigative and adjudicative functions of the  
386 Commission and its members. No matter how fair individual  
387 members can be, the system cannot convey the appearance of fairness  
388 when members have full access to investigative materials, formulate  
389 their decisions to file charges in reliance on the investigative files, and  
390 then make adjudicative decisions based on the evidence presented in  
391 formal proceedings. This process is in conflict with the fundamental  
392 division of investigative and adjudicative responsibilities that is a  
393 hallmark of our modern judicial and administrative disciplinary  
394 systems. The indicting grand jury does not hear and determine the  
395 evidence presented at trial. Such a process may not be regarded as  
396 fair by a defendant who is indicted and convicted by the same body.  
397 Thus, the Commission is divided into separate investigative and  
398 hearing panels so that no member of the Commission is involved both  
399 in deciding whether to file formal charges and in hearing the case on  
400 those charges.
- 401 [3] Commission members shall avoid statements and conduct that  
402 create the appearance of impropriety or bias in order to maintain the  
403 integrity of Panel decisions and the Commission as a whole.
- 404 [4] The independence of the Commission will be enhanced if the  
405 Investigative Panel chooses its own leadership.
- 406 [5] No qualified person should be deterred from serving on the  
407 Commission by the expenses incurred for service.
- 408 [6] It is essential that the Commission have the authority to propose its  
409 own rules of procedure to achieve uniformity, continuity, and the  
410 equitable and expeditious resolution of recurring issues, subject to  
411 the requirements of due process and approval by the Supreme Court.

#### 412 413 **Rule 2.4. Director**

- 414
- 415 **A. Selection.** The Investigative Panel shall select a Director, who shall be  
416 an active status member of the State Bar of Georgia and shall not engage  
417 in the practice of law, other than to represent the Commission, and shall  
418 not serve in a judicial capacity. See O.C.G.A. § 15-18-32 (c)(2)(C).
- 419 **B. Removal.** The Director shall not be removed from office except by  
420 majority vote of the Investigative Panel. In the event of a vacancy, the  
421 Investigative Panel may delegate the Director's powers and duties to  
422 another of its staff or to one or more of its members until a new Director is

423 selected.

424 **C. Recusal.** In the event the Director recuses from a specific matter, an  
425 individual shall be selected by the Investigative Panel to serve as special  
426 counsel to fill the role of Director for that specific matter. An individual  
427 selected to serve as special counsel in the event of the Director's recusal  
428 shall be an active status member of the State Bar of Georgia and shall not  
429 simultaneously serve in a judicial capacity or as a prosecuting attorney  
430 but shall be allowed to engage in the practice of law outside of  
431 representing the Commission.

432 **D. Powers and Duties.** The Director shall have the duty and authority to:

- 433 (1) Receive and screen complaints, refer complaints to other agencies  
434 when appropriate, conduct preliminary investigations, recommend  
435 to the Investigative Panel and upon authorization conduct full  
436 investigations, notify complainants about the status and  
437 disposition of their complaints, make recommendations to the  
438 Investigative Panel on the disposition of complaints, file formal  
439 charges when directed to do so by the Investigative Panel,  
440 prosecute formal charges, file notices of exceptions to the findings,  
441 conclusions, recommendations for sanctions, or orders of dismissal  
442 of the Hearing Panel, and brief and argue matters on review by the  
443 Supreme Court;
- 444 (2) Maintain records of the operations of the Commission, including  
445 minutes of Investigative Panel meetings and receipt of complaints,  
446 screening, investigation, and filing of formal charges in judicial  
447 discipline and incapacity matters, subject to the requirements of  
448 Rule 4.3;
- 449 (3) Compile statistics to aid in the administration of the system,  
450 including but not limited to a log of all complaints received,  
451 investigative files, and statistical summaries of docket processing  
452 and case dispositions;
- 453 (4) Prepare the Commission's budget for submission to the  
454 Investigative Panel and administer the funds;
- 455 (5) Employ, with the Investigative Panel's approval, and supervise  
456 other members of the Investigative Panel's staff;
- 457 (6) Employ, with the Investigative Panel's approval, and supervise  
458 investigators or experts as necessary to investigate and process  
459 matters before the Investigative Panel, the Hearing Panel, and the  
460 Supreme Court; and
- 461 (7) Perform other duties at the direction of the Investigative Panel

462 insofar as they are consistent with the duties enumerated above.

463 **Commentary**

- 464 [1] Except as provided in Rule 5.2(B), the Director and the  
465 Investigative Panel's other staff must not participate in the  
466 Hearing Panel's deliberations, draft decisions, orders, or other  
467 documents, or otherwise serve as legal counsel to the Hearing  
468 Panel. To the extent the Hearing Panel requires legal or support  
469 staff assistance not available from its members, it should contract  
470 for the necessary support personnel.
- 471 [2] Investigations and prosecutions of prosecuting attorneys should be  
472 conducted by the Director under the authority of the Investigative  
473 Panel. The Director should not use active law enforcement officials  
474 or staff to investigate complaints or present cases. It is the intent  
475 of the Rules Committee that the Director avoid public commentary  
476 on matters before the Commission except in accordance with Rule  
477 3.8 of the Georgia Rules of Professional Conduct, as amended.
- 478 [3] The investigative panel is responsible for the investigative,  
479 prosecutorial, and administrative functions of the Commission  
480 irrespective of the hiring of an Executive Director. O.C.G.A. § 15-  
481 18-32(c)(2)(A).
- 482 [4] The Commission's authorization to enter into binding contracts as  
483 an agency of the State of Georgia is not presumed and was not  
484 provided in the enabling statute. Compare O.C.G.A. §§ 15-18-  
485 40(c)(2), 42-2-8(b), 50-27-9.

486  
487 **Section 3. General Provisions**

488  
489 **Rule 3.1. Grounds for Discipline; Sanctions; Felony Indictment**  
490 **or Conviction**

491  
492 **A. Grounds for Discipline.** The grounds for discipline of a prosecuting  
493 attorney are:

- 494 (1) Willful misconduct in office. (see Georgia Code of Prosecuting  
495 Attorneys' Conduct Rule 5.2, O.C.G.A. § 15-18-32(h)(2));
- 496 (2) With respect to district attorneys, willful and persistent failure to  
497 carry out duties pursuant to O.C.G.A. § 15-18-6. (see Georgia  
498 Code of Prosecuting Attorneys' Conduct Rule 5.3, O.C.G.A. § 15-  
499 18-32(h)(3));
- 500 (3) With respect to solicitors-general, willful and persistent failure to

- 501 carry out duties pursuant to O.C.G.A. § 15-18-66. (see Georgia  
502 Code of Prosecuting Attorneys' Conduct Rule 5.3, O.C.G.A. § 15-  
503 18-32(h)(4));
- 504 (4) Conviction of a crime involving moral turpitude. (see Georgia  
505 Code of Prosecuting Attorneys' Conduct Rule 5.4, O.C.G.A. § 15-  
506 18-32(h)(5));
- 507 (5) Conduct prejudicial to the administration of justice which brings  
508 the office into disrepute. (see Georgia Code of Prosecuting  
509 Attorneys' Conduct Rule 5.5, O.C.G.A. § 15-18-32(h)(6)); or
- 510 (6) Knowingly authorizing or permitting an assistant district  
511 attorney or assistant solicitor-general to commit any act  
512 constituting grounds for removal under paragraphs (1) through  
513 (5) of this subsection. (see Georgia Code of Prosecuting Attorneys'  
514 Conduct Rule 5.6, O.C.G.A. § 15-18-32(h)(7)).

515 **B. Limitations for Discipline.** The commission may not entertain a  
516 complaint on the basis of a charging decision, plea offer, opposition to  
517 or grant of a continuance, placement of a case on a trial calendar, or  
518 recommendation regarding bond unless the affidavits and any  
519 documents attached to the complaint show it is plausible that the  
520 district attorney or solicitor-general made or knowingly authorized  
521 the decision based on:

- 522 (1) Undue bias or prejudice against the accused or in favor of persons  
523 with interests adverse to the accused;
- 524 (2) An undisclosed financial interest in the outcome of the  
525 prosecution;
- 526 (3) An undisclosed conflict of interest;
- 527 (4) Factors that are completely unrelated to the duties of prosecution;  
528 or
- 529 (5) A stated policy, written or otherwise, which demonstrates that  
530 the district attorney or solicitor-general categorically refuses to  
531 prosecute any offense or offenses of which he or she is required by  
532 law to prosecute. (See commentary on Georgia Code of  
533 Prosecuting Attorneys' Conduct Rule 6.2).

534 **C. Sanctions.** The following sanctions may be imposed upon a  
535 respondent who has committed such misconduct:

- 536 (1) Private admonition by the Investigative Panel with the consent of  
537 the prosecuting attorney, provided that a private admonition may  
538 be used in subsequent proceedings as evidence of prior misconduct  
539 solely upon the issue of the sanction to be imposed pursuant to

- 540 Rule 4.1 D (1).
- 541 (2) Deferred discipline agreement;
- 542 (3) Public reprimand by order of the Hearing Panel;
- 543 (4) Censure by the Hearing Panel;
- 544 (5) Imposition by the Hearing Panel of limitations on the
- 545 performance of prosecutorial duties;
- 546 (6) Suspension by the Hearing Panel, with such conditions and
- 547 restrictions as deemed appropriate;
- 548 (7) Removal or involuntary retirement from office by the Hearing
- 549 Panel, which shall include a disqualification from being
- 550 appointed or elected to the office of district attorney of any judicial
- 551 circuit or to the office of solicitor-general of any county of this state
- 552 for a period of ten years from the date of such removal or
- 553 involuntary retirement.

554 **D. Criminal Charges.**

- 555 (1) Upon receipt of a copy of an indictment by a grand jury of this
- 556 state or by the United States, charging a district attorney or a
- 557 solicitor-general with having committed a felony offense which
- 558 relates to a matter which is pending before the investigative or
- 559 hearing panel, the commission shall, after notice to parties,
- 560 suspend its investigation or hearing until such time as a
- 561 judgment in such case shall become final.
- 562 (2) Upon receipt of a copy of an indictment, information, or
- 563 accusation charging a district attorney or a solicitor-general with
- 564 having committed a misdemeanor offense which relates to a
- 565 matter which is pending before the investigative or hearing panel,
- 566 the commission shall, after notice to parties, suspend its
- 567 investigation or hearing until such time as a judgment in such
- 568 case shall become final.

569

570 **Commentary**

571 [1] Removal and suspension are the most serious sanctions that can

572 be imposed by the prosecutorial discipline system. They can be

573 imposed only by the Hearing Panel, and their use is appropriate

574 when the respondent's misconduct demonstrates that the

575 respondent is unfit to serve as a prosecuting attorney.

576 [2] In many instances, however, prosecutorial misconduct is of a

577 lesser nature that does not require the prosecuting attorney's

578 removal or suspension, either to protect the public or to preserve

579 the integrity of the criminal justice system. The facts may  
580 indicate that the prosecuting attorney can continue to serve  
581 effectively with certain conditions (e.g., participation in a  
582 therapy, counseling, or recovery program). In these cases, the  
583 Hearing Panel should impose appropriate conditions.

584 [3] A private admonition is a non-public sanction imposed on a  
585 prosecuting attorney by the Investigative Panel with the  
586 consent of the prosecuting attorney. A private admonition  
587 cannot be imposed after the filing and service of formal charges.  
588 Only in cases of minor misconduct, when there is little or no  
589 injury to the public, the legal system, or the profession, should a  
590 private admonition be imposed.

591 [4] A deferred discipline agreement is a confidential agreement  
592 between the prosecuting attorney and the Investigative Panel for  
593 the prosecuting attorney to undergo treatment, participate in  
594 education programs, or take other corrective action. It is only  
595 available as a response to misconduct that can be addressed  
596 through treatment, education, or a rehabilitation program. A  
597 deferred discipline agreement can only be entered into prior to  
598 the filing and service of formal charges.

599 [5] Some misconduct is so minor that it is appropriate not to impose  
600 any discipline. It is not intended that every transgression will  
601 result in the imposition of discipline. Whenever the Investigative  
602 Panel or the Hearing Panel determines there has been a  
603 transgression, it should consider whether disciplinary action is  
604 appropriate and the degree of discipline to be imposed through a  
605 reasonable and reasoned application of the text of the Code,  
606 taking into account such factors as the seriousness of the  
607 transgression, whether there is a pattern of improper activity,  
608 and the effect of the improper activity on others or on the criminal  
609 justice system. See Georgia Code of Judicial Conduct, Preamble  
610 and Scope, Paragraph [6].

### 611 **Rule 3.2. Form of Complaint**

- 612
- 613
- 614 **A.** Any person who has personal knowledge that a district attorney or  
615 solicitor-general is subject to discipline pursuant to O.C.G.A. § 15-  
616 18-32, may file a complaint with the investigative panel.
- 617 **B.** Such complaint shall be in such form as the investigative panel

618 shall prescribe but shall include the following:

- 619 1. The name, address and such other information as the  
620 investigative panel shall require to permit the panel or the  
621 commission staff to communicate with the person submitting the  
622 complaint;
  - 623 2. A detailed statement of the facts which support the allegation  
624 that a district attorney or solicitor-general has committed acts  
625 which are grounds for discipline or involuntary retirement;
  - 626 3. Disclosure of any interest the person making the complaint may  
627 have in the outcome of the complaint, including any criminal or  
628 civil case which is subject to the jurisdiction of the district  
629 attorney or solicitor-general who is the subject of the complaint  
630 and any action brought by the person making the complaint on  
631 behalf of themselves or another person against such district  
632 attorney or solicitor-general.
  - 633 4. An affidavit made under oath or affirmation that the facts stated  
634 in the pleading are true to the best of his knowledge and  
635 belief. Such affidavit shall be sworn to before any notary public,  
636 magistrate, judge of any court, or any other officer of the state or  
637 county where the oath is made who is authorized by the laws  
638 thereof to administer oaths.
- 639 C. The person submitting a complaint pursuant to this rule may  
640 attach to the complaint documents which support the facts alleged  
641 in the complaint.
- 642 D. A complaint brought by the commission on its own motion shall  
643 substantially comply with the provisions of this Rule.  
644

### 645 **Rule 3.3. Incapacity Status Standard and Burden of Proof**

646  
647 **A. Misconduct.**

648 Charges of misconduct shall be established by the standard of  
649 clear and convincing evidence. The burden of proof is on the  
650 Director or the attorney representing the Investigative Panel.

651 **B. Incapacity.**

652 Grounds for transfer to and from incapacity status shall be  
653 established by the standard of clear and convincing evidence. The  
654 burden of proof in proceedings seeking transfer from incapacity  
655 status is on the prosecuting attorney. See Rule 5.1.  
656

657 ***Commentary***

658 Disciplinary cases are neither civil nor criminal in nature but are sui  
659 generis. “Clear and convincing evidence” is a standard of proof higher than  
660 the civil law standard of “preponderance of the evidence” and lower than the  
661 criminal law standard of “beyond a reasonable doubt.” The standard of proof  
662 required to sanction a respondent’s conduct is thus commensurate with  
663 the importance of protecting the criminal justice system’s ability to function  
664 – more than required to prove a private wrong, but less than required to  
665 prove a criminal offense. The same standard is applied in lawyer  
666 disciplinary proceedings. When incapacity is raised as a defense, the same  
667 burden of proof applies. See Rule 5.1.D (1).

668  
669 **Rule 3.4. Civil Rules Generally Applicable**

670  
671 Except as otherwise provided in these Rules, the rules of evidence  
672 applicable to non-jury civil proceedings and the rules of civil procedure  
673 apply in judicial discipline and incapacity cases.

674  
675 ***Commentary***

676 Rules promulgated by the Investigative Panel pursuant to its authority  
677 under O.C.G.A. § 15-18-32(g) take precedence over the civil rules of evidence  
678 and procedure. See, e.g., Rule 3.9 on service, and Rule 4.6 on discovery.

679  
680 **Rule 3.5. Right to Counsel**

681  
682 The prosecuting attorney shall be entitled to retain counsel and to have the  
683 assistance of said counsel at every stage of these proceedings.

684  
685 ***Commentary***

686 The prosecuting attorney may notify the Georgia Department of  
687 Administrative Services if they are seeking financial assistance regarding  
688 legal representation on any matter before the Commission. See O.C.G.A. §  
689 45-15-70

690  
691 **Rule 3.6. Ex Parte Contacts by the Hearing Panel**

692  
693 Members and staff of the Hearing Panel shall not engage in any ex parte  
694 communications regarding a disciplinary or incapacity matter, including  
695 with the Director and members and other staff of the Investigative Panel.

696 **Commentary**

697 [1] What constitutes improper ex parte communication is determined  
698 by Rule 2.9 of the Georgia Code of Judicial Conduct.

699 [2] Because of their investigative and prosecutorial roles, the Director  
700 and members and other staff of the Investigative Panel are  
701 prohibited from ex parte communications only with regard to  
702 communications about specific disciplinary matters with members  
703 and staff of the Hearing Panel.  
704

705 **Rule 3.7. Confidentiality**

706  
707 **A. Before Formal Charges.**

708 All information regarding a disciplinary or incapacity matter of a  
709 prosecuting attorney shall be kept confidential by the Investigative Panel  
710 and Commission staff before formal charges are filed and served; provided,  
711 however, that if prior to filing formal charges the prosecuting attorney and  
712 the Investigative Panel agree to a satisfactory disposition of a disciplinary  
713 matter other than by a private admonition or deferred discipline  
714 agreement, a report of such disposition shall be publicly filed in the  
715 Supreme Court. See O.C.G.A. § 15-18-32 (j)(1).

716 **B. After Filing and Service of Formal Charges.**

717 (1) With respect to an incapacity matter of a prosecuting attorney, all  
718 pleadings, information, hearings, and proceedings shall remain  
719 confidential; and

720 (2) With respect to a disciplinary matter of a district attorney or  
721 solicitor-general, all pleadings and information shall be subject to  
722 disclosure to the public, and all hearings and proceedings shall be  
723 open and available to the public, except to the extent that such  
724 pleadings and information or hearings and proceedings could be  
725 properly sealed or closed under Chapter 14 or Article 4 of Chapter  
726 18 of Title 50 or by a court as provided by law. See OCGA § 15-18-  
727 32 (j)(2).

728 **C. Administrative and Other Matters.**

729 With respect to administrative and other matters, all records and  
730 information shall be subject to disclosure to the public and all meetings,  
731 or portions thereof, shall be open and available to the public, except to the  
732 extent such records, information, and meetings would:

733 (1) disclose disciplinary matters of a prosecuting attorney protected in  
734 O.C.G.A. § 15-18-32 (j)(1) ;

- 735 (2) disclose incapacity matters of a prosecuting attorney protected in  
736 O.C.G.A. § 15-18-32 (j)(1) or (j)(2)(A);  
737 (3) be considered a matter subject to executive session, if the  
738 Commission were considered to be an agency under Chapter 14 of  
739 Title 50 of the Georgia Code; or  
740 (4) not be required under O.C.G.A. § 50-18-72, if the Commission  
741 were considered to be an agency. See O.C.G.A. § 15-18-32 (j).

742 **D. Work Product and Deliberations.**

743 The work product of the Commission and its staff and the deliberations of  
744 the Commission shall remain confidential. However, prosecuting  
745 attorneys under investigation by the Commission shall have the right to  
746 work product and deliberations regarding his or her case upon written  
747 request. See O.C.G.A. § 15-18-32 (j)(4).

748 **E. Exceptions.**

749 Notwithstanding the other provisions of this Rule, information regarding  
750 a disciplinary or incapacity matter of a prosecuting attorney may be  
751 disclosed to the general public or to specific persons or agencies when:

- 752 (1) the privilege of confidentiality has been waived by the  
753 prosecuting attorney who was the subject of the Commission's  
754 investigation; or  
755 (2) the commission's rules provide for disclosure;  
756 (a) In the interest of justice and to protect the public;  
757 (b) If an emergency situation exists; or  
758 (c) If the prosecuting attorney is under consideration for  
759 another state or federal position. See O.C.G.A. § 15-18-32  
760 (k)

761  
762 **Commentary**

763  
764 [1] In the initial stages of the disciplinary case, confidentiality is  
765 necessary to protect a prosecuting attorney's reputation from  
766 unfounded charges and to protect witnesses from possible  
767 recriminations while a claim is being investigated.

768 [2] Disclosing the existence of complaints that were considered and  
769 dismissed is unfair to the prosecuting attorney and undermines  
770 the work of the Commission. It is unfair to allow any adverse  
771 inferences to be drawn from the mere existence of a complaint  
772 when it was not substantial enough to state a possible ground for  
773 discipline. The Commission will have greater credibility if it does

774 not release information about dismissed complaints under any  
775 circumstances. If the prosecuting attorney wishes to have such  
776 information disclosed, he or she may release the information.

777 Once the formal charges have been filed and served upon the  
778 prosecuting attorney, the policy emphasis shifts from  
779 confidentiality to the public's right to know. The integrity of the  
780 criminal justice system is better protected by an open public  
781 hearing than by a closed hearing. It is no longer possible to  
782 protect the identity of the witnesses because their identity must  
783 be disclosed through the discovery to which the respondent is  
784 entitled, including the work product and deliberations of the  
785 Commission.

786 [3] Disclosures that the Investigative Panel or the Hearing Panel  
787 may determine to be necessary under Rule 3.7 (E) (2) (a) or (b)  
788 include disclosures to law enforcement authorities and potential  
789 victims of substantial evidence that a prosecuting attorney has  
790 committed, is committing, or is intending to commit a serious  
791 crime, and similar disclosures to attorney disciplinary  
792 authorities regarding serious violations of the Georgia Rules of  
793 Professional Conduct by prosecuting attorneys. The timing and  
794 extent of such disclosures is at the discretion of the Investigative  
795 Panel or the Hearing Panel, depending on the procedural status  
796 of the case.

797 [4] When the alleged misconduct or incapacity of a prosecuting  
798 attorney who is the subject of a complaint has been publicized  
799 and the public would expect the Commission to be investigating  
800 such conduct, the Investigative Panel may authorize the  
801 chairperson or the Director to publicly confirm the existence,  
802 without more, of such an investigation pursuant to Rule 3.7 E  
803 (2) (a).

804 [5] The Commission's administrative records and meetings that do  
805 not disclose specific, confidential disciplinary and incapacity  
806 matters should be available and open to the public like the  
807 records and meetings of other governmental agencies in this  
808 state.

### 809 **Rule 3.8. Immunity from Civil Suits**

810 Information submitted to the Commission or its staff, and testimony given  
811

813 in any proceeding before the Commission or one of its panels, shall be  
814 absolutely privileged, and no civil action predicated upon such information  
815 or testimony shall be instituted against any complainant, witness, or his or  
816 her counsel. See OCGA § 15-18-32 (l).

817  
818 ***Commentary***

- 819  
820 [1] This Rule does not cover immunity from criminal prosecution.  
821 Immunity from criminal prosecution for witnesses in judicial  
822 disciplinary proceedings is covered by Rule 4.1.E. It is crucial that  
823 persons with information about misconduct feel free to bring  
824 matters to the Commission. Complainants and witnesses will not  
825 come forward without some protection.
- 826 [2] Complainants, witnesses, and their counsel should be granted  
827 absolute immunity, as qualified immunity does not protect against  
828 the threat of a civil lawsuit because it does not apply to acts done  
829 with malice. The prosecuting attorney may file suit alleging malice  
830 and force the complainant or witness to undergo the expense of  
831 defending the suit. Qualified immunity therefore does not serve to  
832 encourage cooperation with the disciplinary process.
- 833 [3] Immunity from civil action attaches only to communications made  
834 to the Commission or its staff and to testimony given in the  
835 proceeding. If the complainant or witness publicly discloses the  
836 information, immunity does not apply to the public disclosure. The  
837 complainant, witness, or attorney remains liable in a civil action if  
838 he or she publicly makes a false allegation about a prosecuting  
839 attorney.
- 840 [4] Commission members and staff must be free from harassment.  
841 They have immunities from civil suits pursuant to the Georgia Tort  
842 Claims Act, OCGA § 50-21-20 et seq., the official immunity  
843 provision of Article I, Section II, Paragraph IX of the Georgia  
844 Constitution of 1983, and the common law of quasi-judicial  
845 immunity. These immunities assure the independence of the  
846 Commission and eliminate a major deterrent to service on it.

847  
848  
849 **Rule 3.9. Service**

850  
851 **A. Notice of Complaint.**

852 Service of notice that a complaint has been received shall be made by regular  
853 mail and email to the prosecuting attorney’s address of record on file with  
854 the State Bar of Georgia, or at such other address provided in writing to the  
855 Director.

856 **B. Formal Charges.**

857 Service of formal charges in any disciplinary or incapacity proceeding shall  
858 be made by personal service upon the prosecuting attorney or prosecuting  
859 attorney’s counsel by any person authorized by the Director, by registered or  
860 certified mail, or by statutory overnight delivery. Delivery of all other papers  
861 or notices shall be made in accordance with the Civil Practice Act and Rule  
862 4-203.1 of the State Bar of Georgia.

863

864 **Rule 3.10. Oaths**

865

866 **A. Oaths.**

867 Oaths and affirmations may be administered by any member of the  
868 Commission or the Director in matters under full investigation or any other  
869 person authorized by law. The form of the oath shall be as in civil cases.

870 **B. [Reserved.]**

871 **Commentary**

872 We note that these rules are based upon the rules of the Judicial  
873 Qualifications Commission, which has subpoena power based on its  
874 constitutional authority. The Georgia Constitution provides that the  
875 general assembly shall, by law, provide for the discipline, removal, or  
876 involuntary retirement of a prosecuting attorney. Thus, the Commission’s  
877 power derives solely from O.C.G.A. § 15-18-32, which does not contain  
878 language authorizing the Commission or its panels to compel the  
879 attendance of witness or the production of evidence. Such power cannot be  
880 implied. “When we consider the meaning of a statute, ‘we must presume  
881 that the General Assembly meant what it said and said what it meant.’”  
882 *Deal v. Coleman*, 294 Ga. 170, 172 (1) (a) (751 S.E. 2d 337) (2013). “When  
883 a statute contains clear and unambiguous language, such language will be  
884 given its plain meaning and will be applied accordingly.” *Opensided MRI  
885 of Atlanta, LLC v. Chandler*, 287 Ga. 406, 407 (696 S.E. 2d 640) (2010).

886

887 **Rule 3.11. Notification to Complainant**

888 The Director shall provide written acknowledgment of every complaint, if  
889 the complainant is known, and notify the complainant in writing of the final

890 disposition of a proceeding under these Rules. Notification in writing shall  
891 be mailed within 10 days of the final disposition of the proceeding.

892  
893 ***Commentary***

894  
895 It is advisable for the Director to keep the complainant informed of the  
896 status of the case throughout the proceedings. Providing notice to  
897 complainants of the final disposition in all cases is vital to maintaining  
898 public confidence in the prosecutorial disciplinary system. When a  
899 complaint has been dismissed, the notification to the complainant should  
900 include a brief summary of the facts and reasoning upon which the decision  
901 to dismiss was made. When final disposition is by private admonition or  
902 deferred discipline agreement, the complainant should be notified that  
903 action was taken on the matter without specifying the nature of the  
904 disposition.

905  
906 **SECTION 4. Disciplinary Proceedings**

907  
908 **Rule 4.1. Screening and Investigation**

909  
910 **A. Screening.**

911 The Director shall evaluate all information coming to the Director's  
912 attention by complaint or from other sources that alleges prosecutorial  
913 misconduct or incapacity. When a Commission member receives  
914 information relating to the alleged misconduct or incapacity of a  
915 prosecuting attorney, the member shall provide such information to the  
916 Director. See OCGA § 15-18-32 (g). If the information would not constitute  
917 misconduct or incapacity if true, the Director shall dismiss the complaint,  
918 subject to reconsideration by the Investigative Panel. If the information  
919 raises allegations that would constitute prosecutorial misconduct or  
920 incapacity if true, the Director shall conduct a preliminary investigation.

921 **B. Preliminary Investigation.**

- 922 (1) The Director may conduct interviews and examine evidence to  
923 determine whether grounds exist to believe the allegations of  
924 complaints, pursuant to Rule 4.1.
- 925 (2) When the Director believes there is evidence supporting the  
926 allegations against a prosecuting attorney, he or she shall  
927 recommend to the Investigative Panel that the panel authorize a  
928 full investigation. In all other cases, the Director shall recommend

929 that the matter be dismissed.

- 930 (3) The Investigative Panel shall review the Director's  
931 recommendations and either dismiss the complaint or authorize  
932 a full investigation. Said investigation shall only commence upon  
933 a majority vote of the Investigative Panel. See O.C.G.A. § 15-18-  
934 32 (g).

935 **C. Full Investigation.**

- 936 (1) Within 10 days after the Investigative Panel authorizes a full  
937 investigation, the Director shall give the following notice to the  
938 prosecuting attorney:  
939 (a) A specific statement of the alleged violations being  
940 investigated, with the provision that the investigation can  
941 be expanded if appropriate;  
942 (b) The prosecuting attorney's duty to respond if requested  
943 pursuant to Rule 4.1.C (3);  
944 (c) The prosecuting attorney's opportunity to meet with the  
945 Director or the Investigative Panel pursuant to Rule 4.1.C  
946 (4); and  
947 (d) The name of the complainant unless the Investigative  
948 Panel determines that there is substantial cause to  
949 withhold that information.  
950 (2) The Director may request that the prosecuting attorney file a  
951 written response within 30 days after service of the notice under  
952 Rule 4.1.C (1).  
953 (3) Before the Investigative Panel determines its disposition of the  
954 complaint under Rule 4.1.D, the prosecuting attorney, the  
955 Director, or the Investigative Panel may request a meeting by the  
956 prosecuting attorney with the Director or the Investigative Panel.  
957 The appearance may be on the record, with advance notice, at the  
958 request of the prosecuting attorney, the Director, or the  
959 Investigative Panel. The prosecuting attorney may appear with  
960 or without counsel, who may present additional information by  
961 proffer.  
962 (4) Members of the Investigative Panel shall be present in person to  
963 participate in a panel meeting with a prosecuting attorney. See  
964 Rule 2.3.A.

965 **D. Disposition After Initiation of Full Investigation.**

- 966 (1) The Investigative Panel may consider any of the following  
967 dispositions:

- a. dismissal;
- b. private admonition or deferred discipline agreement;
- c. the filing of formal charges;
- d. the filing of a petition for transfer to incapacity inactive status;
- e. referral to an appropriate agency;
- f. other sanctions as provided by Rule 3.1.C; or
- g. resolution of the matter by the prosecuting attorney's agreement to resign or retire, with or without the prosecuting attorney's agreement not to seek or hold office as an elected or appointed district attorney or solicitor-general in the future.

(2) If the Investigative Panel finds a violation pursuant to Rule 3.1 for which the imposition of discipline is not warranted, it may dismiss.

(3) If the Investigative Panel finds that there is probable cause to believe the prosecuting attorney committed misconduct:

- a. the Investigative Panel may propose to the prosecuting attorney a private admonition, a deferred discipline agreement, or an agreement by the prosecuting attorney to resign or retire, and if the prosecuting attorney consents, it shall admonish the prosecuting attorney or implement the deferred discipline agreement or the agreement to resign or retire; or
- b. if the prosecuting attorney does not consent to the private admonition, or the deferred discipline or an agreement by the prosecuting attorney to resign or retire, the Investigative Panel may instruct the Director either to file formal charges or dismiss the complaint; or
- c. the Investigative Panel may decline to propose to the prosecuting attorney a private admonition, a deferred discipline agreement, or an agreement by the prosecuting attorney to resign or retire, and instruct the Director to file formal charges.

**E. Immunity from Criminal Prosecution.**

Whenever a witness, other than the respondent, invokes his or her privilege against self-incrimination as a basis for refusing to answer a question or to produce other evidence that may be relevant to a discipline or incapacity proceeding, the Director, after authorization by

1007 the Investigative Panel, may request the Prosecuting Attorneys'  
1008 Council of Georgia appoint a district attorney pro tempore to consider  
1009 application to the appropriate Superior Court for immunity from criminal  
1010 prosecution. See O.C.G.A. § 24-5-507.

1011  
1012 ***Commentary***

- 1013 [1] The phrase “Substantial Cause” in subsection (c)(1)(D) shall mean  
1014 when the Panel determines that disclosure of the complainant’s  
1015 identity may jeopardize public safety or the personal safety of the  
1016 complainant.
- 1017 [2] The Director is authorized to screen complaints because  
1018 complaints that fail to state grounds for discipline may represent  
1019 a large portion of those received by the Commission.
- 1020 [3] The Director shall notify a prosecuting attorney of every  
1021 complaint made against the prosecuting attorney. The Director  
1022 must notify the prosecuting attorney before the Investigative  
1023 Panel considers a disposition, in order to ensure that the  
1024 Investigative Panel can consider all the facts, including the  
1025 prosecuting attorney’s statement, before determining whether to  
1026 dismiss the case, file formal charges, or offer the respondent a  
1027 deferred discipline agreement, private admonition, or agreement  
1028 to resign or retire.
- 1029 [4] During a preliminary investigation, the Director or the  
1030 Investigative Panel and any staff or investigators assisting the  
1031 Director or the Investigative Panel should be cognizant in seeking  
1032 evidence and conducting interviews of the objective of  
1033 maintaining the confidentiality of the proceeding, particularly  
1034 before the Investigative Panel has authorized a full investigation.
- 1035 [5] When giving notice, the Director or the Investigative Panel  
1036 should inform the prosecuting attorney of the nature of the  
1037 allegations, the Code provisions alleged to have been violated, the  
1038 opportunity of the prosecuting attorney to respond if requested,  
1039 or meet with the Director or the Investigative Panel, and the  
1040 possibility of resolving the complaint by agreement. The Director  
1041 or the Investigative Panel should advise the prosecuting attorney  
1042 that since the investigation is ongoing, facts may be discovered  
1043 that will change the violations charged.
- 1044 [6] If the Director or the Investigative Panel requests a written  
1045 response from the prosecuting attorney, the Director or the

1046 Investigative Panel should state when the prosecuting attorney  
1047 is to respond and advise the prosecuting attorney where he or she  
1048 may find a copy of these Commission Rules. If either the  
1049 prosecuting attorney, the Director, or the Investigative Panel  
1050 requests an opportunity for the prosecuting attorney to meet with  
1051 the Director or the Investigative Panel, the prosecuting attorney  
1052 may have counsel present at the meeting.

1053 [7] In reviewing a complaint after investigation, the Investigative  
1054 Panel should consider the Director's recommendation, if there is  
1055 one, including any memoranda on the law, together with the  
1056 investigative file. The investigative file should include the  
1057 statements of the complainant, the witnesses, if any, and the  
1058 respondent, as well as relevant documents and other evidence.  
1059 Additional factors that shall be considered by the Director and  
1060 Investigative Panel include staffing, caseload, financial  
1061 limitations of the prosecuting attorney's office, the unique  
1062 concerns and demands within the Respondent's jurisdiction, and  
1063 resource limitations imposed by external agencies critical to the  
1064 prosecution function.

1065 [8] If the Investigative Panel decides to impose a private admonition,  
1066 the panel should condition the private admonition upon the  
1067 prosecuting attorney's execution of a waiver of the right to a  
1068 hearing. Such a waiver should bar the prosecuting attorney from  
1069 objecting to the use at a subsequent proceeding against the  
1070 prosecuting attorney of the findings that are the basis for the  
1071 admonition. The private admonition should be in writing.

1072 [9] A deferred discipline agreement may be entered into only with  
1073 the consent of the prosecuting attorney. The agreement sets forth  
1074 conditions imposed by the Investigative Panel with which the  
1075 prosecuting attorney must comply in order to avoid the  
1076 reinstatement of disciplinary proceedings. The agreement must  
1077 be in writing. A deferred discipline agreement does not constitute  
1078 a finding that misconduct was committed. It is appropriate only  
1079 when the alleged misconduct is minor, that is, it does not reflect  
1080 on the prosecuting attorney's fitness for office, and when the  
1081 underlying cause of the misconduct can be addressed through a  
1082 treatment or rehabilitation program. Upon successful completion  
1083 of the program, the complaint will be dismissed. If the prosecuting  
1084 attorney fails to complete the program, the Investigative Panel

1085 may proceed to determine whether to dismiss the complaint,  
1086 impose a private admonition with the consent of the prosecuting  
1087 attorney, or instruct the Director to file formal charges, file formal  
1088 charges on their own behalf, or a petition for transfer to incapacity  
1089 inactive status.

1090 [10] The ultimate sanction for prosecutorial misconduct or incapacity  
1091 is the removal or involuntary retirement of the prosecuting  
1092 attorney, which includes a prohibition on the prosecuting  
1093 attorney serving as an elected district attorney or solicitor-  
1094 general for a period of ten years. A prosecuting attorney may  
1095 always voluntarily resign or retire, and doing so precludes the  
1096 Commission from proceeding.

1097 [11] Such an agreement to resign or retire must be in writing; in the  
1098 agreement, the prosecuting attorney may admit to all or certain  
1099 of the allegations against him or her, or agree that such  
1100 allegations could be properly proved in a hearing, or neither  
1101 confirm nor deny the allegations, but the agreement must  
1102 indicate that the prosecuting attorney is resigning or retiring in  
1103 light of an investigation by the Commission. Pursuant to O.C.G.A.  
1104 § 15-18-32(j)(1), the Director or the Investigative Panel must file  
1105 a report of such an agreement reached in a disciplinary matter  
1106 publicly in the Supreme Court, so that the public is notified that  
1107 the prosecuting attorney resigned or retired due to a Commission  
1108 investigation and to avoid such speculation about prosecuting  
1109 attorneys who resign or retire under other circumstances. A copy  
1110 of such report shall also be provided to the Hearing Panel for  
1111 informational purposes. The Director or the Investigative Panel  
1112 shall also file a report of such an agreement reached in an  
1113 incapacity matter confidentially with the Hearing Panel and the  
1114 Supreme Court for informational purposes.

1115 [12] An agreement to resign or retire is a contract between the  
1116 prosecuting attorney and the Investigative Panel, is not reviewed  
1117 or approved by the Hearing Panel and is not a court order. If the  
1118 prosecuting attorney violates the agreement, the Investigative  
1119 Panel may seek to enforce the agreement as a contract with the  
1120 prosecuting attorney, or it may seek to rescind the agreement and  
1121 direct the Director to file formal charges.

1122 [13] A stay of the proceedings is required when there is an ongoing  
1123 civil or criminal action against the prosecuting attorney, so as not

1124 to interfere with the expeditious litigation of the court action.

1125

1126 **Rule 4.2. Use of Allegations from Dismissed Cases**

1127 If a complaint has been dismissed due to insufficient evidence, the  
1128 allegations made in that complaint shall not be used for any purpose in any  
1129 other disciplinary proceeding against the prosecuting attorney. If, however,  
1130 additional information becomes known to the Director or the Investigative  
1131 Panel regarding a complaint that has been dismissed due to insufficient  
1132 evidence before the filing of formal charges, the allegations may be  
1133 reconsidered with the permission of the Investigative Panel.

1134

1135 ***Commentary***

1136 [1] A prosecuting attorney should not be subject forever to possible  
1137 disciplinary action based on a complaint that has been  
1138 investigated and dismissed due to insufficient evidence. It is  
1139 unfair to use these inadequately supported complaints to  
1140 establish a pattern or practice of misconduct. If, however,  
1141 additional evidence is discovered that adds substance to the  
1142 allegations of a complaint previously dismissed due to insufficient  
1143 evidence, it is appropriate to reconsider the allegations of the  
1144 original complaint. In determining whether to consider such  
1145 allegations, the Investigative Panel may wish to consider factors  
1146 such as length of time elapsed, the alleged harm caused, possible  
1147 disruption to the criminal justice system, the extent of the  
1148 original investigation, the good faith of the complainant, and  
1149 other appropriate factors.

1150 [2] These Rules only apply to actively serving prosecuting attorneys.  
1151 They do not adopt any statute of limitations as to incumbent  
1152 prosecuting attorneys. The conduct of a prosecuting attorney  
1153 while in office is always relevant to the question of fitness for  
1154 office. The time between the commission of alleged misconduct  
1155 and the initiation of a complaint based on the conduct is relevant  
1156 to whether and to what extent discipline should be imposed but is  
1157 not relevant to limit the Commission's power to investigate.

1158

1159 **Rule 4.3. Formal Charges**

1160 The formal charges shall give fair and adequate notice of the nature of the  
1161 alleged misconduct or incapacity. The Director or the Investigative Panel

1162 shall file the formal charges and proof of service with the Hearing Panel.  
1163 The Director or the Investigative Panel shall cause a copy of the formal  
1164 charges to be served upon the respondent or respondent's counsel pursuant  
1165 to Rule 3.9.  
1166

### 1167 *Commentary*

1168

1169 [1] The formal charges should be drawn with clarity and specificity.  
1170 The Respondent should be able to ascertain the allegations and the  
1171 provisions of the Georgia Code of Prosecuting Attorneys' Conduct  
1172 alleged to have been violated or the alleged incapacity. In many  
1173 instances, the formal charges will not be identical to the  
1174 allegations of the original complaint. Often the investigation of a  
1175 complaint will lead to the elimination of some allegations and the  
1176 clarification of others. New, related allegations may come to light,  
1177 some of which may be much more serious than those in the  
1178 complaint. Sometimes the Investigative Panel will choose not to  
1179 pursue certain allegations. The prosecuting attorney shall be  
1180 advised of any changes to the formal charges brought before the  
1181 Hearing Panel.  
1182

1183 [2] The Hearing Panel shall act as its own clerk.  
1184

### 1185 **Rule 4.4. Answer**

1186

#### 1187 **A. Time.**

1188 The respondent shall file a written answer with the Hearing Panel  
1189 and serve a copy on the Director or the Investigative Panel within 30  
1190 days after service of the formal charges, unless the time is extended  
1191 by the Hearing Panel.

#### 1192 **B. Waiver of Privilege.**

1193 The raising of a mental or physical condition as a defense constitutes  
1194 a waiver of medical privilege pursuant to Rule 5.1 D(2).

#### 1195 **C. Effect of Denial.**

1196 The answer should contain denials of those factual allegations known  
1197 or believed to be untrue. The answer should also specify those factual  
1198 allegations as to which the respondent lacks knowledge or  
1199 information sufficient to form a belief; this has the effect of a denial.  
1200 All other factual allegations in the formal charges are deemed

1201 admitted. The answer may also contain affirmative and other  
1202 defenses and may assert that the conduct alleged in the formal  
1203 charges is not misconduct.

- 1204 **D. Failure to Answer.** Failure to answer the formal charges, or any  
1205 amendments thereto, shall create a rebuttable presumption of  
1206 admission of the factual allegations contained therein.

1207  
1208 **Rule 4.5. Failure to Appear**

1209  
1210 If the Respondent should fail to appear when specifically so ordered by the  
1211 Hearing Panel, such failure shall create a rebuttable presumption that  
1212 Respondent has admitted the factual allegations in the formal charges.  
1213 Absent good cause, the Hearing Panel shall not continue or delay  
1214 proceedings because of the respondent's failure to appear.

1215  
1216 **Rule 4.6. Discovery**

1217  
1218 **A. Witnesses.**

1219 Within 30 days of the filing of an answer, the Director or the  
1220 Investigative Panel and the respondent shall exchange the names  
1221 and addresses of all persons known to have knowledge of the  
1222 relevant facts. The Hearing Panel shall set a date for the  
1223 exchange of the names and addresses of all witnesses the parties  
1224 intend to call at the hearing. The Director and the respondent may  
1225 take depositions only of witnesses to be called at the hearing and  
1226 other witnesses who are unavailable to testify as defined in  
1227 O.C.G.A. § 24-8-804. Depositions of other persons may be taken  
1228 only with permission of the presiding officer of the Hearing  
1229 Panel and only for good cause shown.

1230  
1231 **B. Other Evidence.**

1232 The Director or the Investigative Panel and the respondent shall  
1233 exchange all evidence relevant to the formal charges, including  
1234 but not limited to documents to be presented at the hearing, and  
1235 witness statements and summaries of interviews with witnesses  
1236 who will be called at the hearing.

1237  
1238 **C. Exculpatory Evidence.**

1239 The Director or the Investigative Panel shall provide the

1240 respondent with exculpatory evidence relevant to the formal  
1241 charges.

1242

1243 **D. Duty of Supplementation.**

1244 Both parties have a continuing duty to supplement information  
1245 required to be exchanged under this Rule.

1246

1247 **E. Completion of Discovery.**

1248 All discovery shall be completed within 90 days of the filing of the  
1249 answer, unless extended for good cause by the presiding officer of  
1250 the Hearing Panel, but not later than 10 days prior to any  
1251 scheduled hearing.

1252

1253 **F. Failure to Disclose.**

1254 The Hearing Panel may preclude either party from calling a  
1255 witness at the hearing if the party has not timely provided the  
1256 opposing party with the witness's name and address or any  
1257 statements taken from the witness, and there is a showing of bad  
1258 faith in failure to comply.

1259

1260 **G. Resolution of Disputes.**

1261 Disputes concerning discovery shall be determined by the  
1262 presiding officer of the Hearing Panel, who may in his or her  
1263 discretion refer the dispute to the full Hearing Panel for decision.  
1264 The decisions of the Hearing Panel may not be appealed before  
1265 the entry of the final order.

1266

1267 **Commentary**

1268 [1] "Witnesses to be called at the hearing" include witnesses whose  
1269 testimony will be presented by deposition.

1270 [2] Liberal exchanges of information should be encouraged, because  
1271 they facilitate the trial of the charges. However, the presiding  
1272 officer of the Hearing Panel should monitor closely the extent of  
1273 discovery permitted and the time for obtaining such discovery in  
1274 order to prevent counsel from using discovery as a means of delay.

1275 [3] Under this Rule, the number of persons who may be deposed is  
1276 limited to avoid building delay into the process and to protect  
1277 persons who will not testify at trial.

1278

1279 [4] In determining whether to preclude a party from calling a witness  
1280 at the hearing for failure to disclose required information, the  
1281 Hearing Panel may take into consideration the prejudice to the  
1282 party calling the witness if the witness is not called and the extent  
1283 to which the opposing party will be prejudiced by the lack of  
1284 advance disclosure. It is the intent of this rule that discovery be  
1285 completed no later than 10 days prior to any hearing, however,  
1286 exceptions to this rule discovered in good faith shall be allowed if  
1287 valid under current case law.

1288

## 1289 **Rule 4.7 Discipline by Consent**

1290

### 1291 **A. Contents.**

1292 At any time after the filing of formal charges and before final  
1293 disposition, the respondent may agree with the Director in writing that  
1294 a stated sanction should be imposed in exchange for the prosecuting  
1295 attorney's admission of some or all of the formal charges or the  
1296 prosecuting attorney's admission that evidence exists with which the  
1297 Director could properly prove some or all of the formal charges. If the  
1298 prosecuting attorney admits to only some of the counts in the formal  
1299 charges, or admits that evidence exists with which the Director could  
1300 prove only some of the formal charges, the Director shall provide an  
1301 explanation in the written agreement as to why the Director is not  
1302 proceeding on the counts for which there is no admission. The written  
1303 agreement shall include a signed affidavit from respondent stating  
1304 that:

- 1305 1. The respondent consents to the sanction;
- 1306 2. The consent is freely and voluntarily rendered;
- 1307 3. There is presently pending a proceeding involving allegations of  
1308 misconduct; and
- 1309 4. The facts set forth in the affidavit are true, or the respondent deems  
1310 it in their best interest not to challenge the assertions set forth in the  
1311 affidavit.

### 1312 **B. Submission to Hearing Panel.**

1313 The agreement and affidavit shall be submitted to the Hearing Panel,  
1314 which shall either:

- 1315 1. reject the agreement; or
- 1316 2. approve the agreement and file the agreement with the Supreme  
1317 Court.

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**C. Rejection of Sanction.**

If the recommended sanction is rejected by the Hearing Panel, the admission shall be withdrawn and cannot be used against the respondent in any proceedings.

**D. Confidentiality.**

The agreement and affidavit shall remain confidential until filed with the Supreme Court.

**E. Order of Discipline.**

The final order of discipline shall be based upon the formal charges and the conditional admission.

**F. Notice.**

If the Hearing Panel's final order of discipline orders a public reprimand, the Director shall issue and file with the Clerk of the Supreme Court an order setting the date, time, and place for the imposition of the public reprimand and shall serve such order on the respondent and respondent's counsel at least 10 days prior to the date set. Such notice shall also be given in the event of any rescheduling of a public reprimand.

***Commentary***

- [1] Either the respondent or the Director or the Investigative Panel may initiate negotiations on discipline by consent, but both parties must agree to the stipulated discipline.
- [2] When justified, discipline by consent is beneficial to all participants. It enables the respondent to avoid the personal anxiety and expense of further proceedings, and it relieves the public and the judicial discipline system of the time-consuming and expensive necessity for such proceedings.
- [3] In the event the proposed stipulated discipline is disapproved by the Hearing Panel or the matter is returned for formal proceedings for any reason, the respondent's admissions cannot be used against the respondent.
- [4] If rejecting a proposed discipline by consent, the Hearing Panel should consider providing a written explanation for its decision. An explanation of the rejection may provide valuable guidance both moving forward with the matter underlying the rejected discipline by consent and in crafting future discipline by consent agreements.

1357 **Rule 4.8. Hearing**

1358  
1359 **A. Scheduling.**

1360 Upon receipt of the respondent's answer or upon expiration of the time  
1361 to answer, the presiding officer of the Hearing Panel shall confer with  
1362 the Director and respondent about scheduling discovery, motions, and  
1363 a public hearing. The presiding officer shall issue and file a scheduling  
1364 order setting the date, time, and place of the hearing and shall serve  
1365 such order on the Director, the respondent or respondent's counsel,  
1366 and other members of the Hearing Panel at least 20 days prior to the  
1367 date set. The presiding officer may also conduct status and pre-hearing  
1368 conferences and, in consultation with the other members of the  
1369 Hearing Panel, may issue pre-hearing orders and other orders  
1370 necessary for the just and efficient conduct of the hearing.

1371 **B. Withdrawal or Dismissal of Formal Charges by the**  
1372 **Director Prior to Hearing.**

1373 (1) **Withdrawal of Formal Charges.** At any point prior to  
1374 beginning the public hearing, the Director, with authorization  
1375 from the Investigative Panel, may file a notice withdrawing the  
1376 formal charges from the Hearing Panel based upon newly  
1377 discovered information or evidence.

1378 (2) **Dismissal of Formal Charges Without Prejudice.** At any  
1379 point prior to beginning the public hearing, the Director, with  
1380 authorization from the Investigative Panel and with the  
1381 approval of the Hearing Panel, may file a notice dismissing the  
1382 formal charges without prejudice for reasons of judicial economy  
1383 or other good cause shown. A dismissal under this section shall  
1384 be without prejudice, and the Director may reinstate a  
1385 disciplinary matter by re-filing formal charges within six months  
1386 of dismissal should the circumstances that warranted the  
1387 dismissal of formal charges change.

1388 (3) **Confidentiality.** After formal charges have been withdrawn or  
1389 dismissed as described above, any filings before the Hearing  
1390 Panel prior to the withdrawal or dismissal of the formal charges  
1391 shall remain subject to disclosure to the public. Any proceedings  
1392 before the Investigative Panel after a withdrawal or dismissal of  
1393 formal charges shall remain confidential, until or unless formal  
1394 charges are again filed on the same matter, in which case Rule  
1395 3.7.B(2) will again apply.

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**C. Conduct of Hearing.**

- (1) The hearing shall be conducted by the Hearing Panel, the members of which shall be present in person. See Rule 2.3.A.
- (2) The Director shall present evidence on the formal charges. All testimony shall be under oath.
- (3) The Director may call the respondent as a witness.
- (4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.
- (5) The hearing shall be recorded verbatim at the expense of the Commission. Whenever a transcript is requested by the respondent, the Director, or the Hearing Panel, a transcript of the hearing shall be produced promptly at the expense of the requesting party.
- (6) The Hearing Panel may request from the Director and the respondent proposed findings, conclusions, and recommendations for sanctions or dismissal.

**D. Dismissal or Imposition of Sanction.**

The Hearing Panel shall either dismiss the case or impose a sanction. The Hearing Panel shall decide a matter only upon the concurrence of at least two members of the panel. Panel members shall have the option of issuing a dissenting opinion that shall become part of the record.

**E. Submission of the Report and Record.**

Within 30 days after the hearing or after the filing of the transcript if one was requested, the Hearing Panel shall file with the Supreme Court the record of the proceeding and a report setting forth a written summary, findings of fact, conclusions of law, any minority opinions, and the order of dismissal or sanction. The Hearing Panel shall at the same time serve the report and a copy of the proposed record upon the respondent, respondent's counsel, and the Director. If the respondent or the Director has objections to the proposed record, he or she may have the record settled by the Hearing Panel's presiding officer.

**F. Notice of Exceptions.**

Within 20 days of receipt of the Hearing Panel's report, the respondent and the Director may file with the Supreme Court notice of exceptions to the findings, conclusions, sanction, or order of dismissal of the Hearing Panel. The failure to file notice

1435 of exceptions constitutes acceptance of the findings of fact,  
1436 conclusions of law, and order of dismissal or sanction.  
1437

1438 ***Commentary***

- 1439 [1] Under these Rules, the Investigative Panel determines whether  
1440 the Director has sufficient grounds to conduct a full investigation.  
1441 After investigation, the Investigative Panel determines whether  
1442 reasonable cause exists to believe misconduct was committed.
- 1443 [2] If formal charges are not answered and are deemed admitted, or  
1444 if the respondent fails to appear, the hearing shall afford the  
1445 Respondent an opportunity to present evidence sufficient to  
1446 overcome the rebuttable presumption of admission created by  
1447 Rule 4.4 (B) and 4.5. If the presumption remains un rebutted, the  
1448 Hearing Panel shall determine the appropriate sanction.
- 1449 [3] A disciplinary proceeding is not a criminal proceeding. The  
1450 respondent may not decline to testify but may claim the  
1451 protection of the Fifth Amendment of the U.S. Constitution,  
1452 Paragraph XVI of the Georgia Constitution, or O.C.G.A. §§ 24-5-  
1453 505 or 24-5-506. Further, the Hearing Panel shall not make a  
1454 negative inference upon a failure to testify.
- 1455 [4] When appropriate, the Director or the Investigative Panel and  
1456 the respondent are encouraged to stipulate to any issue of fact or  
1457 law so as to shorten the time for the hearing.
- 1458 [5] With regard to refile charges after dismissal, it is in the best  
1459 interest of all parties, as well as the citizens of Georgia, in a  
1460 speedy and certain resolution of pending matters, and to only  
1461 exercise their discretion to refile charges when absolutely  
1462 necessary.  
1463

1464 **Rule 4.9. Review by the Superior Court**

1465  
1466 **A. Notice of Appeal**

- 1467 (1) Proceedings for review are instituted by the prosecuting attorney,  
1468 who shall file a petition within 30 days after the service of the  
1469 final decision of the Commission. The Commission has no right to  
1470 appeal a final decision of the Hearing Panel. The petition shall be  
1471 filed in the Superior Court of Fulton County or the superior court  
1472 of the circuit or county where such respondent serves as a district  
1473 attorney or solicitor-general. Copies of the petition shall be served

1474 upon the Commission. The petition shall state facts showing that  
1475 the petitioner is aggrieved by the decision and the enumerations  
1476 of error. The petition may be amended by leave of court.

- 1477 (2) Within 30 days after the service of the petition or within further  
1478 time allowed by the court, the Commission shall transmit to the  
1479 reviewing court the original or a certified copy of the entire record  
1480 of the proceeding under review at the Commission's expense. The  
1481 court may require or permit subsequent corrections or additions  
1482 to the record.

1483  
1484 *Commentary*

1485 [1] The enabling statute does not provide standards or grounds for review  
1486 by the superior courts. Therefore, the courts are free to use whatever  
1487 standard they deem is appropriate. In similar instances involving appeals  
1488 from decisions of Executive Branch agencies, the Legislature has  
1489 instructed the superior courts as follows in O.C.G.A. § 50-13-19(h):

1490 The court shall not substitute its judgment for that of the  
1491 agency as to the weight of the evidence on questions of fact.  
1492 The court may affirm the decision of the agency or remand the  
1493 case for further proceedings. The court may reverse or modify  
1494 the decision if substantial rights of the appellant have been  
1495 prejudiced because the administrative findings, inferences,  
1496 conclusions, or decisions are:

- 1497 (1) In violation of constitutional or statutory provisions;  
1498 (2) In excess of the statutory authority of the agency;  
1499 (3) Made upon unlawful procedure;  
1500 (4) Affected by other error of law;  
1501 (5) Clearly erroneous in view of the reliable, probative, and  
1502 substantial evidence on the whole record; or  
1503 (6) Arbitrary or capricious or characterized by abuse of  
1504 discretion or clearly unwarranted exercise of discretion.

1505 **B. Docketing.**

- 1506 (1) The Clerk of the Fulton County Superior Court or the superior  
1507 court of the circuit or county where such respondent serves as a  
1508 district attorney or solicitor-general shall docket any case in which  
1509 the Hearing Panel imposed a sanction and the prosecuting  
1510 attorney has filed an appeal of the final order.  
1511 (2) In cases the Hearing Panel has dismissed, the dismissal shall be  
1512 final.

1513 **C. Briefs, Oral Argument, and Supplemental Filings.**

- 1514 (1) The Director or Investigative Panel and the prosecuting attorney  
1515 shall file briefs as directed by the Superior Court. The Director or  
1516 Investigative Panel or the prosecuting attorney may request oral  
1517 argument.  
1518 (2) If the Superior Court desires an expansion of the record or  
1519 additional findings, it shall remand the case to the Hearing Panel  
1520 with appropriate directions.  
1521 (3) The Superior Court may order additional briefs or oral argument  
1522 as to the entire case or specified issues.

1523 **D. Notice of Additional Complaints.**

1524 If during review by the Superior Court the Director or Investigative  
1525 Panel receives another complaint against the prosecuting attorney, the  
1526 Director shall advise the Investigative Panel, the prosecuting attorney,  
1527 and their counsel and shall treat the complaint as a new, separate  
1528 matter.

1529 **E. Decision.**

- 1530 (1) The Superior Court shall file a written decision affirming or  
1531 reversing the decision of the Hearing Panel.  
1532 (2) The Superior Court may accept or reject, in whole or in part, the  
1533 findings and conclusions of the Hearing Panel.  
1534 (3) Decisions of the Superior Court shall be appealed as provided in  
1535 Chapter 6 of Title 5 of the Official Code of Georgia Annotated.  
1536

1537 **SECTION 5. Special Proceedings**

1538  
1539 **Rule 5.1. Cases Involving Allegations of Mental or Physical**  
1540 **Incapacity**

1541 **A. Initiation of Incapacity Proceeding.**

1542 A proceeding to determine incapacity status can be initiated by a  
1543 complaint, by a claim of inability to defend in a disciplinary proceeding,  
1544 or by an order of involuntary commitment or adjudication of  
1545 incompetency.

1546 **B. Proceedings to Determine Incapacity Generally.**

1547 All incapacity proceedings shall be conducted in accordance with the  
1548 procedures for disciplinary proceedings, except:

- 1549 (1) The purpose of the incapacity proceedings shall be to determine  
1550 whether the prosecuting attorney suffers from a physical or  
1551 mental condition that adversely affects the prosecuting attorney's

1552 ability to perform prosecutorial functions in accordance with  
1553 Georgia Code of Prosecuting Attorneys' Conduct 5.1(a);

1554 (2) All of the proceedings shall be confidential, except as provided in  
1555 Rule 3.7.E; and

1556 (3) If the Hearing Panel concludes that the prosecuting attorney is  
1557 incapacitated to hold his or her appointed or elected office, it may  
1558 enter any order appropriate to the circumstances, the nature of  
1559 the incapacity, and the probable length of the period of incapacity,  
1560 including:

1561 a. Retiring the prosecuting attorney, if the incapacity is a  
1562 disability that constitutes a serious and likely permanent  
1563 interference with the performance of the duties of office; or

1564 b. If a prosecuting attorney's incapacity is found to be  
1565 temporary in nature following a hearing, the prosecutor  
1566 shall be placed on incapacity inactive status, and the  
1567 incapacity shall be resolved as provided for in O.C.G.A. §§  
1568 15-18-15 (b) or 15-18-70 (b).

1569 **C. Involuntary Commitment or Adjudication of Incompetency.**

1570 If a prosecuting attorney has been judicially declared incompetent or  
1571 is involuntarily committed on the grounds of incompetency or  
1572 incapacity by a final judicial order after a judicial hearing, the  
1573 Hearing Panel, upon receipt of a certified copy of the order, shall  
1574 enter an order transferring the matter to the appropriate Superior  
1575 Court for resolution in accordance with the provisions of O.C.G.A. § 15-  
1576 18-15 (b) or 15-18-70 (b). A copy of the order shall be served upon the  
1577 prosecuting attorney, the prosecuting attorney's counsel, his or her  
1578 guardian, or the director of the institution to which the prosecuting  
1579 attorney has been committed.

1580 **D. Inability to Properly Defend in a Disciplinary Proceeding.**

1581 (1) If during a disciplinary proceeding a prosecuting attorney alleges  
1582 an inability to assist in the defense due to mental or physical  
1583 incapacity, the Director shall notify the Hearing Panel. The  
1584 Hearing Panel shall immediately transfer the case to the  
1585 appropriate Superior Court in accordance with the provisions of  
1586 O.C.G.A. §§ 15-18-15 (b) or 15-18-70 (b).

1587 (2) The raising of mental or physical condition as a defense to or in  
1588 mitigation of formal charges constitutes a waiver of medical  
1589 privilege for the purpose of the proceedings before the  
1590 commission, but shall remain confidential and not available for

1591 public inspection for any other purpose.

1592 **E. Stipulated Disposition.**

1593 (1) The Director or Investigative Panel shall obtain any report issued  
1594 under the provisions of Code Sections 15-18-15 (b) or 15-18-70 (b).  
1595 After receipt of the examination report, the Director and the  
1596 prosecuting attorney, their guardian, and/or their counsel may  
1597 agree upon proposed findings of fact, conclusions, and order. The  
1598 stipulated disposition shall be submitted to the Hearing Panel for  
1599 approval or rejection.

1600 (2) If the Hearing Panel accepts the stipulated disposition, the  
1601 Hearing Panel shall enter an order in accordance with its terms.  
1602 If the stipulated disposition is rejected by the Hearing Panel, it  
1603 shall be withdrawn and cannot be used against the prosecuting  
1604 attorney in any proceedings. If the Hearing Panel rejects the  
1605 stipulated disposition, it shall order that the hearing proceed.

1606 **F. Reinstatement from Incapacity Inactive Status.**

1607 Reinstatement from incapacity inactive status shall be in accordance  
1608 with the provisions of O.C.G.A. §§ 15-18-15 (b) or 15-18-70 (b). Upon  
1609 satisfaction of those conditions, the Hearing Panel shall issue an order  
1610 dismissing the complaint and returning the prosecuting attorney to  
1611 service.

1612 ***Commentary***

1613 [1] It is the intent of this rule that assertions of incapacity, whether  
1614 raised by the prosecuting attorney, a civil commitment order, or  
1615 involuntary commitment, be investigated and adjudicated in  
1616 accordance with Code Sections 15-18-15 (b) and 15-18-70 (b), which  
1617 already provide for methods to ascertain and address any potential  
1618 incapacity. A prosecuting attorney shall have the right to respond  
1619 to all other outside assertions of incapacity.

1621 **Rule 5.2. Formal Advisory Opinions**

1622 A. On its own initiative, or on the recommendation of the  
1623 Investigative Panel, the Hearing Panel shall be authorized to  
1624 draft proposed formal advisory opinions regarding the grounds for  
1625 discipline set forth in subsection (h) of O.C.G.A. § 15-18-32. A  
1626 proposed formal advisory opinion should only address prospective  
1627 conduct.

1628 B. When a formal advisory opinion is requested, the Hearing Panel

1629 should review the request and make a preliminary determination  
1630 whether a proposed formal advisory opinion should be drafted.  
1631 Factors to be considered by the Hearing Panel include whether  
1632 the issue is of general interest to prosecuting attorneys; whether  
1633 a genuine issue is presented under subsection (h) of O.C.G.A. § 15-  
1634 18-32; the existence of opinions on the subject from other  
1635 jurisdictions; the presence and relevant scope of prior opinions  
1636 from Georgia; and the nature of the prospective conduct. The  
1637 Hearing Panel may request the Director to provide research and  
1638 an initial draft of a proposed formal advisory opinion.

1639 (1) A formal advisory opinion is neither a defense to any  
1640 complaint, nor binding on the Investigative Panel, the  
1641 Hearing Panel, or any reviewing court. However, action in  
1642 accordance with and in reasonable reliance upon a formal  
1643 advisory opinion shall be considered in mitigation of  
1644 discipline.

1645 (2) When the Hearing Panel makes a preliminary  
1646 determination that a proposed formal advisory opinion  
1647 should be drafted, it shall publish the proposed formal  
1648 advisory opinion on the website of the Commission and shall  
1649 solicit comments. After a reasonable time for receipt of  
1650 comments, the Hearing Panel shall make a final  
1651 determination either to issue the proposed formal advisory  
1652 opinion as drafted, as modified based on comments, or to  
1653 reconsider its decision and decline to issue the proposed  
1654 formal advisory opinion.

1655  
1656 **Commentary**

1657 Unlike the Judicial Qualifications Commission, which is specifically  
1658 authorized by the Georgia Constitution (see Ga. Const. Art. VI, Sect.  
1659 VII), the Constitution merely provides that "[a]ny district attorney  
1660 may be disciplined, removed or involuntarily retired as provided by  
1661 general law." Ga. Const. Art. VI, Sect. VIII, Para. II. The General  
1662 Assembly, by enacting O.C.G.A. § 15-18-32, has, by general law,  
1663 created the Prosecuting Attorneys Qualification Commission as the  
1664 body that is to determine if a district attorney, or a solicitor-general,  
1665 should be disciplined, removed or involuntarily retired. While Article  
1666 VI, § VII, Para. VI(b) specifically provides that "procedures and  
1667 advisory opinions issued by the Judicial Qualifications Commission

1668 shall be subject to review by the Supreme Court," there is nothing in  
1669 Art. VI, Sect. VIII, Para. II, that confers a similar duty or jurisdiction  
1670 on the Supreme Court when it comes to advisory opinions issued by  
1671 the Prosecuting Attorneys Qualification Commission. The Supreme  
1672 Court has repeatedly held that "the legislature is without power by  
1673 mere enactment to confer jurisdiction upon the Supreme Court." *Am.*  
1674 *Mills Co. v. Doyal*, 174 Ga. 631, 163 S.E. 603, 604 (1932); *accord.*  
1675 *Collins v. State*, 239 Ga. 400, 402, 236 S.E.2d 759, 760 (1977); see also  
1676 *Davenport v. State*, 309 Ga. 385, 846 S.E.2d 83 (2020) ("parties cannot  
1677 by agreement confer upon us a power to adjudicate that we do not  
1678 already possess"). Being mindful of that limitation, we have concluded  
1679 that advisory opinions issued by this Commission, unlike those of the  
1680 Judicial Qualifications Commission, are not subject to review by the  
1681 Supreme Court of Georgia and this Commission cannot create such a  
1682 requirement by rule.

PAC SB 92 Rules Committee