

O.C.G.A. § 15-18-5

Current through Acts 2023, No. 23-353 of the 2023 Session, but not including corrections and changes made to the 2023 session laws by the Code Commissioner.

**Official Code of Georgia Annotated > TITLE 15 Courts (Chs. 1 — 25) > CHAPTER 18
Prosecuting Attorneys (Arts. 1 — 5) > Article 1 General Provisions (§§ 15-18-1 — 15-18-32)**

15-18-5. Appointment of substitute for absent or disqualified district attorney.

(a) When a district attorney's office is disqualified from interest or relationship to engage in a prosecution, the district attorney shall notify the executive director of the Prosecuting Attorneys' Council of the State of Georgia of the disqualification. Upon receipt of such notification, the executive director of the Prosecuting Attorneys' Council of the State of Georgia shall:

- (1) Request the services of and thereafter appoint a district attorney, a solicitor-general, a retired prosecuting attorney as provided in [Code Section 15-18-30](#), or an attorney employed by the Department of Law;
- (2) Designate an attorney from the Prosecuting Attorneys' Council of the State of Georgia; or
- (3) Appoint a competent attorney to act as district attorney pro tempore in place of the district attorney.

(b) A private attorney acting as district attorney pro tempore pursuant to paragraph (3) of subsection (a) of this Code section is subject to all laws and regulations established pursuant to [Code Section 15-18-19](#) governing district attorneys. Such private attorney shall receive the same compensation from state funds appropriated for the operations of the district attorneys at the same rate as the district attorney during the term of such appointment and shall incur the same penalties in the discharge of the duties of said office.

(c) Nothing in this Code section shall affect [Code Section 45-15-30](#).

(d) The appointment of the district attorney pro tempore shall specify in writing the court or courts to which the appointment applies, the county or counties where located, the time period covered, and the name of the case or cases to which such appointment shall apply. A copy of the appointment shall be filed with the clerk of court and copies shall be provided to the presiding judge and the Prosecuting Attorneys' Council of the State of Georgia and opposing counsel in any action affected by such order. An order appointing a private attorney pursuant to this Code section shall also specify whether such attorney will serve on a full-time or part-time basis and any restrictions which may apply to such attorney's private practice of law during the term of such appointment. Private attorneys who serve on a part-time basis shall be compensated at an hourly rate determined by the Prosecuting Attorneys' Council of the State of Georgia based on the annual salary of district attorneys paid from state funds. The Prosecuting Attorneys' Council of the State of Georgia shall establish such procedures or guidelines as may be necessary to ensure proper accountability of any funds paid to a private attorney pursuant to this Code section.

(e) A district attorney or solicitor-general who is designated as a district attorney pro tempore, or any assistant designated by such district attorney pro tempore to prosecute such case or cases, or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not receive any additional compensation for such services. The actual expenses incurred by the district attorney pro tempore or members of the district attorney pro tempore's staff shall be reimbursed in the same manner and by the

O.C.G.A. § 15-18-5

same funding source as is provided by law for such personnel when they are performing official duties, provided that, in the case of nonstate paid personnel, the actual expenses incurred shall be reimbursed by the county in which the said district attorney pro tempore is acting at the same rate as provided in [Code Section 15-18-12](#) for district attorneys. Any court costs, filing costs, witness fees, costs of reporting and preparing transcripts of records, and any other expenses incurred for such services shall be paid as provided by law.

(f) If a disqualified district attorney fails or refuses to notify the executive director of the Prosecuting Attorneys' Council of the State of Georgia as provided in subsection (a) of this Code section, the presiding judge may notify the executive director of the Prosecuting Attorneys' Council of the State of Georgia.

(g) Any order entered by a court disqualifying a district attorney's office from engaging in the prosecution shall specify the legal basis for such order. The district attorney may, on behalf of the state and prior to the defendant in a criminal case being put in jeopardy, apply for a certificate of immediate review as provided in [Code Section 5-7-2](#), and such order shall be subject to appellate review as provided in Chapter 7 of Title 5.

History

Laws 1799, Cobb's 1851 Digest, p. 574; Code 1863, §§ 358, 359; Code 1868, §§ 419, 420; Code 1873, §§ 384, 385; Code 1882, §§ 384, 385; Civil Code 1895, § 4395; Penal Code 1895, §§ 805, 806; Civil Code 1910, § 4929; Penal Code 1910, §§ 805, 806; Code 1933, §§ 24-2913, 24-2914; Ga. L. 1977, p. 1257, § 7; Ga. L. 2002, p. 1211, § 1; [Ga. L. 2022, p. 503, § 1/HB 409](#).

Official Code of Georgia Annotated
Copyright © 2023 All rights reserved.