

15-18-32. Prosecuting Attorneys Qualifications Commission; authority; membership; ex parte communications; governance; disciplinary actions; confidentiality; privileged nature.

(a) Pursuant to Article VI, Section VIII, Paragraph II of the Constitution of Georgia in reference to district attorneys and Article 3 of this chapter in reference to solicitors-general of state courts, there is hereby created the Prosecuting Attorneys Qualifications Commission, which shall have the power to discipline, remove, and cause involuntary retirement of appointed or elected district attorneys or solicitors-general in accordance with such Paragraph. As used in this Code section, the term “commission” means the Prosecuting Attorneys Qualifications Commission.

(b) The commission shall consist of eight members.

(c)

(1) The commission shall be divided into a five-member investigative panel and a three-member hearing panel.

(2) The investigative panel shall be responsible for:

(A) The investigative, prosecutorial, and administrative functions of the commission;

(B) Investigation of alleged conduct constituting grounds for discipline under subsection (h) of this Code section;

(C) The selection of an individual to serve as the director of the commission who shall be an active status member of the State Bar of Georgia and who shall not engage in the practice of law, other than to represent the commission; and

(D) Authorization of employment of such additional staff as the commission deems necessary to carry out the powers assigned to the commission.

(3) The hearing panel shall be responsible for:

(A) Adjudicating formal charges filed by the investigative panel;

(B) Issuing disciplinary and incapacity orders;

(C) Issuing formal advisory opinions on its own initiative or on the recommendation of the investigative panel regarding the grounds for discipline set forth under subsection (h) of this Code section; and

(D) Issuing standards on its own initiative or on the recommendation of the investigative panel. Any such standards shall elaborate, define, or provide context for the grounds for discipline as set forth in subsection (h) of this Code section.

(d)

(1) As used in this subsection, the term:

(A) “Attorney” means a lawyer who has been an active status member of the State Bar of Georgia for at least ten years and is a registered voter in this state.

(B) “Judge” means an elected or appointed public official who presides over a court of record.

(2) The Prosecuting Attorneys’ Council of the State of Georgia may recommend to the respective appointing authorities a list of the names of individuals for consideration to serve as attorney commission members.

(3)

(A) The five members of the commission’s investigative panel shall be appointed as follows:

(i) One attorney with prosecutorial experience as an elected district attorney or elected solicitor-general shall be appointed by the Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years;

(ii) One attorney with at least five years of service as an assistant district attorney or an assistant solicitor-general shall be appointed by the Lieutenant Governor and shall serve a term of four years; provided, however, that the initial appointment shall be for two years, and thereafter, successors to such member shall serve terms of four years;

(iii) Two practicing attorneys shall be appointed by the Speaker of the House of Representatives and each shall serve terms of four years;

provided, however, that the initial appointment of one attorney member as designated by the Speaker of the House of Representatives shall be for four years and the initial appointment of the other attorney member as designated by the Speaker of the House of Representatives shall be for one year, and thereafter, successors to such members shall serve terms of four years; and

(iv) One attorney with at least five years of service as an assistant district attorney or an assistant solicitor-general shall be appointed by the Senate Committee on Assignments and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years.

(B) The investigative panel members shall annually elect a chairperson and vice chairperson for such panel.

(4) The three members of the commission's hearing panel shall be appointed as follows:

(A) One elected district attorney or elected solicitor-general shall be appointed by the Governor for a term of four years and his or her successors shall serve terms of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years;

(B) One elected district attorney or elected solicitor-general shall be appointed by the Senate Committee on Assignments and shall be the presiding officer of the hearing panel and shall serve a term of four years; provided, however, that the initial appointment shall be for one year, and thereafter, successors to such member shall serve terms of four years; and

(C) One former judge of the superior court or Court of Appeals or former Justice who shall have at least ten years of service as a judge or Justice and has formerly been a district attorney or a solicitor-general shall be appointed by the Speaker of the House of Representatives and shall serve a term of four years; provided, however, that the initial appointment shall be for three years, and thereafter, successors to such member shall serve terms of four years.

(5) All members shall be appointed by and their initial terms shall begin on July 1, 2023; provided, however, that the initial term of a member under this paragraph

shall not be construed as counting toward the limit of two full terms of service as provided for under paragraph (6) of this subsection.

(6) A commission member shall be eligible to serve so long as he or she retains his or her status as an attorney, citizen, or district attorney, but a vacancy shall be created by operation of law when he or she no longer has the designation for which he or she was appointed. Any vacancy for a member shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; provided, however, that, if the appointing authority fails to fill a vacancy within 60 days of being notified of such vacancy by the commission, the Governor shall appoint a replacement member from the same category of member. Any member of the commission shall serve no more than two full terms.

(e) Members and staff of the hearing panel shall not engage in any ex parte communications regarding a disciplinary or incapacity matter of a district attorney or solicitor-general, including with members and staff of the investigative panel.

(f)

(1) Each member of the commission shall be entitled to vote on any matter coming before his or her respective panel unless otherwise provided by rules adopted by the commission concerning recusal. The chairperson of the investigative panel and the presiding officer of the hearing panel shall retain a vote on all matters except those in which such chairperson or presiding officer has been recused. No commission member present at a panel meeting shall abstain from voting unless he or she is recused. The rules of the commission shall establish grounds for recusal and the process for allowing a temporary replacement of a commission member in such circumstance.

(2)

(A) As used in this paragraph, the term "for cause" shall include indictment for or conviction of a felony or any offense involving moral turpitude; misconduct, malpractice, malfeasance, misfeasance, nonfeasance, or incapacity; failure to attend three or more panel meetings or hearings in a one-year period without good and sufficient reason; or abstaining from voting, unless recused.

(B) Removal of a panel member for cause shall be by a unanimous vote of all members of the commission; provided, however, that the panel member who is the subject of the vote shall not vote.

(3) A quorum of the investigative panel shall require any three members of such panel.

(4)

(A) Members of the commission shall serve without compensation but shall receive the same daily expense allowance as members of the General Assembly receive, as set forth in Code Section 28-1-8, for each day such member is in physical attendance at a panel meeting or hearing, plus either reimbursement for actual transportation costs while traveling by public transportation or the same mileage allowance for use of a personal motor vehicle in connection with such attendance as members of the General Assembly receive.

(B) Notwithstanding subparagraph (A) of this paragraph, no member shall receive such expense allowance or travel reimbursement if he or she is entitled to receive an expense allowance, travel reimbursement, or salary for performance of duties as a state employee.

(C) Expense allowances and travel reimbursements shall be paid from moneys appropriated or otherwise available to the commission.

(g) The commission, with the assistance of the Prosecuting Attorneys' Council of the State of Georgia, shall promulgate standards of conduct and rules for the commission's governance which will comport with due process and enforce the provisions of subsections (h) and (i) of this Code section. Such standards and rules shall allow for a full investigation of a district attorney or solicitor-general only upon majority vote of the investigative panel. When a commission member receives information relating to the conduct of a district attorney or solicitor-general, such member shall provide such information to the commission's director for appropriate action.

(h) The following shall be grounds for discipline of a district attorney or solicitor-general or for his or her removal or involuntary retirement from office:

(1) Mental or physical incapacity interfering with the performance of his or her duties which is, or is likely to become, permanent;

(2) Willful misconduct in office;

(3) With respect to district attorneys, willful and persistent failure to carry out duties pursuant to Code Section 15-18-6;

(4) With respect to solicitors-general, willful and persistent failure to carry out duties pursuant to Code Section 15-18-66;

(5) Conviction of a crime involving moral turpitude;

(6) Conduct prejudicial to the administration of justice which brings the office into disrepute; or

(7) Knowingly authorizing or permitting an assistant district attorney or assistant solicitor-general to commit any act constituting grounds for removal under paragraphs (1) through (6) of this subsection.

(i)

(1) In any complaint filed with the commission alleging a violation of subsection (h) of this Code section and requesting an investigation of an elected or appointed district attorney or solicitor-general, the complainant shall be required to file with the commission a sworn affidavit detailing the personal knowledge of the facts supporting the complaint, including any interest the complainant may have in the outcome of the case. The complainant may attach documents to support the complaint. Nothing in this Code section shall be construed to limit the ability of the commission to bring a complaint pursuant to this Code section on its own motion.

(2) The commission may not entertain a complaint on the basis of a charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond unless the affidavits and any documents attached to the complaint show it is plausible that the district attorney or solicitor-general made or knowingly authorized the decision based on:

(A) Undue bias or prejudice against the accused or in favor of persons with interests adverse to the accused;

(B) An undisclosed financial interest in the outcome of the prosecution;

(C) An undisclosed conflict of interest;

(D) Factors that are completely unrelated to the duties of prosecution; or

(E) A stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute.

(3) Upon indictment of a district attorney or solicitor-general of a matter before either panel, the commission shall suspend its investigation or hearing pending the outcome of the procedure provided for in Code Section 45-5-6.

(j)

(1) All information regarding a disciplinary or incapacity matter of a district attorney or solicitor-general shall be kept confidential by the investigative panel and commission staff before formal charges are filed; provided, however, that, if prior to filing formal charges the judge and investigative panel agree to a satisfactory disposition of a disciplinary matter other than by a private admonition or deferred discipline agreement, a report of such disposition shall be publicly filed in the Supreme Court.

(2) After the filing and service of formal charges:

(A) With respect to an incapacity matter of a district attorney or solicitor-general, all pleadings, information, hearings, and proceedings shall remain confidential; and

(B) With respect to a disciplinary matter of a district attorney or solicitor-general, all pleadings and information shall be subject to disclosure to the public, and all hearings and proceedings shall be open and available to the public, except to the extent that such pleadings and information or hearings and proceedings could be properly sealed or closed under Chapter 14 or Article 4 of Chapter 18 of Title 50 or by a court as provided by law.

(3) With respect to administrative and other matters, all records and information shall be subject to disclosure to the public, and all meetings, or portions thereof, shall be open and available to the public, except to the extent that such records, information, and meetings would:

(A) Disclose disciplinary matters of a district attorney or solicitor-general protected in paragraph (1) of this subsection;

(B) Disclose incapacity matters of a district attorney or solicitor-general protected in paragraph (1) or subparagraph (A) of paragraph (2) of this subsection;

(C) Be considered a matter subject to executive session, if the commission were considered to be an agency under Chapter 14 of Title 50; or

(D) Not be required to be publicly disclosed under Code Section 50-18-72, if the commission were considered to be an agency under Article 4 of Chapter 18 of Title 50.

(4) The work product of the commission and its staff and the deliberations of the commission shall remain confidential.

(k) Notwithstanding subsection (j) of this Code section, information regarding a disciplinary or incapacity matter of a district attorney or solicitor-general may be disclosed or the confidentiality of such information may be removed when:

(1) The privilege of confidentiality has been waived by the individual who was the subject of the commission's investigation; or

(2) The commission's rules provide for disclosure:

(A) In the interest of justice and to protect the public;

(B) If an emergency situation exists; or

(C) If a district attorney or solicitor-general is under consideration for another state or federal position.

(l) Information submitted to the commission or its staff, and testimony given in any proceeding before the commission or one of its panels, shall be absolutely privileged, and no civil action predicated upon such information or testimony shall be instituted against any complainant, witness, or his or her counsel.

(m) A respondent may appeal the decision of the hearing panel by submitting a petition to the superior court of the county where such respondent served as a district attorney or solicitor-general. A respondent who is subjected to public reprimand, censure, limitation on the performance of prosecutorial duties, suspension, retirement, or removal shall be entitled to a copy of the proposed record to be filed with the Supreme Court and, if the respondent has objections to it, to have the record settled by the hearing panel's presiding officer. The hearing panel's order in a disciplinary or incapacity matter may be appealed to the Superior Court of Fulton County pursuant to Chapter 3 of Title 5.

(n) The commission shall commence by July 1, 2023, and the rules and regulations promulgated by such commission shall be established no later than October 1, 2023. No complaint shall be filed before October 1, 2023. The commission shall not receive complaint submissions regarding misconduct in office that occurred prior to May 5, 2023, unless such alleged misconduct is related to a continuous pattern of conduct that continues beyond that date.

(o) The authority of the commission shall be limited to incapacity or discipline regarding the conduct of a district attorney or solicitor-general as a holder of such office. Nothing in this Code section shall be construed as diminishing the authority of the Supreme Court or the State Bar of Georgia to regulate the practice of law in this state.

(p) In the event that a district attorney or solicitor-general is removed or involuntarily retired pursuant to this Code section, such individual shall be disqualified from being appointed or elected to the office of district attorney of any judicial circuit or to the office of solicitor-general of any county of this state for a period of ten years from the date of such removal or involuntary retirement.