Prosecuting Attorneys' Council of Georgia

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Solicitor-General
Cobb County

J. David Fowler
Deputy Executive Director

February 22, 2008

The Honorable Tommy K. Floyd, Chairman
Prosecuting Attorneys' Council of Georgia
Henry County Courthouse
One Courthouse Square, 2nd Floor - West Tower
McDonough, GA 30253

RE: PACOG Rule Change (Docket 08-01)
Proposed Amendment to DA Personnel Rules – State Paid Personnel

This is to certify that the above referenced proposal to amend the Rules of the Prosecuting Attorneys' Council of Georgia, a copy of which is attached hereto and incorporated herein by reference, was duly submitted to the District Attorneys for their advise and consent on January 18, 2008, pursuant to O.C.G.A. § 15-18-19(c) and Rule 2-1.04(c) of the Council.

I further certify that on the question of the adoption of the Rules, with 30 District Attorneys having voted as prescribed by Rule 2-1.04(c), there were 28 votes in favor of the adoption of the proposed Rule, 2 votes opposed to the proposed Rule, and, additionally, there were 19 not having yet voted as of February 22, 2008, as shown in the attached Records of Voting. As of February 22, 2008, a majority of the District Attorneys have voted to approve the above referenced proposed Rule.

Deborah L. Brown
Administrative Assistant
Legal Services Division

Attest:

Richard A. Malone
Executive Director

Enclosures

cc: Prosecuting Attorneys' Council Members
Chairman - House Judiciary Committee
Chairman - Senate Judiciary Committee

104 Marietta Street NW, Suite 400 • Atlanta, Georgia 30303-2743 • phone: (404) 969-4001 • fax: (404) 969-0020 • www.pacga.org

Amendment to Rules of the Prosecuting Attorneys' Council

A Resolution

Amending Chapter 3 of the Rules of the Prosecuting Attorneys' Council of Georgia, relating to State Paid Employees of District Attorneys.

Section 1.

Chapter 3 of the Rules of the Prosecuting Attorneys' Council of Georgia, relating to State Paid Employees of District Attorneys, is amended by striking Rule 3.2, relating to definitions, in its entirety and inserting in lieu thereof the following:

3.2. Definitions.

As used in this Chapter:

a. "Active Practice of Law" means experience as an attorney engaged in the private practice of law or an attorney employed in the capacity of a lawyer by a corporation, partnership, or government agency or an attorney employed on a full-time basis as a law clerk for a judge of a court of record. Any period during which such attorney was disbarred, resigned, suspended or in an inactive status within the jurisdiction or jurisdictions in which such attorney was admitted to practice shall not constitute active practice of law. In the event that it is not clear from the records submitted whether or not a particular employment constituted the active practice of law, the Executive Director shall make the determination.

b. "Anniversary of such employee's appointment" shall mean the first day of the month following the date on which the employee was appointed or promoted to a position under the provisions of these rules.

c. "Attorney" means a person who has been admitted to the practice of law in this State, any of the several States, the District of Columbia, or the territories, dominions or possessions of the United States, or a foreign nation whose legal system is based on the Common Law. In the case of an attorney applying for credit based on practice in a foreign nation, the executive director shall determine whether or not the legal system of that country is based on the Common Law.

d. "Break in service" means a separation from service on a full-time basis as a prosecuting attorney, employee of a district attorney, or as an employee of the State of Georgia for a period of six months or more. Any separation for a period of less

than six months shall not constitute a "break in service" nor shall any periods when the employee is absent in leave status.

e. "Certified peace officer" means an employee who has been certified as a peace office in accordance with Chapter 8 of Title 35 of the Official Code of Georgia Annotated and the rules of the Peace Officers Standards and Training Council and has met the annual training requirements required by O.C.G.A. § 35-8-21.

f. "Compensation of the District Attorney" means the annual salary of the district attorney paid from state funds, excluding any local supplements to the state salary.

g. "Court of Record" means a court established under the Constitution or laws of the United States, its territories, dominions or possessions or any of the several States or of the District of Columbia which by law are required to maintain permanent records of its acts and proceedings.

h. "Headquarters" or "official headquarters" means the office where the employee is assigned to work.

i. "LL.M. or S.J.D. degree" means a master's in law or doctorate in jurisprudence awarded:

(i.) By a law school recognized by the State Bar of Georgia from which a graduate of or student enrolled therein is permitted to take the bar examination; or

(ii.) By a law school accredited by the American Bar Association or the Association of American Law Schools;

provided, however, that the course of study in law schools described in subparagraph (1) of this paragraph shall at least be equivalent in terms of hours and subject matter as the course of study offered in law schools described in subparagraph (2) of this paragraph, and the course of study offered in all law schools described in this paragraph shall have been approved by the Prosecuting Attorneys' Council of Georgia in accordance with Chapter 4 of these Rules.

j. "Peace officer" means any person who, by virtue of his office or public employment, is vested by law with a duty to maintain public order, to make arrests for offenses, or to investigate violations of criminal law, whether that duty extends to all crimes or is limited to specific offenses, and has been certified or registered in accordance with the provisions of O.C.G.A. § 35-8-1, et seq.

k. "Personnel officer" means:

(i.) A person designated in writing by the district attorney to assist in the preparation, and maintenance of personnel files required under these Rules.

(ii.) Personnel employed by the Council to administer these Rules.

l. "Prosecuting attorney" means:

(i.) A district attorney;

(ii.) An assistant district attorney, deputy district attorney, or other attorney appointed by a district attorney of this state;[1]

(iii.) A solicitor-general or assistant solicitor-general of a state court;

(iv.) A solicitor or assistant solicitor of a juvenile court of this state or any political subdivision thereof;

(v.) An attorney employed by the Attorney General of this state;

(vi.) An attorney employed by the United States Department of Justice, including but not limited to United States Attorneys and Assistant United States Attorneys;

(vii.) An attorney who holds elected or appointed office as or is employed by a public official of any of the several states, any political subdivision thereof, a territory, dominion or possession of the United States, or a foreign nation whose legal system is based on the Common Law, having responsibility for the prosecution of violations of the criminal law;

(viii.) An attorney employed by the Prosecuting Attorneys' Council of Georgia;

(ix.) A third-year law student under the authority of Code Section 15-18-22 or as otherwise provided for by Ga. S. Ct. R. XV, or XVI, who is employed or works without pay for a prosecuting attorney and who assist in the prosecution or appeal of cases for the prosecuting attorney;

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[1] This would include an attorney employed as an assistant district attorney, pursuant to a contract with the Department of Human Resources.

(x.) A law school graduate authorized to assist in legal proceedings as if admitted and licensed to practice law in this state pursuant to the Rules of the Georgia Supreme Court, who is employed or works without pay for a prosecuting attorney and who assists in the prosecution or appeal of cases for a prosecuting attorney; or

(xi.) An attorney serving on active duty with the armed forces of the United States, including the United States Coast Guard, with responsibility for the prosecution of offenses under the Uniform Code of Military Justice, as amended.

Authority: O.C.G.A. §§ 15-18-14, 15-18-14.1, 15-18-19, 45-20-2, 45-20-6; ratified 12/10/1999, effective 7/1/2000; amended 8/5/02, effective 8/30/02; amended _____, effective _____.

Section 2.

Chapter 3 of the Rules of the Prosecuting Attorneys' Council of Georgia, relating to State Paid Employees of District Attorneys, is amended by striking Rule 3.10, relating to district attorney investigators, in its entirety and inserting in lieu thereof the following:

3.10 District Attorney Investigators.

a. Generally.

(1) Unless otherwise provided by law or these rules, each district attorney may appoint one district attorney investigator who shall be compensated by state funds as provided by O.C.G.A. § 15-18-14.1.

(2) If funds are available, a district attorney may appoint such additional state-paid district attorney investigators as may be authorized by the Council.

(3) The Council shall adopt job descriptions and promotional criteria for district attorney investigators which shall specify the qualifications and training requirements for each grade of district attorney investigator. Such job descriptions and promotional criteria may be amended from time to time by the Council.

(4) Existing state-paid investigators:

(a) Except as provided in paragraph b of this Section, any employee who is classified as a state-paid investigator on July 1, 2008 shall be classified in accordance with

the job descriptions adopted in accordance with these Rules based on his or her qualifications and training, provided, however, that the salary and benefits of such employee shall not be reduced as a result of such classification.

(b) Any employee who was classified as a state-paid investigator prior to July 1, 2008 without having been certified as a peace officer in accordance with Chapter 8 of Title 35 of the Official Code of Georgia and the Rule of the Georgia P.O.S.T. Council, and does not become certified within 12 months of July 1, 2008, shall be eligible to continue in such position. The salary and benefits of such employee shall not be reduced. Such employee shall be classified in accordance with the job descriptions adopted in according with these Rules based on his or her qualifications and training as if such employee were P.O.S.T. certified. Such employee must, however, meet all of the qualifications and training requirements required for promotion beyond the initial placement.

(c) The provisions of this Section do not apply to district attorney investigators who are compensated by the state using funds provided by a local government pursuant to the provisions of O.C.G.A. § 15-18-20.1 unless the terms of the contract specifically provide that this Section applies to such positions.

b. Minimum Qualifications.

(1) POST Certification.

(a) Except as provided in subsection a(4) of this Rule, a state-paid district attorney investigator shall be certified as a peace officer in accordance with the provisions of O.C.G.A. § 35-8-8 and the Rules of the Ga. P.O.S.T. Council.

(b) The district attorney may appoint as a district attorney investigator an individual who meets the minimum qualifications for appointment as a peace office but who has not yet been certified. Such individual shall be classified as a district attorney investigator I and must complete all of the requirements for certification within 18 months of such appointment.

(c) When an applicant for the position of district attorney investigator I is not certified or registered with P.O.S.T., the district attorney's office is responsible for the completion and submission of all documents required for certification as a peace officer to P.O.S.T.[2] A copy of such documents shall be provided to the payroll office.

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[2] The G.B.I. may assist in the required background investigation, POST Form 3.

(d) No person will be placed on the State payroll until such time as all of the preemployment requirements for appointment as a peace officer of the P.O.S.T. Rules have been met.[3] The appointment order shall include certification that the employee is P.O.S.T. certified or meets all of the pre-employment requirements for a peace office.[4]

(e) Except as provided in subsection a.(4) of this Rule,[5] within 18 months of the date of employment as a district attorney investigator, the individual must submit evidence of satisfactory completion of the Basic Course to the payroll office or the individual will **automatically** be removed from the State payroll. A three (3) month extension of this requirement will be granted upon receipt of evidence by the payroll office that P.O.S.T. has granted the individual an extension. This extension will run concurrent with the extension granted by P.O.S.T. If an individual is removed from the State payroll due to a failure to timely notify the payroll office of satisfactory completion of the Basic Course, the individual must be re-appointed and will not be compensated by the State for the period of time between the date when the individual is removed from the payroll and the start of the pay period following his or her re-appointment.

c. Appointment of Active or Former Peace Officers.

When the person to be employed as an investigator is an active or former peace officer, a new POST Form 1 is not required. Instead, the district attorney is required to submit a POST Form C-11 to P.O.S.T. and the payroll office on or before the first day of employment. **The POST Form C-11 provides the authority to place the individual on the State payroll as an investigator.**

d. Investigators who are not POST Certified.

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[3] Once all the documentation required by (b) (1) above are complete, P.O.S.T. will send a POST Form 2 (Basic Course Authorization) to the district attorney.

[4] Due to the number of persons who must complete the Basic Course each year, it is recommended that the district attorney's office reserve a place for the applicant at the Academy as soon as POST Form 1 is completed.

[5] Section b.(4) provides a "grandfather" clause for state-paid investigators who were not POST certified on July 1, 2008

Any person who is appointed as a state-paid district attorney investigator who, on or after July 1, 2008, does not meet the employment qualifications for a Georgia peace officer set forth in O.C.G.A. § 35-8-8 shall be certified as a peace officer as provided in subsection c of this Rule within 18 months of July 1, 2008.

e. Appointment Of District Attorney Investigator Above the Entry Grade.

(1) Generally.

(a) The intent of this Rule is to provide the district attorney with the flexibility to hire experienced investigators.

(b) Whenever more than one provision of this section applies to an investigator, the provisions will be construed together so as to allow the appointment to be made to the highest authorized Grade .

(c) The provisions of this section apply to transfers under Section 3.7.

(2) Transfer From a Peace Officer Position with a State of Georgia Law Enforcement Agency.

(a) Any person who is employed as a peace officer by an agency of the executive branch of state government who is appointed as an investigator pursuant to this section without a break in service, may be appointed to the Grade for which such person qualifies based on the qualifications and training requirements adopted by the Council at a salary which is not less than the salary such person received on the last day of employment immediately preceding said appointment.

(b) Persons having prior service as a peace officer by an agency of the executive branch of state government, must submit written documentation from the appropriate personnel officer of their prior employment, their annual salary for the year immediately prior to their appointment in the district attorney's office, and the last day of employment. A cover letter signed by the personnel officer must certify that the information contained therein is true and correct.

(3) Prior Service as Peace Officer.

(a) Any person who was a certified peace officer employed on a full-time basis by this state, the United States or any of the several states, or a political subdivision or authority thereof, may be appointed to the level step above the entry level

based on one level for every three years experience as a full-time certified peace officer.

(b) For officers certified by the Georgia P.O.S.T. Council, the Peace Officer Profile Report from the P.O.S.T. Council shall be considered sufficient evidence of the prior service.

f. Promotions.

(1) An employee may be promoted at any time the employee meets the minimum qualifications set forth in the job description for such position, provided that:

(a) Funds have been budgeted to compensate the employee at the higher rate;

(b) The person to be promoted has served not less than 12 months in the position from which the person is to be promoted.

(2) Any promotion shall be effective for pay purposes on the first day of the month following the district attorney approving such promotion.

g. Failure to Meet Qualifications.

Except as provided in subsection a.(4) of this Rule,[6] any person who is appointed as a state-paid district attorney investigator[7] who fails to meet the P.O.S.T. certification requirements for such position as provided in subsection b of this Rule shall be removed from the state-payroll or reclassified to a position for which such employee is qualified in accordance with Rule 3.12.

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[6] Section b.(4) provides a "grandfather" clause for state-paid investigators who were not POST certified on July 1, 2008.

[7] This includes annual qualification with a weapon. Under O.C.G.A. §§ 16-11-130(5) and 16-11-127(c)(5), district attorneys investigators are exempt from State laws governing the carrying of pistols and concealed weapons. Notwithstanding this exemption, the district attorney must authorize an investigator to carry a weapon while in the performance of his or her duties. O.C.G.A. § 15-18-21(c). If the district attorney allows an investigator to carry a weapon at any time (even if only occasionally) while or as a result of the performance of official duty, the investigator must maintain POST certification.

Amendment to Rules of the Prosecuting Attorneys' Council

Authority: O.C.G.A. §§ 15-18-14.1, 15-18-19, 15-18-21 35-8-8; original Rule ratified 12/10/1999, effective 7/1/2000; amended _____; effective _____.

Section 3.

Chapter 3 of the Rules of the Prosecuting Attorneys' Council of Georgia, relating to State Paid Employees of District Attorneys, is amended by striking Rule 3.12, relating to legal secretaries, in its entirety and inserting in lieu thereof the following:

3.12 Administrative, Clerical and Paraprofessional Personnel.

a. Generally.

(1) Unless otherwise provided by law or these rules, each district attorney may appoint two individuals to perform administrative, clerical, and legal support functions for the office and will be compensated by state funds as provided by O.C.G.A. § 15-18-17.

(2) If state funds are available, a district attorney may appoint such additional administrative, clerical and paraprofessional personnel as may be authorized by the Council.

(3) The Council shall adopt job descriptions for administrative, clerical and paraprofessional personnel which shall specify the qualifications and training requirements for such position. Such job descriptions may be amended from time to time by the Council.

b. Qualifications.

The following are the minimum qualifications for administrative, clerical and paraprofessional personnel:

(a) Be not less than 18 years of age;

(b) Have a high school diploma or its recognized equivalent;

(c) Meet the minimum qualifications established by these Rules and the job description for such position; and

(d) Be able to perform the essential functions of the position as set forth in the job description for the position.

c. Appointment of Administrative, Clerical and Paraprofessional Personnel above the Entry Grade.

(1) Generally.

(a) The intent of this Rule is to provide the district attorney with the flexibility to hire experienced administrative, clerical and paraprofessional personnel.

(b) Whenever more than one provision of this section applies to an administrative, clerical and paraprofessional position, the provisions will be construed together so as to allow the appointment to be made to the highest authorized step.

(c) The provisions of this section apply to transfers under Section 3.7.

(2) Transfer From a Non-State Paid to State Paid Position.

Any person who is employed in a non-state paid administrative, clerical and paraprofessional position within a district attorney's office may be transferred to a state paid position. Such transfer shall be to the salary step which is based on the number of years the person has served in the secretarial position as if the person had been initially appointed to a state paid position.

(3) Transfer of Judge's Secretary to district attorney's Office.

Any person who is employed as a state paid secretary to a superior court judge pursuant to Chapter 6 of this title and who is appointed to an administrative, clerical and paraprofessional position pursuant to this Rule section without a break in service may be appointed to the salary step which is equal to or greater than the compensation such person received as a secretary for said judge.

(4) Transfer of Secretary from Another State Agency.

(a) A person employed in a comparable clerical or secretarial position by another agency of this state who is appointed to an administrative, clerical and paraprofessional position pursuant to this Rule without a break in service may be appointed to the salary step which is one step above the annual salary received by such person on the last day of employment immediately preceding said appointment.

(b) Persons having prior service with another state agency must submit written documentation from the appropriate personnel officer of their prior employment their annual salary for the year immediately prior to their appointment in the district attorney's office and the last day of employment. A cover letter signed by the personnel officer must certify that the information contained therein is true and correct.

d. Promotions.

An employee may be promoted at any time the employee meets the minimum qualifications set forth in the job description for such position, provided that:

(1) Funds have been budgeted to compensate the employee at the higher rate;

(2) The person to be promoted has served not less than 12 months in the position from which the person is to be promoted.

e. Paraprofessional Positions.

(1) Law School Graduates.

(a) Conditions for Appointment.

Individuals who have graduated from either a Georgia law school or an accredited law school who have not yet received the results of the first taking of any bar examination who have been certified in accordance with the Rules of the Supreme Court of Georgia may be appointed as a Law School Graduate and compensated by the State subject to the following conditions:

(i) There must be a vacancy in a state-paid assistant district attorney position within the judicial circuit;

(ii) The district attorney must submit a written request to appoint a law school graduate in lieu of filling the vacant assistant district attorney position and agreeing not to fill such vacant position while the law school graduate is so employed;

(iii) A copy of the law school graduate certificate issued by the Georgia Supreme Court together with the appointment order and oath of office must be submitted to the payroll office with the request for the appointment; and

(iv) If the law school graduate does not pass the Bar examination, such individual shall be removed from the state payroll at the end of the month in which the results of the first Georgia Bar examination given after the petitioner's graduation are published.

(b) Compensation.

The salary of a law school graduate shall be set by the Council but will not exceed the starting salary for an assistant district attorney I.

(c) Restrictions.

(i) A law school graduate shall comply with the limitations on the practice of law established by the Georgia Supreme Court for law school graduates.

(ii) A law school graduate shall not use the title assistant district attorney or any other title that implies that he or she has been admitted to the practice of law in Georgia.

(2) Former non-POST certified district attorney investigator.

(a) Except as provided in subsection a of Rule 3.10, an employee who, is appointed as a district attorney investigator on or after July 1, 2008 who does not become certified within 18 months of July 1, 2008, or 12 months after being employed as a district attorney investigator, whichever is later, shall be reclassified as a paraprofessional in accordance with the job descriptions established by the Council.

(b) The salary and benefits of an employee who is reclassified in accordance with this Rule shall not be reduced and such employee shall be eligible for promotion as if such employee had been originally appointed as a paraprofessional.

(c) If an employee initially appointed as a district attorney investigator pursuant to O.C.G.A. § 15-18-14.1 and Section 3.10 of these Rules is reclassified, there must be an authorized state-paid position available within such circuit. If there is no such position vacant, the district attorney may waive the right to appoint an investigator on the part of the district attorney and such employee shall be reclassified as a paraprofessional. Such district attorney shall not be eligible to appoint a district attorney investigator pursuant to

1 O.C.G.A. § 15-18-14.1 so long as the paraprofessional is compensated by the
2 state.

3 Authority: O.C.G.A. §§ 15-18-17, 15-18-19; original Rule ratified 12/10/1999, effective 7/1/2000.; amended
4 _____; effective _____

5 **Section 4.**

6 (a) Effective Date.

7 (1) Section 2 of this Resolution amending Rule 3.10 shall be effective July 1, 2008.

8 (2) Sections 1, 3, and 4 of this Resolution shall be effective upon ratification of this Rule
9 by the district attorneys.

10 (b) This Resolution shall be submitted to the district attorneys for ratification by ballot as
11 provided in Rule 2.4.

Record of Voting (Docket No. 2008-01)

CIRCUIT	DISTRICT ATTORNEY	DATE	PRESENT	YEA	NAY	NOT VOTING
Alapaha	Catherine H. Helms	01/24/08	mail	x		
Alcovy	Ken Wynne					x
Appalachian	Joe Hendricks	01/23/08	mail	x		
Atlanta	Paul M. Howard					x
Atlantic	Tom Durden	02/14/08	mail	x		
Augusta	Daniel J. Craig	01/30/08	mail	x		
Bell-Forsyth	Penny Penn					x
Blue Ridge	Garry T. Moss	01/24/08	mail		x	
Brunswick	Stephen D. Kelley	02/08/08	mail	x		
Chattahoochee	Gray Conger					x
Cherokee	T. Joseph Campbell	01/25/08	mail	x		
Clayton	Jewel Scott	02/13/08	mail	x		
Cobb	Pat Head					x
Conasauga	Kermit McManus	01/24/08	mail	x		
Cordele	Denise Fachini	01/23/08	fax	x		
Coweta	Peter J. Skandalakis					x
Dougherty	Ken Hodges	01/22/08	fax	x		
Douglas	David McDade	01/28/08	mail	x		
Dublin	Craig Fraser					x
Eastern	Spencer Lawton, Jr.					x
Enotah	Stan Gunter	01/23/08	mail	x		
Flint	Tommy K. Floyd					x
Griffin	Scott Ballard	02/01/08	mail	x		
Gwinnett	Daniel Porter	01/31/08	mail	x		
Houston	Kelly R. Burke	01/23/08	fax	x		
Lookout Mountain	Herbert Franklin					x
Macon	Howard Simms	02/01/08	mail	x		
Middle	Steve Askew	01/28/08	mail	x		
Mountain	Brian Rickman	01/29/08	mail	x		
Northeastern	Lee Darragh	02/01/08	mail	x		
Northern	Robert W. Lavender	01/30/08	fax	x		
Ocmulgee	Fred C. Bright	01/28/08	mail	x		
Oconee	Timothy Vaughn					x
Ogeechee	Richard Mallard	01/28/08	mail	x		
Pataula	Charles M. Ferguson					x
Paulding	F.A. (Drew) Lane					x
Piedmont	Richard K. Bridgeman	01/31/08	mail	x		
Rockdale	Richard Read	01/24/08	mail	x		
Rome	Leigh Patterson					x
South Georgia	Joe Mulholland					x
Southern	J. David Miller	02/01/08	fax	x		
Southwestern	Cecelia Cooper	01/31/08	mail	x		
Stone Mountain	Gwen Keyes Fleming	02/22/08	fax		x	
Tallapoosa	Donald Wilson					x
Tifton	C. Paul Bowden					x
Toombs	Dennis C. Sanders					x
Towaliga	Richard Milam					x
Waycross	Richard Currie	01/28/08	mail	x		
Western	Ken Mauldin	02/15/08	fax	x		
	TOTAL			**28**	**2**	**19**

The motion to amend rules is (adopted) (not adopted).

_____(Date)_____ _____(Date)_____

Secretary, Prosecuting Attorneys' Council Chairman, Prosecuting Attorneys' Council