

TENNESSEE DISTRICT ATTORNEYS GENERAL CONFERENCE

GUIDING PRINCIPLES RELATIVE TO REQUESTS FOR A DISTRICT ATTORNEY GENERAL PRO TEM

These are Guiding Principles for Tennessee District Attorneys General as they consider making a request for a District Attorney General Pro Tem to be appointed to handle a particular matter.

A District Attorney General, in considering the need to request a District Attorney General Pro Tem to handle a particular matter, shall take into account the following items:

- The Principles set out in the National District Attorneys Association, National Prosecution Standards, Third Edition with Revised Commentary, or latest Edition of the same.
- The Principles set out in the Tennessee Supreme Court Rules of Professional Responsibility specifically including but not limited to Rule 8: Rules of Professional Conduct.
- Guidance from materials developed and distributed by the Board of Professional Responsibility of the Supreme Court of Tennessee.
- Guidance from court decisions, both in and out of state, on ethical conflicts.
- Review of the Tennessee statutory language which addresses District Attorney General Pro Tem matters as outlined in T.C.A. 8-7-106.
- Appropriate measures available to procedurally negate any conflict such as screening measures as outline in *State v. Davis*, 141 S.W. 3rd 600 (Tenn. 2004)
- Consideration of any other facts or principles which should be applicable to uphold the highest ethical standards.

Once due consideration is given to these items a District Attorney General shall determine if a request for a Pro Tem Prosecutor is the appropriate course of action.

DISTRICT ATTORNEY GENERAL PRO TEM REQUEST

DEFENDANT INFORMATION

Defendant _____ Charge/Suspected Offense _____
DOB _____ Status Pre Charge Warrant Grand Jury Indictment
Statement or Version (if known) _____
Defense Attorney _____ Phone Number _____

OFFICER / VICTIM / WITNESS INFORMATION

Primary Law Enforcement _____ Phone Number _____ Email _____
Statement or Version _____
Victim _____ Witness 2 _____ Witness 3 _____
Phone Number 1 _____ Phone 2 _____ Phone 3 _____

COURT INFORMATION

Court (please include County, Division, Circuit, or Sessions) _____ Next court date for this case _____
Courthouse Address _____ Type of Court Date (trial, discussion, etc.) _____
Judge _____ Address _____ Phone _____
Clerk _____ Address _____ Phone _____

DISTRICT ATTORNEY INFORMATION

District _____ Physical Address of DA's Office _____
Reason for Request Recusal Court Disqualification
Explanation _____
Contact Name in DA's Office _____ Phone _____
Victim Witness Coordinator's Name _____ Phone _____
Investigator's Name _____ Phone _____
DA Support Staff Name _____ Phone _____
District Attorney's Signature _____
Date _____

APPOINTMENT INFORMATION (To Be Completed By District Attorneys General Conference)

General _____ : Pursuant to this request, General _____ has been contacted and has agreed to serve.
Please draft and file with clerk the appropriate Pleading appointing _____ or such of his/her assistants as he/she may designate for the purpose of prosecuting this case. Please let me know if you have any questions or if I can be of further service in this matter.

Executive Director

Conference Pro Tem Request #

District Assigned Case

TENNESSEE DISTRICT ATTORNEYS GENERAL CONFERENCE

PRO TEM PROTOCOL

(Adopted by the TNDAGC Executive Committee February 10, 2017)

A District Attorney General shall carefully consider whether there exists a conflict or an articulable ethical principle that requires a District Attorney General Pro Tem be appointed to handle a matter.

A District Attorney General should review and take into consideration the “Guiding Principles for Requesting a District Attorney General Pro Tem” set out below.

When a Pro-Tem is being requested the request form (as updated February 10, 2017) should be submitted to the Conference with all the pertinent information sought on the form and with any accompanying documents that will help in identifying the conflict as well as describing the charges.

The documents will be reviewed to determine whether a conflict exists.

The definition of a conflict is set forth in the National Prosecution Standards as published by the National District Attorneys Association. The Tennessee Board of Professional Responsibility may be more restrictive in some areas and if so the decisions and/or opinions of the Board shall control. Again, a District Attorney General should review and take into consideration the “Guiding Principles for Requesting a District Attorney General Pro Tem” set out below.

Upon the determination that a Pro-Tem should be assigned to the case the requesting District Attorney will be notified as soon as a Pro-Tem has been assigned or agreed to accept the case. From that point on the requesting District Attorney or Assistant District Attorney should have no further contact with the case nor should they make any recommendations to the Pro-Tem attorney relative to any substantive issue with the case. When a District Attorney General is asked

to consider accepting a Pro Tem matter, that District Attorney General is encouraged to accept the matter within the confines of the workload of their office and other like considerations.

Once the Pro Tem attorney begins with the case the following should be the normal procedure relative to the use of office resources by the Pro Tem attorney:

Absent any circumstances which would compromise the integrity of the office or the pending case, the following from the requesting District should be available to the Pro-Tem attorney:

1. Investigators
2. Victim Witness Coordinator(s)
3. Support Staff (assistance with the preparation of pleadings, indictments, etc.)
4. Use of office resources when in the office, such as computers, copiers, telephones, etc.

The handling of the actual office file will be left to the discretion of the requesting District Attorney and if same has been in the possession of the Pro Tem attorney it will be returned to the office upon completion of the case.

When an actual conflict does arise, an active prosecuting attorney, such as a Conference Pro Tem or other District Attorney/Assistant District Attorney, should be sought to fill the request.

No retired prosecutor or other outside attorney may be sought by the Conference to fill a Pro Tem request without the Executive Director of the Conference first receiving the approval of the Executive Committee.

It is recognized that under Tenn. Code Ann. § 8-7-106, District Attorneys may mutually agree to request/accept Pro Tem cases between themselves. District Attorneys following this course of action should report this occurrence to the Conference Office with all pertinent details so that the Conference can keep track of the number and assignments of Pro Tem cases.