



## Prosecuting Attorneys Association of Michigan

### BEST PRACTICES RECOMMENDATION CONFLICT OF INTEREST/SPECIAL PROSECUTOR

Central to the integrity of the criminal justice system is a prosecuting official free of bias or conflict that would undermine faith in the independence of the office. A prosecutor's ability to ensure the guilty are held accountable, the innocent are protected and the interests of crime victims and the community are safeguarded requires such independence.

Prosecutors are elected to represent the People of the State of Michigan in their community and not any one entity or individual. Because of that unique position in the criminal justice system, disqualification is not a decision to be taken lightly.

Seeking to maintain the dignity and honor of the profession and compliance with the high standard of professionalism required to maintain the public trust, the Prosecuting Attorneys Association of Michigan (PAAM) recommends:

- Prosecutors should be knowledgeable of the Michigan Rules of Professional Conduct as to this subject, including relevant case law, statutes, and ethics opinions.
- An elected prosecutor who has a conflict will require recusal of the entire prosecutor's office. A supervising prosecutor with a conflict may require office recusal depending on the screening procedures in place.
- Procedures within a prosecutor's office should be established to address actual or potential conflicts, which include the creation of firewalls and conflict teams or supervisors to ensure conflicts are identified and necessary screening occurs. The manner in which conflicts or potential conflicts are handled should be documented. National Prosecution Standards (NDAA) 1-3.4.
- As soon as a conflict is discovered that requires the disqualification of a prosecutor's office, the prosecuting attorney should seek a special prosecutor by submitting a petition and supporting documents (e.g. police report) to the Department of Attorney General, pursuant to MCL 49.160. The petition should articulate the basis for the disqualification and rely on more than a mere claim that someone might question whether the prosecutor should be disqualified. A copy of the petition and supporting documents should be provided to the Prosecuting Attorneys Coordinating Council. If the supporting

documents are voluminous, a summary of the case or investigation should be provided. The procedure for appointment of special prosecutors as established by PAAM should be followed.

- A prosecutor should not accept appointment as a special prosecutor unless the prosecutor is confident that they possess the ability, expertise, staff, and other support and resources necessary to prosecute a case through conclusion, including any interlocutory or post-conviction appeals.
- Once the appointment of a special prosecutor is made, the disqualified prosecuting attorney should refrain from discussing the merits and any potential disposition of the case with the special prosecutor or the media. This does not limit contact between offices to insure that all relevant material is transferred to the special prosecutor. It is generally permissible for the disqualified prosecutor to provide general information to the Special Prosecutor, including information about victim services available in that county. The Special Prosecutor should be responsible for all victim notifications and ensuring that the requirements of the Crime Victim's Rights Act are observed. Additionally, the special prosecutor should notify the disqualified prosecuting attorney as to the disposition of the case upon its conclusion. Nothing in this recommendation should be construed to limit consultation by the Special Prosecutor with any victim under the Crime Victim's Rights Act.

A best practices recommendation by the Prosecuting Attorneys Association of Michigan (PAAM) is the product of careful consideration of experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible or desirable to implement in every jurisdiction. There may be other methods in local jurisdictions to reach the same or similar objectives.

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