

KNOW YOUR RIGHTS: RIGHT TO COUNSEL IN GEORGIA

Everyone accused of a felony crime is entitled to a lawyer.¹ The Constitutions of the United States and Georgia require the state to provide effective and conflict-free counsel at public expense to indigent defendants in all critical phases of a criminal prosecution, which include pretrial and trial matters, motions for a new trial and direct appeals.² You are *not* entitled to court-appointed counsel at the post-conviction stage.³ In Georgia, the Georgia Public Defender Standards Council is responsible for *appointing and overseeing* lawyers assigned to criminal cases for indigent defendants:

Georgia Public Defender Standards Council
104 Marietta Street Suite 200
Atlanta, GA 30303
(800) 676-4432

YOUR LAWYER’S RESPONSIBILITIES

You have a right to a lawyer who will zealously represent you within the bounds of the law. Both the United States Constitution and the Georgia Constitution guarantee this right.

A lawyer appointed by the court, or a public defender, should meet with you “promptly” after appointment. Your lawyer should answer questions you have about the case; conduct an investigation of the charges; identify legal issues; file motions on your behalf when appropriate; engage in plea negotiations with the prosecutor when appropriate; and provide you with advice about what to do, as well as speak for you in court.

¹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

² *See* U.S. CONST. amend. VI; GA. CONST. art. I, § 1, ¶ XIV; *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Douglas v. California*, 372 U.S. 353 (1963); *Adams v. State*, 199 Ga. App. 541, 405 S.E.2d 537 (1991); *Williams v. Turpin*, 87 F.3d 1204, 1210 (11th Cir. 1996).

³ *See, e.g., Fortson v. State*, 272 Ga. 457, 532 S.E.2d 102 (2000) (stating there is no right to counsel in habeas corpus proceedings).

Your lawyer has an ethical responsibility to communicate with you. Specifically, he/she must “explain a matter to the extent reasonably necessary” to permit you to “make informed decisions” regarding your case.⁴ He/she must “keep [you] reasonably informed about the status of matters” and must “promptly comply with reasonable requests for information.”⁵

APPLYING FOR A LAWYER

You are not entitled to a public defender until you apply for a public defender. But, once you complete and submit your application (and assuming your income qualifies you for appointed counsel), you should begin receiving the services of a public defender within 3 business days. There are public defender offices in all of the judicial circuits in Georgia except for the counties that have chosen to opt out of the public defender system: Bell-Forsyth, Blue Ridge, Cobb, Douglas, Gwinnett, and Houston Counties.

You may ask the staff at the jail for an Application for Counsel form. However, do not discuss your case with anyone working in the jail. Once you receive the form, fill it out and turn it in. If you do not hear anything within 3 business days, contact the Georgia Public Defender Standards Council (GPDSC) and tell them that you have not yet been appointed a lawyer. GPDSC is responsible for overseeing most of the public defender offices in the state.

CONCERNS WITH YOUR LAWYER

If you have been appointed a lawyer, but have concerns about the representation, try to address the situation with your lawyer as soon as possible. If you don't have contact information for your attorney but you do have a name, his or her contact information can be obtained by contacting the State Bar of Georgia: (404) 527-8700, (800) 334-6865 or www.gabar.org.

Speaking generally, you should know that there may be periods of time during the representation during which there are no developments in the case for the lawyer to report to you. This may be because he/she is waiting to receive information (from the police, prosecutors, court, or crime lab, etc.) before taking next steps.

If you have never met with your attorney or if you have not been apprised of basic information about your case:

- You may write to the “circuit public defender,” the person in charge of your local public defender office. A list of circuit public defenders and their contact information can be found online at: <http://www.gpdsc.com>.
- You may also write to the Georgia Public Defender Standards Council at the address above or have a family member do the same.
- You should be aware that if you file any motions with the court regarding your case, the judge may not consider them if you have legal representation.

⁴ See Rule 1.4 of the Georgia Rules of Professional Conduct, available at: http://www.gabar.org/handbook/part_iv_after_january_1_2001_-_georgia_rules_of_professional_conduct/.

⁵ *Id.*

If you feel that your lawyer is harming your defense, you may file a complaint with the State Bar of Georgia. However, you are not entitled to an appointed lawyer of your choosing and you should be aware that filing such a complaint may not result in the appointment of a new lawyer.

A claim that your lawyer is ineffective is typically not addressed until after the case is disposed of (i.e., until after a defendant has been convicted and sentenced). The fact that you have been convicted is not enough to prove legally that your lawyer was ineffective; in order to succeed on such a claim, you have to be able to show the harm that was done to your case. *See Strickland v. Washington*, 466 U.S. 668 (1984). You must prove two things to show your lawyer was ineffective: (1) that your lawyer's performance fell below reasonable professional standards – meaning, for example, that he or she did not do relevant investigation, argue relevant motions, meet with you to prepare, or put on witnesses that would help your case; **and** (2) had your lawyer performed adequately, the outcome of your case would have been different. You should know that the bar for finding ineffectiveness has been set fairly high by the courts and is an unlikely path to getting your conviction or sentence overturned

Please Note: This document provides general information and is not intended to be an exhaustive summary of the law. In addition, the law is always evolving. The date at the bottom of this page indicates when this information sheet was last updated.