

**IN THE COURT OF APPEALS
STATE OF GEORGIA**

CASE NO. A26A2487

FULTON COUNTY DISTRICT ATTORNEY’S OFFICE,

Appellant,

v.

DONALD J. TRUMP et al.,

Appellees.

**CERTAIN APPELLEES’
RESPONSE BRIEF**

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INTRODUCTION

This interlocutory appeal asks whether the trial court abused its discretion by declining to let a wholly disqualified prosecutor's office intervene in a case to defend the very decisions that led to its disqualification. The answer must be no. Following the Georgia Supreme Court's denial of certiorari, the Fulton County District Attorney's Office ("District Attorney") can no longer challenge this Court's determination that it is "wholly disqualified from this case." *Roman v. State*, 373 Ga. App. 863, 873 (2024), *cert. denied*, 322 Ga. 571 (2025). The District Attorney now attacks that judgment collaterally. It asks this Court to hold that the trial court abused its discretion by refusing to return the District Attorney by intervention to the very case from which it was disqualified for the purpose of defending the decisions that produced the disqualification and contest fee claims that exist only because of it.

This Court should deny the District Attorney's request. The District Attorney does not establish that the trial court abused its discretion by denying the District Attorney's motion to intervene as a matter of right under O.C.G.A. § 9-11-24(a)(2). Its appeal fails at the threshold because it never made most of its current arguments to the trial court in the first instance. The District Attorney's motion to intervene did not argue that the State of Georgia or Peter J. Skandalakis, the Executive Director of the Prosecuting Attorneys' Council who appeared on behalf of the State as District Attorney *Pro Tempore*, ("Executive Director") would inadequately represent

whatever interest the District Attorney may claim. Neither did the District Attorney challenge the Executive Director's motivation or authority to oppose any fee motion. Nor does its opening brief in this appeal address Fulton County, which has successfully intervened in this action as a party and possesses the very budgetary knowledge the District Attorney claims only it can supply. Put another way, the District Attorney stood on a motion to intervene that did not argue inadequate representation, an essential element of intervention as a matter of right. Because it did not properly present and argue those issues to the trial court, they have been waived and cannot be raised for the first time in this appeal.

Even if this Court looks past the District Attorney's waiver, the trial court's adequacy finding was well within its discretion. The trial court correctly found that the District Attorney remains subject to the same disqualification that removed it from this case in the first place. It cannot reenter as a party in an action from which it has been "wholly disqualified." Nor is the District Attorney a private litigant with interests independent of the State that created and funds it. The funds the District Attorney claims to protect are appropriated by Fulton County and the State. Those funds do not belong to the District Attorney, and the District Attorney holds no personal or proprietary stake in them. The District Attorney's asserted interest that any fee award be limited to an amount reasonably and legally authorized is precisely

the same interest that the State, through the Executive Director, is charged with vindicating. And it is the same interest Fulton County asserts as an intervenor.

The trial court properly reviewed the record and found these facts. It also correctly determined that the State retains the ability and motivation to oppose any attorneys' fee motion, demand a hearing, and challenge the constitutionality and evidence supporting any fee application. The State has already done so by filing an omnibus brief opposing Appellees' fee applications under the Georgia Constitution and on the merits. The trial court additionally found the Executive Director's duty to represent the State necessarily encompasses the interests of citizens in Fulton County, who are the District Attorney's constituency. The trial court also determined that the Executive Director's statewide responsibilities render him uniquely qualified and motivated to vigorously litigate the interests of the State and its prosecutors, including the District Attorney, during the first application of O.C.G.A. § 17-11-6. The District Attorney does not dispute any of these factual findings. Nor does it identify a single argument or objection the State has not or will not make, or a single piece of evidence the State has not challenged. The District Attorney's silence on these factual findings supporting adequate representation dispenses with any abuse of discretion argument.

What the District Attorney instead offers is its strenuous disagreement with the State's decision, following the District Attorney's disqualification, to dismiss the

criminal charges against Appellees. But the District Attorney ignores that its own misconduct and disqualification triggered Appellees' statutory right to seek fees under O.C.G.A. § 17-11-6 in the first place. Neither the State nor the Executive Director, as the substituted prosecutor, have any obligation to continue pursuing criminal charges brought by the District Attorney after its disqualification to shield the District Attorney from a fee award. Nor will the State or Executive Director be required to defend the District Attorney's charging decisions. The wisdom in bringing those charges is not an element bearing on the reasonableness of Appellees' attorneys' fees and costs under O.C.G.A. § 17-11-6. While the District Attorney extracts certain subjective remarks out of a brief filed by the Executive Director on behalf of the State to claim that the Executive Director will not adequately represent the District Attorney's interests, the District Attorney strips those remarks of all context and does not explain how they are relevant under the narrow scope of O.C.G.A. § 17-11-6. Nor does the District Attorney explain how Fulton County's intervention fails to assuage any subjective concern raised by the Executive Director. In any event, the trial court was entitled to consider and weigh such statements and decline to treat them as dispositive. Doing so was not a clear error in making factual findings under the abuse-of-discretion standard.

Separately, the trial court's reliance on this Court's disqualification holding in *Roman* to deny intervention independently supports affirmance. The plain language

of O.C.G.A. § 17-11-6 contemplates a furtherance of a criminal case in adjudicating any fee award. The statute requires that any fee motion be filed in the same criminal matter. It also necessitates the same judge resolve any fee motion. O.C.G.A. § 17-11-6 is not a freestanding civil action. By structuring the statute in this manner, the General Assembly clearly did not intend to allow the same disqualified prosecutor (or entire office) whose conduct triggered the right to seek fees to be restored to the case to further litigate the actions that caused their disqualification. The District Attorney's insistence on defending and relitigating those decisions in this case highlights the dangers of allowing such a disqualified prosecutor to mount collateral attacks under the guise of opposing a fee motion.

In sum, the trial court properly found facts, applied the law, and precluded the District Attorney from intervening in this case. The District Attorney does not, and cannot, show how the trial court's decision constituted an abuse of discretion. Accordingly, the trial court's order should be affirmed.

STATEMENT OF THE CASE

The District Attorney was "wholly disqualified" from representing the State of Georgia in the underlying criminal prosecutions. *See Roman v. State*, 373 Ga. App. 863, 873 (2024), *cert. denied*, 322 Ga. 571 (2025). That disqualification explicitly covered the "elected district attorney," the "assistant district attorneys," and their entire office (i.e., the District Attorney) who "have no authority to proceed" in this

matter. *Id.* (quoting *McLaughlin v. Payne*, 295 Ga. 609, 613 (2014)). Following the District Attorney's disqualification, the Executive Director appeared on behalf of the State as District Attorney *Pro Tempore*. V7-177–82.¹ The trial court subsequently granted the State's motion to dismiss the indictment against Appellees. V7-189–212.

The District Attorney's disqualification, followed by the dismissal of the criminal charges, triggered Appellees' statutory right to an award of the reasonable attorneys' fees and costs they incurred in defending their cases. *See* O.C.G.A. § 17-11-6. Despite that total disqualification, and shortly after Appellees began filing their individual motions for attorneys' fees and costs, the District Attorney moved to intervene, claiming to be entitled to intervention as a matter of right under O.C.G.A. § 9-11-24(a)(2). *E.g.*, V8-1–274.

The State and Fulton County meanwhile raised several challenges to the underlying fee motions. The State, through the Executive Director, filed an omnibus opposition, challenging the constitutionality of O.C.G.A. § 17-11-6 and the merits of Appellees' fee motions. V9-204–21. Fulton County, as an exhibit to its own intervention motion, opposed Appellees' fee motions to the extent they did not follow a plain language application of O.C.G.A. § 17-11-6 and urged the trial court to allow Fulton County notice and an opportunity to be heard for Fulton County to

¹ Citations to the record in this brief are to the distinct record for Appellee Robert David Cheeley.

advocate for the proper application of O.C.G.A. § 17-11-6 and ensure the reasonableness of any fees awarded thereunder. V9-233–40.

After the District Attorney filed its intervention motion, Appellees timely opposed intervention. V9-170–97. Nearly two months after the District Attorney filed its initial motion, the District Attorney filed a 49-page “consolidated” brief in support of its motion to intervene and motion to dismiss Appellees’ fee motions. V9-241–89. In its March 9, 2026 Order on the Motions to Intervene, the trial court rejected the District Attorney’s supplemental filing as “untimely and unapproved.” V10-31 n.5. The trial court explained that its standing order prohibited any party from filing “additional briefing” beyond a motion and a response to that motion “without leave of the court.” *Id.* The trial court noted that its standing order explicitly covered reply briefs, which may be filed only with the trial court’s approval and “within 15 days of [a] response.” *Id.* The District Attorney requested no such leave from the trial court, and its supplemental brief was filed nearly a month after Appellees opposed the District Attorney’s motion. *Id.*; V9-170–97, 241–89.

In the same Order, the trial court denied the District Attorney’s intervention motion, finding the State’s presence as a party precluded the District Attorney’s intervention; the Executive Director’s duty to represent the State encompasses the interests of the citizens of Fulton County and the District Attorney; and, “[i]n short, many of the arguments [the District Attorney] lodges are ones the Court of Appeals

has determined [the District Attorney] can no longer ethically make.” V10-28–34. The trial court granted Fulton County’s motion to intervene. V10-24–36.

The District Attorney moved for a certificate of immediate review on the same day that the trial court denied its intervention motion. V10-37–41. The District Attorney also sought a stay of all fee proceedings pending the outcome of the interlocutory appeal. *Id.* The trial court granted the District Attorney a certificate of immediate review on March 16, 2026. V10-42. This Court granted the District Attorney’s application for interlocutory appeal on April 21, 2026. V10-72. The District Attorney thereafter timely filed its notice of appeal with the trial court.

SUMMARY OF ARGUMENT

The District Attorney asks this Court to return the District Attorney to the same case from which this Court held the District Attorney was wholly disqualified due to a significant appearance of impropriety. The District Attorney does so solely to defend the very prosecutorial decisions that led to its disqualification and triggered Appellees’ fee claims. The trial court correctly denied that request. This Court should affirm.

First, the District Attorney has waived nearly every argument it now presses. Its intervention motion never argued that the State, or the Executive Director as substituted prosecutor, inadequately represented whatever interest the District Attorney claims. It never cited O.C.G.A. § 15-18-5, challenged the scope or duration

of the Executive Director's appointment, or suggested the Executive Director's statutory role forecloses him from protecting the District Attorney's interests. Yet, those theories comprise nearly its entire argument on appeal. Having stood below on a motion that never addressed adequacy of representation, the District Attorney cannot manufacture that argument for the first time on appeal.

Second, even if this Court were to reach the merits, the trial court did not abuse its discretion in finding the District Attorney's interests were adequately represented. The trial court reviewed the record and found facts establishing the State, by and through the Executive Director, adequately represents the District Attorney's interests, including by ensuring the proper application of Georgia law and that Appellees "receive only the reasonable attorney[s'] fees and costs to which they are legally entitled." V10-33. The trial court recognized a district attorney's role in representing the State; the Executive Director's replacement of the District Attorney in this case; and the Executive Director's purpose, statutory obligations, and statewide knowledge, including his founding purpose of "assist[ing] the prosecuting attorneys throughout the state." *Id.* The District Attorney disputes none of the factual findings made by the trial court or the evidence supporting them. It instead raises grievances with how the Executive Director exercised his prosecutorial discretion after the District Attorney's disqualification and lifts stray characterizations out of context to claim the Executive Director is not an adequate representative. But, even

at best, the District Attorney does nothing more than point to conflicting evidence that the trial court had the discretion to resolve in deciding the District Attorney's intervention motion. None of this establishes an abuse of discretion.

Third, this Court's disqualification judgment independently bars the District Attorney's intervention. That judgment is final: the District Attorney and all its prosecutors are wholly disqualified from this case. The fee proceedings triggered by the District Attorney's disqualification do not escape that judgment. O.C.G.A. § 17-11-6 does not contemplate a separate action. It instead requires that any fee motion be filed in the same criminal case and resolved by the same judge to whom the case was first assigned. Only one case is involved here, and this Court held the District Attorney is disqualified from it. The trial court correctly followed the mandatory precedent from this Court that the District Attorney is disqualified from this action and separately properly found that a prosecutor disqualified from a case may not reenter it to litigate any issue that a statute places inside that case.

Finally, the District Attorney's remaining complaints are that the trial court did not appreciate the "context" in which the District Attorney filed its intervention motion and that the trial court enforced its standing order against an untimely, unapproved filing. The District Attorney, however, did not raise this third enumeration of error in its application for interlocutory appeal, which therefore is not properly before this Court. Even had the District Attorney properly preserved its

third enumeration of error, the trial court had broad discretion to determine whether its orders had been followed, and a trial court's decision to enforce its standing order is not an abuse of discretion. The District Attorney offers no authority or argument showing otherwise.

For these reasons, the trial court did not abuse its discretion when it denied the District Attorney's intervention motion, and that decision should be affirmed.

ARGUMENT AND CITATION OF AUTHORITIES

I. The District Attorney waived any argument that the State or Executive Director will not adequately represent its interests.

The District Attorney's appeal fails at the threshold because its first enumerated error rests almost entirely on legal theories it did not properly present to the trial court. Arguments raised "for the first time on appeal" are improper and "deemed to have been waived." *Trop, Inc. v. City of Brookhaven*, 296 Ga. 85, 90 (2014); *see also City of Atlanta v. Perkins*, 372 Ga. App. 656, 676 (2024) ("An argument not raised in the trial court is waived and cannot be raised for the first time on appeal." (citation omitted)). The purpose of this rule is that "appellate courts are courts for the correction of errors of law committed in the trial court," and to "consider the case on a completely different basis from that presented below" would undermine the basic principle that a litigant "must stand or fall upon the position taken in the trial court." *Pfeiffer v. Ga. Dep't of Transp.*, 275 Ga. 827, 829 (2002).

In its first enumerated error, the District Attorney asserts the Executive Director will not adequately protect the District Attorney's interests in the attorneys' fee proceedings. Appellant's Br. 4. But the District Attorney did not raise any adequacy of representation argument in its motion to intervene. As the trial court correctly found, the District Attorney's "initial motion entirely neglects to address [the] caveat" that "intervention is not permitted if the applicant's interest is adequately represented by existing parties," which the trial court found "determinative" in denying the intervention motion. V10-31 (citation omitted); *see* V8-273–76. That failure also is determinative here.

The District Attorney's intervention motion made no reference to adequate representation whatsoever. *See* V8-273–76. It contained no argument on whether the Executive Director (or, as the trial court held, the State) adequately represented whatever interest the District Attorney claims in these fee proceedings. *See id.* Nor did the District Attorney's motion reference or challenge the Executive Director's motivation or authority under O.C.G.A. § 15-18-5 to litigate Appellees' fee motions. *See id.* The District Attorney's failure to properly raise and argue these issues to the trial court forecloses any argument on appeal. *See Robinson v. State*, 208 Ga. App. 528, 530 (1993) (holding this Court cannot consider "an entirely different objection or basis for appeal" that "was not presented" to the trial court); *Boyd v. State*, 302 Ga. App. 455, 457 (2010) ("It is well established that an appellant cannot on appeal

raise and request a ruling on a ground of argument that [it] did not make before the trial court.” (citation omitted)).

The District Attorney additionally claims the trial court “dismis[s]e[d] the practical obstacles to effective representation raised by the [Executive Director] himself.” Appellant’s Br. 20. Pointing to statements in the State’s brief, the District Attorney argues that the Executive Director “lack[s] underlying knowledge of the case or any specific budgetary information,” which the District Attorney “naturally” possesses. *Id.* at 27. But the District Attorney never made that argument to the trial court. Its motion to intervene said nothing about the Executive Director’s knowledge of the case, his access to budgetary information, or his capacity to litigate the fee motions. Nor could the District Attorney rely on the State’s brief to supply this argument because the District Attorney never joined or adopted any portion of the State’s brief. *See Maxwell v. State*, 267 Ga. App. 227, 229 (2004); *Lewis v. State*, 271 Ga. 500, 501 (1999). That issue is therefore waived. *See, e.g., Trop, Inc.*, 296 Ga. at 90; *Perkins*, 372 Ga. App. at 676; *Boyd*, 302 Ga. App. at 457.

Accordingly, this Court should affirm the trial court’s decision to deny the District Attorney’s intervention motion because the District Attorney waived the issue it now attempts to assert for the first time in its first enumeration of error.

II. The trial court did not abuse its discretion in denying the District Attorney's motion to intervene by finding the State adequately represented the District Attorney's interests.

Even if this Court reaches the merits of an issue the District Attorney never presented below, the District Attorney's first enumeration of error still fails. The first enumerated error contends the trial court abused its discretion in denying the District Attorney's intervention motion by finding that the Executive Director adequately represents whatever interest is claimed by the District Attorney in the attorneys' fee proceedings. Appellant's Br. 4. The District Attorney admits this Court will not reverse a trial court's denial of a motion to intervene under O.C.G.A. § 9-11-24(a) unless there has been an abuse of discretion. *Id.* at 9 (citation omitted). It, however, cannot show an abuse of discretion here.

A. The trial court's factual findings are not clearly erroneous because they are supported by the record.

Intervention as of right is proper where "the applicant claims an interest relating to the property or transaction which is the subject matter of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties." O.C.G.A. § 9-11-24(a)(2). This procedural mechanism "requires a three-fold showing of (1) interest, (2) potential impairment, and (3) inadequate representation." *Atlanta Rest. Partners, LLC v. Clayton Cnty.*, 375 Ga. App. 669, 671 (2025) (citing *DeKalb Cnty. v. Post Props., Inc.*, 245 Ga. 214,

219 (1980)); *see* Appellant’s Br. 10 (conceding the trial court correctly stated these elements). The District Attorney’s first enumerated error challenges only the trial court’s finding of adequate representation. Appellant’s Br. 4, 10.

At the trial level, a movant seeking intervention must establish “a concrete showing of circumstances in the particular case that make the representation inadequate.” *Buckler v. DeKalb Cnty.*, 290 Ga. App. 190, 195 (2008) (citing *Post Props.*, 245 Ga. at 219). The question of whether “inadequacy of representation” exists to justify intervention is “a question of fact” resolved by the trial court. *Buckler*, 290 Ga. App. at 194; *see* Appellant’s Br. 4 (admitting the same). That factual determination must be upheld on appeal unless it was “clearly erroneous, which means there is some evidence in the record to support them.” *Lawrence v. Lawrence*, 286 Ga. 309, 310 (2009). In deciding a motion to intervene, the “evidence” may include the “pleadings and representations of counsel.” *Buckler*, 290 Ga. App. at 194; *Southwest Ga. Prod. Credit Ass’n v. Wainwright*, 241 Ga. 355, 356 (1978); *see* Appellant’s Br. 10 (similar).

The trial court found facts establishing the State, by and through the Executive Director, adequately represents whatever interest is claimed by the District Attorney. V10-31–34. The trial court found the Executive Director acts on behalf of the State “in place of the disqualified district attorney.” V10-32 (internal brackets omitted) (quoting O.C.G.A. § 15-18-5(a)(3)). It determined the Executive Director possesses

a “duty to represent the state,” which “encompasses” the interests of the “citizens of Fulton County,” as well as “those of the [District Attorney]—namely [that] the law is followed and the movants receive only the reasonable attorney[s’] fees and costs to which they are legally entitled.” V10-32–33. The trial court recognized the State “retains the ability to respond and oppose any motion by another party, as well as the right to challenge the proffered evidence and demand a hearing.” V10-32. It also found that the Executive Director possesses the “apparent” “motivation to subject [O.C.G.A. § 17-11-6] to rigorous scrutiny.” V10-33. And the trial court decided that the Executive Director is “exceptionally situated to litigate this statute’s first application” because this action “will set the standard for future attorney’s fees motions affecting every office” that the Executive Director “is obligated to assist” and that “constitutional and statutory nuances may be best appreciated and argued by” the Executive Director given his “statewide experience.” *Id.*

These factual findings are supported by the record. The Executive Director appeared in this case on behalf of the State following the District Attorney’s disqualification. V7-79, 99, 178–82. The State represented to the trial court that the Executive Director appointed himself in this case following the District Attorney’s disqualification and identified O.C.G.A. § 15-18-5 as the source of the Executive Director’s authority in this case. V9-207–08. The trial court quoted O.C.G.A. § 15-18-5 in making its factual finding as to the District Attorney’s role in this case.

See V10-31 (quoting O.C.G.A. § 15-18-5(a)(3)). The State further represented that district attorneys have a “duty . . . to represent the state in all criminal cases in the superior court of such district attorney’s circuit.” V9-207 (quoting Ga. Const. art. VI, sec. VIII, para. 1). The Executive Director continues to represent the State in litigating the fee motions. *See* V9-204–18. For example, the State, by and through the Executive Director, filed a robust opposition to Appellees’ fee motions that challenged the constitutionality of O.C.G.A. § 17-11-6, Appellees’ eligibility for O.C.G.A. § 17-11-6 fees, and the reasonableness of such fees. V9-204–18. The State’s response also raised issues pertaining to the statewide application of O.C.G.A. § 17-11-6. V9-211. The briefs and other filings before the trial court when it decided the intervention motions, including the District Attorney’s intervention motion and the State’s opposition to Appellees’ fee motions, were filed in the original criminal cases in which the Executive Director appeared. *E.g.*, V8-1, 273; V9-204; V10-28.

The District Attorney does not challenge any of these facts or the evidence on which these facts were based. These factual findings were not clearly erroneous but are instead supported by the evidence before the trial court. The evidence was sufficient to support the finding, and it should be affirmed.

B. The District Attorney shows no abuse of discretion.

Instead of engaging with the “clearly erroneous” standard that must be met for this Court to overturn the trial court’s decision on adequate representation, the District Attorney seeks to relitigate its intervention motion (and the decisions around its disqualification). *See* Appellant’s Br. 12–15. The only argument raised by the District Attorney is that some evidence supported a finding of inadequate representation. *See id.* at 16. But the existence of some contradictory evidence is insufficient, as “it is well-settled that the ‘clearly erroneous’ standard for reviewing findings of fact is equivalent to the highly deferential ‘any evidence’ test.” *Reed v. State*, 291 Ga. 10, 13 (2012) (citations omitted). Thus, reversal of the trial court’s factual findings and the trial court’s denial of the intervention motion based on them is precluded where, as here, the trial court’s finding of adequate representation was based on facts supported by sufficient evidence.

The District Attorney contends that “circumstances exist” “that make the representation inadequate.” Appellant’s Br. 16. But the District Attorney points to nothing more than the dismissal of the indictments against Appellees, which the District Attorney contends amounts to the Executive Director’s “role” in initiating the fee proceedings; the Executive Director’s so-called “public disagreement” with the District Attorney’s charging decisions; and the Executive Director’s out-of-context statements that the District Attorney asserts constitute “doubts as to his

authority and expertise.” Appellant’s Br. 16, 27 (citation omitted). These “circumstances” amount to nothing more than the District Attorney’s dissatisfaction with how the trial court reviewed the evidence before it.

Mere dissatisfaction with the outcome of a ruling, however, is not an abuse of discretion nor would it allow this Court to re-weigh the evidence. As this Court has long recognized, “whether [this Court] may have reached different conclusions, faced with the same evidence, plays no part in [the] determination” in an abuse-of-discretion review. *See Coastal Bank v. Rawlins*, 363 Ga. App. 627, 635 (2022) (citing *Scott v. Scott*, 227 Ga. App. 346, 348 (1997)). Indeed, the “proper application of the abuse-of-discretion review” frequently involves “affirm[ing] the evidentiary ruling of a trial court even though [this Court] would have gone the other way had it been [this Court’s] call.” *Williams v. State*, 328 Ga. App. 876, 880 (2014) (quotation omitted).

The District Attorney nevertheless remains “emphatic about the legal viability of the case the [Executive Director] inherited.” Appellant’s Br. 14; *see also id.* at 16 (decrying the Executive Director’s “public disagreement with the basic premise of the criminal case”). But the Executive Director’s dismissal of the underlying prosecutions is irrelevant to the trial court’s decision on adequacy of representation. Even if the Executive Director’s decision to dismiss the indictments offered evidence

contradicting the trial court’s ruling (it does not)², “it is the duty of the trial judge to resolve the conflicts in the evidence,” and the trial court commits no abuse of discretion where any evidence supports its findings. *King v. King*, 284 Ga. 364, 365 (2008) (citation omitted). As set forth above, the trial court’s adequacy finding was supported by the record.

Although the State argued “O.C.G.A. § 17-11-6 does not allow third-party intervention,” V10-31; V9-215, the District Attorney selectively lifts two remarks out of the State’s opposition to the fee motions that purportedly support its intervention arguments, Appellant’s Br. 20 (citation omitted). In that brief, the State, by and through the Executive Director, remarks the Executive Director is in a “uniquely terrible position” to defend the District Attorney’s *charging decisions* and a “horrible choice” to provide information about “the disqualified District Attorney’s *budget*,” including “the funds available” and “the sources of those funds.” V9-215 (emphasis added). The District Attorney extrapolates those remarks out of their

² The District Attorney omits that its own actions led to its disqualification, which was the first element triggering Appellees’ statutory right to recover their reasonable fees and costs. The State and Executive Director were not obligated to continue pursuing the prosecutions after the District Attorney’s disqualification. Nor will they be required to defend those charging decisions to determine the reasonableness of Appellees’ fee motions. Charging decisions have no bearing on fee liability under O.C.G.A. § 17-11-6. The District Attorney’s insistence on relitigating this irrelevant issue demonstrates the trial court was correct to not permit its reentry into this case. *See* V10-33 (“In opposing the attorney’s fees motions, [the District Attorney] appears all too eager to relitigate and defend those same conflicted decisions.”).

context to claim that the Executive Director has “concede[d]” he will not adequately represent its interests in these attorneys’ fee proceedings. *See* Appellant’s Br. 26–29.

Even had the District Attorney raised those remarks below, the trial court found evidence to the contrary. The trial court expressly found the Executive Director was “exceptionally situated to litigate” the “first application” of O.C.G.A. § 17-11-6 and, as counsel for the State, adequately represented the interests of the District Attorney. V10-33. The trial court explained that the Executive Director’s “founding purpose” is to “assist[] the prosecuting attorneys throughout the state.” *Id.* (quoting O.C.G.A. § 15-18-40(a)). After the State, in opposing the fee motions, asserted that the trial court “should consider the statewide application [O.C.G.A. § 17-11-6],” the trial court noted that “O.C.G.A. § 17-11-6 applies to district attorney’s offices statewide[] and certain constitutional and statutory nuances may be best appreciated and argued by an entity with statewide experience.” V10-33. The trial court’s factual findings are amply supported by the record and there was no clear error in resolving conflicting facts³ and finding adequate representation.

³ The context surrounding these remarks supports the trial court’s findings. For instance, the Executive Director will not be charged with defending the District Attorney’s charging decisions, as those choices have no bearing on the reasonableness of a fee award under O.C.G.A. § 17-11-6. And any concern with the Executive Director’s lack of access to county budgetary information is cured by the intervention of Fulton County. Fulton County will provide this information, and its interests are aligned with the District Attorney’s, as Fulton County “provides the overwhelming source of funding” for the District Attorney and can bring to bear “the county’s knowledge of budgetary issues, local government, the structural interplay

Finally, the District Attorney claims the Executive Director’s “time period” to represent the State in this action has expired, thus necessitating its intervention. *See* Appellant’s Br. 20–22. O.C.G.A. § 15-18-5(d) requires that the appointment of a district attorney *pro tempore* “specify in writing . . . the time period covered.” The order appointing the Executive Director covered “the time period beginning from investigation, arrest or Grand Jury proceedings, whichever comes first, *until all appeals are exhausted.*” V7-182 (emphasis added). The trial court expressly considered the Executive Director’s “self-written appointment order” and found the plain language of the appointment order empowered the Executive Director to continue to represent the State, as appeals from forthcoming fee rulings were not foreclosed. V10-32 n.7; V7-182. The trial court also found, regardless of the language in the appointment order, that the Executive Director’s “duty extends beyond the active prosecution of any criminal charges and includes all related aspects of the case,” including some proceedings that may “occur long after a defendant’s direct appeal is exhausted.” V10-32 & n.7 (citing O.C.G.A. § 15-18-5(a)(3)). In making this finding, the trial court relied on the very statute that

between the county and the district attorney’s office, and its position on any necessary post-judgment collection efforts.” V10-35–36. The trial court thus acted within its proper discretion to weigh those remarks as part of the entire record.

the State argued provided “the authority granted to a conflict prosecutor.” V9-208. These findings, supported by record evidence, show no clear error.⁴

Accordingly, the District Attorney’s first enumeration of error is without merit.

III. The trial court did not abuse its discretion in holding that the District Attorney remains “wholly disqualified” from this action.

The District Attorney’s second enumeration of error argues the trial court abused its discretion by concluding that this Court’s holding in *Roman*—that the District Attorney and all its prosecutors are “wholly disqualified” from this case—likewise bars the District Attorney’s claimed intervention as a matter of right. *See* Appellant’s Br. 29–35. This Court, however, will affirm the trial court’s denial of the motion to intervene unless “the trial court significantly misapplie[d] the law.” *In re R.W.*, 315 Ga. App. 227, 232 (2012). While the District Attorney admits its “disqualification has consequences,” the District Attorney nonetheless claims that its status as a “wholly disqualified” prosecutor’s office “is not relevant” to these

⁴ The District Attorney asserts, and Appellees in this response agree, that “the issue of adequate representation is a factual determination” based on “fact-specific” findings. *See* Appellant’s Br. 15 (citations omitted). These fact-specific findings include the Executive Director’s continued representation of the State. But, even if this Court considers this factual finding to include a question of law based on the trial court’s reference to O.C.G.A. § 15-18-5(a)(3), the trial court correctly applied the plain language of the statute to make its ultimate factual finding. The proper application of law does not constitute an abuse of discretion.

proceedings. Appellant’s Br. 33–34. That argument is internally inconsistent and identifies no reversible error.

Having failed to convince the Georgia Supreme Court to grant certiorari, the District Attorney can no longer *directly* challenge this Court’s disqualification order. It instead attempts to do so *indirectly* by asking this Court to carve out an exception for proceedings that exist only *because of* that disqualification. The District Attorney cites no authority for this proposition. There is none. Although the trial court held that O.C.G.A. § 17-11-6 constitutes a “special statutory proceeding” to which the Civil Practice Act’s intervention provisions apply,⁵ it nonetheless correctly held this proceeding remains part of the same criminal action from which the District Attorney was wholly disqualified. In other words, this is not a freestanding civil action. That conclusion comports with the plain language of O.C.G.A. § 17-11-6(b), which again requires a fee motion to be filed in “the underlying criminal case” and adjudicated by the “judge to whom the criminal case was assigned.” The plain language of O.C.G.A. § 17-11-6 governs. *See Deal v. Coleman*, 294 Ga. 170, 172 (2013) (“When we consider the meaning of a statute, we must presume that the General Assembly

⁵ Certain Appellees disagree with that conclusion, from which the Executive Director has sought reconsideration in the trial court. *See* V10-44. If the Civil Practice Act does not apply to proceedings under O.C.G.A. § 17-11-6, that alone is fatal to the District Attorney’s argument, as Georgia has not recognized a right to intervene in a criminal case. *See In re Haney*, 355 Ga. App. 658, 661 n.6 (2020).

meant what it said and said what it meant. . . . To that end, we must afford the statutory text its plain and ordinary meaning.” (citation omitted)).

The District Attorney’s analogy to individual attorney-contempt proceedings does not change this result. *See* Appellant’s Br. 23–25. Contempt proceedings impose a personal judgment against an individual attorney for that attorney’s own conduct. No judgment runs against a government office’s operating budget. An O.C.G.A. § 17-11-6 award, by contrast, is against public funds. It directs that any fee award after disqualification “be paid from the funds of the office of the prosecuting attorney as budgeted by the county or counties comprising the judicial circuit of such prosecuting attorney.” O.C.G.A. § 17-11-6(c). The District Attorney has no personal right to those budgeted funds. That structure has nothing in common with a personal contempt sanction against an individual attorney but instead confirms these proceedings remain tethered to the disqualification this Court imposed in *Roman* on this very District Attorney.

Nor did the trial court err by determining that the District Attorney’s personal participation in these fee proceedings would merely result in its rearguing—as its opening brief does at length—that its charging decisions were not “conflicted” in the first place. *See* Appellant’s Br. 32. That is precisely the relitigation of *Roman* that a final judgment forecloses. *See* O.C.G.A. § 9-11-60(h) (“[A]ny ruling by . . . the Court of Appeals in a case shall be binding in all subsequent proceedings in that case in the

lower court.”). And it is exactly what the trial court meant when it found that the arguments the District Attorney intends to make “are ones the Court of Appeals has determined [the District Attorney] can no longer ethically make.” V10-33–34. The District Attorney’s argument that a disqualified prosecutor has a right to intervene is directly contrary to the plain language of O.C.G.A. § 17-11-6, which requires a “disqualification” as the first essential element triggering an award of fees. This language indicates that the General Assembly did not intend for the disqualified prosecutor whose own conduct triggered the ability to pursue fees to be reintroduced into the very matter from which it was disqualified.⁶ As explained by the trial court, Georgia courts have rejected intervention on comparable grounds where the

⁶ Another rule of statutory construction is important: “In matters of statutory construction, ‘[Georgia courts] look diligently for the General Assembly’s intention, bearing in mind relevant old laws, evils sought to be addressed and remedies interposed.’” *Cox v. Fowler*, 279 Ga. 501, 502 (2005) (citation omitted). “The cardinal rule in construing a legislative act, is ‘to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.’” *Id.* Senate Bill 244, which enacted O.C.G.A. § 17-11-6, provides remedies, including recoupment of attorneys’ fees and expenses, to citizens who are wrongly prosecuted by the State. *See generally* S.B. 244, 158th Gen. Assemb., Reg. Sess. (Ga. 2025). Here, the District Attorney prosecuted Appellees while simultaneously engaging in misconduct that resulted in its removal. *See Roman*, 373 Ga. App. at 869, 873. A disinterested, subsequently appointed prosecutor confirmed that no indictment should have been pursued in the first instance. *See* V7-189. It was not the General Assembly’s intent in enacting Senate Bill 244 for that disqualified prosecutor (or prosecutor’s office) to then reinsert that prosecutor or office into the case to relitigate prosecutorial decisions under the guise of a defense to a fee award triggered because of their disqualification.

legislature assigned a different party to protect the relevant interest. *See Wiggins v. Lemley*, 256 Ga. 152, 154–55 (1986). Such is the case here, as O.C.G.A. § 15-18-5 assigns that role to the Executive Director precisely because the District Attorney has been disqualified.

The District Attorney’s fallback argument, that the “novelty” of O.C.G.A. § 17-11-6 entitles it to some special standing to intervene, fares no better. Appellant’s Br. 29–30. It cites no authority for that proposition. None exists in the statute, which sets forth a straightforward process: a fee motion is filed in the underlying criminal case and resolved by the same judge who presided over it. O.C.G.A. § 17-11-6(b).⁷ To the extent a question arises regarding the interpretation of O.C.G.A. § 17-11-6, the Georgia rules of statutory construction exist to resolve that issue. In addition, the District Attorney has no personal stake in any fee motion, let alone any “entrust[ment] with *protecting* taxpayer funds from the claims that became authorized by the decision to dismiss.” Appellant’s Br. 34 (emphasis in original). To reiterate, it was the District Attorney’s disqualification due to a significant

⁷ This language is substantially similar to O.C.G.A. § 9-15-14(e), which permits a party to file a motion for fees in a civil litigation within forty-five days of termination. The statute does not expressly say a response is allowed or set a date by which an opposition must be filed, but Georgia courts have determined that Uniform Superior Court Rule 6.2 supplies the response right and timing. *See, e.g., Forest Lakes Home Owners Ass’n v. Green Indus.*, 218 Ga. App. 890, 892, 894 (1995). The same is true of the fee motions here, even if addressed under the criminal rules. *See* Ga. Unif. Super. Ct. R. 31.1. Indeed, the State has already filed a substantive response to the fee motions.

appearance of impropriety that triggered Appellees' statutory right to seek fees. In any event, the District Attorney cites no authority for this new duty it seeks to assume to protect funds that derive from the State and Fulton County, not the District Attorney.

Finally, the District Attorney argues at length that the trial court abused its discretion because it used the term "conflict," yet it was disqualified for a "significant appearance of impropriety." Appellant's Br. 30–35. But the label used by the trial court does not constitute an abuse of discretion. No matter what nomenclature was used by the trial court, the consequence this Court imposed in *Roman* was total: the District Attorney was "wholly disqualified," and its assistants had "no authority to proceed." *Roman*, 373 Ga. App. at 873. That is the relevant finding relied on by the trial court. Nothing in the trial court's reasoning turns on an actual-versus-apparent distinction. Any imprecision in terminology is harmless because the disqualification and its scope are the same either way. The District Attorney's argument is merely another collateral attack on this Court's final judgment.

Accordingly, the District Attorney's second enumeration of error is without merit.

IV. The trial court did not abuse its discretion “in the manner it reviewed the record” or by enforcing its standing order.

The District Attorney’s third and final enumeration of error asserts the trial court abused its discretion “in the manner it reviewed the record and by apparently disregarding” the District Attorney’s supplemental briefing “in support of its motion to intervene.” Appellant’s Br. 4. As this Court recently reaffirmed, this Court’s review on appeal is “limited to the issues set forth in the application” for interlocutory review. *Johnson & Johnson v. Monroe*, 379 Ga. App. 791, 793 (2026). A failure to raise an issue in an application for interlocutory appeal constitutes a “fail[ure] to raise the issue at the earliest opportunity” and means “the issue ‘is not properly before [this Court.]’” *Id.* (citation omitted). The Court therefore should not review the District Attorney’s third enumerated error. *See id.*; *see also Zekser v. Zekser*, 293 Ga. 366, 369 (2013) (holding appeals granted from applications for discretionary appeal “necessarily [are] limited to the errors actually enumerated in the application”); *Miller v. State*, 374 Ga. App. 360, 366 (2025) (explaining this Court has “declined to consider those additional claims of error” beyond the claims enumerated as error in the application”).

Though the Court need not consider it, the third enumeration of error attempts to highlight the perceived “novelty,” “confusion,” and “problems” the District Attorney has faced when formulating its own arguments in support of intervention and responses to Appellees’ fee motions. Appellant’s Br. 35–39. Although not

entirely clear, the purpose of this enumerated error appears to lay the foundation for a future equitable argument by the District Attorney that it did not intend to waive any inadequate representation argument because it referenced the Executive Director's response brief as part of an omnibus, unapproved brief. *See id.* at 36–37. For instance, the District Attorney claims the trial court's finding that it failed to raise any inadequate representation argument in its motion to intervene was an “erroneous” “interpretation” of the record and “ignore[d] the context of the moment.” *Id.* at 36. But the District Attorney fails to connect rhetorical arguments regarding the “context of the moment” to any legal or factual error allegedly committed by the trial court, let alone an abuse of discretion. This does not provide a valid basis for reversal.

At best, the District Attorney claims that “to the extent the [trial] court disregarded” its unapproved omnibus brief filed on February 11, 2026 “as untimely and unapproved under its standing order . . . the court abused its discretion.” *Id.* at 38 (citation omitted). But this is no basis for reversal. In its order, the trial court declined to consider the at-issue omnibus brief filed by the District Attorney—after it filed its motion to intervene—because it was untimely, unapproved, and violated the trial court's standing order. *See* V10-31 n.5. The District Attorney does not disagree with any of those findings.

The District Attorney cites no authority for the proposition that the trial court abused its discretion by applying the straightforward terms of its standing order, which the District Attorney has been aware of and followed throughout years of litigating these prosecutions. Nor could the District Attorney do so. Under Georgia law, “[a] trial court has broad discretion in determining whether its orders have been complied with,” including “its standing order,” and its enforcement of that standing order “will not be overturned on appeal in the absence of an abuse of discretion.” *State v. Wood*, 338 Ga. App. 181, 187 (2016) (citing *Hamilton v. Hamilton*, 292 Ga. 81, 83 (2012)). The District Attorney provides no valid reason in fact or law explaining how the trial court abused its discretion by declining to consider its admittedly improper filing. That ruling provides no basis for reversal. And because the District Attorney’s motion to intervene—the only timely, properly filed pleading before the trial court—never raised any argument concerning inadequate representation in the first place, its later, unapproved attempt to introduce that argument through the February 11, 2026 filing cannot retroactively cure the waiver established in Section I.⁸

⁸ In any event, the trial court held that “permissive intervention would not have been granted” even if it had considered the District Attorney’s improper filing. V10-31 n.5. Thus, the District Attorney has suffered no prejudice, and any error from discarding an improper filing would be harmless.

Accordingly, the District Attorney's third and final enumeration of error is without merit.

CONCLUSION

A prosecutor disqualified for conduct that undermined public confidence in these proceedings now asks to return to them so it may defend the very decisions that led to its disqualification. The trial court correctly declined that invitation. It did so based on findings of fact the District Attorney does not dispute and arguments it never raised below. The District Attorney has failed to establish that the trial court abused its discretion in denying intervention as a matter of right. As such, Appellees Robert David Cheeley, Jeffrey Bossert Clark, John Charles Eastman, Harrison Floyd, Rudolph Giuliani, Cathleen Latham, Mark Randall Meadows, David J. Shafer, Shawn Still, and Donald John Trump respectfully request that this Court affirm the trial court's order in full.

This submission does not exceed the word count limit imposed by Rule 24.

Respectfully submitted this 30th day of September, 2026.

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CERTIFICATE OF SERVICE

I certify that, on the 30th day of September 2026, I served counsel for the Fulton County District Attorney's Office with a copy of the foregoing **CERTAIN APPELLEES' RESPONSE BRIEF** by U.S. Mail as follows:

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