

GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL

Minutes of Special Call Meeting

January 18, 2008

The call meeting of the Georgia Public Defender Standards Council was held on Friday, January 18, 2008, at the office of the Standards Council, 104 Marietta Street, Suite 200, Atlanta, GA 30303

Council members present were Wilson DuBose (Chairman), David Dunn (Secretary), Paul Kurtz, Judge Willie Lockett, Lee Morris, Donald Oliver, Wyc Orr (by telephone), Bill Rumer, Judge Mark Scott, and Jerry Word.

CALL TO ORDER

Chairman DuBose declared a quorum and called the meeting to order at 10:10 AM. Henry Walker, Chair of the State Bar Indigent Defense Committee was welcomed as a guest.

APPROVAL OF MINUTES

A motion was made to approve the minutes from the last Standards Council meeting held on January 4, 2008. DeBrae Kennedy from the Attorney General's office requested that the council make a correction to the minutes in the executive session section on paragraph 2, in the second sentence to read as follows: "Chairman DuBose presided and Judge Scott made a motion that the council find probable cause to remove Larry Schneider, ..." A motion was made and adopted unanimously to approve the minutes with the correction.

PUBLIC COMMENT

There were no public comments.

EXECUTIVE SESSION

A motion was made that the Council go into Executive Session at 10:30 AM to discuss pending litigation and personnel issues, motion was seconded. The motion to go into executive session was approved unanimously.

REGULAR SESSION

The Council reconvened in regular session at 11:50 AM with Chairman Dubose presiding.

Don Oliver made a motion, with a second from Bill Rumer as follows:

- 1) That the council instruct council staff to prepare a motion asking for reconfiguration of council in the Brian Nichols case and that the Office of the Georgia Capital Defender be reinstated in the Nichols case as lead council.

- 2) That the council authorize Director Crawford to sign the motion and file as soon as possible; and
- 3) That the council authorize the Chairman and Vice Chairman of the council to review and sign off on the final version prior to filing by Executive Director Crawford.

Oliver then stated that the purpose of this motion was for the Georgia Capital Defender to be inserted in the case as lead council and as such, be authorized to contract with other attorneys to ensure constitutional defense at the lowest expenditure of public funds.

After discussion, the motion passed on a vote of 7 yays, 1 nay and 1 abstention.

REPORT OF STANDARDS COUNCIL LEGISLATIVE COMMITTEE

The legislative committee identified the following issues to be discussed with possible action by the council. The council discussed each individual issue and issued the following report reflecting its positions to the chairmen of the joint legislative study committee.

Issue 1: Increased county participation on the Standards Council

The bill proposed by the Study Committee adds 4 county commissioner representatives to the Standards Council. There was significant discussion by the council on this item about increasing the size of the council from 11 to 15 members because of the potential difficulty with getting a quorum.

Position: the council supports increased county participation. The council requested that staff work with the Association County Commissioners and the General Assembly on the physical number of commissioners. The council would support up to 4 commissioner members as proposed.

Vote: unanimous

Issue 2: Additional oversight over Circuit Public Defenders

The issue of additional oversight over the chief public defenders has been an ongoing issue of discussion with the legislators and the Association County Commissioners. The bill proposed by the joint study committee proposed the following:

- a) Adding two county commissioner members to the local selection panel and calling them local supervisory panels. These panels must meet two times per year and perform a performance evaluation on the circuit public defender.

Position: The council supports this change to the legislation.

- b) Limits the terms of circuit public defenders to no more than 2 year terms.
Position: The council opposes limitation of appointment to two years and requests that the legislation be left as is which is appointment of terms for up to 4 years. If the local panels determine that a two year term is more acceptable, they can appoint for that term under the current law.

- c) Expands the procedure for removal by inserting removal without cause with 2/3 majority vote of the council.

Position: the council took no position on this change to the legislation.

Vote: 8/1

Issue 3: Per diem for council members.

The legislative changes recommended by the joint legislative study committee do not have per diem for council members included. The council, due to the infancy of the agency, is required to spend countless hours in meetings and on calls relating to the agency. Several members of the council are in private practice and have indicated that the time requirements present a financial burden. **Based on this, the council respectfully requests that they receive state paid per diem for the time spent in Atlanta for council business.**

Vote: 5/3

Issue 4: Ratification Process for standards

The bill proposed by the joint study committee recommends removal of the legislative ratification process for the 12 standards that the council must set per the code.

Position: The council supports removal of the ratification process.

Vote: unanimous

Issue 5: Procedures for providing conflict of interest services. Add contracting authority.

The council requests adding language to the current statute clarifying that the council can contract for conflict of interest services. **In section 17-12-22, (a), (in addition to full time conflict offices and hourly appointed counsel) adding language to add attorneys under contract with GPDSC for services. This would statutorily allow the council to contract with an attorney or attorneys to handle a set number of cases for a set amount of dollars.**

Vote: unanimous

Issue 6: Financial Eligibility

There has been significant discussion about whether or not public defenders are representing clients that do not qualify as indigent under the Act. A possible solution that has been discussed amongst various legislators is whether having an independent person or office (working for the county) handle the qualification of indigent clients would result in fewer cases and a cost savings to the system. The council discussed this issue but determined that doing this could cause unnecessary delay and that the circuit public defender office was the most qualified to handle this function.

Position: The council would support a pilot project (if additional funding is provided by the state) in a few circuits to see if having an independent person qualifying defendants for public defender services would be cost effective and efficient.

Vote: unanimous

Issue 7: Salary of Circuit Public Defender, set at 90% of District Attorney salary

The council urges that the legislature consider raising the starting salary of the circuit public defenders to not less than 90% of the starting salary of the district attorney.

Vote: 7/2

Issue 8: Removing funding cap

The council recommends removing the statutory language which does not allow the council to request more in its budget than is collected in the indigent defense fund the prior fiscal year.

The proposed legislation from the joint study committee removes any language tying the indigent defense fund to the appropriations given to the council. The council feels that the study committee's recommendation, along with the agency's move to the executive branch justifies this proposal. (When the agency was in the judicial branch, the Governor could not modify the agency's budget. Now that the agency is in the executive branch, it is no longer a pass through to the legislature.)

Vote: unanimous

Issue 9: Contingency Fund

There is a code section in the Indigent Defense Act that allows the council to set aside 3% of the overall budget in a contingency fund.

The council requests that the Governor and legislature consider setting aside an emergency fund that rolls over from year to year to use for cases with extenuating circumstances. Use of funds from any money set aside should be subject to the governor's office, council and legislative oversight committee's approval.

Vote: unanimous

Issue 10: Clean up language clarifying contracting language for the Council, through each circuit public defender to contract and accept funds.

Position: The Council recommends clarifying that the council must be involved with the circuit public defender when any contract is entered into.

In section 17-12-35, the council recommends adding language that the Council, through each circuit public defender may contract and accept funds. This would give the Council the ability to have final approval on all contracts and receipt of all funds.

Vote: unanimous

Issue 12&13: Move functions of mental health and capital defender under the council's director.

Position: The council supports both of these proposals from the joint study committee.

Vote: unanimous

Issue 14: Requiring written application before the 72 hour rule begins.

Position: The council opposes any change to the current statute defining the 72 hour rule.

Vote: unanimous

Additional Proposals and Issues from the council:

1. Add language to allow for the creation of capital satellite offices.

The council recommends adding the following language adding authority for the capital defender to establish satellite offices in order to handle multiple defendant death penalty cases utilizing in house attorneys.

Add section (b) to §17-12-127.

Representation; **establishment of satellite offices**; appointment of alternate attorney; assistance with federal habeas corpus petition prohibited

(a) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be indigent, as provided in Article 2 of this chapter, the court in which the charges are pending shall notify the office, and the office shall assume the defense of the person if there is no conflict of interest.

(b) **In addition to the principal office, the capital defender shall be authorized to set up satellite offices throughout the state, as approved by the council, for the purpose of handling cases in which the state is seeking the death penalty against multiple co-defendants. The capital defender shall establish sufficient safeguards and procedures among the principal office and the various satellite offices, consistent with the Georgia State Bar Rules of Professional Conduct and the state and federal case authority and as approved by the council, to insure that there is no actual conflict of interest between co-defendants being represented by the different offices.**

2. Open Records exemption for meetings and records requests.

Now that the council is under the executive branch, it is subject to all rules and regulations under the Open Records and Open Meetings act. The council is requesting an exemption (similar to what the district attorney's have) in the code section from certain provision of the open records act. Proposed language had been drafted.

Vote on additional proposals: unanimous

Motion was made to adjourn and seconded. The meeting was adjourned at 4 PM.

The date for next regular meeting is Friday, February 29, 2008.

These minutes are respectfully submitted this 15th day of January, 2008 and adopted this _____ day of February, 2008

David Dunn, Secretary

