

GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL

Minutes of Regular Meeting

May 5, 2009

***Transcript of Meeting Available for Review at Central Office*

The regular meeting of the Georgia Public Defender Standards Council was held on May 5, 2009 at Brasstown Valley Resort in Young Harris, Georgia.

Council members present were Wilson DuBose (Chairman), David Dunn (Secretary), Jerry Word and Mike Berg. Council members present via telephone were Stephen Tillman (Vice-Chairman), Ron Cross, Lee Morris, Bill Rumer, Melvin Davis, Tony Thaw and Paul Kurtz and Wyc Orr.

CALL TO ORDER

Council Chairman C. Wilson DuBose declared a quorum and called the meeting to order at 10:00 a.m. As the meeting was held in conjunction with the previous day's CPD meeting and a number of CPDs were present, Chairman DuBose asked that all those in attendance identify themselves and their affiliations.

APPROVAL OF MINUTES

Chairman DuBose asked if anyone had additions or corrections to the minutes of the January 13, January 23 and February 2, 2009 meetings. Mike Berg raised two concerns: 1) whether or not it was proper for the chair to make or second motions and 2) whether all votes should be by roll call, which would create a record of how each Council member voted on each issue called to a vote. Mr. DuBose pointed out that the Indigent Defense Act of 2003 permits the chairman to vote on all matters coming before the Council. He interpreted this provision as permitting him to make or second motions. After further discussion, Mr. Berg did not ask the minutes under consideration to be corrected. Chairman DuBose asked for a correction to the February 2, 2009 minutes: they should be changed to reflect that Chairman DuBose did not speak privately with Senator Preston Smith about Sen. Smith's reasons for proposing Senate Bill 42. Instead, the reasons were taken from the public hearing of the Senate Judiciary Committee meeting on January 19, 2009. Motion was then made by Jerry Word and seconded by David Dunn to approve the minutes as corrected. The motion carried unanimously.

PUBLIC COMMENT

Michael Parham of the Appalachian Circuit spoke on behalf of the CPDs regarding two issues: 1) the process of verifying indigency that would allow that \$50 fee to be retained locally and 2) the need for new computer equipment for those employees funded by the state. The Council then requested the staff to convene a meeting of the indigency verification committee.

(At that point, as a point of order, Mike Berg asked if the Council voted to approve the agenda. Stefan Ritter from the Attorney General's Office answered that it is a common practice to adopt the agenda but not required.)

LEGISLATIVE REPORT

Director Mack Crawford explained the FY 2009 amended budget as passed and the FY 2010 budget. He pointed out to the Council that the tracking sheet for HB 118, which was passed as amended FY 2009, was included in their materials. Moving on to FY 2010, he noted the importance of the line item put in to pay for 2005-2008 non-capital conflict cases. Those funds were intended to “catch up” the non-capital bills that were not paid for those appropriated years. He further noted that the House had originally put in “catch up” funds for capital cases, but the Senate zeroed it out. Budget Director Marques Smith added that the agency would make it through June 30 within budget, but would not be able to pay all pending bills for capital and conflict cases within that time period.

ELECTION OF OFFICERS

Because several of the members attending by telephone had to leave shortly, Chairman DuBose announced that he wanted to move to election of officers at that point, leaving the director’s report for later. The chairman also announced that he was resigning his position as chair, effective as of the end of the meeting. Mr. Berg, however, expressed an opinion that the election should not be held until the new Council members were appointed.

Chairman DuBose then called on Stefan Ritter of the Attorney General’s Office to comment on the election question. Mr. Ritter said that the Council could not prevent the chairman from resigning, but that he did not think the election was properly noticed under the Open Meetings Act. In response to a question from Wyc Orr, Mr. Ritter noted that Chairman DuBose’s term as a Council member would probably carry over until his successor is elected.

Mr. Berg then moved that the election of officers be tabled until a future date, with no date specified. Bill Rumer seconded. Mr. Berg called for a roll-call vote. Voting “yes” were Mike Berg, Tony Thaw, Paul Kurtz, Ron Cross, Melvin Davis, Bill Rumer and Lee Morris. Voting “no” were David Dunn, Jerry Word, Don Oliver, Wyc Orr and Stephen Tillman. The motion carried by a vote of seven to five. At that point, both Chairman DuBose and Vice-Chairman Stephen Tillman agreed to put off their resignations until the end of the next meeting.

Don Oliver then made a motion that the election of officers be placed on the agenda for the next meeting, scheduled for June 26. Paul Kurtz seconded. Voting “yes” were David Dunn, Jerry Word, Don Oliver, Lee Morris, Paul Kurtz and Wyc Orr. Voting “no” were Mike Berg, Bill Rumer, Ron Cross and Tony Thaw. The motion carried by a vote of six to four.

DIRECTOR’S REPORT

Director Crawford began with a description of the tentative plans for restructuring the management of conflict cases. Mr. Crawford described a new conflict division, separate and apart from the central office, which would be headed up by Jim Stokes effective July 1, 2009.

His next topic dealt with the Report on the Standards Council issued by the Department of Audits that forbade the payment of bills from past fiscal years from current fiscal year funds. On the topic of conflict cases, Don Oliver made a motion to appoint David Dunn as a committee of one to work with the director and the others he has chosen to bring recommendations on handling conflict cases statewide. Jerry Word seconded. Mr. Berg requested a roll-call vote.

Voting “yes” were Mike Berg, David Dunn, Jerry Word, Don Oliver, Ron Cross, Stephen Tillman, Lee Morris, Bill Rumer and Wyc Orr. The motion carried unanimously.

Director Crawford returned to his report and spoke about the major problem occurring with attorneys filing motions to withdraw and judges granting those motions, with no notice to the CPDs or the central office. Mr. Dunn added that this was just a symptom of the problem; the real problem is the agency’s failure to pay conflict lawyers for years of cases. Mr. Crawford again explained that he has been instructed by the Attorney General and the Department of Audits not to use FY 2009 funds to pay bills for work in prior fiscal years. Don Oliver questioned whether or not it was actually illegal to pay past bills during this fiscal year and called upon Stefan Ritter to speak to that point. Mr. Ritter answered that multi-year contracts are not allowed under Georgia law; thus, the state cannot pay any obligations not encumbered during that fiscal year.

[The meeting was temporarily adjourned at noon for lunch and resumed at 1:05 p.m. Upon checking with those attending by telephone, Chairman DuBose learned there was no longer a quorum, thus obviating the possibility of voting on motions at that point.]

DISCUSSION ITEMS

Chairman DuBose explained that he had placed four items on the agenda for discussion purposes. The first topic was ineffective assistance of counsel and excessive caseloads. This topic was included, in part, because of the concerns raised by certain articles about public defenders having excessive caseloads. David Dunn expressed the opinion that there were inaccuracies in the article written by the staff attorney in Walton County. Mike McCarthy, the Conasauga CPD, then spoke about the caseloads being too high in his circuit. Chairman DuBose asked David Dunn and Jerry Word to review the caseload issue and propose a statement from the Council stating the Council’s concerns regarding ineffective assistance of counsel.

On the second item, Mary McCall Cash gave an update on the State Bar Formal Advisory Opinion No. 07-R1, noting that the committee has put off consideration of a revision to the opinion until its June 20, 2009 meeting.

The third topic was council appointments and governance of the Council. The chairman noted there were five Council positions expiring on June 30, 2009: his own; Jerry Word’s; Paul Kurtz’s; Judge Willie Lockette’s and Judge Mark Anthony Scott’s. He noted, however, that just because the terms expire at that time, it does not necessarily mean that new Council members will be in place on July 1. [Council member Tony Thaw’s term will also expire on June 30, 2009.]

Under the final topic, preparation of the FY 2011 and FY 2010 amended budget request, Chairman DuBose asked Director Crawford and staff what their plans are for preparing these requests. The director responded that the requests are due October 1, 2009 to the Governor’s Office of Planning and Budget (OPB). The staff would begin July 1 preparing the requests and have them ready for Council consideration in late August or early September. The FY 2010 amended budget depends, according to the director, on whether there is a special session of the legislature to deal with the economic downturn.

The Council then requested that staff set up a series of meetings with the Council to discuss the budget. The director recommended having a budget workshop and instituting the proposed conflict division.

OTHER REPORTS

Georgia Capital Defender Report

Jerry Word announced that GCD was ready to move into a new satellite office in Brunswick and was working on new space in Tift County.

CPD and Conflict Caseload Report

Larry Schneider reported that he will be checking the caseloads of each circuit to ensure accuracy.

Financial Reports

In addition to the explanatory written materials supplied to the Council, Marques Smith elucidated for the Council one of the impacts of the audit report: the agency will now accrue on its books every conflict case appointed to private attorneys, which will result in a deficit at the end of this fiscal year. The estimated amount of accrued obligations to private counsel for FY 2009 that will remain unpaid at the end of the fiscal year is \$717,000.

Meeting adjourned at 2:05 p.m. without an executive session. The date for the next meeting is June 26, 2009.

These minutes are respectfully submitted this June 25, 2009 and adopted this _____ day of June, 2009.

David Dunn, Secretary