

GEORGIA PUBLIC DEFENDER STANDARDS COUNCIL

Minutes of a Regular Meeting

November 4, 2005

10:00 AM

The regular meeting of the Georgia Public Defender Standards Council (Standards Council), an independent state agency within the judicial branch, was held on Friday, November 4, 2005, at the office of the Standards Council, 104 Marietta Street, Suite 200, Atlanta, GA 30303.

Council members present were Emmet Bondurant (Chairperson), Wilson DuBose (Co-chair), Gerald Word, Paul Kurtz, Ed Hine, David Dunn (Secretary), and Evelyn Pugh.

Staff members present were Sarah Haskin (Deputy Director), Nolan Martin (Deputy Director), Cindy Wang (Deputy Chief Legal Officer), Marques Smith, Christie Crane, Leigh Schrope, Sarah Gerwig-Moore, and Jim Bonner.

Guests included Steve Pollak (Fulton Daily Report), Michael Smith (Clayton County Chief Staff Attorney), Kip Jones (Clayton County), Lee Smith (Clayton County), Lolitha Hale (Clayton County), Andrews Williams (Clayton County), Shannon Weathers (Council of Superior Court Judges), David Cannon (Cherokee County Indigent Defense Committee), Natalie Gatson (Clayton County), Terance Madden (Clayton County), Antavius Weems (Georgia Alliance of African American Attorneys), Lee Robinson (Macon), Bob Wadkins (Chattahoochee), Brett Ladd (Blue Ridge), Gary Bowman (Flint), Christine A. Van Dross (Clayton), Larry Love (Chattahoochee Conflict Office), D'Andre Berry (Atlanta), Debra Grigsby (Clayton), Bert Barker (Forsyth County Indigent Defense Committee), Alex Sponseller (Forsyth County Indigent Defense Committee), and Richard Dictor,

I. CALL TO ORDER

Chairman Bondurant called the meeting to order at 10:17 AM after a quorum was declared.

II. APPROVAL OF MINUTES

A motion was made by Council member Kurtz to approve the minutes from the last Standards Council meeting held on September 16, 2005. The motion was seconded and adopted unanimously.

III. PRESENTATION BY CLAYTON COUNTY

Michael Smith introduced Kip Jones who made the presentation. Members of the Clayton County Bar Association were available to answer any questions. Mr. Jones stated that the Clayton County indigent defense delivery system has been operational for 25 years. He decided to limit his presentation to just addressing the four areas of concern listed below:

- The involvement of the judiciary;
- Determination of indigency by the judge;

- 24 hours rule; and
- Poverty guidelines.

Mr. Jones stated that the last two areas were the results of a misunderstanding. He informed the council that the court administrator did not realize that the Standards Council's standard on determining indigency had based eligibility for representation on a percentage of the federal poverty guidelines. Mr. Jones stated that they just found out that eligibility had to be based on 150% of the federal poverty guidelines for misdemeanors and 200% of the federal poverty guidelines for felony representation. He admitted that they have not been using the right percentages, but they will start as of November 4, 2005.

Another area of concern was in regards to the first appearance hearing. Clayton County has a duty attorney present at the first appearance hearings. These first appearance hearings occur within 24 hours from arrest, sometimes sooner. Panel attorneys are then appointed to the indigent defendant at the first appearance hearing. The attorney assigned to the case must then contact the defendant, even if the defendant is no longer incarcerated. During the 24 hours, the court has staff that can visit the defendant in jail prior to the first appearance hearing. If the attorney fails to contact the defendant within the required timeframe, then another attorney will be assigned to the case. Typically, the defendant would have had time to fill out the application by the first appearance hearing. When the defendant thinks that he wants his own attorney, but is unable to obtain his own attorney then a panel attorney will be assigned.

Mr. Jones further stated that the panel administrator receives the application for representation. He explained that the physical flow of the application is that the defendant is called to the podium. The judge will then physically get the application. The judge will then turn the application over to the administrator. Then the judge will decide whether to appoint an attorney. The panel administrator will then assign counsel by telephone. Mr. Jones did not know of any instances where the judge disagreed with the panel administrator regarding the appointment of counsel. He stated that the necessary forms for requests for attorneys are in the jail. In some cases, the defendant asks for counsel. In other cases, the defendants are notified of their right to counsel. Everybody is given the opportunity to request counsel.

Mr. Jones stated that as a rule, attorneys are assigned at the first appearance hearing. However, there may be exceptions for certain types of crimes. If the defendant is charged with a murder, an attorney may be assigned earlier. Generally, the attorneys are notified at the hearing, and they know that they have 24 hours to contact the defendant. The duty attorney has the responsibility of making paperwork available to the assigned counsel.

Compliance is monitored by checking to see if the paperwork has been picked up. The panel attorneys have to file an affidavit showing that they have contacted the

defendant within 24 hours from assignment. The staff panel administrator monitors whether the affidavits have been filed. They can go to the jail to see if the paperwork has been picked up. The duty attorney will get assigned as counsel if it is a Sunday and the paperwork has still not been picked up.

The proposed qualification for the panel administrator is for the administrator to be an attorney. However, since the panel administrator would be hired directly by the county commission, the Clayton Bar Association has no say in what the qualifications will be, though they can give their preferences. The county commission has passed a resolution to fully fund the system.

The staff of the panel administrator can provide assistance to the defendants in filling out the paperwork. Interpreters are available. The council inquired about the conflict of interest procedure, specifically what happens when the assigned counsel can no longer represent a defendant because of conflict of interest. Mr. Jones stated that the procedure is not specifically laid out and that they may have to supplement the 2005 opt-out application.

Mr. Jones also stated that they will commit to using JCATS if allowed to opt out.

The council asked what type of competency screening existed for the attorneys. Mr. Jones stated that attorneys were assigned depending on the type of the case. A concern was raised as to how the attorneys are assigned to cases when there are specific levels of experience required depending on the types of the case, and at the first appearance hearing, only the initial charges are known. Mr. Jones stated that if the charges are upgraded and the case becomes more complex then a new attorney can be assigned. Furthermore, the attorneys with the least amount of experience will be restricted from handling complex felony cases.

Council member Kurtz suggested that one way of ensuring that the panel administrator is aware of when charges are upgraded is for her to receive all indictment information so that new counsel assignments can be made promptly.

The council was also concerned with the minimal qualifications required for juvenile representation. Mr. Jones stated that they can make the qualifications more rigorous. Only a half a dozen of the panel attorneys actually represent juveniles and they are specialized in this field.

The council asked about the existing panel. Mr. Jones informed the council that there were about 100 attorneys on the panel. There are 170 to 200 attorneys in the Clayton County Bar Association. The existing panel is not based on the qualifications. They would be grandfathered into the new system though they may be restricted in what types of cases they may handle.

Mr. Jones also explained the responsibilities of the duty attorney. The duty attorney will be working on a volunteering basis. Though the compensation rate

for in-court work is \$60 per hour, the duty attorney is not going to be asked to be compensated. The panel administrator and the duty attorney will be present at every first appearance hearing.

The council asked if Clayton County has made changes to the system from last year. Mr. Jones responded that the initial application was not reflective of the system. Over the past year, the panel of attorneys has self-policed. The Clayton County Board of Commissioners will not make changes unless the plan is approved for opt-out.

Mr. Jones informed the council that currently, the policy is for the panel attorneys to contact the defendant within 48 hours from assignment of case. The council asked what the sanctions are, if any, for when an attorney does not contact his client. Mr. Jones stated that they have an internal operating procedure in place which they are attempting to change. Generally, if the superior court judges complain about a particular panel attorney, then the panel administrator may respond accordingly. Mr. Jones stated that he cannot say what the sanctions will be since they are attempting to change the procedure. Chairman Bondurant stated that the procedure must be in place before Clayton County can be considered for opt-out.

Mr. Jones further stated that courtroom performance is monitored by attendance and level of preparation. Though the panel administrator is frequently in the courtroom, she is not really making those observations.

When asked about the caseload, Mr. Jones stated that the tripartite committee monitors the panel. Each panel attorney is limited to 25 indigent cases at any one time. The council was concerned with panel attorneys having many private cases as well. Chairman Bondurant suggested restricting based on combined private and panel caseload.

Mr. Smith reiterated that the county will fully fund the system; however, if the expenditures increase because of the council then the county commission will have to vote on the changes.

Council member Dunn asked why Clayton County prefers the panel system over the public defender office. Mr. Smith answered that they felt that the panel system provided the best service to the defendants.

IV. PUBLIC COMMENTS

Antavius Weems from the Georgia Alliance of African American Attorneys (Alliance) asked to be placed on the agenda for the next Council meeting. He said that there were growing concerns over the treatment of minority attorneys.

Richard Dicter talked about his experience with the Fulton County court system and the knowing and intelligent waiver of counsel.

V. **ACTION/VOTING ITEMS**

a. **Appellate Performance Standards.** After a brief presentation by Sarah Gerwig-Moore, the Council voted by unanimous consent to post the Appellate Performance Standards as amended on the website for comments. These standards were originally discussed at the May 27th council meeting. Amendments included adding a preamble explaining the standards and changing “shall” to “should” in certain areas. The council also suggested developing a form letter for attorneys to use when consulting the defendants.

The appellate policies and procedures were also discussed. The council felt that certain practices such as contributing to the brief bank do not need to be a policy.

b. **FY 2006-2007 Budget.** Deputy Director Haskin stated that the Executive Committee has already approved the revised FY2007 general budget request. Council member Hine moved to adopt the revised FY2007 budget request. It was seconded and adopted unanimously.

c. **Opt-Out Applications**

1. **Bell Forsyth.** Deputy Director Haskin stated that the application was silent as to the collection of the \$50 application fee. Representatives from the Forsyth County Indigent Defense Committee stated that they will collect the fee and will supplement the opt-out application with that information. The representatives, Bert Barker and Alex Sponseller, stated that though their panel administrator is not an attorney, the tripartite committee consisting of 3 attorneys closely monitors the program. They are in constant communication with the panel administrator. Additionally, the size of Forsyth’s panel is relatively small compared to Clayton County’s panel. Forsyth is training their attorneys and will meet any of the standards established by the Standards Council. They will utilize the JCATS system. Forsyth has separated out pretrial services from the panel administrator’s job duties. Deputy Director Haskin stated that Director Mears is satisfied that the deficiencies from last year’s opt-out application have been cured.

Council member Pugh moved to approve Forsyth County’s (Bell Forsyth Judicial Circuit) opt out application conditioned upon Forsyth utilizing the JCATS system. The \$50 application fee must also be collected. The motion was seconded and adopted unanimously (7-0).

2. **Blue Ridge.** David Cannon from Cherokee County presented to the council that the application is similar to Forsyth County’s. Though the panel administrator is not an attorney, the system is overseen by a 4 member committee, 3 of which are attorneys. The

committee closely monitors the system, and they comply with the standards adopted by the council. There is a mechanism in place to reappoint if a conflict of interest arises. They will use JCATS.

The council was concerned with the representation of defendants whose probation may be revoked for technical violations. Mr. Cannon stated that they will provide representation to those defendants if allowed to opt out.

The council was also concerned with the panel administrator handling other pretrial services. Mr. Cannon stated that pretrial services will be separated out.

Deputy Director Haskin stated that Director Mears is satisfied that the deficiencies from last year's opt-out application have been cured.

Council member Word moved to approve the opt-out application subject to the following conditions:

1. the JCATS case management system must be utilized;
2. the \$50 application fee must be collected;
3. the indigent defense administrator cannot handle pretrial services;
4. indigent defendants whose probation may be revoked for technical violations must be appointed counsel;
5. the indigent defendants who have bonded out can apply for and receive representation anytime before arraignment regardless of the bond returnable date; and
6. the panel administrator, not the juvenile court judges, must appoint attorneys to handle juvenile proceedings.

The motion was seconded and adopted unanimously (7-0).

3. **Clayton.** Because of remaining concerns regarding the opt-out application, the council stated that they were unable to determine that Clayton County may continue its alternative delivery system because of the following reasons:
 1. the panel administrator should be an attorney;
 2. the JCATS case management system must be utilized;
 3. the panel administrator should receive all indictment information;
 4. the qualifications for the panel attorneys handling juvenile appointments should be more stringent (e.g., like the other counties that have been approved for opt-out, the system could require that all panel attorneys shall have participated in

a certain number of juvenile proceedings and/or that a certain number of hours of juvenile court observation have occurred. In no circumstance should an attorney be qualified for the juvenile court panel without demonstrated past experience rather than a promise to engage in training after the appointment to the panel.);

5. the jail lists should be monitored daily;
6. the duty attorney should be compensated;
7. the duty attorney should assist the defendant in getting a bond;
8. the conflict of interest determination procedure should be clear;
9. there should be a procedure established to handle complaints about panel attorneys and what the sanctions would be for noncompliance with standards;
10. there should be independence from the judiciary;
11. the Standards Council's standard for determining indigency should be followed; and
12. the judge must not determine indigency.

Council member Hine moved to adopt these reasons as the list of deficiencies for Clayton County. The motion was seconded and adopted unanimously (6-0, Council member Pugh left the meeting at 2:26 PM.)

d. Policies and Procedures. Although the policies and procedures to be considered for a vote were postponed until the next council meeting, Council member Pugh wanted to discuss the policy on the 72 hour rule. Chattahoochee Circuit Public Defender Wadkins informed the council of the problems that he was encountering from the sheriffs in his circuit. It appears that the problem is only in Muscogee. Council member Pugh suggested that Director Mears should write a letter to the sheriff. The council decided that Chattahoochee Circuit Public Defender Wadkins should document specific instances. The revised Grievance Procedure was considered by the council. Council member Dunn moved to adopt the revised Grievance Procedure as amended. This amendment added the phrase "This grievance procedure shall not be construed to alter or limit in anyway the statutory authority of the Circuit Public Defender" to the disclaimer clause of the procedure. The motion was seconded and adopted unanimously. This Grievance Procedure will supersede the previously adopted grievance procedure established in Resolution 07-04.

e. CJCC Byrne Grant – Cordele Project. Deputy Director Haskin reported that the CJCC granted \$300,000 for the Cordele Data Integration Project. However, the grant requires a 25% match from the participants. Therefore, the council would have to contribute \$50,000 to the project. Council member Kurtz

moved to contribute this money. The motion was seconded and adopted unanimously.

f. **Fund Distribution for Opt-out Circuits.** The council voted by unanimous consent to distribute the funds on a prorated basis starting from the date the opt-out contract is executed. Also, Council member Kurtz moved to distribute last year's grant money to the circuits applying for opt out. The motion was seconded and adopted unanimously.

VI. OTHER REPORTS

a. **Financial Reports.** Deputy Director Haskin stated that the Council is within budget for the current fiscal year and within the fund collections. She also presented a summary of contracts between the Council and county and municipal governments. Deputy Director Haskin expressed concern about the relatively small amount of revenue collected from the \$50 application fee. The Council discussed working with the judges to apply the application fee during sentencing as part of probation. Deputy Director Haskin informed the council that Rep. Willard is considering legislation that mandates judges to tack on the application fee to the probation.

Deputy Director Haskin also informed the council that the Fulton County Conflict Defender Office is in the process of becoming employees of the council. There is a stipulation that the cost cannot exceed the price of the current contract between the Fulton County Conflict Defender Office and the Standards Council.

Finally, the council discussed a moratorium on hiring in the central office.

VII. EXECUTIVE SESSION

Council member Hine moved to go into executive session to discuss personnel matters. The motion was seconded and adopted unanimously.

VIII. FUTURE MEETINGS

The next Council meeting will be Friday, December 9, 2005 at 10:00 AM.

IX. ADJOURNMENT

The meeting was adjourned at 4:07 PM.

These minutes are respectfully submitted this ___ day of _____, 2005, and adopted this ___ day of _____, 2005.

David Dunn, Secretary