

**Council Resolution 10-04**  
**Georgia Public Defender Standard Council**

Whereas, the Georgia Public Defender Standards Council is authorized by O.C.G.A. §17-12-36 to permit a judicial circuit composed of a single county to continue in effect an alternative delivery system to the one set forth in Article 2 of Chapter 12 of Title 17 of the Official Code of Georgia Annotated; and

Whereas, O.C.G.A. § 17-12-36 (a) (2) authorizes the Standards Council to permit a judicial circuit composed of a single county to continue in effect an alternative delivery system if the Council determines, by a majority vote of the entire council, that the alternative delivery system meets or exceeds its standards; and

Whereas, the Standards Council is desirous of adopting a procedure to make this determination consistent with the law and with the Standard Council's standards, resolutions and bylaws.

It is Resolved by the Standards Council that it adopts the procedure contained in this Resolution.

**Section 1 Procedure for approval of alternative delivery system.**

**(a) Definition.** For the purposes of this Resolution the following definitions apply:

- (1) "Alternative delivery system" means a system that provides legal representation to indigent persons accused of crimes within the jurisdiction of the superior court and the juvenile court in an eligible judicial circuit and that is not operated by a circuit public defender pursuant to Article 2 of Chapter 12 of Title 17 of the Official Code of Georgia Annotated.
- 2) "Contested case" means a case involving the issue of the revocation of the authority of an eligible judicial circuit to operate an alternative delivery system pursuant to Section 1 and O.C.G.A. § 17-12-36. The term "contested case" does not include the initial decision whether to permit a single county circuit to operate an alternative delivery system.
- (3) "Eligible judicial circuit" means a judicial circuit which has boundaries that are conterminous with one county.
- (4) "Full-time director" means a person who works at least 30 hours per week receiving applications for appointment of counsel for indigent defendants in criminal cases, assigning cases, monitoring performance, performing administrative functions, determining eligibility, collecting data, and performing other functions that are normally performed by a director.

(5) "Respondent" means the official who acted on behalf of an eligible judicial circuit, or the official's successor in office, in applying for permission to operate an alternative delivery system and on whom a notice of probable cause has been served pursuant to Section 4 (a).

**(b) Application.** An official with authority to act on behalf of an eligible judicial circuit may apply to the Standards Council for the Council to permit the eligible judicial circuit to operate an alternative delivery system. The official shall include in the application the information required by Resolution 09-04 of the Standards Council adopted on August 27, 2004

**(c) Deadline for application.** The deadline for an application is established by Resolution 09-04 of the Standards Council adopted on August 27, 2004.

**(d) Requirement for permission to operate an alternative delivery system.** In order for the Standards Council to permit an eligible judicial circuit to operate an alternative delivery system, the Standards Council requires the applicant to comply with Section 1(b) and 1(c) and to submit a written plan to demonstrate that the alternative delivery system meets or exceeds and will continue to meet or exceed the standards adopted by the Standards Council and the requirements of law, including O.C.G.A. § 17-12-23 (b).

**(e) Approval or denial of applications.** The director of the Standards Council shall review all applications to determine if the application complies with Section 1(b) and 1(c) and if the applicant's written plan demonstrates that the alternative delivery system meets or exceeds and will continue to meet or exceed the standards adopted by the Council and the requirements of law including O.C.G.A. § 17-12-23 (b). After the review and before October 29, 2004, the director shall submit to the Standards Council a written recommendation to permit, permit subject to the fulfillment of such conditions as the Council shall require, or deny the operation of the alternative delivery system. If the recommendation is to deny the operation of the alternative delivery system, the written recommendation shall delineate the deficiencies in the alternative delivery system. Pursuant to O.C.G.A. § 17-12-36 (c) and §2.2 (c) (6) of the Standards Council Bylaws, the Standards Councils may permit, permit subject to the fulfillment of such conditions as the Council shall require or deny the operation of an alternative system by an affirmative vote of 6 members of the Standards Council present at a meeting of the Council. The decision to permit, permit subject to the fulfillment of such conditions as the Council shall require or deny the operation of an alternative delivery system is discretionary with the Standards Council and is final. There is no further administrative appeal of the decision of the Standards Council to

permit, permit subject to the fulfillment of such conditions as the Council shall require or deny the operation of an alternative delivery system.

**Section 2. Periodic review of the authority of an eligible judicial circuit to operate an alternative delivery system.** During the first quarter of each calendar year beginning in 2006, the Standards Council shall review the operation of each alternative delivery system permitted to operate pursuant to Section 1 to determine whether the alternative delivery system continues to meet or exceed the standards adopted by the Council and the requirements of law including O.C.G.A.

§ 17-12-23 (b). At any other time the Council may on its own initiative review the operation of an alternative delivery system permitted to operate pursuant to Section 1 to determine whether the alternative delivery system continues to meet or exceed the standards adopted by the Council and the requirements of law including O.C.G.A. § 17-12-23 (b).

**Section 3. Correction of deficiencies and revocation of the authority of an eligible judicial circuit to operate an alternative delivery system.**

**(a) Correction of deficiencies.** If after a review pursuant to Section 2 the Standards Council determines by an affirmative vote of a majority of a quorum present at a meeting of the Council that an alternative delivery system does not meet the requirements of Section 1 but that the deficiencies can reasonably be expected to be corrected, the director shall send a notice of deficiencies to the official who applied on behalf of an eligible judicial circuit for the authority to operate an alternative delivery system, or the official's successor in office. The director may establish a time period, subject to the approval of the Standards Council, for correcting the deficiencies.

**(b) Revocation of permission to operate an alternative system.** If the Standards Council determines by an affirmative vote of a majority of a quorum present at a meeting of the Council that deficiencies identified pursuant to Section 3 (a) have not been timely corrected or that, after a review pursuant to Section 2, the deficiencies cannot reasonably be expected to be corrected, the Standards Council after complying with contested case provisions in Section 4 may revoke the permission to operate an alternative system.

**Section 4 Contested case.**

**(a) Right to a notice and a hearing.** In a contested case, the official who applied on behalf of an eligible judicial circuit for the authority to operate an alternative delivery system, or the official's successor in office, has the right to a hearing. The director of the Standards Council shall prepare and serve the notice and shall include in the

notice the following:

- (1) a statement that the Standards Council has found probable cause to believe that the alternative delivery system does not meet the standards adopted by the Council and the requirements of law including O.C.G.A. § 17-12-23 (b),
- (2) a statement that the eligible judicial circuit has the right to a hearing on the issue as a contested case pursuant to the procedures in Section 4,
- (3) the time, place, and purpose of the hearing,
- (4) a statement of the legal authority and jurisdiction under which the hearing is to be held,
- (5) reference to the particular sections of the statutes, resolutions and rules pertaining to the conduct of the hearing and the contested case,
- (6) a short and plain statement of the factual issues involved in the contested case, and
- (7) a demand that the respondent show cause why the termination or revocation should not become final.

**(b) Representation.** In hearings under this Section the respondent has the right to be represented by legal counsel and to respond and present evidence on all issues involved.

**(c) Hearing.** The respondent may request a hearing within 30 days of the service on the respondent of the notice provided in Section 4(a). The Standards Council may conduct an evidentiary hearing or may appoint a special master to conduct an evidentiary hearing and to make findings of fact to be presented to the Standards Council. The Council may regulate the course of the hearing, set the time and place for continued hearings, fix the time for filing briefs and other documents, provide for the taking of testimony by deposition or interrogatory, and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Standards Council or the special master.

**(d) Final Decision.** If the respondent does not request a hearing, the final decision of the Standards Council may be made on the record without a hearing. If the respondent requests a hearing the final decision is made on the record after the hearing. In either case the final decision of the Standards Council requires an affirmative vote of 6

members of the Standards Council present at a meeting of the Council. The director shall communicate the Council's final decision to the respondent in writing. The decision of the Standards Council is final and not subject to further administrative review. .

**(e) Record.** The director shall keep a record in each contested case. Hearings and deliberations of the Council are open to the public.

This 24<sup>th</sup> day of September, 2004.

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Emmet J. Bondurant  
Chairperson

Attested:

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Natasha Perdue Silas  
Secretary