

Internal Operating Policy 01-05

Submitted by Director to the Georgia Public Defender Standards Council: 5/27/05

Approved by Standards Council: 9/16/2005

Effective: 9/16/2005

Authority: O.C.G.A. § 17-12-5(c) (2)¹

Subject: Applicable State Laws and Regulations

Introduction.

This memorandum discusses the policies that apply to circuit public defender offices. Policies that apply to circuit public defender offices come from a number of sources. This memorandum divides these policies into 6 sections based on the different sources of policy. They are as follows:

1. Georgia Indigent Defense Act of 2003, as amended.
2. State statutes applicable to state employees.
3. Merit system regulation applicable to state employees in the unclassified service.
4. Employee Retirement System regulations.
5. Administrative Office of the Courts policies.
6. State Bar of Georgia ethical standards.

Section 1

Georgia Indigent Defense Act of 2003, as Amended

The Georgia Indigent Defense Act of 2003, as amended, (Chapter 12 of Title 17 of the Official Code of Georgia Annotated) is the statutory authority for the Standards Council and its employees including the circuit public defender office employees. The Act contains the following policies applicable to circuit public defender offices:

O.C.G.A. § 17-12-3 (b) provides that a circuit public defender to serve on the Standards Council is elected by a majority vote of all the circuit public defenders. The circuit public defender councilmember serves a term of two years beginning July 1, 2004.

¹ O.C.G.A. § 17-12-5 (c) (2) provides as follows: “(c) The director shall... (2) Develop such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this chapter and comply with all applicable laws, standards, and regulations, and submit these to the council for approval”.

O.C.G.A. § 17-12-4 (c) provides that the Standards Council may not provide compensation from its funds to any administrative or clerical personnel employed by the council if the personnel are then receiving retirement compensation from any retirement or pension fund created by Title 47 to provide compensation for past services as a judicial officer, prosecuting attorney, indigent defense attorney, court officer, or law enforcement officer except for county or municipal retirement funds.

O.C.G.A. § 17-12-5 (c) requires the director of the Standards Council to develop such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this chapter and comply with all applicable laws, standards, and regulations, and submit these to the council for approval and to administer and coordinate the operations of the council and supervise compliance with rules, policies, procedures, regulations, and standards adopted by the council. This subsection also requires the director to ensure that the expenditures of the council are not greater than the amounts budgeted or available from other revenue sources.

O.C.G.A. § 17-12-6 (b) provides that the Standards Council is the fiscal officer for the circuit public defender offices.

O.C. G.A. § 17-12-7 (d) provides that a majority of the entire council must approve the removal of a circuit public defender for cause pursuant to Code Section 17-12-20.

O.C.G.A. § 17-12-8 (a) provides that the council shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles.

O.C.G.A. § 17-12-8 (b) provides that the council shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of the article and to comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law.

O.C.G.A. § 17-12-11 provides that all full-time employees of the Georgia Public Defender Standards Council shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all of the benefits of appointed state employees provided by law.

O.C.G.A. § 17-12-20 (c) provides that a circuit public defender may be removed for cause by a majority vote of the Standards Council.

O.C.G.A. § 17-12-21 provides that to be eligible to fill the position of circuit public defender, a person must:

- (1) Have attained the age of 25 years;

- (2) Have been duly admitted and licensed to practice law in the superior courts for at least three years;
- (3) Be a member in good standing of the State Bar of Georgia; and
- (4) If previously disbarred from the practice of law, have been reinstated as provided by law.

O.C.G.A. § 17-12-22 provides that the Standards Council establishes a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest. This procedure may be by appointment of individual counsel on a case-by-case basis or by the establishment of a conflict defender office in those circuits where the volume of cases may warrant a separate conflict defender office. The Code Section also provides that attorneys who seek appointment in conflict cases must have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which they are appointed and must meet such qualifications and standards for the representation of indigent defendants as are established by the council. The circuit public defender is required to establish a method for identifying conflicts of interest at the earliest possible opportunity.

O.C.G.A. Sec.17-12-23 (a) requires the circuit public defender to provide representation in the following actions and proceedings:

- (1) Any case prosecuted in a superior court under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or a suspended sentence of imprisonment may be adjudged;
- (2) A hearing on a revocation of probation in a superior court;
- (3) Any juvenile court case where the juvenile may face a disposition of confinement, commitment, or probation; and
- (4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3) of this subsection.

O.C.G.A. § 17-12-23 (b) provides that in each of the actions and proceedings enumerated in Code Section 17-12-23 (a) entitlement to the services of counsel begins as soon as is feasible and no more than 72 hours after the indigent person is taken into custody or service is made upon him or her of the charge, petition, notice, or other initiating process.

O.C.G.A. § 17-12-23 (c) requires each circuit public defender to establish a juvenile division within the circuit public defender office to specialize in the defense of juveniles.

O.C.G.A. § 17-12-24 (b) provides that the circuit public defenders shall administer and coordinate the day-to-day operations of their respective offices and shall supervise the assistant public defenders and other staff serving in the office.

O.C.G.A. § 17-12-24 (c) requires the circuit public defender to keep and maintain appropriate records, which shall include the number of persons represented under this article, including cases assigned to other counsel based on conflict of interest; the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and any other information requested by the council.

O.C.G.A. § 17-12-25 (a) provides that each circuit public defender receives an annual salary of \$87,593.58 and cost-of-living adjustments as may from time to time be granted to employees of the executive, judicial, and legislative branches of government from state funds as prescribed by the council.

O.C.G.A. § 17-12-25 (b) allows the county or counties comprising the judicial circuit to supplement the salary of the circuit public defender in an amount as is or may be authorized by local Act or in an amount as may be determined by the governing authority of the county or counties, whichever is greater.

O.C.G.A. § 17-12-25 (c) prohibits a circuit public defender from engaging in the private practice of law for profit.

O.C.G.A. § 17-12-26 (c) (1) and (2) provide that the Standards Council establishes and furnishes to each circuit public defender and the state auditor the travel budget for each judicial circuit based on the amount appropriated by the General Assembly for travel. In determining the travel budget for each judicial circuit, the Standards Council is required to consider the budget request submitted by the circuit public defender of each judicial circuit, the geographic size and the caseload of each circuit, and other facts as may be relevant. The Standards Council is also required to submit to each circuit public defender, the state auditor, and the legislative budget analyst a monthly report showing the budget amount of expenditures made under the travel budget. The Standards Council is authorized to periodically review and adjust the travel budget as may be necessary to carry out the purposes of this subsection.

O.C.G.A. § 17-12-26 (c) (4) prohibits the circuit public defender and any personnel compensated by the state pursuant to the provisions of this Article 2 of Chapter 12 of Title 17 of the O.C.G.A. from being reimbursed from state funds for any expenses for which the person has been reimbursed from funds other than state funds; provided, however, that the governing authority of the county or counties comprising the judicial circuit are authorized to provide travel advances or to reimburse expenses which may be incurred by the person in the performance of his or her official duties to the extent the expenses are not reimbursed by the state.

O.C.G.A. § 17-12-27 (a) authorizes the circuit public defender in each judicial circuit to appoint:

- (1) One assistant public defender for each superior court judge authorized for the circuit, excluding the chief judge and senior judges; and
- (2) Subject to funds being appropriated by the General Assembly or otherwise available, additional assistant public defenders as may be authorized by the Standards Council.

O.C.G.A. § 17-12-27 (b) and (c) require each assistant public defender appointed pursuant to subsection Code Section 17-12-27 (a) to be classified based on education, training, and experience. The jobs of assistant public defenders and the minimum qualifications required for appointment or promotion to each job is established by the Standards Council based on education, training, and experience and in accordance with the provisions of Code Sections 17-12-30 and 17-12-34. Subsection (c) provides the salary ranges for assistant public defenders.

O.C.G.A. § 17-12-27 (g) provides that all full-time state-paid employees of the office of the circuit public defender shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all benefits of such appointed state employees as provided by law.

O.C.G.A. § 17-12-27 (h) provides that an employee of a local public defender office who was an employee of the office on June 30, 2004, and who becomes a circuit public defender or an employee of a circuit public defender office before July 1, 2005, may elect, with the consent of the former employer and the consent of the council, to remain an employee of the entity for which the employee worked as a local public defender; and such entity shall be his or her employer for all purposes, including, without limitation, compensation and employee benefits. The right to make an election pursuant to this subsection shall expire on July 1, 2005. The council shall reimburse the appropriate entity for compensation, benefits, and employer contributions under the federal Social Security Act, but the total payment from the council to the entity on behalf of the employee shall not exceed the amount otherwise payable to or for the employee under the circumstance where the employee had become a state employee.

O.C.G.A. § 17-12-28 provides that the circuit public defender in each judicial circuit is authorized to appoint one investigator to assist the circuit public defender in the performance of his or her official duties in the preparation of cases for trial. Subject to funds being appropriated by the General Assembly or otherwise available, the circuit public defender in each judicial circuit may appoint additional investigators as may be authorized by the council. The Code Section also provides for the qualifications responsibilities, and salary range of investigators.

O.C.G.A. § 17-12-29 authorizes the circuit public defender to employ administrative, clerical, and paraprofessional personnel as may be authorized by the council based on funds appropriated by the General Assembly or otherwise available; provided, however, that each circuit public defender shall be authorized not less than two such personnel.

O.C.G.A. § 17-12-30 (a) provides that all state paid personnel employed by the circuit public defenders pursuant to this Article 2 of Chapter 12 of Title 17 of the O.C.G.A. are employees of the judicial branch of state government in accordance with Article VI, Section VIII of the Constitution of Georgia and shall be in the unclassified service of the State Merit System of Personnel Administration.

O.C.G.A. § 17-12-30 (b) provides that personnel employed by the circuit public defenders pursuant to this article shall have the authority, duties, powers, and responsibilities as are authorized by law or as assigned by the circuit public defender and shall serve at the pleasure of the circuit public defender.

O.C.G.A. § 17-12-30 (c) (2) authorizes the circuit public defender to fix the compensation of each state paid employee appointed pursuant to this article in accordance with the class job to which the person is appointed and the appropriate step of the salary schedule range.

O.C.G.A. § 17-12-30 (c) (5) provides that the compensation of state paid personnel appointed pursuant to this article shall be paid in equal installments by the Department of Administrative Services or the Administrative Office of the Courts, as determined by the council, as provided by this subsection from funds appropriated for such purpose. The council may, with the consent of the Department of Administrative Services or the Administrative Office of the Courts, authorize employees compensated pursuant to this Code section to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title 45.

O.C.G.A. § 17-12-30 (c) (6) and (7) provide that the governing authority of a county or of a municipality in a judicial circuit may supplement the salary or fringe benefits of any state paid position appointed pursuant to this Article 2 of Chapter 12 of Title 17.

O.C.G.A. § 17-12-31 provides that the circuit public defender in each judicial circuit may employ additional assistant circuit public defenders, deputy circuit public defenders, or other attorneys, investigators, paraprofessionals, clerical assistants, and other employees or independent contractors as may be provided for by local law or as may be authorized by the governing authority of the county or counties comprising the judicial circuit. The circuit public defender is authorized to define the duties and fix the title of any attorney or other employee of the office

of the circuit public defender. Personnel employed by the circuit public defender pursuant to this Code section shall serve at the pleasure of the circuit public defender and shall be compensated by the county or counties comprising the judicial circuit, the manner and amount of compensation to be paid to be fixed either by local Act or by the circuit public defender with the approval of the county or counties comprising the judicial circuit.

O.C.G.A. § 17-12-33 (a) provides that an assistant public defender or other attorney at law employed full time by the circuit public defender who is compensated in whole or in part by state funds may not engage in the private practice of law for profit.

O.C.G.A. § 17-12-33 (b) requires an assistant public defender or any other attorney at law employed by the circuit public defender to be a member of the State Bar of Georgia and admitted to practice before the appellate courts of this state. The Code Section also provides that an assistant public defender serves at the pleasure of the circuit public defender and has such authority, powers, and duties as may be assigned by the circuit public defender.

O.C.G.A. § 17-12-34 requires the governing authority of the county to provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner. The provisions of an office, utilities, telephone expenses, materials, and supplies are subject to the budget procedures required by Article 1 of Chapter 81 of Title 36.

O.C.G.A. § 17-12-35 provides that a circuit public defender office may contract with and may accept funds and grants from any public or private source.

O.C.G.A. § 17-12-41 authorizes an authorized third-year law student or staff instructor, when under the supervision of a circuit public defender, to assist in criminal proceedings within this state as if admitted and licensed to practice law in this state except that all pleadings and other entries of record must be signed by a circuit public defender or by his or her duly appointed assistant and that, in the conduct of a trial or other criminal proceeding, a circuit public defender or his or her duly appointed assistant must be physically present.

O.C.G.A. § 17-12-42 authorizes a third-year law student or staff instructor to assist a circuit public defender in such form and manner as the judge of the court may prescribe, taking care that the requirements of this article and the good moral character of the third-year law student or staff instructor are properly certified by the dean of the law school.

O.C.G.A. § 17-12-43 provides that as to each third-year law student or staff

instructor authorized to assist a circuit public defender, there shall be kept on file in the office of the clerk of the court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under Code Section 17-12-42. The authority to assist a circuit public defender as allowed under this Code section shall extend for no longer than 18 months. If during this period any change occurs in the status of the student or instructor at the law school in which he or she was enrolled or employed, that is, if the student ceases his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her employment or is released by the school, any such authority shall terminate and be revoked.

Section 2 **State Statutes Applicable to State Employees**

Not covered by this memorandum are the State statutes located in Titles 16 (Crimes and Offenses), 45 (Public Officers and Employees) and 50 (State Government) of the Official Code of Georgia Annotated and throughout the Code.

Specific statutes to take note of are as follows:

Title 16

- O.C.G.A. § 16-10-1 *et seq.* Abuse of governmental office.
- O.C.G.A. § 16-10-20 *et seq.* Obstruction of Public Administration and Related Offenses.
- O.C.G.A. § 16-10-70 *et seq.* Perjury and related offenses.
- O.C.G.A. § 16-10-90 *et seq.* Offenses related to judicial and other proceedings.

Title 45

- O.C.G.A. § 45-1-2 Actions by or against public officers who have left office.
- O.C.G.A. § 45-1-5 Purging of personnel records of terminated employee.
- O.C.G.A. § 45-1-6 Gifts to employees by vendors; disclosure; reports.
- O.C.G.A. § 45-3-1 Oaths required in addition to oath of office and constitutional oath.
- O.C.G.A. § 45-5-7 Hearing of complaints against budget unit employees and proceedings thereupon; effect of tenure.
- O.C.G.A. § 45-6-1 *et seq.* Powers and duties generally.
- O.C.G.A. § 45-7-8 Officer to be dismissed from office for charging or taking fees not allowed or for services not performed.
- O.C.G.A. § 45-9-1 General provisions; disclosure of insurance or indemnification in legal action.
- O.C.G.A. § 45-9-5 Article not waiver of immunity from action or provision of liability insurance protection.
- O.C.G.A. § 45-10-1 *et seq.* Codes of ethics and conflicts of interest.
- O.C.G.A. § 45-11-1 *et seq.* Miscellaneous offenses concerning public officers and employees.
- O.C.G.A. § 45-18-1 *et seq.* Employees' insurance and benefits plan.

O.C.G.A. § 45-19-2 Public employees not to promote, participate in, or encourage strikes.
O.C.G.A. § 45-19-20 *et seq.* Fair Employment Practices Act of 1978.
O.C.G.A. § 45-23-4 Suspension or termination of public employee convicted of drug offense.
O.C.G.A. § 45-23-5 Ineligibility for public employment of person convicted of drug offense.
O.C.G.A. § 45-24-1 *et seq.* Governmental Reorganization and Termination from Employment Reform.

Title 50

O.C.G.A. § 50-1-1 Agency mailing lists; updating; restriction on mailing materials to officials no longer in office.
O.C.G.A. § 50-1-4 Employment position to remain open upon granting of involuntary separation benefits by state agency.
O.C.G.A. § 50-1-5 Meetings by teleconference or other similar means.
O.C.G.A. § 50-18-70 Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access; electronic access to records.
O.C.G.A. § 50-18-71 Right of access to make photographs and reproductions.
O.C.G.A. § 50-18-71.1 Approval of judge required for inspection of trial exhibits; reproduction of exhibits.
O.C.G.A. § 50-18-71.2 Estimate of copying fees as condition of assessment.
O.C.G.A. § 50-18-72 When public disclosure not required; disclosure of exempting legal authority.
O.C.G.A. § 50-18-73 Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.
O.C.G.A. § 50-18-74 Penalty for violations; procedure for commencement of prosecution.
O.C.G.A. § 50-18-90 *et seq.* Georgia Records Act.
O.C.G.A. § 50-18-102 Records as public property; disposing of records other than by approved retention schedule as misdemeanor; person acting under article not liable.
O.C.G.A. § 50-19-9 Penalty for violation of provisions relating to purchase or use of automobiles.
O.C.G.A. § 50-20-3 Requirements from nonprofit contractors; audits; political activities.
O.C.G.A. § 50-20-5 State organizations required to report to state auditor.
O.C.G.A. § 50-21-1 Waiver of sovereign immunity as to actions *ex contractu* for breach of written contract to which state is party; venue.
O.C.G.A. § 50-21-20 *et seq.* State Tort Claims.

Section 3 **State Merit System Rules**

O.C.G.A. § 17-12-27 (g) provides that all full-time state-paid employees of the office of the circuit public defender shall be state employees in the unclassified service of the State Merit System of Personnel Administration. Because circuit public defender employees are under the Merit System, the Merit System rules applicable to unclassified employees apply. These rules can be found on the Merit System website at <http://www.gms.state.ga.us/agency/services/rules.asp>.

The State Merit policies can be found at <http://www.gms.state.ga.us/agency/services/gmspolicies.asp>.

Section 4 **Employee Retirement System Regulations**

Employees of the Georgia Public Defender Standards Council and circuit defender offices are covered by the Employees Retirement System of Georgia and its rules. For more information please check <http://www.ersga.org>.

Section 5 **Administrative Office of the Court Policies**

The Administrative Office of the Courts handles the payroll for the circuit public defender offices and administers some of the contracts with the counties. The AOC has policies and procedures that it requires contractors to follow. For more information on the AOC, please check out <http://www.georgiacourts.org/aoc>.

Additional links:

Accounting Policies and Procedures:

<http://www.audits.state.ga.us/internet/sgd/apmanual.html>

Statewide Travel Regulations

<http://www.audits.state.ga.us/internet/nalgad/trvlpg.html>

Section 6 **State Bar of Georgia Ethical Standards**

Attorneys who work for the Standards Council are subject to State Bar ethical requirements.

If during the transition to the new system a circuit public defender encounters a case of abandonment of a client by a lawyer, the matter will be referred to the State Bar for appropriate disciplinary action under Rules 1.3 and 1.16 of the Rules of Professional Conduct.

For more information on the State Bar, please check out <http://www.gabar.org>.