

Providers,

I wanted to send out a few points of clarification to you, as I have been asked about these on a number of occasions. Please let me know if you have any questions. Thanks for all you do.

Tolling:

In reference to Sentinel v Anderson: As of July 1, 2015, OCGA 42-8-105 sets forth the reasons why a misdemeanor probated sentence may be tolled and the procedure required to be followed in order to obtain a tolling order. With such a statute in place we will audit according to such law. Please refer to the attached letterhead.

Governing Authority signature:

OCGA §42-8-101(a)(1) requires that an actual final contract for the provision of private probation services, that has been negotiated by a chief judge be approved by the governing authority of the county in order for the contract to be a valid and legally enforceable. The statute further requires that the governing authority's approval be attached to the contract as an exhibit thereto. Whether this statutory provision requires governing authority approval for any subsequent amendments to or extensions of the contract is neither addressed in the statute or court decisions interpreting the statute. However, given the potentially significant legal risks associated with a court finding that an attempted contract amendment or extension is legally void and unenforceable the following guidelines shall be followed:

1. If the original contract **specifically** permits for the contract to be amended or extended by the chief judge without further approval of the governing authority then no additional approval from the governing authority need be obtained; and
2. If the original contract is silent on whether further governing authority approval is necessary in order to amend or extend the contract then approval of the amendment or extension must be obtained from the governing authority and the approval must be attached as an exhibit to the amendment or extension."

Pay Only:

42-8-103. Pay-only probation

(a) As used in this Code section, the term "pay-only probation" means a defendant has been placed under probation supervision solely because such defendant is unable to pay the court imposed fines and statutory surcharges when such defendant's sentence is imposed. Such term shall not include circumstances when restitution has been imposed or other probation services are deemed appropriate by the court.

(b) When pay-only probation is imposed, the probation supervision fees shall be capped so as not to exceed three months of ordinary probation supervision fees notwithstanding the number of cases for which a fine and statutory surcharge were imposed or that the defendant was sentenced to serve consecutive sentences; provided, however, that collection of any probation supervision fee shall terminate as soon as all court imposed fines and statutory surcharges are paid in full.

(c) If pay-only probation is subsequently converted to a sentence that requires community service, on petition by a probation officer or private probation officer and with the probationer having an opportunity for a hearing, the court may reinstate probation supervision fees as necessary to monitor the probationer's compliance with community service obligations.

NOTE: Best practice for the provider would be to find out the intention of the Judge and have supporting documentation to prove such intention. If there is no clarification, and the sentence meets the above definition, we will audit as a pay only case.

--

Barbara Neville

Director of Misdemeanor Probation Oversight

[\(404\)558-0180](tel:(404)558-0180)

Department of Community Supervision