



# TEXAS JUDICIAL COUNCIL

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CHAIR:  
HON. WALLACE B. JEFFERSON  
Chief Justice, Supreme Court

EXECUTIVE DIRECTOR:  
CARL REYNOLDS

VICE CHAIR:  
HON. SHARON KELLER  
Presiding Judge, Court of Criminal Appeals

## TEXAS JUDICIAL COUNCIL

### MINUTES OF MEETING

**March 07, 2008**  
**10:00 a.m.**

**SUPREME COURT COURTROOM**  
**201 W. 14<sup>th</sup> Street**  
**Austin, Texas**

### COMMENCEMENT OF MEETING

On March 7, 2008, Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 10:00 a.m. in the Supreme Court in Austin, Texas.

### ATTENDANCE OF MEMBERS

Carl Reynolds of the Office of Court Administration (OCA) called the roll. The following members of the Council were present:

*Hon. Sharon Keller, Presiding Judge, Court of Criminal Appeals*  
*Mr. Richard Battle, Vice-President of Sales, KeyTrak, College Station*  
*Mr. Joseph Callier, Attorney, Callier & Garza, Houston*  
*Hon. F. Alfonso Charles, Judge, County Court at Law No. 2, Gregg County*  
*Hon. Beatriz Q. Gonzalez, Justice of the Peace, Precinct 3, Victoria County*  
*Hon. Monica A. Gonzalez, Judge, San Antonio Municipal Court*  
*Hon. Kelly Moore, Judge, 121<sup>st</sup> Judicial District, Brownfield*  
*Hon. Orlanda Naranjo, Judge, 419<sup>th</sup> Judicial District, Travis County*  
*Hon. Glenn D. Phillips, Presiding Judge City of Kilgore*  
*Hon. Polly Spencer, Judge, Probate Court #1, Bexar County*  
*Hon. Linda Thomas, Chief Justice, 5<sup>th</sup> Court of Appeals, Dallas*

Additionally present was Alice McAfee, General Counsel for the Supreme Court of Texas. Other members not in attendance were Senators Robert Duncan and Jeff Wentworth, Representative Will Hartnett and Representative Todd Smith, Ms. Keely Appleton, Mr. Lance Byrd, Associate Judge Delia Martinez Carian, Judge Russ Casey, Ms. Ann Manning, and Chief Justice Sherry Radack.

### INTRODUCTION OF NEW MEMBERS

Chief Justice Jefferson discussed the role of the Judicial Council and its work with the OCA as well as its use as a clearinghouse for identifying legislative issues for the judiciary. He then welcomed new members Mr. Richard Battle and Ms. Keely Appleton.

### **Task Force on Indigent Defense**

Mr. Jim Bethke introduced the Task Force's new intern, Tina Smutterer. Ms. Smutterer is studying law in Germany and is working on a comparative analysis of the Texas indigent defense system compared to the German indigent defense system. He then referred to last year's [Annual Report](#) which chronicles the work of the Task Force and initiatives on the horizon and encouraged the Council to review it. Lastly, Mr. Bethke alerted the Council to a case that is currently before the Supreme Court of the United States that may have a large impact on Texas and directly relates to the work of the Task Force. The case is [Rothgary vs. Gillespie County](#), Texas and will look at when the right to counsel attaches under the Sixth Amendment. He included a one page summary with a link to the briefs. He also noted that the brief by the Brennan Center for the Justice at NYU School of Law, a NAACP legal defense the National Legal Aid and Defender Association cited a number of the Task Force's studies. When asked who was representing the counties, Mr. Bethke stated that he was not sure but he did know that Ted Cruz, Solicitor General, had requested for time to argue on behalf of the State.

Judge Keller noted the upcoming Task Force strategic planning meeting. One of the issues to discuss will be the \$7 million dollar funding increase from the legislature and how to utilize it. Mr. Bethke credited Senators Ellis and Duncan as largely responsible for the funding. He added that Representative Peña, who is also a member of the Task Force, was involved as well.

### **Weighted Caseload Study**

Ms. Mary Cowherd stated that on February 22 the [Judicial Needs Assessment](#) Committee (JNAC) met to evaluate the preliminary case weights that were developed by the [National Center for State Courts](#) (NCSC) for reasonableness and to offer input. Brian Ostrom, Principal Research Consultant at NCSC, presented the preliminary results to the Committee. OCA is currently working with NCSC to do a final review and verification of the accuracy of the filings and census data.

Preliminary results indicate that judges are working hard and the state overall needs more district courts. She stressed that until the final data cleaning process is completed and all necessary adjustments are made to the case weights, the final number of additional district court judges needed cannot be calculated. Another major result of the study is that urban judges who serve one county are able to spend 30 more minutes on case-related activity per day than district judges who serve multiple counties. This is due to the travel involved in serving multiple counties. The study also confirmed the complexity of the state's court system.

The study was originally to be completed by March 31; however, because of the complexity of our court system, time study weighting issues, filings data issues, and other matters, the analysis phase of the project took an additional two months longer than was anticipated. OCA applied for an extension of the grant period in February, and a three-month extension was received from the State Justice Institute. The project must now be completed by June 30. NCSC will prepare a draft final report,

which will be submitted to JNAC for review and comment. The NCSC hopes to have the final report completed and approved by the end of May.

Chief Justice Thomas asked if there were any controversial items the Council needed to be aware of. Mr. Reynolds responded that in some counties, the preliminary study results indicated that a negative (fewer) number of judges were needed instead of a positive (greater) number. But that does not mean those counties are “overjudged.” Rather, in those counties with a positive number, additional judges will allow all the judges to spend more time on their cases and thereby provide higher quality case resolution. He said that the study results also indicate that Harris County needs many more judges, but that individuals in Harris County do not think they need all the additional judges. Harris County may be an outlier that the model cannot adequately explain. OCA and the NCSC need to determine whether Harris County has efficiencies that lessen their need for as many additional judges as the results indicate.

Mr. Callier noted that on the civil side of the docket in Harris County that it may seem there is some excess capacity and that the family law and criminal dockets probably do need more capacity. He hoped if the Council was to take a position that it would opt towards shifting capacities to the extent security resources were available when civil judges hear criminal matters.

Chief Justice Jefferson added that one of the measures of the study was to ask the judges how much time was spent per case. The question not posed was: How much time should a judge spend on each case? He said the next phase of the study is designed to look at what is the appropriate amount of time that should be spent on cases. He said that a case can be made to the Legislature this is what judges are doing, but we need more resources or judge time for important cases. He also said that the study reflects we need fewer judges in certain multiple county areas, but Texas has concluded we need at least one judge per county. Finally, he said that the NCSC has done this study in other states; and he thought the Legislature in each of those states did not reduce the number of judges as a result of the study, they only added judges.

Mr. Reynolds added that the information could be used to address redistricting issues.

When asked when the second phase would begin, Mr. Reynolds stated that funding was still needed.

### **Repaying Debts Project**

Mr. Reynolds briefed the Council on the Repaying Debts Project which has to do with the financial aspect of the re-entry issue prominent in criminal justice. OCA is working in collaboration with the Justice Center at the Council of State Governments (CSG). CSG is a national, non-profit organization that attempts to unite all three branches of state government. The Justice Center is headed by Michael Thompson. The Center is focused on using evidence of collaboration to produce better public safety results.

The project surrounds offenders upon their re-entry into society and their financial burdens encountered during incarceration. The paradigm is about the ability of the system to collect as much

as possible without making the person fail while on supervision and to make sure that other obligations are met such as child support which is a federal priority or victim restitution.

The plan is to come up with a balanced approach to address the various financial needs from a limited resource. Goals are to ensure that victims and children are getting the money they deserve and to try to facilitate the success for the re-entering population.

Mr. Reynolds added that he has been in Idaho assisting as they kick-off the project in their state and noted the advantages they have in having a unified court system.

He then referred to the success of OCA's mandated Collection Improvement Program which imports private sector collections methods into a court setting. Chief Justice Jefferson asked about the licensing component that would prevent someone from obtaining a license if there were an imposed unpaid fine and Mr. Reynolds referenced the statute called the Scoff Law and said there were some pieces established like that but said the program was not fully there yet.

Dr. Tony Fabelo, the Research Director for the Center and a former colleague of Mr. Reynolds saw Mr. Reynolds' Collections Edition of CourTex and contacted him regarding the project. A Committee was established with OCA staff, members of CSG and staff from the Texas Department of Criminal Justice and Office of Attorney General. Some of the OCA staff recently met with Dr. Fabelo and decided to 1) focus the legislature's attention on the incoherence of policy in this arena, 2) do an empirical study of the actual financial obligations of this population, and 3) to conceptualize the project into a framework that will bring more coherence to policy.

Challenges faced are sentencing and whether or not a judge can tell if the defendant has financial obligations, something that may be addressed with the Automated Registry Project. Finally, they must remain aware of the return on investment issue.

Some members expressed their concern for priorities of the project and commented that if efforts do not include review of the rehabilitative activities that should occur then the project may not work. Mr. Reynolds stated that both the Senate Criminal Justice Committee and the House Crisis Committee have charged to look at re-entry and a more global set of issues around it and to see how the system is working.

Judge Phillips asked if the program would address whether financial issues had an impact on recidivism and Mr. Reynolds said that it was a correlation they would be looking for.

Questions turned to information available to judges upon sentencing and Mr. Reynolds again referred to the automated registry project.

To assure the Council that earlier concerns were being addressed, Judge Keller added that the Justice Center also has a Re-Entry Policy Council that works on larger issues. She also mentioned that

OCA's Collection Improvement Program had received a national award for a certain project a few years ago.

## **MINUTES OF PREVIOUS MEETING**

Once established that a quorum had been reached, Chief Justice Jefferson called for a motion of approval for the minutes of the December 7 Council meeting. After a proper motion and vote, the minutes were approved as presented.

## **JUDICIAL IOLTA ACCOUNTS**

Chief Justice Jefferson reminded the Council that in 1984, Chief Justice Jack Pope, the Court established an Interest on Lawyer's Trust Accounts (IOLTA) program. Interest in the account is dedicated to helping non-profit organizations that provide legal services to the poor. Funds are administered by Texas Equal Access to Justice Foundation.

Last fall, Chief Justice Jefferson had an idea that judges' campaign accounts and officeholder accounts could also be used in a similar effort. The account would be called the Judicial Interest on Campaign and Officeholder Accounts (JICOA) and the interest gained would be collected and paid to the Equal Access to Justice Foundation fund civil legal services. The Foundation has expressed its support (*Attachment A*). He stated that participation would be completely voluntary and should apply to judges only. He noted that the attached draft for legislation makes it mandatory.

Chief Justice Jefferson submitted the proposal to the Council for discussion and a potential motion. Chief Justice Thomas supported the proposal and added that she was assured there would be no additional reporting due to participation. She then stated that making it a pilot project as Chief Jefferson suggested would help in addressing concerns for an IRS exemption.

After discussion and a proper vote, the motion to carry out the project and submit to the Legislative Committee was approved.

## **REPORTS**

### ***Committee on Judicial Data Management***

Ms. Cowherd briefed the Council on the last meeting when Judge Sharolyn Wood reviewed the proposed changes to the monthly case activity reports for the district courts and the county-level courts and stated that the Council had approved those changes for publication in the *Texas Register*. Since that meeting, OCA rethought the process and decided that rule text is what should be published, with the proposed forms and instructions posted on the OCA website for comment as well. A copy of the proposed rules was provided to the Council.

Ms. Cowherd reported that a letter had been sent to stakeholders to notify them of the proposed changes and to request comments. The letter also advised that the Council would be meeting this day to consider and likely adopt for publication in the *Texas Register* the proposed new rules.

The expected implementation date for the changes is currently September 1, 2009. She reported that Mr. Bruce Hermes, OCA Information Services Director, advised that date may be problematic. Mr. Hermes prepared an outline of the steps necessary to implement the reporting changes in a chart. That chart indicates that a 2010 deadline may be more realistic.

She noted that clerks are discussing whether to seek a reporting fee of \$5.00 per case to help defray the cost of the software changes and additional staff the clerks think are needed due to the reporting changes.

Ms. Cowherd requested approval of a motion to give notice of the Judicial Council's intention to repeal the existing reporting rules and adopt the proposed new reporting rules by filing notice with the secretary of state for publication in the *Texas Register*.

Mr. Reynolds suggested leaving the expected implementation date at 2009 until another meeting when the Council adopts a final proposal and to anticipate making a change at that time. He also noted that the biggest change to reporting was in family law. Chief Justice Thomas reiterated that the changes made were to more accurately reflect the work of the courts.

Ms. Cowherd mentioned that a workgroup would be meeting to review the justice and municipal courts data and follow the same process used for the review of the district and county court data. Mr. Reynolds noted that Chief Justice Jefferson would appoint a chair to head the Committee on Judicial Data Management since Judge Wood's term on the Council expired.

With a proper motion and vote, the motion was approved.

Ms. Cowherd presented for action a resolution recognizing all those who served on the project to review and recommend changes to the monthly case activity reports for the district and county-level courts. With no discussion, a vote was taken and the resolution was approved unanimously.

### **CONFERENCE OF CHIEF JUSTICES RESOLUTIONS**

Chief Justice Jefferson reviewed and commented on the recent resolutions that were approved at the Conference of Chief Justices (CCJ). He stated that the Conference would like for each state to adopt the resolutions.

Concerning the resolution regarding adoption of rules on temporary practice by foreign lawyers, Chief Justice Jefferson noted that he will discuss the issue of civil jurisdiction in Mexico with the International Section of the State Bar and will report back to the Court.

### **NEW BUSINESS**

Chief Justice Jefferson discussed the current scrutiny of the Court's travel expenditures in relation to the perception of transparency to the public. He asked for the Council's assistance to enhance public confidence in the judiciary.

The Judicial Campaign Finance Regulations are in the Texas Ethics Code and the Ethics Commission adopts rules to provide accountability in the reporting of campaign expenditures for judicial candidates and judicial officeholders. The Election Code requires and expenditure exceeding \$50 must include the dates, names and addresses of the persons to whom the expenditures are made. However, the Ethics Commission does not currently require detail in the purpose/description of the trip. Chief Jefferson suggested more detail be required for greater transparency. He did add that reporting who a candidate is seeing while campaigning should not need to be reported as this may expose political strategy.

He asked the Council to investigate whether more transparency in terms of reporting travel expense would be beneficial for Texas or not.

After members expressed their concerns and support for reporting changes, Chief Justice Jefferson asked for a motion that the Council move forward with suggesting rules or statutory changes that would provide greater transparency for judicial travel. He also asked Judge Kelly Moore to take on the task if the motion were to pass.

After a proper motion and vote, the action was approved. Judge Moore agreed to look into the issue.

Chief Justice Thomas requested the status on the Compensation Commission and was told that the governor's office has all but one member selected.

She then advised the Council of the Legislative Committee members who are Judge Charles, Judge Moore, Judge Spencer and Judge Monica Gonzalez and that they would be meeting upon adjournment of the Council.

Judge Spencer commented that she will be meeting with Judge Monica Gonzalez and Margaret Bennett, OCA General Counsel, in April to discuss the issue of rules for removal or retirement of judges that are used by the Judicial Conduct Commission stating.

Chief Justice Jefferson introduced Alice McAfee as the new General Counsel for the Court.

#### **NEXT MEETING**

Mr. Reynolds will be in contact with members concerning a date for the next meeting.

#### **ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at approximately 11:45 a.m.

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Wallace B. Jefferson  
Chair