



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

May 1, 2007
1:30 p.m.

SUPREME COURT COURTROOM
201 W. 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

On May 1, 2007, Presiding Judge Kelly Moore called the meeting of the Texas Judicial Council (Council) to order at approximately 1:47 p.m. in the Supreme Court Courtroom in Austin, Texas. Judge Moore advised the Council that Chief Justice Jefferson and Judge Keller were unable to attend and that both had expressed their regrets and thanked the members for their work.

Judge Moore announced that St. Mary's University School of Law has recently begun webcasting of Supreme Court of Texas oral arguments and would also be broadcasting this meeting live via the internet. He introduced Professor David Schlueter and his wife Linda from St. Mary's School of Law and recognized him for his involvement in the project. Judge Moore then mentioned that the general public would also have an opportunity to send in questions and comments to an email address during the meeting.

ATTENDANCE OF MEMBERS

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

Mr. Joseph A. Callier, Attorney at Law, Callier & Garza, Houston
Ms. Delia Martinez-Carian, Associate Judge, Title IV-D, Court #20, Bexar County
Hon. Allen C. Gilbert, Judge, Municipal Court, San Angelo
Hon. Beatriz Q. Gonzalez, Justice of the Peace, Precinct 3, Victoria County
Hon. Melissa Goodwin, Justice of the Peace Pct. 3, Travis County
Deacon Jose Luis Lopez, Executive Director, Housing Authority of Crystal City, San Antonio
Ms. Ann Manning, Underwood, Wilson, Berry, Stein & Johnson, Attorney at Law, Lubbock
Hon. Orlanda Naranjo, Judge, 419th Judicial District, Travis County
Hon. Kelly Moore, Judge, 121st Judicial District, Brownfield
Hon. Sherry Radack, Chief Justice, 1st Court of Appeals, Houston

*Hon. Linda Thomas, Chief Justice, 5th Court of Appeals, Dallas
Hon. Sharolyn P. Wood, Judge, 127th Judicial District, Harris County*

Additionally present was Lisa Hobbs, 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, Judge Glenn D. Phillips, Judge Polly Spencer, Willie Jean Birmingham and Lance Byrd.

MINUTES OF PREVIOUS MEETING

Upon proper motion and vote, the minutes of the January 26, 2007, Council meeting were reviewed and adopted.

REPORTS

Task Force on Indigent Defense

Jim Bethke, Director of the Task Force on Indigent Defense (TFID) provided a brief update on Task Force projects and legislation. One project of interest is a report nearing publication, *Determining Indigence and the Cost Effectiveness of Verification*, which researched Tarrant, Van Zandt, Collin and Denton counties and may be used as a reference and as a toolkit by counties for determining indigency. Another project near completion is *Indigent Defense - Juvenile Justice* which is a booklet for juvenile court judges, defense lawyers and parents that discusses the rights and responsibilities of appointment if a child is unable to secure counsel. This should be available early to mid-summer. A study about to begin that received tentative approval from the Board concerns mental health public defenders that will observe whether or not an attorney who is specially trained in mental health procedures makes a difference in representation.

Mr. Bethke also told the Council that the TFID Grants and Reporting Committee will be reviewing three applications for discretionary grants at its upcoming meeting. One received from Galveston County is for an Indigent Defense Resource Center, another from Bowie County is for a Public Defender Office which will also handle Red River County. This would be a full office handling felonies and misdemeanors. Finally, its largest proposal ever, the Committee will be reviewing a grant to set up a super-regional death penalty public defender office in the state of Texas that would handle 85 counties and has received wide public, judicial and legislative support. Judge Moore was active in the work on this along with David Slayton, the court administrator in Lubbock.

Ms. Manning noted that Mr. Slayton had been selected by a group of his peers nationally to speak to the United States Supreme Court on May 11, 2007. Mr. Reynolds has a letter of recognition to present to him at the next Council meeting.

Judicial Data Management Committee

Judge Wood reported on the meeting of the Judicial Data Management Committee, which was held earlier in the day. At that meeting, the Committee reviewed the work done by the OCA judicial data workgroups over the past 15 months. She explained how the proposed monthly reporting forms for the district courts, county courts at law, and constitutional county courts were developed. She reviewed the proposed changes with the Council, noting that the proposals were still working

documents and changes had been made as recently as that morning. She then requested preliminary approval from the Council to adopt the policy issues outlined in her report so that the Committee can move forward with writing detailed instructions for the proposed monthly reports. Judge Wood stated that the Committee intends to continue to refine the proposed monthly reports.

Judge Wood also brought forth an additional item for approval by the Council: to allow the Committee to determine if the appointments and fees report mandated by the Supreme Court can be incorporated into the unified reporting system. She indicated that the Committee received a request from the statutory probate judges that morning to modify the report.

Judge Wood said that with the preliminary approval of the proposed monthly reports and case categories, the Committee will continue to work on the development of case cover sheets to assist the clerks on how to categorize cases. When the Committee's next report is presented to the Council in the fall, the Committee hopes to have the reporting documents finalized, and the instructions and case cover sheets completed. The end products will be published in the Texas Register.

Chief Justice Thomas made a motion that the Council approve the policy issues and matters that have been adopted by the Committee. Chief Justice Raddack seconded the motion.

Mr. Reynolds noted OCA's work with the Supreme Court Task Force on Child Protection Case Management and Reporting. The Task Force is considering the collection of very detailed CPS data in the distant future. In the meantime, the Task Force has asked district clerks in the larger counties to report six CPS case data elements. He asked if those six data elements are included in the proposed monthly reports. Angela Garcia, Director of Judicial Information at OCA, explained that the proposed monthly reports are focused on filings and dispositions and that the clerks are not able to report all six data elements, particularly hearings information.

Judge Wood added that the goal for implementation of the revised monthly reports is September 1, 2008.

Judge Gilbert asked Mr. Reynolds if the justice of the peace courts and the municipal courts should also have their reporting process reviewed by the Committee. Ms. Cowherd said that they would be looked at next.

Mr. Reynolds relayed a question received earlier from a viewer of the current webcast. The viewer asked where commitment proceedings were captured in the reporting. Mr. Reynolds said that question had been answered previously when discussing the probate section and that the answer was the probate section.

He then read an online comment received from Ted Wood, OCA Assistant General Counsel, regarding jury fees paid and the value of keeping that statistic, as the legislature often asks for information regarding how much money will be generated if a fee is increased. Judge Wood agreed to put the "jury fee paid" data element back into the report.

Judge Moore asked for clarification of the motion. Chief Justice Thomas restated that the motion is to approve the policy issues and matters that have been adopted by the Committee, and that Judge Wood had a second request regarding the appointments and fees report. Judge Wood explained that the request to have the Committee look at merging the appointments and fees report into the monthly reports was part of the policy issues and matters that the Committee wanted approved by the Council. Chief Justice Thomas stated that she would like to take it up separately. Judge Wood agreed that it could be taken up separately.

The original motion, excluding the appointments and fees report, was voted upon and carried as presented.

Chief Justice Thomas then asked Judge Wood about the Committee's request to examine, improve, or change the appointments and fees report mandated by the Supreme Court. Chief Justice Thomas wanted to make sure that this had been discussed with the Supreme Court. Judge Wood said that she spoke to Justice Nathan Hecht and that he said the Committee could review the report and make recommendations for changes. After further discussion, Chief Justice Thomas made a motion for the Council to authorize the Committee to look at the issues of the appointments and fees as they relate to the probate courts and make a recommendation based on the findings. With a proper motion and vote, the motion carried.

Judge Naranjo was not in the room at the time of the votes but asked that the record reflect she supports both motions.

Weighted Caseload Study

Ms. Cowherd reviewed the purpose of the weighted caseload study and discussed the first meeting held by the Judicial Needs Assessment Committee (JNAC) on February 23, 2007. She noted that JNAC's role is to provide oversight and guidance to the weighted caseload study. JNAC is comprised of 13 district judges, two county court at law judges, one child protection associate judge, two district court administrators and one county court administrator. At the meeting, National Center for State Courts (NCSC) staff presented considerable information on the purpose of a weighted caseload study and the one-month time study that would be conducted. During the time study, judges will report the amount of time they spend on case-related and non-case-related activities.

She explained that items discussed during that meeting were whether county courts at law would be included; the use of visiting judges, associate judges, magistrates and other judicial officers; the selection of the counties and courts that would be asked to participate; the case type and case categories that would be included; when the time study should be conducted; and what training would be provided to the judges who agreed to participate in the study.

At the meeting, JNAC made recommendations as to which counties and courts to include in the study and recommended that the county courts at law be included in the study.

After the meeting, NCSC and OCA staff met to develop a proposed sample of the counties and courts to be included in the study based on the recommendations of JNAC. They also developed a proposed list of case type categories that would be included in the study. After much consideration, a decision was made to recommend that the county courts at law not be included in the study. The decision was based on several factors, which were discussed by Ms. Cowherd.

Next, Ms. Cowherd noted that the time study is not intended to describe in detail all activities performed by the district courts; however, every type of case and activity and the related workload time will be accounted for in a more general sense through the proposed 21 case type categories and the proposed four case event categories. The case event categories will be referred to as preliminary matters or pre-trial activities, non-trial dispositions, trial, and post-judgment activities.

On another note, Ms. Cowherd relayed that there were concerns from judges regarding how results from the study will be used. Specifically, OCA has heard concerns about the anonymity of the data that is reported. She told the Council that the workload study is based on aggregate data, not data specific to individual courts. She discussed what steps would be taken to help ensure the anonymity of the data reported. Also, she said that the second big concern expressed by judges has been that the study results will be used for redistricting purposes. Ms. Cowherd explained that while the study provides an objective method to determine the need for new district courts, the information could be used for redistricting purposes.

Ms. Cowherd reported that on March 30, 2007, a letter was sent to 310 judges in the sample group asking if they would like to participate in the time study, which was planned for May 2007. Ms. Cowherd said that after the letter was sent, several JNAC members expressed concern that the time study felt rushed and more time was needed to fully address various concerns and issues. After consultation with JNAC, Chief Justice Jefferson and NCSC, the time study was postponed until September/October 2007. She noted that the original project timeline was very compressed due to funding issues. OCA was able to secure extensions from the State Justice Institute and the Court Improvement Project, which are providing grant funding for the project. The completion date for the project was extended from December 31, 2007 to March 31, 2008.

She told the Council that JNAC will meet on May 18, 2007, the meeting will be webcast, and judges will be able to email questions concerning the study during the meeting. She also told the Council that OCA will post information about the study on its website and that she spoke with Judge Barbara Walther about getting the study on the agenda of the Annual Judicial Conference in September 2007.

Judge Naranjo added to Ms. Cowherd's comment about the rushed timeline, stating as a member of JNAC that the Committee wanted to give judges more time to think about the study and whether it would accurately capture the work of the courts. JNAC also believed there would be a decrease of activity in the summer and that the fall would be a more accurate reflection of activity. She noted that the study came at a time when there are bills in the legislature that some judges are concerned about; and those judges believe that the data collected in the study would be used to the detriment of the judiciary.

Judge Moore asked that the webcast information be provided to the regional presiding judges so that they could reinforce it.

Ms. Cowherd stated that Judge Walther would assist to get notice about the webcast out to judges through the Texas Center for the Judiciary as well.

LEGISLATIVE ISSUES

Mr. Reynolds highlighted the status of Judicial Council legislative resolutions for the Council, noting the status of HB 1380, HB 2506, SB 1519, HB 3199, SB 1298, SB 600, HB 1909, SB 885, SB 505, SB 506, and SB 507. Mr. Reynolds also explained where additional OCA bills were in the legislative process.

Then, Jim Bethke, gave a brief overview of the status of Indigent Defense bills HB 1265, SB 528, HB 1266, SB 159, HB 1267, SB 1557, HB 3636, SB 168 and HB 1406 for the Council.

Mrs. Hobbs asked Mr. Bethke to discuss SB 263 regarding the creation of a Texas Innocence Commission. He explained the difference between the Commission and the Texas Innocence Project, noting that it is currently in House Jurisprudence after passing out of the Senate rather quickly. However he noted that the prosecutors are not in favor of it. He also mentioned SB 1655, which would set up the State Capitol Writs Office, bringing Texas in alignment with other major jurisdictions across the country.

Next, Ms. Hobbs noted other legislation not proposed or discussed by the Council but related to the judiciary. Bills mentioned were SB 496, SB 560, SB 618, SB 699, SB 749, SB 1204, SB 1300, SB 1411, SB 1430, SB 1556, SB 1705, SB 1782, HB 1750 and HJR 36.

Mr. Reynolds added that OCA sends a weekly legislative report to the presiding judges and offered to include the Council in that distribution.

OTHER BUSINESS/NEXT MEETING

Judge Moore noted that the next meeting would be scheduled possibly in September.

ADJOURN

There being no further business before the Council, the meeting was adjourned at approximately 3:40 p.m.

Wallace B. Jefferson
Chair