



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 21, 2009
10:00 a.m.

TEXAS ASSOCIATION OF COUNTIES
1210 San Antonio, 4th Floor
AUSTIN, TEXAS

COMMENCEMENT OF MEETING

On May 21, 2009, Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 10:10 a.m. at the Texas Association of Counties Boardroom in Austin, Texas.

The following members of the Council were present:

Hon. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas
Hon. Sharon Keller, Presiding Judge, Court of Criminal Appeals
Hon. F. Alfonso Charles, Judge, County Court at Law No. 2, Gregg County
Mr. Fred E. Davis, Attorney & Mediator, Austin
Mr. Richard Figueroa, UBS Advisory & Brokerage Services, Houston
Hon. Monica Gonzalez, Judge, San Antonio Municipal Court
Hon. Kelly Moore, Judge, 121st Judicial District, Terry and Yoakum Counties
Hon. Orlinda Naranjo, Judge, 419th Judicial District, Travis County
Mr. Henry Nuss, Welder Leshin, Corpus Christi
Hon. Glenn D. Phillips, Presiding Judge, City of Kilgore
Hon. Sherry Radack, Chief Justice, 1st Court of Appeals, Houston
Hon. Polly Spencer, Judge, Probate Court #1, Bexar County

Additionally present was Alice McAfee, General Counsel for the Supreme Court of Texas (SCOT). Members not in attendance were Ms. Keely Appleton, Mr. Richard Battle, Judge Russell Casey, Senator Robert Duncan, Ms. Allyson Ho, Representative Todd Hunter, Judge Valencia Nash, Representative Todd Smith, Chief Justice Linda Thomas and Senator Jeff Wentworth. Judge Moore and Mr. Nuss attended via conference call.

REPORTS AND ACTION ITEMS

Task Force on Indigent Defense (TFID)

Judge Keller reported that the Grants and Reporting Committee met and discussed discretionary grants that will be recommended to the full Task Force at its June 10 meeting. The largest grant recommendation adopted by the Committee was regarding a Mental Health Public Defenders Office in Fort Bend.

Mr. Bethke discussed the report made by the National Right to Counsel Committee (NRCC) on the state of indigent defense in the nation (*Justice Denied: America's Continual Neglect of Our Constitutional Right to Counsel*) noting that in a self-assessment, Texas reported favorably overall having made significant progress with room for more improvement. He added that no other state had initiated a self-assessment in response to the report and the NRCC was appreciative of the work.

He then reported on Task Force legislation with news that all initiatives presented have either been signed by the governor or are currently in calendars. Additionally, with appropriations received, the Task Force plans to increase their staff by three Full-Time Equivalents (FTEs).

Chief Justice Jefferson asked for clarification on the status of each bill. Mr. Bethke responded that SB 625 relating to the representation of indigent defendants in criminal cases was in calendar committee, HB 2058 relating to the standards for attorneys representing indigent defendants in capital cases had been signed by the governor on 5-13-2009, SB 1710 relating to the creation of independent assigned counsel programs was also in calendars, SB 1091 relating to the establishment of the capital writs committee and the office of capital writs and to the appointment and compensation of certain counsel for indigent defendants in a capital case has passed both chambers and is in conference committee. He added that SB 2167 relating to the repeal of the indigent defense representation fund had been rolled into SB 625.

Chief Justice Jefferson also asked for the status of compensation for the wrongly convicted. It was reported that HB 1736 relating to compensation of and services to persons wrongfully imprisoned had been sent to the governor. Status of an Innocence Commission, HB 498, and a Reentry Policy Task Force, SB 2280, were also discussed.

Criminal Justice Integrity Unit

Rose Cardona, Program Attorney for the Criminal Justice Integrity Unit (Unit), presented a summary of the four bills of interest to the Unit. All have resulted favorably so far. SB 116 relating to electronically recording certain interrogations and SB 117 relating to photograph and live lineup identification procedures in criminal cases have passed through the House and are on calendars in the Senate with expectation to pass. HB 3594 relating to the preservation of evidence that contains biological material has passed the House and is in the Senate Public Safety Committee. Lastly, SB 1909 relating to the establishment by the Texas Forensic Science Commission of a DNA laboratory audit program has passed both chambers and is in calendars in the House.

81ST TEXAS LEGISLATURE

Judicial Selection

Chief Justice Jefferson noted that judicial selection has received a lot of attention but will be difficult to address due to the various interests involved and with political parties in opposition. He added that dependent upon the outcome of Caperton vs. Massey in the Supreme Court of the United States (SCOTUS), it could require changes in the way states select judges or fund campaigns. He anticipates a decision from SCOTUS by late June.

General Legislation

Gary Kansteiner, OCA Legislative Counsel, advised the Council on upcoming deadlines in the legislative session and general statistical information for the current session.

Legislation Affecting Judges

Judge Alfonso Charles reported that SB 992 relating to the jurisdiction and administration of, and procedures relating to, certain courts in this state, including procedures for appeals, had passed the Senate but its companion HB 3763 had died. HB 692 relating to the jurisdiction of statutory county courts passed the House and has been assigned to Senate Jurisprudence with no hearing set at this time. HB 4061 relating to the consequences of an arrest for or conviction of certain intoxication offenses passed the House and was originally assigned to Transportation and Homeland Security but was sent to Senate Criminal Justice instead. No hearing has been set and Senator Whitmire may want to study the issue in the interim. SB 392 relating to the elimination of straight-party voting for judicial offices passed the State Affairs Committee but at last action had been pulled off of the intent calendar. HB 3689 relating to the functions and continuation of the Texas Youth Commission and the Texas Juvenile Probation Commission and to the functions of the Office of Independent Ombudsman for the Texas Youth Commission passed the House and is currently pending in the Government Organization Committee. SB 320 relating to the qualifications for office of justice of the peace in certain counties was left pending in committee on April 15. HB 4833 relating to the creation of district courts and statutory county courts and to the composition of juvenile boards in certain counties was heard May 20. Mr. Reynolds added that the only issue he knew of regarding HB 4833 was the removal of Midland County but he did not know the outcome of the hearing. Judge Charles then reported that SB 935 relating to authorizing a judge of a municipal court to conduct a marriage ceremony had made it to the governor's desk for signature.

Lastly, Judge Charles discussed the 3.3% pay raise included in the House Appropriations bill, HB 1, for all judges from the Supreme Court down to district courts noting that it is currently in Conference Committee.

Mr. Reynolds commented on additional bills of interest to judges. SB 780, relating to disclosure of the individual vote of each member of the SCOT on a petition for review had died. SB 2038 relating to the construction of nonsubstantive codifications and revisions of statutes has been sent to the governor. Chief Justice Jefferson discussed the issue further stating that it was his opinion that it makes the law less accessible to the people.

Mr. Reynolds continued with HB 1118 relating to the appointment of an administrative judge for drug court programs in this state and noted his concern, also reporting that it had passed through the House and is in Senate Criminal Justice. HB 3595 relating to the provision of drug court programs in this state has also passed the House and is in Senate Criminal Justice.

One bill that would affect OCA, SB 1062 relating to creating an online resource center for individuals handling child abuse and neglect cases, has passed the Senate and may be on the House calendar soon.

He went on to review the status of two bills that were not Council proposals. SB 1651 relating to state indemnification of certain judges and certain judicial appointees is through the Senate and is in House Judiciary Committee. SB 1388 relating to process server certification and the establishment of a certification division within the Office of Court Administration of the Texas Judicial System went through the Senate and is also in House Judiciary. He noted that there has been some opposition by process servers.

SB 2325 relating to the confidentiality of certain information pertaining to the State Commission on Judicial Conduct is pending in Judiciary having made it all the way through the Senate.

He noted that several bills related to judicial readiness in times of emergency are all close to passing. They are HB 1861 relating to the operation and administration of the judiciary in the event of a disaster, HB 4068 relating to the conduct of judicial proceedings and transaction of other essential judicial functions in the event of a disaster, and SB 12 relating to disaster preparedness and emergency management and to certain vehicles used in emergencies; providing a penalty. Chief Justice Jefferson stated that the Interim Plan to Ensure Judicial Readiness in Times of Emergency is posted on the website and the next step will be to finalize the report, hopefully after session. Providing these bills pass, there should be an additional FTE or funding to help efforts in making this a statewide program.

Judicial Council Legislative Proposals

Mr. Reynolds reported that there are a number of Council bills that could still pass in light of the impending legislative deadlines. SB 497 relating to compensation paid to certain judges and justices is out of Judiciary. It is the companion bill to HB 199 relating to longevity pay for assistant public defenders.

Bills that have died or are close to dying are those relating to the Repaying Debts project, and one that would ease the process of obtaining a concealed handgun license for associate judges. HB 3995, an omnibus bill relating to the operation of the judiciary, has also died.

A bill of importance, SB 1259 relating to the management of certain courts, including the storage of records by the clerks of the supreme court and the courts of appeals and the creation of an appellate

judicial system for the Seventh Court of Appeals District, has passed both houses and is close to going all the way.

HB 199, aforementioned, is doing well. HB 586 relating to the evidence required for the release of a motor vehicle after impoundment of the vehicle for failure to maintain evidence of financial responsibility is dead but its companion bill SB 419 is in committee in the House and still has a chance of survival. HB 588 relating to fees charged by a justice of the peace for certain documents in a criminal case is dead but its companion bill SB 409 is at the governor's desk. The companion bill to HB 600 relating to appeals from small claims courts, SB 408, has passed the House and is in good shape. The House version of SB 1259, HB 1833 relating to the electronic storage of records by the clerks of the Supreme Court and the courts of appeals, is awaiting Senate concurrence in house amendments.

All of the guardianship House bills have died but each of their companion bills is set for local consent or calendar and may pass. They are HB 2047 relating to authorizing a criminal justice agency to disclose certain criminal history record information to the Guardianship Certification Board and offices of the county clerk and companion bill SB 1056, HB 2048 relating to the appointment or removal of guardians of incapacitated persons and companion bill SB 1053, HB 2049 relating to reporting and application requirements regarding certain public and private guardians and companion bill SB 1055, and HB 2050 relating to criminal history record information relating to persons who are certified to provide guardianship services and companion bill SB 1057.

HB 3352 relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check is on Senate intent and looks probable for passage. HB 4464 relating to crime victim information in a criminal judgment is on local in the Senate. SB 333 relating to the retention by a county or municipality of certain court costs for maintaining and supporting a certified breath alcohol testing program has passed all the way. SB 365 relating to the suspension of sentence and deferral of final disposition in certain misdemeanor cases is dead. SB 409 relating to fees charged by a justice of the peace for certain documents in a criminal case has gone to the governor. SB 410 relating to the statute of limitations for a misdemeanor is set on local and consent. SB 411 relating to a restitution lien for the state to secure fines or costs in a misdemeanor case is pending in House Criminal Jurisprudence. SB 412 relating to the placement of a defendant on deferred disposition in a justice or municipal court is dead. SB 413 relating to the prosecution of a Class C misdemeanor offense for which the defendant does not appear, SB 414 relating to conducting by electronic means a hearing to determine a defendant's ability to discharge certain fines and court costs and SB 415 relating to the court in which certain persons charged with misdemeanors punishable by fine only may be arraigned are all recommended for local and consent in the House. SB 416 relating to additional court costs for certain traffic offenses that occur in a municipality has died. SB 419 relating to the evidence required for the release of a motor vehicle after impoundment of the vehicle for failure to maintain evidence of financial responsibility is out of the Senate and has been referred to House Committee on Insurance. SB 420 relating to the performance evaluation criteria for judges employed by a municipality, SB 742 relating to the qualifications to serve as an associate judge or visiting associate judge in certain family law proceedings, SB 1436 relating to the

appeal of a censure issued by the State Commission on Judicial Conduct, SB 1437 relating to the powers of an associate judge in a Title IV-D case, SB 1439 relating to the travel, board, and lodging expenses of a person appointed to assist the State Commission on Judicial Conduct, SB 1440 relating to orders and judgments rendered by associate judges in child support and child protection cases and to the investigation of child abuse and neglect, SB 1441 relating to the terms of the members of the Court Reporters Certification Board and SB 1599 relating to the disclosure of criminal history record information to the Court Reporters Certification Board are all currently pending in House Judiciary. SB 916 relating to exempting certain judicial officers from certain requirements for obtaining or renewing a concealed handgun license and to the authority of certain judicial officers to carry certain weapons and SB 1438 relating to compliance requirements for candidates for judicial office both went nowhere. SB 1866 relating to the collection, dissemination, and correction of certain judicial determinations for a federal firearm background check has its House companion, HB 3352, moving through. SB 2088 relating to state and local court costs and fees associated with criminal cases may turn into an interim study.

Judicial Branch Funding

Chief Justice Jefferson stated that he did not have anything to report other than the need to wait and see what happens with certain legislation but noted that the [Supreme Court of Texas's Legislative Appropriations Request](#) (LAR) was quite successful. He noted that he testified before Senate Finance regarding the crisis facing access to justice programs. In doing so, Senator Ogden asked that a proposal be submitted for funding. Chief Justice Jefferson said that in response to the proposal, they received \$22 million in funding over the biennium.

Next, Judge Keller reported on the [CCA's LAR](#) noting that they had equal success and acknowledged Judge Hervey of the [Court of Criminal Appeals](#) for the work she had done on the LAR regarding pay raises adding that Judge Hervey is not a member of the committee responsible for salary increases but is largely responsible for its success.

Glenna Bowman, Chief Financial Officer at OCA, reported on the intermediate appellate courts.

She also reported on the results of the [OCA LAR](#). Of note were the increasing restrictions on operating budgets. However, the legislature did approve more funding for travel training and lump sum payments. Funding was also received to complete the Texas Appeals Management and E-filing System ([TAMES](#)) project and for the ongoing support of the [Automated Registry](#). Additional funding was also received for the [Child Support Courts Program](#) for a child support docket case management system. Judicial data management and the Judicial Data Emergency Infrastructure (JEDI) are other [technology programs](#) that received some funding.

In addition, the [visiting judge program](#) received requested funding.

Stimulus Funding

Whitney Stark, Grants Administrator for TFID, updated the Council on the stimulus funding as it affects the courts. She addressed allocations of the Justice Assistance Grant (JAG) and the extension deadline for solicitation.

She also advised that the Task Force has applied for a grant under the Byrne Competitive Grant Program for a project titled Regional Defender and Mental Health Training Initiative.

NEW BUSINESS

Without a quorum, no action was taken on items discussed.

NEXT MEETING

Mr. Reynolds will be in contact with members concerning a date for the next meeting. Chief Justice Jefferson said that it would address final legislative actions and begin planning for the next session.

He then asked that the Council work with him in looking at issues on a national scale in light of his 2010 scheduled role as the president of the Conference of Chief Justices.

ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at approximately 11:55 a.m.

Wallace B. Jefferson
Chair