



# 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 23, 2008  
10:30 a.m.

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

#### COMMENCEMENT OF MEETING

On May 23, 2008, Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 10:35 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. Wallace B. Jefferson, Chief Justice, Supreme Court of Texas*  
*Hon. Sharon Keller, Presiding Judge, Court of Criminal Appeals*  
*Ms. Keely Appleton, Magnolia Media Group, Arlington*  
*Mr. Richard Battle, KeyTrak, College Station*  
*Hon. Russell Casey, Justice of the Peace, Pct. 3, Place 1, Tarrant County*  
*Mr. Richard Figueroa, Merrill Lynch, Houston*  
*Judge Beatriz Q. Gonzalez, Asst. District Attorney, Victoria County*  
*Hon. Monica A. Gonzalez, Judge, San Antonio Municipal Court*  
*Hon. Kelly Moore, Judge, 121<sup>st</sup> Judicial District, Brownfield*  
*Hon. Orlinda Naranjo, Judge, 419<sup>th</sup> Judicial District, Travis County*  
*Mr. Henry "Hank" Nuss, Welder Leshin, Corpus Christi*  
*Hon. Sherry Radack, Chief Justice, 1<sup>st</sup> Court of Appeals, Houston*  
*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, Judge Alfonso Charles, Allyson Ho, Ann Manning, and Judge Glenn Phillips.

## **INTRODUCTION OF NEW MEMBERS**

Chief Justice Jefferson introduced new members Keely Appleton, Rick Figueroa and Hank Nuss. He also introduced Allyson Ho as a new member of the Council.

## **MINUTES OF PREVIOUS MEETING**

With a quorum present, after a proper motion and vote, the minutes were approved as presented with no discussion.

## **NEW COMMITTEE REPORTS**

### ***Reporting Judicial Travel Expenses***

Judge Kelly Moore informed the Council about his findings on reporting judicial use of office holder account funds. He has assembled information and spoken with affected parties and will make a recommendation to Council at the next meeting.

The issue came about after allegations that judges or justices may have used office holder funds for commuting expenses. In response, Chief Justice Jefferson had the idea that requiring more detail in reporting the use of judicial campaign funds would make it more transparent to gain trust from the public.

Judge Moore considered looking into ways of reimbursing Court of Criminal Appeals' judges and Supreme Court justices for commuting expenses from budgeted or state funds. Another step would be to change the rules promulgated by the Texas Ethics Commission to allow an office holder to use office holder funds for commuting expenses. Chief Justice Jefferson noted that there was an ethics opinion several years ago that said judicial officers are not entitled to use office holder accounts for commuting and that it applies to judicial office holders only. It does not apply to legislators or other office holders.

Judge Moore has spoken to justices around the state, gathering their thoughts, which range from wanting something to be done to accepting the loss of expense as an anticipated expenditure. He hopes to have options for the Council at the next meeting and possibly a recommendation.

Chief Justice Jefferson added that there is not a budget for judiciary travel and the compensation judges receive is not enough to use personal funds for official business. He also stated as an example of travel used for other than campaigning, judges and justices have been sent on missions statewide to examine how courts conduct their business and what technology they use, all in an effort to increase efficiency of justice.

In addition to issues being reviewed, Judge Moore stated that much more detail is required for out-of-state travel than for in-state travel.

Chief Justice Radack asked if there was a preference to how funding would be received and asked how other office holders such as the Comptroller or the Agricultural Commissioner receive their

funding. Chief Justice Jefferson stated that he did not have a preference and was not aware of how the others received funding. He also added that as elected officials, judges are required to campaign in addition to performing judicial functions. His concern about the reports in the media is the public misunderstanding of what judges do and hopes to succeed in this effort through either legislative funding or rules amendments.

### ***Judicial Conduct Procedures***

Judge Spencer reported on the status of the review of judicial conduct procedures. She stated that she, Judge Monica Gonzalez, OCA General Counsel Margaret Bennett, Executive Director of the Judicial Conduct Commission. Seana Willing and Judge Kelly Moore are working on the review. All but Judge Moore were able to meet on April 24 in San Antonio to begin discussion. A decision was made to try to clarify and streamline the current procedures to make them more easily understandable and they are presently continuing to look at those issues.

She noted that the last legislative session increased the number serving on the Judicial Conduct Commission to 13 to include another public member and a constitutional county court judge. It may be that the larger group number is not workable and that issue may be addressed further but it is not a high priority.

They have also looked at what constitutes an *ex parte* communication relative to the Automated Registry Project and its usefulness to judges. She stated that lots of judges are concerned about the *ex parte* feature of the registry. The group discussed what might need to be changed including some of the rules in the Code of Judicial Conduct as well as the Rules of Evidence and possibly some statutory changes to expand the concept of allowable *ex parte* communication.

Judge Spencer said the group does plan to meet again.

### **OTHER REPORTS AND ACTION ITEMS**

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

Judge Sharon Keller began by mentioning that the Task Force, along with the National Center for State Courts (NCSC), applied for a \$90,000 grant from the State Justice Institute (SJI) to study criminal justice mental health processing services.

She also noted that at the second strategic planning meeting held a few months ago, they discussed how they will use the additional funds the Legislature appropriated to the Task Force and turned the floor over to Jim Bethke, Indigent Defense Director.

Mr. Bethke spoke in reference to the strategic planning meeting. The new revenue stream was the main focus of the planning and the Board discussed a number of ideas with the general consensus that the funds would make the biggest difference in helping local jurisdictions set up new programs or public defender type systems. They are now crafting rules and policies and drafting the actual strategic plan with hopes to have the document specifically addressing funding strategies completed by and published by August.

He then told the Council of a feasibility study that Harris County is conducting for a public defender office and requested assistance from the Task Force, noting that Harris County is the largest jurisdiction in the United States without a public defender office. Initially, when it was proposed in 2002, Harris County was not receptive but now has decided to consider the possibility. He expects a report sometime in September.

The Task Force has been updating its toolkit for setting up a public defender office in Texas over the past year. It was originally published in 2003 for local jurisdictions and since that time several offices have been funded. It should be ready for distribution in the following week.

Mr. Bethke said that there are currently 13 jurisdictions with a public defender office covering approximately 120 counties. This includes a regional public defender office for the Seventh and Ninth Administrative Judicial Regions which alone covers 85 counties. He stated that the primary method for assigning counsel is through a rotational list but there are 15 or so jurisdictions with a contract defender system. Most jurisdictions across the country use the public defender model. Mr. Bethke added that in 2001, Texas was one of only six states that provided no state funding for this model. Setting up the assigned counsel system is a simpler process than setting up a county department or non-profit and the data available assists local jurisdictions in making an informed decision on the best way to provide these services while improving quality but also cost effectively.

## **NEW COMMITTEE REPORTS Cont'd**

### **Legislative Committee**

Chief Justice Linda Thomas reported that the Committee met prior to the Council and had been broken into various workgroups. Within a particular workgroup, there may be different workgroups. At the meeting, everyone was updated on the work of each subcommittee. The Committee plans to meet again in late August or early September to review proposals from the workgroups and form recommendations for the Council. She anticipates presenting recommendations to the Council for adoption through a resolution along with a statement regarding the issues that have arisen and the proposals for handling them.

The Committee opted not to do specific legislation or write the bills although the workgroups may be working with individual bills.

In an effort to make the legislative representative more informed and make the Council more effective, Chief Justice Jefferson stated that he would like to see a process in place after a resolution is adopted with a briefing book that would describe the resolution and include any anticipated criticism as well as the policy rationale behind it. He would also like someone to meet with that representative before a bill is filed and before the hearing is conducted on the House or Senate floor.

Chief Justice Thomas added that the Committee discussed continuation of work for staff in the workgroups after adoption of a resolution by the Council. It was agreed that their work would continue. Also discussed was the philosophy of keeping the meetings open for transparency.

## **OTHER REPORTS AND ACTION ITEMS Cont'd**

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

Mary Cowherd, Deputy Director for Research and Court Services at OCA, reported that the new rules the Council would be asked to approve are the culmination of a multi-year project through workgroups that reviewed the data elements that are reported by the district and county-level courts. The judges and clerks who served on the workgroups made a number of recommended changes to the data elements that are reported. Over the past several months, the proposed changes were presented to and considered by the Council.

The notice of the Council's intent to repeal the current monthly case activity reporting rules and to adopt new monthly reporting rules was published in the Texas Register on March 21<sup>st</sup>, with a 30-day comment period. Comments were due by April 22<sup>nd</sup>. The new proposed rules specify the types of cases and case activity that are to be reported for the district courts, statutory county courts and constitutional county courts. They provide that OCA will maintain and update the revised monthly reporting forms and instructions that are initially approved by the Council. The rules also require the county and district clerks to submit the monthly reports electronically, unless they are granted a waiver by OCA.

The Council received no specific comments about the repeal of the existing rules or the adoption of the new reporting rules. The Council received a number of comments about the proposed reporting forms and instructions, including comments about general implementation issues. One suggestion that it received was to create a new civil case type category, which would require a change to the proposed rules. Comments were received from seven district clerks or staff from their offices, two county clerks, one programmer from a case management software vendor, and all the district judges in one county in one letter and most of the county court at law judges from the same county in another letter.

The primary comments included concern about the extra workload and changes to the case management software that the new reports would entail for the clerks' offices; clerks not having case management systems or processes set up to track inactive pending cases and reactivated cases; and concerns regarding counting certain matters related to criminal cases, such as bond forfeitures, nondisclosures, seizures and forfeitures, under the case type category "All Other Civil Cases" in the civil section of the monthly reporting forms.

Regarding the last concern, in counties with specialized courts, those matters are normally heard by the courts that are designated as criminal courts. However, under the proposed reporting forms those matters would be reported under "All Other Civil Cases" and it would appear that the civil courts are handling those cases.

In the letters Ms. Cowherd referred to from the district and county court at law judges in one county, it was suggested that a new civil case type category be created called "Civil Cases Relating to Criminal Matters." The creation of that category would allow those cases and the work associated

with them to be attributed to the courts that are actually handling those matters. Ms. Cowherd said that OCA staff agrees with that recommendation and would encourage the Council to adopt their suggestion.

The proposed implementation date for the changes is currently September 1, 2009, but OCA recommends that date be changed to September 1, 2010, to allow the clerks and their software vendors more time to get everything in order to implement the reporting changes.

Ms. Cowherd requested the Council to consider four action items.

A motion was made to amend the proposed rules to create a new civil case type category for “Civil Cases Relating to Criminal Matters” in the district court monthly report, statutory county court monthly report and the constitutional county court monthly report. With a second and vote, the motion carried.

The next motion made was to repeal the Council’s existing reporting requirement rules in Sections 171.1 and 171.2 of Title I of the Texas Administrative Code and to adopt new sections 171.2 [the motion inadvertently provided that the Council adopt new sections starting with Section 171.2; it should have provided that the Council adopt new sections starting with Section 171.1] through 171.6, as amended by the prior motion. With a second and vote, the motion carried.

A third motion was made to amend the proposed reporting forms and instructions for the district courts, statutory county courts and constitutional county courts to include the civil case type category, “Civil Cases Relating to Criminal Matters,” and to approve the reporting forms and instructions, as amended. With a second and vote, the motion carried.

A final motion was made to change the effective date of the new rules to September 1, 2010. With a second and vote, the motion carried.

Ms. Cowherd added that an OCA workgroup is currently reviewing the data elements for the justice and municipal courts. The workgroup has held two meetings.

Chief Justice Jefferson commended Judge Sharolyn Wood and Ms. Cowherd and her staff for their work. Mr. Reynolds recognized Ms. Angela Garcia, Judicial Information Manager at OCA for her work on the project as well.

### **Weighted Caseload Study**

Next, Ms. Cowherd explained that OCA was directed by legislation to contract with a non-profit organization that specializes in providing consulting services to the courts to conduct a weighted caseload study of the district courts. OCA contracted with the National Center for State Courts (NCSC) to conduct the weighted caseload study. She added that about half of the states in the United States have already done weighted caseload studies. She said the purpose of the study is to develop a method to objectively assess the need for how many judges are required to handle the workload of the courts. The NCSC just completed the draft final report, which OCA sent to the advisory committee of judges who are providing oversight and guidance to this project. The final study report is to be completed and approved by late June, and it will be posted on the OCA website.

### **Judicial Compensation Commission**

Chief Justice Jefferson discussed the creation of a nine member Judicial Compensation Commission by the governor. He stated that in the past, when the Council has addressed the Legislature about the need to objectively evaluate judicial compensation the necessary data was not always available. Often judges would request more pay but wouldn't have a comparison for the Legislature to consider. Chief Justice Jefferson said that Chief Justices from other states advised him that they had judicial compensation commissions established by the Legislature and that they employ economists and analysts to make recommendations in order to recruit and maintain the best judges possible.

The Council urged the Legislature last session to create such a commission and they agreed. The Commission is chaired by Betsy Whitaker who is a well known attorney in Dallas. They will be meeting on June 30<sup>th</sup>. The non-funded Commission will be supported by OCA. Unlike some commissions in other states that give a recommendation to their legislature who then vote on it, this Commission is purely advisory. Chief Justice Jefferson would offer that the Commission advocate for their report after it is given.

Mr. Reynolds noted that Mary McQueen, President of NCSC is an expert on this topic and will be available at the June 30<sup>th</sup> meeting.

### **Task Force to Ensure Judicial Readiness in Times of Emergency**

Denise Davis, an attorney at Baker Botts LLP, is the chairperson for the Task Force. Ms. Davis reported that there are currently several committees working. They are the Coordination Committee, Technology Committee, Legislative Committee, Border Affairs Committee and the Committee to Develop an Interim Plan. Each has a list of charges and deadlines.

The Committee to Develop an Interim Plan will have a product available soon. Judge Olen Underwood is currently drafting the plan. The Court asked the Task Force to develop an interim plan while working on a permanent plan in the event an emergency should occur. Permanent recommendations or templates are not expected until late this year or early next year. There may be some legislative recommendations and appropriations requests.



The Task Force recently met in El Paso and discussed border issues and met with local courts and military. However, the primary focus at this time is implementing an interim plan and researching funding resources for back-up information storage.

Judge Keller asked if federal money was available. Ms. Davis responded that a former attorney for Homeland Security had given them a presentation on how to get funding. Mr. Reynolds stated that funding is available but it is not intended for the courts. NCSC has been trying to change that but it has not happened yet.

Ms. Davis added that the advisory members to the Task Force include of John Fainter, Executive Director of the Association of the Electric Companies of Texas, and various persons from AT&T, the hospitality and technology industries from the private sector. Mr. Reynolds will provide the Council with a Task Force member list and Committee list.

Lastly, Mr. Nuss suggested another advisory source would be someone from the banking industry.

#### ***Child Protection Courts – Specialty Courts***

A memo was provided to the Council for this report. Mr. Reynolds acknowledged the Specialty Courts Program as the largest piece of OCA because it includes associate judges and judicial support staff in Child Protection Courts and Child Support Courts statewide. OCA pays the staff in those courts and provides support while the Administrative Judges do the hiring and firing.

He said that OCA has been working with the Presiding Judges about the budget for these courts and that they are crafting a \$2 million dollar exceptional item for the legislature in an effort to get more funding for the program. A large part of that is a lump sump for the increased number of personnel reaching retirement in the child support courts who are entitled to a lump sump payment of accrued time. This issue is emerging and there is currently no money in the budget for that to happen.

They are also reviewing funding needs for the child protection courts. An appropriation was received last session to create new dockets and they will be supplementing that with additional requests this session.

#### ***Child Protection Courts – Eldorado/FLDS Case***

Mr. Reynolds then proceeded to discuss the Eldorado cases and their impact on the state. He stated that it began in April when Judge Dean Rucker, Presiding Judge of the Seventh Region contacted Mr. Reynolds and others regarding the case and requesting assistance with the administration of that case. Mr. Hermes, Director of Information Services at OCA has been involved in several areas as well as the CFO of OCA, Glenna Bowman, who has been assisting the counties to get reimbursement by the state.

He reported that he and Ms. Cowherd went to San Angelo on April 8<sup>th</sup> to assess the situation and OCA has sent support staff helping to do data entry, case management and scheduling.



He stated that this event has reinforced Senator Duncan's suggestion last session for a mechanism meant for plugging more resources into the system when a major complex case arises. If S.B. 1204 had passed, the judiciary would have been better positioned with resources for this type of situation.

Mr. Reynolds said that technical assistance was available for determining "lessons learned" from the case. He added that the executive branch would probably do the same with their lessons learned. He said that he would come back to the Council and report on those lessons.

Chief Justice Jefferson said that the Council may want to pass a resolution on resources that could pass through OCA when this type of disaster occurs. Mr. Reynolds discussed how funds were identified for use and how volunteers were also relied upon for certain resources. He also expressed his belief that OCA would be compensated for those funds.

#### ***Automated Registry***

Mr. Reynolds commented briefly on the *ex parte* issue of the registry. He stated that the Legislature funded the registry last session without a request from OCA. The funding was to contract for an automated registry which means a system for judges to access pre-ordained state databases to look up information regarding a defendant in their court. Examples of information included in the databases would be child protection and support information, paternity information, and criminal history records that judges would not otherwise have access to. Concerns exist that some information may or should be irrelevant to the judges' determination on the case. The resolution may come from Rules of Evidence. Mr. Reynolds said that more research will be done on how other states have implemented this kind of system and will report back.

#### **NEW BUSINESS**

None

#### **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 12:05 p.m.

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Wallace B. Jefferson  
Chair