



TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 936-2423
P. O. BOX 12066 • AUSTIN, TEXAS 78711-2066

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

September 19, 2008

10:00 a.m.

SUPREME COURT COURTROOM

201 W. 14th Street

Austin, Texas

COMMENCEMENT OF MEETING

On September 19, 2008, Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 10:02 a.m. in the Supreme Court in Austin, Texas.

He advised that the meeting was being webcast by St. Mary's University.

Chief Justice Jefferson recognized Judge Olen Underwood, Presiding Judge of the 2nd Administrative Region, for his service to the coastal region before, during and since Hurricane Ike hit. He also credited Denise Davis for her work as chairperson of the Task Force to Ensure Judicial Readiness in Times of Emergency.

The week prior to the hurricane, Chief Justice Jefferson went with a group to the State Operations Center in Austin and saw representation from almost every state agency but noted an absence of judicial representation. Afterwards, they met with the Governor's office to discuss the issue.

He added that there may need to be additional legislation regarding the ability of the presiding judge to move judicial functions within the county to another location in the event of an emergency. Last session, legislation was put into place for coastal regions only.

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
Mr. Richard Battle, KeyTrak, College Station
Hon. Russell Casey, Justice of the Peace, Pct. 3, Place 1, Tarrant County
Mr. Fred E. Davis, Attorney, Davis & Davis,
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, 121st Judicial District, Brownfield
Hon. Orlinda Naranjo, Judge, 419th Judicial District, Travis County
Mr. Henry "Hank" 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
Hon. Linda Thomas, Chief Justice, 5th Court of Appeals, Dallas
Hon. Jeff Wentworth, Senator, San Antonio

Hon. Alfonso Charles, County Court at Law No. 2, Gregg County, attended the meeting via phone.

Additionally present was Alice McAfee, General Counsel for the Supreme Court of Texas. Other members not in attendance were Keely Appleton, Allyson Ho, Senator Robert Duncan, Representative Will Hartnett and Representative Todd Smith.

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

Legislative Committee

Mr. Reynolds reported on the list of legislative proposals that had gone through the Legislative Committee (Committee). Additional presenters were Ted Wood, OCA Assistant General Counsel, Wesley Shackelford, Special Counsel for the Task Force on Indigent Defense, and Katie Bond, OCA Assistant General Counsel. Because there were many proposals, Mr. Reynolds suggested that proposals with concerns or objections be set aside and not be included in the motion for overall approval.

Only the highlighted proposals were presented with the exception of number 71 regarding a certification division for OCA which had been removed from the agenda.

Number 33, regarding appointment of presiding judges by the Chief Justice of the Supreme Court, was presented for discussion rather than as a recommendation from the Committee. Mr. Reynolds mentioned the State Bar of Texas - Court Administration Task Force (SBOT-CATF) has a different

recommendation than the Committee's. Judge Keller added that the Court of Criminal Appeals (CCA) would favor having input on the appointments also. This proposal was set aside for further consideration.

Another proposal, number 41 regarding jury note taking and discussion of evidence, was also set aside for later consideration by the Council. Senator Wentworth, Chair of the Senate Jurisprudence Committee (Jurisprudence), said of a recent hearing that the consensus was to allow jurors to take notes but that there were details to be worked out. Judge Naranjo testified at the hearing, supportive of juror note taking but adding that including juror's notes in the record would be invasive of the deliberation process.

Mr. Reynolds continued with the presentation of proposals without comment until number 55, the proposal allowing for *capias pro fine* hearings by video conference. Judge Phillips suggested amending to include *capias* pleas. Chief Justice Jefferson agreed and the resolution was set aside.

Regarding, number 56, allowing courts of appeals to hear appeals that originated in small claims court, Judge Casey said that he would like to see an appellate process in place for cases filed in small claims courts after an appeal has reached a county court at law, to allow the same rules of appeal for small claims as in a justice court case or any other case. The proposal was deferred to gather statistical information on the volume of cases.

The proposal requiring four-year terms for all municipal judges, number 63, was presented noting there may be pushback from city councils that make the appointment and set the term as they desire. Mr. Wood said the default term is two years and the proposal is to make the default term four years and be consistent with the constitution. He stated that the proposal as presented should be reworded so it was set aside as well.

After discussion, proposal numbers 33, 41, 55, 56 and 63 were set aside. A motion was made to approve the resolutions presented with the exception of those set aside or removed from the agenda. After a vote, the motion carried.

Chief Justice Jefferson asked for a process regarding resolutions for future meetings. He will want a report for who has been contacted, what staff work has been completed, and the status of any hearings. He also wants notebooks provided for sponsors of resolutions.

Judicial Conduct Procedures

Judge Spencer reported that they had considered a possible change in the composition of the Judicial Conduct Commission and that the intention of the group is to address *ex parte* communication.

Reporting Judicial Travel Expenses

Judge Moore stated he had met with Judge Naranjo, Ms. Bennett, Mr. Reynolds and the Council of Chief Justices (CCJ) at the Judicial Annual Conference. The CCJ did not perceive problems at their level or the intermediate appeals court justices. The CCJ's believe their level and below need no

changes and that the current system provides full public disclosure of the use of campaign or office holder funds.

Judge Moore stated the group does want to determine if it would be appropriate to recommend changes in reporting for the Supreme Court (Court) and CCA due to heightened scrutiny. They will continue to work with staffs of the Courts.

OTHER REPORTS AND ACTION ITEMS

Task Force on Indigent Defense

Mr. Shackelford reported that since the last meeting, the U.S. Supreme Court had issued a ruling in Rothgery v. Gillespie County, Texas. It is a significant case on when the right to counsel attaches. The Court decided it would attach at magistrations but did not include a timeframe for when counsel must be appointed.

The Task Force met on August 27 and funded a public defender office in Bee County and a juvenile public defender office in Webb County to supplement the criminal public defender currently in existence. The Independent Assigned Counsel program in Lubbock will initially target mental health cases in the criminal justice system but the county has plans to expand it.

They are currently working on rule revisions and considering new funding strategies. They will also be proposing new policy monitoring rules. The policy monitoring rules will come to the Council for ratification once adopted by the Task Force.

Two technical assistance reviews conducted by staff were for Dallas County and Cameron County.

Judicial Data Management Committee

Mary Cowherd, OCA Deputy Director for Research and Court Administration, discussed the cover sheets that were developed for civil and family law cases. Two cover sheets were developed for civil cases, one is for district courts and the other is for county-level courts. And one cover sheet was developed for family law cases, which is for both district courts and county-level courts. As part of the Judicial Data Project, the Council's Committee on Judicial Data Management asked the OCA data workgroups to develop a civil coversheet, the purpose of which is to remove the burden from clerks in categorizing cases and to make the attorney or litigant responsible for identifying what type of case is being filed. The cover sheets have not been approved by the Committee or Council. She briefly reviewed the changes that had recently been made to the civil cover sheets at the suggestion of Blake Hawthorne, the Clerk for the Supreme Court. She asked the Council to approve the cover sheets as model forms, which can be modified for local use. Ms. Cowherd noted that the implementation team comprised of district and county clerks, which is assisting OCA in the implementation of the new monthly reporting forms, asked that items 6, 7 and 8 on the civil cover sheets, and items 6, 7, 8 and 9 on the family law cover sheet, not be mandatory.

If the model cover sheets are approved by the Council, OCA will ask the Supreme Court to adopt a rule requiring a cover sheet to be submitted whenever a family law or civil case is filed. The

minimum information that should be included on the cover sheet is the style of the case, name and contact information of the attorney or party filing the suit, state bar number of the attorney (if applicable), names of the parties, and case types (the case types to be used will be selected by the local jurisdictions).

She added that the Supreme Court staff and the County and District Clerks Association are currently investigating the use of a sensitive data sheet in cases in which sensitive data, such as social security numbers, birthdates and financial account numbers, are used and required. These are primarily family law cases. There has been discussion about merging the sensitive data sheet with the cover sheets so that attorneys or litigants would not have to complete more than one form.

After discussion and proper vote, the Council approved the civil and family cover sheets as model forms, which can be modified for local use.

Judicial Compensation Commission

Chief Justice Jefferson reported the Commission has met several times and with OCA support are gathering data for their report due in December.

Chief Justice Thomas added that the Council subcommittee on judicial compensation met at the Judicial Section Annual Conference and expressed concern about the perception of un-linking of trial courts from the appellate courts.

Task Force to Ensure Judicial Readiness in Times of Emergency

Mr. Reynolds provided the Interim Plan to Ensure Judicial Readiness in Times of Emergency.

Chief Justice Radack suggested the heads of the judiciary visit with their local Office of Emergency Management.

NEW BUSINESS

Chief Justice Jefferson welcomed new Council member Fred E. Davis.


NEXT MEETING

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

Additionally, the items that were not adopted will be brought back to the next meeting.

ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at approximately 12:35 p.m.


Wallace B. Jefferson
Chair