



# 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

September 20, 2006  
10:00 a.m.

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

#### COMMENCEMENT OF MEETING

On September 20, 2006, at approximately 10:08 a.m., the Texas Judicial Council (Council) met at in the Supreme Court Courtroom in Austin, Texas.

Chief Justice Jefferson announced that although a quorum was not present at the time, with much to discuss the Council would go forward, withholding any action until a quorum was present.

The following members attended that day.

*Hon. Wallace B. Jefferson, Chief Justice, Supreme Court*  
*Hon. Sharon Keller, Presiding Judge, Court of Criminal Appeals*  
*Willie Jean Birmingham, City Commissioner, Marshall*  
*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 Precinct 3, Travis County*  
*Hon. Will Hartnett, State Representative, Dallas*  
*Deacon Jose Luis Lopez, Executive Director, Housing Authority of Crystal City, San Antonio*  
*Ms. Ann Manning, Attorney at Law, McWhorter Cobb & Johnson, Lubbock*  
*Hon. Orlanda Naranjo, Judge, County Court at Law #2, Travis County*  
*Hon. Kelly Moore, Judge, 121<sup>st</sup> Judicial District, Brownfield*  
*Hon. Glenn D. Phillips, Presiding Judge, City of Kilgore*  
*Hon. Sherry Radack, Chief Justice, 1<sup>st</sup> Court of Appeals*  
*Hon. Polly Jackson Spencer, Judge, Probate Court #1, Bexar County*  
*Hon. Linda Thomas, Chief Justice, 5<sup>th</sup> Court of Appeals, Dallas*  
*Hon. Sharolyn P. Wood, Judge, 127<sup>th</sup> Judicial District, Harris County*

Members not in attendance were Lance Byrd, Joseph Callier, Delia Martinez Carian, Senator Robert Duncan, and Representative Todd Smith.

## **REPORTS**

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

Mary Cowherd, Deputy Director of OCA, reported that the Committee on Judicial Data Management had not met but OCA has a number of District Court sub-workgroups that are looking at the data elements reported by the district courts. The current criminal, civil and juvenile sections have been reviewed. The criminal and juvenile changes have been approved by the sub-workgroups however the civil district sub-workgroup last met in August and changes are still in need of approval.

She stated that although Judge Wood had expressed an interest in having the changes to reporting take effect in September 2007, the district clerks overwhelmingly articulated that would be impossible to do. Being such, the changes will most likely be effective September 2008.

At the next meeting of the Council, the recommended changes of the sub-workgroups will be presented for consideration and adoption. After which, they will be disseminated to the courts and clerks in order to make the necessary programming changes to their case management software systems.

Mr. Reynolds suggested it be done in the form of an Administrative Rule.

### ***Report on Weighted Caseload Study***

Ms. Cowherd reported that OCA is close to initiating a weighted caseload study of district courts. Although the 79<sup>th</sup> Legislature passed SB729 directing OCA to conduct a weighted caseload study, they did not provide funding. As a result, OCA began looking at other sources of funding. Recently, OCA applied for and obtained grant funds from the State Justice Institute and the Federal Court Improvement Project. These funds will not cover the entire study so it will be divided into two phases.

Phase I will be a stand alone phase in the event Phase II is not funded. Phase I will result in the development of preliminary case weights that can be used to determine district court workload and judicial need. It will measure the amount of judge time currently spent on handling different types of cases from filings to dispositions. Phase II will assess the preliminary case weights developed in Phase I to determine whether the amount of time judges currently spend on various case types is reasonable to dispense quality justice. In addition, the results will be used to examine and evaluate the current allocation of district judges in our state in more depth.

OCA published an invitation for offers to conduct Phase I and it is limited to non-profit organizations that specialize in providing consulting services to the courts. The offer will expire on September 27, 2006. Phase I will take approximately 18 months to complete.

In an exceptional item of its Legislative Appropriations Request, OCA requested funding for Phase II of the project as well as a staff person assist in completing the study and to periodically review those weights in the future to preserve the validity of the weights.

### ***OCA Legislative Appropriations Request***

Glenna Rhea Bowman, OCA Chief Financial Officer, reported on the agency's Legislative Appropriations Request (LAR). She advised the Council that Mr. Reynolds had presented the information the previous day to the Senate Finance Committee. She also noted that each agency was given a directive to submit budget requests ten percent less than their current level of funding.

Ms. Bowman then gave a summary of the agency's exceptional item requests, beginning with restoration of the ten percent reduction as it impacts a number of programs; indigent defense being the largest dollar amount but also including the child support and child protection specialty courts. She reviewed the five other requests which are for a Certification Division, Trial Court Technology, Texas Appellate Management E-filing System (TAMES), Child Protection Courts, and to Enhance Court Administration which includes the weighted caseload study and court security initiatives.

### ***Report on Other Staff Projects***

Mr. Reynolds reported on the Supreme Court Task Force on Child Protection Case Management and Reporting (CPCMR) that OCA has been staffing in collaboration with the Court Improvement Project (CIP) at the Texas Center for the Judiciary. He announced that CIP will be receiving additional funding to specifically look at issues CPCMR has focused on such as how to bring uniformity to the way judges manage those cases and how the state has visibility about those cases.

### **ATTENDANCE OF MEMBERS**

Chief Justice Jefferson stated that a quorum was now in attendance and the meeting would officially open. He thanked Representative Hartnett for attending and praised his assistance to the judiciary during the last legislative session.

### **MINUTES OF PREVIOUS MEETING**

The Council approved the minutes of the May 30, 2006, meeting after a proper motion and vote.

### **LEGISLATIVE RESOLUTIONS**

#### ***Court Security Funding and Reporting***

Mr. Reynolds reported that the Court Security Committee had recently met and discussed the results of its extensive Court Security Survey. Also, the Committee produced an amendment to Article 102.017 of the Code of Criminal Procedure which is the statute that sets up Court Security Funds at the local level. This modification clarifies that Associate Judges may be included in court security expenditures. Somewhat controversial is the new provision in subsection (f) that says those local funds are subject to audit by the State Auditor. Upon meeting with the Conference of Urban Counties, Mr. Reynolds stated that they have expressed concern regarding this condition. However, he related to them that the Council has repeatedly expressed their concerns about the accountability for these funds. Further discussion raised the suggestion of using a similar approach with the

municipal courts. To continue, subsection (g) gives administrative flexibility to the requirement for reporting court security incidents. The final provision under Section 2 of the bill is an amendment to the Public Information Act which is intended to enhance the security of judges and their families by making confidential certain personal information held by governmental bodies. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

Chief Justice Jefferson clarified to the Council that although legislative drafts were attached to some of the resolutions, the Council would only be voting to adopt or reject the resolutions presented and discussion regarding legislation would be between Council or Committee Chairs and sponsoring Legislators.

With continued discussion regarding the local level court security funds, Chief Justice Jefferson called for a vote to leave in the provision calling for a State Audit of those funds. The Council voted unanimously to retain it.

A change was then made to the language in the required reporting of security of incidents. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature as amended.

#### ***Information Technology in the Judicial Branch***

Chief Justice Jefferson reported that this involved the discussion of HB 1516 which was created as an effort to consolidate state agencies' information resources into statewide technology centers. This is problematic to the judiciary due to the confidential nature of the courts. He explained that a dialogue began with the Department of Information of Resources (DIR) as to whether or not the Judicial Branch was subject to consolidation under HB 1516. The essence of the resolution is that DIR may not establish or expand a statewide technology center that includes the judicial branch unless the Supreme Court of Texas consents. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

Bruce Hermes, OCA Information Services Director, noted that DIR has informally exempted the appellate judiciary from the consolidation into 2007 but beyond that is unknown. Chief Justice Jefferson proposed a change regarding the exemption of the judicial branch from HB 1516. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature as amended.

#### ***Funding for Information Technology in the Judicial Branch***

Mr. Hermes then presented the resolution in support of funding for information technology which includes two of the exceptional items from the LAR that Ms. Bowman presented to the Council. First, for the \$500,000 appropriation for OCA's support to trial courts guided by Judicial Committee on Information Technology (JCIT) which includes broadband internet connectivity, case management software and collections management software. Second, for the Texas Appeals Management E-Filing System (TAMES) which brings the benefits of e-filing from the trial courts into the appellate courts

without converting back into paper. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

### ***Judicial Longevity Pay***

Chief Justice Sherry Radack related that the resolution would allow for longevity pay to be instituted by statute. Mr. Reynolds said that some of the proposed legislation was withdrawn in favor of presenting only the resolution. Chief Justice Linda Thomas added that the issue was in not wanting to adopt specific statutes but rather the resolutions to allow for flexibility in working with the Legislature. Chief Justice Radack agreed but also wanted to point out the range in the statute that would cap it at \$5,000. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

### ***Judicial Compensation Advisory Committee***

The Judicial Compensation Advisory Committee, Chief Justice Radack reported, will be an advisory committee to survey salaries and make recommendations regarding judicial salaries to the legislature. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

### ***Judicial Retirement***

Chief Justice Radack presented the resolution on Judicial Retirement, to increase the retirement annuity from 80% to 90% for any judge who completes 30 years of service and an amendment to retirement Plan II to provide automatic adjustments to annuities paid under that plan. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

Chief Justice Radack noted that the Judicial Compensation Committee brought the Texas County and District Retirement System to its meeting for study and found the Judicial Retirement System (JRS) to be adequate by comparison.

Representative Hartnett asked for the cost associated with the 10% increase Lisa Kaufman of Senator Duncan's office addressed the Council. She stated that it is funded and was funded in 1985 on an annuity basis as opposed to coming out of general revenue. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

### ***Jurisdiction of Statutory County Courts and Compensation Parity for Statutory County Court Judges***

Chief Justice Linda Thomas presented the resolution regarding Statutory County Courts Jurisdiction and Compensation Parity for Judges. She stated that the Statutory County Court at Law Committee (SCCL) has been working with legislators and their staff as well as the county court at law organization to craft legislation that will provide uniformity in the creation of future county courts at law and will also address the assortment of references to family courts. She noted the fact that the county courts of law are performing a steadily increasing amount of district court work without comparable compensation. Particularly, one county court at law judge was found to have a \$60,000 difference between salary and docket compared to a district court judge. The Committee wants to

work with legislators to create a method under which it can establish parity of pay for statutory county courts at law. This resolution also requests the Council's support for those statutory county court judges who were not affected by the judicial pay raise.

Judge Wood expressed concern that family law and probate jurisdiction had not been addressed in the resolution. Chief Justice Jefferson reminded Judge Wood that the Council's final resolution would not preclude the Legislature from taking on that issue. Chief Justice Thomas said that the Committee had not abandoned the matter but rather had begun to focus on new courts and stated that any existing court could opt in if desired. Judge Wood requested a change be made to the language to reflect her concern. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature as amended.

***Inclusion of a Justice of the Peace and Municipal Judge on Each Juvenile Board***

Judge Allen Gilbert noted the mandated assignment of the Justices of the Peace and Municipal Judges as juvenile courts. Yet these judges have little to no communication with the smaller counties and the other courts involved in the juvenile system. The proposal would help to increase communication and there will be no fiscal impact. Chief Justice Thomas stated that some counties proved compensation for serving on their juvenile board so there may be financial implications with the counties. The Council agreed to add an amendment for the Legislature to address statutorily regarding a judges' jurisdiction. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature as amended.

***Authority for Appellate Courts to Obtain Criminal History***

Chief Justice Radack requested that the Appellate Courts, with their jurisdiction over criminal cases and matters that require a high level of confidentiality, have the authority to obtain criminal history from the Texas Department of Public Safety when hiring personnel. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Reimbursement of Guardianship Certification Board Members***

Katie Bond, Assistant General Counsel for OCA, introduced herself to the Council and informed them of the Guardianship Certification Board's mandate to be appointed from geographically diverse areas of the State and to meet four times per year. The statute also stated that they do not get reimbursed. Ms. Bond presented a resolution requesting reimbursement for the Guardianship Certification Board members. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Authority for Guardianship Certification Board to Obtain Criminal History Information***

Ms. Bond requested GCB have the authority to obtain criminal history from DPS when reviewing applicants for Guardianship. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Oath for Official Court Reporters***

Michele Henricks, Director for the Court Reporters Certification Board, presented two resolutions to the Council. First, the Oath for Official Court Reporters, clarifies the language as to who must take the oath, who administers the oath and where the oath is to be filed. Judge Wood opposed the motion and expressed her preference for having the court reporter sworn in upon each election cycle. When asked, Ms. Henricks confirmed that the only reason for the change requested was to have the oath be administered once to each reporter rather than multiple times. Chief Justice Jefferson suggested the resolution be discussed after the meeting.

***Authority for Court Reporters Certification Board to Obtain Contracts***

Chief Justice Jefferson then suggested that both Court Reporters' resolutions be tabled for further consideration. After proper motion and vote, both resolutions were tabled.

***Associate Judge Residency Requirements***

Mr. Reynolds presented the resolution for Associate Judge Residency Requirements as one that would resolve the ambiguity about the residency requirements for associate judges by simply requiring them to live somewhere within the region where they work. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Appellate Court Filing Fees***

Mr. Reynolds presented the resolution for appellate court filing fees which asks the Legislature to update the language regarding such. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Capias Pro Fine***

Concerning the OCA Collections Program, Mr. Reynolds stated there was some ambiguity regarding the authority of judges at the higher level to issue a *capias pro fine* and this resolution would clarify that. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Crime Victim Information in Criminal Judgments***

Mr. Reynolds stated that this resolution would remove the burden from a judge concerning whether or not to include information about a victim in the judgment that would effect restitution. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Support for Office of Administration Funding Requests***

Mr. Reynolds explained that this resolution is requesting support from the Council for all of OCA's LAR exceptional line item requests. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Expansion of Locations Where Courts of Appeals May Hold Court***

Next, Mr. Reynolds described how this issue arose out of disaster recovery efforts. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Grants of Surplus Equipment and Money***

Mr. Reynolds acknowledged that OCA does not have specific grant authority and stated that this would give OCA that generic authority. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Improving Service of Process Requirements on Corporate Registered Agents***

At the last Process Server Review Board Meeting, this matter arose and Mr. Reynolds asked Mr. Mark Blenden, a member of that board, to create a resolution that addresses this problematic issue. Judge Wood expressed concern that it was more a matter for education. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Technical Changes to Indigent Defense Statutes***

Presiding Judge Sharon Keller presented for the Task Force on Indigent Defense (TFID). She reviewed minor changes to the statutes for the Council. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Qualifications to Represent Defendants in Capital Cases***

Judge Keller then discussed the changes in qualifications for appellate counsel and trial counsel. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature. Discussion ensued about removal of the permanent ban and whether or not it should be included.

***Clarifying Process of Creating Public Defender Offices***

The resolution presented by Judge Keller requested the Legislature act to clarify the process of creating public defender offices. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Study of Pretrial Release from Custody Laws***

Judge Keller reported that TFID realized the necessity for a more detailed study of pretrial release from custody laws in criminal cases. She requested the Council approve the resolution. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.

***Improving Payment Processes for Indigent Defense Services***

Chief Justice Jefferson recused himself as there is a current matter pending in the Supreme Court concerning this issue. He asked Judge Keller to preside. Judge Keller stated the resolution would improve the payment for indigent defense services by allowing an attorney to appeal a failure to act on a fee voucher within 60 days, remove the \$25,000 biennial cap on fees for inmate indigent defense services and permit the Texas Board of Criminal Justice to designate someone to review and approve indigent inmate defense fee claims. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature.



***Removal of Sunset Provision on Legal Services Fees***

Chief Justice Jefferson returned to preside over the meeting. Judge Keller stated that there was a Sunset (expiration) provision attached for legal services fees that support indigent defense and this resolution would remove that provision. A discussion followed with the concern being the loss of money to TFID if the Council did not support the resolution. With a proper motion and vote, the Council adopted the resolution for recommendation to the Legislature with Judge Phillips opposing.

**RULEMAKING**

Judge Keller reported on TFID Contract Standards as proposed in 31 *Texas Register* 4819, June 16, 2006. She stated that the Standards had been posted for public comment and provided a copy to the Executive Director of the Council. No public comment or comment from the Council was received. In August, the Task Force adopted the Standards to be effective January 1, 2007, and is now required to be ratified by the Council before being sent to the Secretary of State for publication in the *Texas Register*. With a proper motion and vote, the Council approved the ratification of the Standards.

**OTHER BUSINESS/NEXT MEETING**

Chief Justice Jefferson suggested meeting in December.

**ADJOURNMENT**

There being no further business before the Council, the meeting was adjourned at approximately 12:30 p.m.

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Wallace B. Jefferson  
Chair