



# 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

December 7, 2007  
10:00 a.m.

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

#### COMMENCEMENT OF MEETING

On December 7, 2007, Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 9:10 a.m. in the Supreme Court Courtroom in Austin, Texas and began with a moment of silence in remembrance of Pearl Harbor.

#### ATTENDANCE OF MEMBERS

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

*Hon. Sharon Keller, Presiding Judge, Court of Criminal Appeals*  
*Ms. Willie Jean Birmingham, City Commissioner, Marshall*  
*Hon. Russ Casey, Justice of the Peace Pct. 3, Place 1, Tarrant County*  
*Hon. F. Alfonso Charles, Judge, County Court at Law No. 2, Gregg County*  
*Hon. Beatriz Q. Gonzalez, Justice of the Peace, Precinct 3, Victoria County*  
*Hon. Monica A. Gonzalez, Judge, San Antonio Municipal Court*  
*Deacon Jose Luis Lopez, Executive Director, Housing Authority of Crystal City, San Antonio*  
*Hon. Kelly Moore, Judge, 121<sup>st</sup> Judicial District, Brownfield*  
*Hon. Orlanda Naranjo, Judge, 419<sup>th</sup> Judicial District, Travis County*  
*Hon. Glenn D. Phillips, Presiding Judge City of Kilgore*  
*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, Central Staff Attorney 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, Mr. Lance Byrd, Mr. Joseph Callier, Associate Judge Delia Martinez Carian, and Ms. Ann Manning.

## **INTRODUCTION OF NEW MEMBERS**

Before introducing the new members, Chief Justice Jefferson recognized Lisa Hobbs, former General Counsel for the Supreme Court of Texas, for her tremendous service to the Council, the Court the judiciary, and him.

He then introduced Ms. Alice McAfee, formerly the Court's Staff Attorney for Original Proceedings, who will serve as acting general counsel for the Court. Next, the Chief Justice extended a welcome to the newest members of the Council; Judge Alfonso Charles from Longview, Judge Monica Gonzalez from San Antonio and Justice of the Peace Russ Casey from Fort Worth.

## **MINUTES OF PREVIOUS MEETING**

A motion and second were made to approve the minutes, but a typographical error was noted concerning Judge Moore's name on the bottom of page 6. A motion and second were made to approve the minutes as amended, and without further discussion, the minutes of the May 1, 2007, Council meeting were approved.

Chief Justice Jefferson recognized Judge Guy Herman to the floor before moving forward to the reports. Judge Herman commented on his appreciation for an editorial from the *Austin American Statesman* in today's issue co-authored by the Chief Justice, the Dean at the University of Texas School of Law and the President of the State Bar of Texas regarding attorneys in Pakistan standing up for their constitution.

## **REPORTS**

### ***Weighted Caseload Study***

Mary Cowherd, Deputy Director of Research and Court Services at OCA opened with a brief review of the purpose of a weighted caseload study (WCS). She reported that during the month of October, the WCS Time Study was conducted with a sample group of judges who were asked to participate in the study. Participation was voluntary. Overall, the study went smoothly as multiple training opportunities were provided to participants in the format of live training sessions at the Annual Judicial Conference, a Webinar Training Session and an Online Tutorial on the OCA website. Judges participating in the study included district judges, county court at law civil judges who exercise civil and/or family law jurisdiction concurrent with the district courts and associate judges, masters, magistrates, referees who perform work that would otherwise be handled by the district judges who were participating in the study. Participation of the district judges was successful and as a result the National Center for State Courts (NCSC) will be able to develop statistically case weights for the courts and will be able to determine how many judges are needed to handle the workload of the district courts.

The completion date for the study is March 31, 2008. Between now and then, NCSC along with the assistance of OCA staff, will clean the time data that was received, analyze it and develop preliminary case weights. Those preliminary case weights will be submitted to the Judicial Needs Assessment Committee (JNAC) who will be asked to evaluate them for reasonableness and offer any

input. Ms. Cowherd stated they anticipate a meeting of JNAC to take place in January or February with the preliminary case weights being developed by January. The final study report will be completed by March 31, 2008. It will be posted on the OCA website and the judges will be notified at that time.

Chief Justice Jefferson commented on the concern among the judiciary that the information gathered could be potentially misused or exploited. He reaffirmed that the data obtained was anonymous and will be used to make a stronger case to present to the legislature areas where more judicial resources are needed. He also noted that Lubbock County just released its report from NCSC called CourTools judging court performance. So far Lubbock County has had nine of the ten specific areas in CourTools measured over the past two years and plans to be finished by next year. The results showed that they were doing well and also showed areas for improvement in which improvements have been made.

#### ***Commission on Children, Youth & Families***

Justice Harriet O'Neill began by discussing the National Summit on Foster Care in New York held two years ago when Texas sent a team of delegates to attend. The Summit was sponsored by NCSC, the Conference of Chief Judges and the Pew Commission. The Team returned to Texas to work with several judges and attorneys, Child Protective Services and case workers. Since that time, the Court has also hired more staff and is in the process of transitioning grant money into the Court for its direct administration. The federal grant money is directed towards court improvement and child welfare cases and had previously been administered by the Texas Center for the Judiciary. With the "in-house" team in place, Tina Amberboy as the lead and Bryan Wilson as the grants administrator, the culmination of this process was a hearing on September 25. The result of the hearing was the creation of a 14 member Supreme Court Permanent Judicial Commission on Children, Youth and Families. Justice O'Neill will chair the Commission which will cover everything that impacts child welfare and will be court driven. The Commission gets three basic grants, one for training, data collection and case management and, basic court improvement.

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

Jim Bethke reviewed a summary of statewide county expenditures (*Attachment A*) that occurred over the last five to six years. He also noted that the Task Force's main responsibility is to distribute money to local jurisdictions to improve delivery of their indigent defense services. By the return of data reported, the summary indicates that 100% of the counties reported their expenditures and last year state and local spending for indigent defense was \$160,000,000, up from \$92,000,000 in 2001 before the Fair Defense Act went into effect. Mr. Bethke reported this as a positive development but felt there is still room for improvement because in overall per capita spending Texas' is ranked last out of the ten largest states by population. Last session, the Legislature approved an additional 50 % in appropriations to help offset increased costs for an approximate \$47,000,000 for the biennium. He also referred to a handout (*Attachment B*) regarding six new publications by the Task Force that have come out since the last Council meeting in May and stated they were all available online at the Task Force website.

Judge Keller stated that the money the Task Force spends goes out in formula grants or discretionary grants and that the discretionary grants are either used for pilot projects or to get a project or position started. She then noted some of the discretionary grants that were awarded this year beginning with the "Super" Regional Capitol Public Defender's Office in the panhandle. This office includes Administrative Regions VII and IX and 84 of the 85 counties in those regions have agreed to join. She also recognized Judge Kelly Moore for his efforts in getting the project accomplished. The Chief Public Defender has been hired and the office plans to be open on January 1, 2008.

Last year in Bexar County the Task Force helped to fund an Appellate Public Defender's Office with so much success that adjoining counties and the 4<sup>th</sup> Court of Appeals (COA) District wanted to join so now all 34 counties and the 4<sup>th</sup> COA are included. This Public Defender's office handles 80% of the criminal appellate docket in the 4<sup>th</sup> court region.

Two years ago, the Task Force approved a grant to El Paso for a Mental Health Public Defender. Since this position has been established, their clients spend 25 fewer days in jail. Figures show a savings of approximately \$45,000 a month in jail costs due to reduced jail population.

Over the last five years, the Task Force has granted money to a number of counties to establish Indigent Defense Coordinator positions. Last week, Fort Bend reported an average yearly savings of \$9,000 in decreased jail population and the efficiencies of the indigent defense coordinator.

The last project mentioned involves four border counties. Val Verde opened the first Regional Public Defender's Office in Texas and has resulted in decreasing jail population and savings of \$738,000 a year. They are also renting their additional jail space to the federal government. She thanked Mr. Bethke and Judge Naranjo and Chief Justice Raddack for their work on this project.

Judge Keller also commented that the Indigent Determination Study the Task Force did as being the most extensive study that has ever been done to determine indigence.

Texas A&M Public Policy Research Institute is collaborating with the Task Force to get a federal grant for a study to find out the effectiveness of dealing with misdemeanor mentally ill offenders.

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

Judge Sharolyn Wood presented the report for the Committee on Judicial Data Management noting that it was created four years ago to review how case data is collected in Texas. The Committee worked to modify and more accurately reflect the caseloads of the courts. During that time, the Committee learned that counties across the State were contracting with software companies to develop data management tools to include a provision in their contract that required the software developer to comply with OCA requirements.

She recognized Mary Cowherd and Angela Garcia, Director of Judicial Information at OCA, for their work on the project before reviewing the changes to the reporting forms and instructions for each

court (*Attachment C Proposals*). Judge Wood stated that the forms will be available to the clerks for the purpose of collecting the data in a uniform manner to send to OCA.

Expected implementation is planned for September 1, 2009. Judge Wood requested that the Council publish the proposed monthly reporting forms and instructions for district courts, county courts at law, constitutional county courts, including probate and juvenile, in the Texas Register as a proposed Judicial Council rule. With a proper vote and little discussion, the motion was approved.

Chief Justice Radack mentioned that the appellate courts completed a project standardizing codes and offered to volunteer someone from that committee to assist in a similar project for the lower courts.

Judge Wood then asked the Council to adopt a resolution recognizing the judges, clerks and staff members who contributed to the project. Chief Justice Jefferson agreed and thanked Judge Wood for her service.

#### ***Judicial Compensation Commission***

Chief Justice Jefferson reviewed the Act (*Attachment D*) adopted by the Legislature creating a Judicial Compensation Commission to look at judicial salaries across the state, compare them to other states, to the federal court system, to private practice of law and make a recommendation that would be presented to the Legislature every session. The Governor will make the appointments to the Commission.

#### ***Supreme Court of Texas Webcasting***

The Chief Justice then reported on the current status of Supreme Court of Texas webcasting, noting that in the previous week there were a record number of hits involving a water rights dispute which has become a major issue across the State. For those in West Texas who have an interest in the case, the cameras in the Courtroom allow the public to sign on to the broadcast. However, with a limited amount of bandwidth, capacity was quickly reached. That case has now been archived and can still be accessed for viewing along with the transcripts and briefs permitting more transparency.

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

Next, Chief Justice Jefferson introduced Denise Davis who is chairing the Task Force to Ensure Judicial Readiness in Times of Emergency (*Attachment E*). Ms. Davis stated that the first meeting of the Task Force would be on December 13 and noted there has already been a great deal of preliminary work done. They have visited with the NCSC that already has quite a bit of information in place.

She said the immediate goal for the meeting is to develop an interim plan that the Supreme Court and the appellate courts could use if needed. Second, the Task Force plans to develop a template for courts statewide to use. Ms. Davis will be attending a National Bar Association meeting in New Orleans that will include disaster issues. She will have an opportunity to visit with the Supreme Court of Louisiana and the Fifth Circuit at that time.

She noted that they had previously sent a survey to judges inquiring who had response plans and 115 responded. Out of those responses, nine were from appellate courts, 84 were from district courts, 19 from county level and justice courts, two from multiple jurisdiction district and county justice courts and one unknown. The responses alone demonstrate the amount of work there is to do to ensure each court has a plan in place in the event of emergency. Ms. Davis enumerated the categories the National Center defines as threats as being 1) natural threats, such as pandemic, hurricanes, floods, tornados, and ice storms, 2) man-made threats, such as explosions, hazardous materials, etc., and 3) terrorist threats, such as conventional weapons, cyber terrorism, biological weapons, etc.

Chief Justice Jefferson asked if the Council would need to recommend other statutes to amend HB 2766 which was passed for the coastal counties last session that allowed first and second tier coastal counties to have court proceedings in places other than the county seat in the event of a disaster. Ms. Davis said that she could see some expansion since the current statute only applies to the coastal counties.

#### ***State Bar Court Administration Task Force***

Carl Reynolds discussed SB 1204 which did not pass during the last session but noted that the State Bar (Bar) decided to get involved in looking at the court system from a systemic perspective. They have had a few meetings and the Bar has posted a collaborative tool on the internet for their use as well. Chief Justice Thomas added that the Task Force has broken into various subcommittees that are looking at different issues within the courts also.

#### ***H.B. 1380 Court Security Incident Reporting***

Kristin Creel of the OCA informed the Council of the status of security incident reporting (*Attachment F*) from the local administrative judges which went into effect September 1 of this year. Over a three month period ending November 30, OCA received 66 incident reports, averaging 22 per month. According to the 2005 OCA Court Security Survey, reported security incidents were a monthly average of 350 per month. Far fewer reports are being received than estimated. Of those received, 45% were from district courts, 15% were from county courts, 5% were from justice courts, 23% were from municipal courts and 12% came from a courthouse that served more than one court.

Of the types of cases tied to the incidents, 25% were Class C misdemeanors, 21% were criminal cases other than Class C misdemeanors, 21% were family related cases and 18% were not related to any particular case within the court.

When looking at the type of case by the court type, in the district courts, 37% of the incidents related to criminal cases and 33% related to family cases. In county courts, 37% related to criminal cases. In the justice courts most were not related to any particular case at all. In municipal courts all were Class C misdemeanors. In courthouses that reported incidents, 63% were not related to any particular case and 25% were related to family cases.

The types of incidents being reported are overwhelmingly disorderly behaviors at 55% and 17% involved either a verbal or written threat. Others involving some type of security breach were 18% that did not fall into any category listed on the form.

Disorderly behavior was the predominant incident in all court types. In district courts, 53% were disorderly behavior and 27% were threats. In county courts, 83% were disorderly behavior and 67% fell under the category of other. In justice courts, 67% were disorderly behavior, in municipal courts, 60% were disorderly behavior and 27% were other security breaches. In the general courthouse reports 50% were disorderly behavior and 25% were attempts to take a weapon in the courtroom.

A qualitative analysis of the disorderly behavior incident reports shows most were angry individuals yelling equally towards either the court or other individuals involved in the case.

Chief Justice Radack asked if the forms were available to the courts. Mr. Reynolds responded that the courts had all been notified but that the appellate courts had not been included in the bill. Chief Justice Jefferson said that the appellate courts could be added.

***Texas Data-Enabled Courts for Kids (TexDECK)  
Texas Appellate Management & E-filing System (TAMES)  
Automated Registry***

Carl Reynolds reviewed the technology projects currently in progress at OCA (*Attachment G*). He described TexDECK as a suite of projects created to pursue a goal that Justice O'Neill discussed on behalf of the new Children's Commission, to allow judges to have better information available to them when hearing child protection cases and have better tools at their disposal to manage the very intensive and complex nature of those cases.

The next project, Automated Registry, is a rider for OCA to contract for a tool that will put on a judge's computer screen a preset selection of information out of a variety of state databases. Bruce Hermes, OCA Information Services Director and his staff have been working with Mr. Reynolds, the Department of Public Safety, the Department of Criminal Justice, the Department of Family and Protective Services and the Department of State Health Services to create a search engine of information that will be available to a judge so that they will know who they are looking at in their courtroom. There are several issues to be looked at but it will have exciting results by the end of the biennium.

Mr. Reynolds opened the discussion to TAMES, the technology tool for appellate courts to share and accept data digitally. He stated that OCA received most of the funding it had requested for this project development and then referred to Mr. Hermes for any questions.

Judge Casey asked regarding the Automated Registry if any information provided would be prejudicial towards a case. Mr. Reynolds responded that one answer would be to provide the information to both parties of the case and that that would be one of the concerns of the project.

Judge Keller added that Florida has a similar system used as a red flag system for sex offenders. She said that the Automated Registry is not a registry at all. It will be more in depth than a registry used for red flagging.

### **DISCUSSION OF 81<sup>ST</sup> LEGISLATURE**

Next, Mr. Reynolds referred to the House Interim Studies handout (*Attachment H*) provided as well as the Legislative Proposals for Consideration by the Texas Judicial Council (*Attachment I*). The latter document is a current tracking matrix of Council proposals/bills and their legislative progress.

Mr. Reynolds reviewed some of the 14 holdovers on the list from the last session such as the funding of a certification division and changing the collection program from a mandated one to a voluntary one among others. The second page included four additional proposals for the Task Force on Indigent Defense.

### **DISCUSSION OF NEW PROJECTS FOR JUDICIAL COUNCIL**

Chief Justice Jefferson talked about preparing the Council for the next legislative session and discussed creating a Legislative Committee. He asked Chief Justice Linda Thomas to serve as Chair and discuss membership with him, and that its first task is to review the projects that Mr. Reynolds had discussed for the Council's next meeting.

Next, Chief Justice Jefferson commented that the Court has asked the Council to look at the Rules for Removal or Retirement of Judges currently used by the Judicial Conduct Commission and make recommendations to modernize them to fit current circumstances. Margaret Bennett, General Counsel for OCA, named the American Bar Association Model Rules of Judicial Disciplinary Enforcement as a current example for review.

Judge Polly Spencer was appointed to Chair this committee with Judge Monica Gonzalez as a member and Ms. Bennett serving as staff.

### **OTHER BUSINESS/NEXT MEETING**

Mr. Reynolds will notify the Council of a future meeting date which will be held prior to the next legislative session.

### **ADJOURN**

There being no further business before the Council, the meeting was adjourned at approximately 12:13 p.m.

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Wallace B. Jefferson  
Chair