

TEXAS JUDICIAL COUNCIL

MINUTES OF MEETING

January 7, 1999

10 A.M.

Supreme Court Courtroom

AUSTIN, TEXAS

COMMENCEMENT OF MEETING

Chairman Thomas R. Phillips called the regularly scheduled meeting of the Texas Judicial Council to order at 10:20 a.m. on January 7, 1999, in the Supreme Court Courtroom in Austin, Texas.

ATTENDANCE OF MEMBERS

The Director of the Judicial Council, Denise Davis, called roll. The following members of the Council were present:

Chief Justice Thomas Phillips
Judge Michael McCormick
Mr. James Brickman
Mr. Joseph Callier
Ms. Kathleen Cardone
Judge Martin Chiuminatto
Judge Stella Ortiz-Kyle
Judge Jim Parsons
Judge David Peeples
Mr. Diego Pena
Judge Robin Smith
Sharon Warfield Wilkes
Judge Mike Wood

Members not in attendance were James Boswell, Judge David Patronella, Judge Penny Pope, Justice Marilyn Aboussie, Justice John Cayce, Senators Rodney Ellis and Robert Duncan, and Representatives Pete Gallego and Senfronia Thompson. With a quorum established, the Council took the following action:

MINUTES OF THE PREVIOUS MEETING

The minutes of the November 20th Council meeting were adopted.

LEGISLATIVE UPDATE

Denise Davis, Director of the Texas Judicial Council, discussed legislation being tracked by Council staff. Ms. Davis highlighted filed legislation relating to judicial selection and the assignment of visiting and retired judges.

**REPORTS FROM THE COUNCIL COMMITTEES
DISCUSSION AND ACTION BY THE COMMITTEE**

COMMITTEE ON VISITING AND RETIRED JUDGES

Judge David Peebles provided an overview of the Committee's proposed peer review rule.

The Council discussed various elements of the rule, including possibility of suits being brought under the Americans with Disabilities Act (ADA).

The Council discussed changing the language in the rule to conform to the ADA.

The Council discussed whether the doctrine of qualified immunity applied to citizen and lawyer members of the proposed peer review panels.

Ms. Davis raised the point that as an advisory body, the peer review panel may not require immunity. Final decision rests with the presiding judge who enjoys judicial immunity.

Judge Wood moved to adopt the rule with amendments to conform to the ADA. The motion passed unanimously with recommendation that the rule be submitted to the Supreme Court.

The Council discussed how Representative Nixon's HB 460 relates to the Council's proposed visiting judges' legislation.

Ms. Kathleen Cardone briefed the Council on opinions expressed in El Paso legal community regarding the Council's proposed legislation. Ms. Cardone reported that lawyers in El Paso feel strongly that unlimited strikes of defeated visiting judges should apply in both civil and criminal cases.

COMMITTEE ON JUVENILE REFORM/IMPACT ON THE COURTS

Judge Robin Smith presented background information on the Committee's proposals.

The Council discussed the Committee's following proposals:

- ▶ Allow municipal and justice courts to retain fine-only contempt jurisdiction over juveniles.

A motion to adopt the recommendation was seconded. The motion passed unanimously.

- ▶ Afford municipal and justice courts greater flexibility in the assignment of community service.

A motion to adopt the recommendation was seconded. The motion passed with one reservation relating to the need for county oversight of community service programs.

- ▶ Provide for membership of the presiding judge of the municipal courts and a justice of the peace on the juvenile board in ten counties.

A motion to adopt the recommendation was seconded. The motion passed unanimously.

The Council discussed funding of community service programs. Specifically, the use of tobacco settlement funds was discussed as a possible funding source for certain juvenile programs.

COMMITTEE ON JUDICIAL REDISTRICTING

Chief Justice Phillips summarized the Committee's proposal to abolish the Judicial Districts Board while retaining the constitutional provision that directs the Legislative Redistricting Board to make a reapportionment of judicial districts following the federal decennial census.

The Council discussed the proposal.

A motion to adopt the proposal was seconded. The motion passed unanimously.

COMMITTEE ON APPELLATE CRIMINAL RECORDS STORAGE

Mr. Diego Pena provided an overview of the issue of appellate records storage.

Mr. Pena briefed the Council on the recommendations of the Committee:

- ▶ In criminal appellate cases involving a sentence of 20 years or less, the records will be retained by the district clerk for 25 years. If there is a sentence of life, the records will be kept for the life of the defendant.
- ▶ In civil cases, records will be destroyed one year after final disposition. Ninety-day notice will be provided to the parties in the case.

Mr. Jeffrey Vice, of the Office of Court Administration, provided additional information on appellate records storage policy.

The Council discussed the applicability of the committee's recommendations to court exhibits.

A motion to approve the Committee's proposal was seconded. The motion passed.

COMMITTEE ON STRATEGIC PLANNING

Ms. Davis briefed the Council on the Committee's progress in developing a strategic plan.

Ms. Davis presented the Council with a first draft of a proposal to establish standing committees for the Council.

Ms. Davis gave background information on how judicial councils in other states are organized.

The Council discussed the composition of the proposed standing committees.

COMMITTEE ON JUDICIAL SELECTION

The Council discussed the various judicial selection legislative proposals.

It was recommended that the sponsors of the judicial selection bills be invited to the next Council meeting.

COMMITTEE ON TRIAL COURT REORGANIZATION

Judge Martin Chiuminatto updated the Council on the work of the Committee. Judge Chiuminatto reported that proposed legislation was being drafted to provide that the county courts-at-law and district courts be merged into a unified trial court system with special treatment for the statutory probate courts.

The Council discussed how the issue of retirement may prove to be an obstacle to reorganization.

It was suggested that judges affected by reorganization could have the option of remaining on their county retirement plan.

The Council discussed the filing deadlines for proposed legislation.

COURT INTERPRETER CERTIFICATION

Judge Lana Rolf McDaniel, 203rd District Court in Dallas, discussed several problems associated with the use of court interpreters in Dallas. Judge McDaniel described a number of instances in which court interpreters translated important legal information incorrectly. Judge McDaniel indicated her support for a standardized court interpreter certification program.

The Council appointed a committee on court interpreter certification. The committee will consist of Rep. Thompson, Judge Parsons, Ms. Cardone, and Mr. Pena. The Council directed the committee to look into the cost of implementing a court interpreter certification program.

REPORT OF THE OFFICE OF COURT ADMINISTRATION: PUBLIC TRUST AND CONFIDENCE IN THE COURTS

Mary Cowherd, of the Office of Court Administration, briefed the Council on the recently completed study on "Public Trust and Confidence in the Courts."

COMMITTEE ON JUDICIAL INFORMATION TECHNOLOGY: ANNUAL REPORT

Doug Rybacki, Deputy Director of the Office of Court Administration, presented the Council with highlights from the JCIT's annual report.

The Council discussed the ability of the JCIT's proposals to withstand public scrutiny.

Mr. Rybacki discussed the JCIT's goal of keeping Texas courts in the mainstream of technology, with maximum protection against obsolescence.

DATE OF NEXT MEETING

The date and location of the next Council meeting will be determined.

ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 1:15 p.m.

Chief Justice Thomas R. Phillips
Chair