



# 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

August 25, 2011  
10:00 a.m.

SUPREME COURT OF TEXAS  
Supreme Court Building  
201 W. 14th Street, Room 104  
Austin, Texas

#### COMMENCEMENT OF MEETING

On August 25, 2011 Chief Justice Wallace B. Jefferson called the meeting of the Texas Judicial Council (Council) to order at approximately 10:05 a.m. in the courtroom of the Supreme Court of Texas (SCOT) in Austin, Texas.

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, Key Trak, College Station*  
*Hon. Gary Bellair, Presiding Judge, Ransom Canyon Municipal Court*  
*Hon. Bill Boyce, Justice, 14<sup>th</sup> Court of Appeals, Houston*  
*Hon. F. Alfonso Charles, Judge, County Court at Law No. 2, Gregg County*  
*Mr. Richard Figueroa, UBS Advisory & Brokerage Services, Houston*  
*Ms. Allyson Ho, Morgan Lewis, Dallas*  
*Mr. Virgil Justice, First Insurance Agency, Kerrville*  
*Hon. Orlanda Naranjo, Judge, 419<sup>th</sup> Judicial District, Travis County*  
*Hon. Valencia Nash, Justice of the Peace Pct. 1, Place 2, Dallas County*  
*Mr. Henry Nuss, Welder Leshin, Corpus Christi*  
*Hon. Glenn D. Phillips, Presiding Judge, City of Kilgore*  
*Hon. Polly Jackson Spencer, Judge, Probate Court #1, Bexar County*

Members Allyson Ho and Judge Nash attended via conference phone.

Members not in attendance were Representative Alonzo, Judge Russell Casey, Senator Duncan, Senator Harris, Representative Jackson, Ashley Johnson, Judge Kelly Moore and Chief Justice Sherry Radack.

Chief Justice Jefferson welcomed new member Virgil Justice.

He then commended Justice Boyce on his work last session regarding judicial selection and requested informally that he continue to work with those in the legislature who offered amendments to the system to the extent that they want to look at potential changes in the future.

## **REPORTS AND ACTION ITEMS**

### ***Court Resources Committee***

Mr. Reynolds reported on the work of the Court Resources Committee and the progress of its Shared Solutions Summit planning. The Committee has been meeting regularly and plans to continue meeting monthly. A plenary session on videoconferencing has been added because it was found to be such a recurring area under discussion.

Chief Justice Jefferson commented that the idea was developed on the premise that Texas has a decentralized judiciary. He asked Mr. Figueroa to discuss its purpose. Mr. Figueroa explained his approach in viewing the counties' operations from a business perspective and noted that each county has the same goal and similar processes; that of adjudicating cases. He also found that cost efficiencies exist and could easily be shared however there is no mechanism in place for doing so. The summit will provide a way to bring people together and create peer-to-peer conversation that will promote a paradigm shift from static systems thinking to revolutionary change in how courts function in Texas because of efficiency and cost.

Judge Naranjo commented that upon review of the summit agenda, she saw a lack of representation from the larger counties. Mr. Reynolds expressed a desire to continue the summit annually with the concept of including counties regionally within its host city. Mr. Figueroa added the importance of follow up that should include conference calls and an online collaboration tool. Chief Justice Jefferson agreed and asked that Mr. Reynolds and Mr. Figueroa have a plan in place scheduled to keep participants interested in adopting new reform.

## **MINUTES**

With a quorum present, Chief Justice Jefferson called for a motion to approve the previous meeting minutes. With proper motion and vote, the April 28, 2011 meeting minutes were adopted.

## **REPORTS AND ACTION ITEMS CONT'D**

Chief Justice Jefferson introduced Marisa Secco as the new Supreme Court Rules Attorney and discussed the process that takes place after new legislation has been adopted where the Court is then responsible for writing rules to implement those policies.

### ***Supreme Court Rule Projects***

Ms. Secco reported on the current projects that the Supreme Court Advisory Committee (SCAC) has on its agenda and a timeline for what will be presented to the Court for adoption. There were six bills that require the Court to promulgate rules or necessitate revision to existing rules. The SCAC will meet on a monthly basis until the end of the year instead of bimonthly and will begin meeting later this week.

The first bill [HB 274](#), relating to the reform of certain remedies and procedures in civil actions and family law matters, has four provisions calling for rules. They are regarding rules to provide for the dismissal of causes of action that have no basis of law or fact, rules to promote the prompt, efficient, and cost-effective resolution of civil actions, an amendment to the interlocutory appeals process, and the fourth provision will require amendments to the offer of settlement rule of the [Texas Rules of Civil Procedure](#) (Rule 167).

The dismissal rules do not have a legislative deadline. SCAC will be reviewing those rules within the committee and it has set a committee recommendation deadline of March 1, 2012. The expedited action rules similarly do not have a rules deadline but have also been set for a recommendation deadline of March 1, 2012. The legislation effective date for interlocutory appeals rules is September 1, 2011 and work is already in progress. Some of those rules will be discussed at the upcoming meeting and may be promulgated next week. Also for discussion at the SCAC meeting later this week are the amendments to the offer of settlement rule.

The second bill on the SCAC agenda is [HB 79](#) with fiscal matters relating to the judiciary. There are two rules provisions created by the bill. The first is concerning the abolishment of small claims court effective May 1, 2013. The Court is required to create rules defining which cases constitute small claims, to create rules of civil procedure applicable to small claims cases and to also create rules for eviction proceedings. A small claims task force will be appointed next week and will include justices of the peace. Plans are for a recommendation to be put forth in the spring of 2012.

The second provision is to create rules to guide determination of whether a case requires additional resources. The bill required the [State Bar of Texas](#) to create a task force on additional resources for complex cases. Ms. Secco reported that the task force has been appointed, the chair named is Richard Isle and that meetings are already in progress. Those rules must be promulgated by May 1, 2012.

The next bill requiring action is [HB 906](#) relating to parental rights termination cases for expedited appeals. This bill requires that rules be promulgated next week and SCAC will look at preliminary recommendations at its next meeting. The recommendations for consideration were made by the [Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship](#) (Task Force). Another set of recommendations will be made by the Task Force in October. The legislative deadline for those rules is March 1, 2012.

The fourth bill is [HB 962](#) relating to rules regarding return of service. The bill authorizes changes to Rule 107 so that the endorsement is no longer required to be attached to the original process issued. The effective date is January 1, 2012.

Next, expedited foreclosure rules for property owners associations, [HB 1228](#). There is already a task force in place regarding expedited foreclosure rules and they are now including the property owners associations. These rules will also be discussed at the upcoming SCAC meeting. The legislative rules deadline is also January 1, 2012 and they should be ready for public comment November 1, 2011.

The sixth bill relating to rules is in a provision of [SB 1](#) relating to confidentiality of certain peace officer expense reimbursements incurred while providing security to an elected official. This gives the Supreme Court the original and exclusive mandamus jurisdiction over any dispute regarding the construction, applicability, or constitutionality of that confidentiality and allows the Court to appoint a master to assist in the resolution of any such dispute.

Ms. Secco also reported on [HB 2425](#) relating to notice to the attorney general of challenges to the constitutionality of Texas statutes and [HB 3674](#) relating to the use of an unsworn declaration.

Chief Justice Jefferson commented that transcripts of the SCAC [meetings](#) are posted online.

#### ***Access to Justice Commission Projects***

Chief Justice Jefferson introduced Trish McAllister, Executive Director of the [Access to Justice Commission](#) (Commission). Ms. McAllister reported on the activities of the Court's [Uniform Forms Task Force](#) (Task Force). The Task Force held its first meeting in March 18, 2011 with its focus set on identifying and developing forms needed and evaluating best practices for the creation and distribution of those forms. The Task Force gathered statistics from [TexasLawHelp.org](#) and locally from the [Travis County Self-Help Center](#). Family law matters were identified as the area most in need of services. The Task Force focused to begin with a set of forms for divorce involving no children and very limited property. Other areas of law will be addressed based on priority of need as seen throughout the state. The Task Force has invited participation from family law leaders at the State Bar but the offer has not been accepted. Some members of the Bar have expressed concerns about the Task Force relating to the complexity of the law and the impact the forms may have on attorneys. Although there have been similar concerns in other states, she noted that 45 additional states do have standardized forms available for *pro se* litigants and none of those concerns have materialized. Some Family Law members of the State Bar had requested the Task Force postpone drafting the forms and have agreed to meet with the Task Force on September 2.

Mr. Figueroa encouraged the Task Force to work on guardianship and probate forms as well.

Ms. McAllister further reported on the work of the Commission regarding self-represented litigants. To complement the Court's Task Force, the Commission has established several sub-committees on the subjects of self-help centers, models for assisted *pro se* representation, limited scope representations, and educating lawyers, the judiciary, clerks and law librarians who may have contact with self-represented litigants. The Commission is also looking at opportunities for rule changes that would facilitate a self-represented litigant.

### ***School Discipline and Ticketing***

Chief Justice Jefferson introduced Deborah Fowler, Deputy Director for [Texas Appleseed](#), to present a summary of Texas' [School to Prison Pipeline](#) report [Ticketing, Arrest & Use of Force in Schools](#). The report provided information on how ticketing and arrest of juveniles has the most immediate impact on courts and court resources. She remarked on three initiatives by courts and judges. The first successful initiative reported in Clayton County, Georgia, is a cooperative agreement aimed at limiting the number of school referrals to juvenile court and involves graduated sanctions. The next is a court-based initiative in Florida which has been mandated statewide. The "Civil Citation Program" in Florida is similar to Texas' first offender programs. Ms. Fowler expressed hesitancy due to its net-widening effect but noted its benefit as a true diversion program. The last initiative is a change in policy that originated in Connecticut. The judiciary there issued new policy and intake procedures for delinquency summons that were referred to the juvenile courts from schools. A preliminary screening will be conducted upon receipt of summons to determine whether or not further action is required.

After Ms. Fowler's report and discussion by Council, Chief Justice Jefferson decided to create a committee that will explore these issues. Ms. Fowler agreed to be a part of that committee.

### ***Information Services Projects***

Casey Kennedy, OCA's Information Services Director, gave a brief overview of current technology projects. Detailed information can be found in the [Director's Report](#). Mr. Kennedy reported progress on implementation of the Court Activity Reporting and Directory Project (CARD).

Regarding the Judicial Emergency Data Infrastructure Project (JEDI), he stated infrastructure for a secondary emergency recovery site in Waco should be built out by the end of September.

Mr. Kennedy noted that the Supreme Court and the [1<sup>st</sup>](#) and [14<sup>th</sup>](#) Courts of Appeals (COA) in Houston are currently testing the application for the [Texas Appeals Management and E-filing System](#) (TAMES). The [14<sup>th</sup>](#) COA is scheduled to go live at the end of September. E-filing is now available at six of the appellate courts.

Lastly, the Child Support Case Management System launched at the end of April with the first release of enhancements due at the end of August.

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

Presiding Judge Keller reported that almost all indigent defense funding was restored. She then discussed the dramatic changes that have been made in the way Texas handles death penalty trials. There is now a Regional Public Defender Office for Capital Cases, thanks to David Slayton, Lubbock County Court Coordinator, that is funded by the Task Force and it has now been expanded to include other regions in the state. She anticipates it will be statewide with the exception of a few counties within the next year. There is also now an [Office of Capitol Writs](#) so the initial writ of *habeas corpus* in death penalty cases is being tried by a public defender office. All of this has occurred within the last four years and it has transformed the way death penalty cases are handled in Texas. Lubbock County just received a best practices award for their Special Needs Public Defenders Office which was funded by the Task Force and Mr. Slayton also received an award for his work in the public defender office for capital cases and the special needs public defenders' Managed Assigned Counsel Program. The Task Force on Indigent Defense was created ten years ago and as of September 1, it will become the [Texas Indigent Defense Commission](#).

***Director's Report***

Mr. Reynolds noted an omission from the Director's Report regarding Article 10 of HB79 which mandates OCA to study the County Courts at Law in Texas that have subject matter jurisdiction in excess of \$200,000. He noted that Judge Gary Harger, retired, is working with the National Center for State Courts to conduct this study.

**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 12:15 p.m.

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Wallace B. Jefferson  
Chair