



# TEXAS JUDICIAL COUNCIL

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CHAIR:

HON. WALLACE B. JEFFERSON  
Chief Justice, Supreme Court

EXECUTIVE DIRECTOR:  
DAVID SLAYTON

VICE CHAIR:

HON. SHARON KELLER  
Presiding Judge, Court of Criminal Appeals

## TEXAS JUDICIAL COUNCIL

### MINUTES OF MEETING

September 7, 2012  
10:00 a.m.

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

#### COMMENCEMENT OF MEETING

On September 7, 2012 Chief Justice Wallace B. Jefferson called the meeting of the [Texas Judicial Council](#) ("Council") to order at approximately 10:04 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. Russell B. Casey, Justice of the Peace Pct. 3, Place 1, Tarrant County*  
*Hon. Robert Duncan, Senator, District 28, Lubbock*  
*Mr. Richard Figueroa, UBS Advisory & Brokerage Services, Houston*  
*Ms. Allyson Ho, Morgan Lewis, Dallas*  
*Ms. Ashley Johnson, Gibson Dunn & Crutcher LLP, Dallas*  
*Mr. Virgil Justice, First Insurance Agency, Kerrville*  
*Hon. Kelly Moore, Judge, 121<sup>st</sup> Judicial District, Terry & Yoakum*  
*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 Jackson Spencer, Judge, Probate Court #1, Bexar County*  
*Hon. Laura A. Weiser, Judge, County Court at Law No. 1, Victoria County*

Ms. Ashley Johnson attended via conference phone.

Members not in attendance were Representative Roberto Alonzo, Senator Chris Harris, Representative Jim Jackson, Judge Valencia Nash and Mr. Hank Nuss.

Chief Justice Jefferson announced that the State Bar of Texas is now hosting live and archived video of SCOT oral arguments and meetings on its website.<sup>1</sup> He thanked St. Mary's School of Law for their support and assistance in getting the webcasting program started.

In keeping with the Council's statutory responsibility to receive and consider advice from judges, public officials, members of the bar, and citizens, Chief Justice Jefferson last month wrote to organizations across the state that are directly connected to the judicial branch and asked for help considering what proposals they might be presenting to the legislature in the next session. Many entities responded with numerous proposals identifying policy matters and resource issues that affect the administration of justice. He prefaced the discussion noting that the Council would consider only ten proposals today, but that many of the other proposals submitted by organizations have merit and may be considered at a later time.

Chief Justice Jefferson recognized Senator Duncan and thanked him for his support of the courts. Senator Duncan remarked on the many challenges ahead and the progress that has been made in modernizing the courts.

## **MINUTES**

With a quorum present, Chief Justice Jefferson called for a motion to approve the previous meeting minutes. With proper motion and vote, the [June 8, 2012](#) meeting minutes were approved.

## **REPORTS AND ACTION ITEMS**

### **Shared Solutions 2.0**

Chief Justice Jefferson began discussion with the proposal provided by the Shared Solutions Committee (Committee on Judicial Resources). Commenting on the success of the Summit, he asked Rick Figueroa, Committee Chairman, to explain the proposal to extend the concept further through *Shared Solutions 2.0 – Competencies of a High Performing Texas Court*. Mr. Figueroa reported the Committee's desire to develop standards for a certification system similar to the private-sector business model ISO 9000 for quality management. He hopes to begin that process in early fall and during development, the next Shared Solutions Summit will be in the planning stages for late 2013. The goal will be to have a certification process in place and available in 2014.

Chief Justice Jefferson asked Mr. Figueroa to move forward with the project and report again in November.

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<sup>1</sup> <http://www.texasbarcle.com/CLE/TSCSearch2.asp>

**Legislative Proposals for Judicial Council Resolutions**

a. Resolution Advocating for Adequate Funding of the Courts

Chief Justice Jefferson stated that each proposal for consideration for possible resolution of support would be introduced and briefly discussed and that for each item the Council supports, staff will prepare a resolution for consideration at the November meeting. He reiterated that this would not be the last opportunity for Council to consider resolutions supporting legislation.

Before taking up the first item for consideration on the subject of advocating for adequate funding of the courts, Chief Justice Jefferson commented on the budget cuts that Texas courts have experienced. He highlighted examples that substantiate the Texas judiciary has cut waste and increased efficiency during this period of budget cuts. He articulated that the judiciary must ensure that the courts are funded sufficiently so that Texas can provide access to justice, high quality judges and staff.

David Slayton, Executive Director of the Council, presented the proposal. He noted that the proposals received from the different groups included a recurring need for funding to support specific needs in the courts. He explained that with support from Council, staff plans to draft a resolution that would speak generically to the need for the Legislature to ensure that the courts are adequately funded but that would somewhat specifically address group needs as well.

With minimal discussion a motion was made to support the concept for a resolution on adequate court funding. After vote and with no objection, the motion was approved.

b. Resolution Supporting Adequate Funding of the Court eFiling System

The second item for discussion was a resolution supporting adequate funding of the court eFiling system. In 2002 Texas initiated a court eFiling system that has since been adopted in the Supreme Court, nine of the fourteen Courts of Appeals and in 52 of the 254 counties. Today it covers over 80% of the State's population at the trial court level but has been hampered by the cost structure. The goal is to provide a cost effective system so that the courts can fully utilize its benefits. Casey Kennedy, OCA Director for Information Services, added that the current statewide contract for eFiling will finally end February 28, 2014. He apprised that OCA and the Supreme Court are negotiating with a new vendor who may be better able to allow for easier integration. The proposal will remove the barrier for additional cost to the filer, allow attorneys to practice in multiple counties and ultimately provide a lower, one-time filing fee per case. With higher volume of usage, higher revenues will be produced. Mr. Slayton concluded the proposal would help to reduce the cost of litigation and improve the efficiency of the courts.

After discussion, a motion was made to support the concept for a resolution to support adequate funding of the court eFiling system. After vote and with no objection, the motion was approved.

c. Resolution Encouraging Full Funding by the State of the Increased Cost of Indigent Defense Since the Passage of the Fair Defense Act

Next, the proposal encouraging full funding by the state of the increased cost of indigent defense since the passage of the Fair Defense Act was considered. In 2001 the Legislature passed the Fair

Defense Act that provided state funding and requirements for criminal indigent defense. The bill has resulted in dramatic improvements but counties have had to shoulder some of the cost at their own expense. Jim Bethke, Executive Director for the [Texas Indigent Defense Commission](#), presented the proposal that will allow greater funding levels to be allocated towards indigent defense, which will reduce the county burdens.

After discussion, a motion was made to support the proposal. After vote and with no objection, the motion was approved.

- d. Resolution Supporting the Children's Commission and its Proposals to Better Advise Indigent Parents of their Right to Counsel and Related Amendments, as well as Support Amendments that would Strengthen the Consideration of Educational Needs of Children in the Foster Care System

Concerns have been raised by the [Permanent Commission for Children, Youth and Families](#) ("Commission") on how children are dealt with in the foster care system and to ensure that parents are adequately represented in the legal process and also that the educational needs of these children are fully met. Tina Amberboy, Executive Director for the Commission, presented the concept for a resolution supporting the Commission and its proposals to better advise indigent parents of their right to counsel and related amendments, as well as support amendments that would strengthen the consideration of educational needs of children in the foster care system.

After discussion, a motion was made to support the concept. After vote and with no objection, the motion was approved.

- e. Resolution Supporting the Clarification of the State's Vexatious Litigant Statute

Maria Eléna Ramón, General Counsel for OCA, explained a proposal for supporting clarification of the state's vexatious litigant statute. The primary confusion regarding [Chapter 11](#) of the Civil Practices and Remedies Code that occurs comes from two provisions in the statute. One is a mechanism for a litigant to have the person that is suing them declared a vexatious litigant in that case. Another provision allows for a global order that determines a person filing is a vexatious litigant and cannot ever file a lawsuit without preclearance from a local administrative judge. Most orders that are submitted to OCA are a hybrid of both and are unclear. The proposal would help to clarify the statute and may also include a recommendation for a model form that would clearly state the chosen mechanism. The proposal may also address whether or not a person remains on the list for perpetuity.

A motion was made to support the concept. Without further discussion, after vote and with no objection, the motion was approved.

- f. Resolution Supporting the Collection of Court Costs and Fines Beyond the Period of Community Supervision

Since 2005, OCA has assisted local governments in collecting courts costs and fines that are owed to them. It had been local government practice to pursue collection from criminal defendants who have discharged their period of community supervision however county

attorneys disagreed with that practice and so an opinion request was sent to the attorney general. Ted Wood, Assistant General Counsel for OCA, described the opinion issued in 2006 in regards to the request that said once a defendant is no longer on probation they are no longer obligated to repay the criminal court costs and fines that were ordered in that case. OCA has followed the AG's opinion but is seeking legislation that would allow local governments to collect those fees owed.

A motion was made to support the concept. Without further discussion, after vote and with no objection, the motion was approved.

g. Resolution Supporting the Simplification of the Criminal Court Cost Structure in Texas

Mr. Wood presented a request for a resolution supporting the simplification of the criminal court cost structure in Texas. OCA assists district and court clerks with guidance in assessing these complex fees and is proposing a more efficient solution. In effect, the proposal would recommend abolishing all current criminal court cost statutes and seek to establish a constitutional amendment calling for a single criminal court cost for each level of offense.

After discussion, a motion was made to support the concept. After vote, the motion was approved with the following members opposed: Judge Bellair, Allyson Ho and Richard Battle.

h. Resolution Supporting Adequate Compensation of Texas' Judges

Mr. Slayton discussed the presentation from the [Judicial Compensation Commission](#) ("Commission") at the last Judicial Council meeting and presented a proposal for a resolution supporting adequate funding for Texas' judges. The Commission expects to have finalized its recommendations to the legislature before the November Judicial Council meeting and the proposed resolution will be to support the Commission's recommendations.

A motion was made to support the Commission's recommendations. Without further discussion, after vote and with no objection, the motion was approved.

i. Resolution Supporting the Juvenile Justice Committee's Recommendations for Addressing School Disciplinary Actions Referred to the Juvenile Justice Court System, Parity Between Criminal and Civil Juvenile Justice Courts and Probation, Identifying Criteria for Data Collection and also that would Encourage More Use of Best Practices

Judge Naranjo reported on the activity of the Juvenile Justice Committee ("Committee"). Judge Naranjo and Judge Spencer, respectively, presented the recommendations of the Legislative Subcommittee and the Data Collection and Best Practices Subcommittee. Judge Naranjo requested a resolution supporting the Committee's recommendations<sup>2</sup> for addressing school disciplinary actions referred to the juvenile justice court system, parity between criminal and civil juvenile justice courts and probation, identifying criteria for data collection and also that would encourage more use of best practices.

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<sup>2</sup> Juvenile Justice Committee Comparison Chart of Legislative Recommendations, Data Collection and Best Practices Subcommittee Recommendations and Legislative Subcommittee Recommendations are posted online at <http://www.courts.state.tx.us/tjc/090712mtg.asp>

A motion was made to support the Committee's recommendations. Without further discussion, after vote and with no objection, the motion was approved.

- j. Resolution Supporting Modification of the Responsibility of Clerks to Notify the Attorney General when a State Statute is being Challenged as Unconstitutional

Mr. Wood presented a proposal for a resolution supporting modification of the responsibility of clerks to notify the Attorney General when a state statute is being challenged as unconstitutional. Last session a bill was passed that required the court to inform the Attorney General whenever there was a constitutional challenge. Although well intentioned, application is impractical due to the volume of pleadings and motions. This resolution would remove that requirement and suggest that the burden of responsibility be placed on the attorney filing.

A motion was made to support the proposal. Chief Justice Jefferson proposed adding a check box to the civil cover sheet that would indicate whether or not there was a challenge. After vote and with no objection, the motion was approved.

#### **NEW BUSINESS**

None

#### **NEXT MEETING**

Friday, November 9, 2012. 10:00 a.m. – 12:00 p.m.

#### **ADJOURNMENT**

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