

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL  
MADISON, WISCONSIN  
January 18, 2008

The Judicial Council met at 9:30 a.m., Room 328 NW, State Capitol, Madison, Wisconsin.

**MEMBERS PRESENT:** Marla J. Stephens, Chair; Honorable Ann Walsh Bradley, Michael R. Christopher, Allan M. Foeckler, Professor Jay Grenig, Honorable Edward E. Leineweber, Robert L. McCracken, Stephen R. Miller, Professor David E. Schultz, A. John Voelker, Honorable Mary K. Wagner.

**MEMBERS EXCUSED:** Honorable Michael J. Gableman, Kathleen E. Grant, Beth E. Hanan, Representative Bill Kramer, Catherine A. La Fleur, Kathleen A. Pakes, Senator Lena Taylor, Greg M. Weber (represented by Maura Whelan), Honorable Ted E. Wedemeyer, Jr., Honorable Maxine A. White.

**OTHERS PRESENT:** James C. Alexander, Robin Ryan, Maura Whelan.

**I. Call to Order and Roll Call**

Chairperson Stephens called the meeting to order at 9:30 a.m. Chairperson Stephens welcomed Stephen R. Miller, Chief of the Legislative Reference Bureau (LRB) to the Judicial Council. Members of the Council introduced themselves.

**II. Approval of Minutes of December 14, 2007 meeting**

Chairperson Stephens noted typographical corrections to the minutes. The minutes as amended were approved by consensus.

**III. Hiring and Transition Report**

Chairperson Stephens reported that ads for the full-time attorney position had been published electronically in several places and will be published in other media soon. Applications have already been received. It is anticipated that the hiring process can be completed in the spring.

Chairperson Stephens said there has been no response from the Department of Administration (DOA) to the Council's space request for the Tenney Building. Also, there has been no decision whether the Supreme Court Office of Management Services or DOA will process the Council's financial operations.

#### **IV. Discussion of Citation to Unpublished Opinions**

The Council was presented with a draft of the workgroup's petition for an order amending Wis. Stat. § (Rule) 809.23(3) to allow the citation of unpublished opinions for their persuasive value. Justice Bradley left the meeting before discussion ensued.

Discussion centered on whether to include effective dates in either or both subsections of proposed § 809.23 (3). The consensus of the Council was that an effective date was inadvisable in sub. (a) because it might suggest that unpublished opinions could not be cited "to support a claim of claim preclusion, issue preclusion or the law of the case" prior to the effective date of any amendment.

A discussion followed on whether to include an effective date in sub. (b), the issue being whether the rule should allow citation of only those unpublished decisions issued after the effective date of the rule change or allow citation of all unpublished decisions issued both before and after the effective date of the rule change. The consensus of the Council was to propose an amendment allowing the citation of all unpublished court of appeals decisions.

Justice Bradley returned to the meeting.

#### **V. National Center for State Courts Study**

The final report of the National Center for State Courts (NCSC) entitled "Wisconsin Judicial Council Recommendations Regarding Priorities, Planning and Operations" has been received and distributed to Council members.

MOTION: Judge Wagner moved, seconded by Judge Leineweber, to accept the report.

Motion passed unanimously.

Judge Leineweber led a discussion about what actions should now be taken to determine which recommendations in the study to adopt and how to implement them. The consensus of the Council was to defer action in that regard until staff for the Council is hired. In the meantime, the Council will publish the report on its website, attach the report to the minutes for this meeting and send copies of the report to various Council constituencies.

## **VI. Committee Reports**

### **A. Appellate Procedure**

Marla Stephens reported that the committee did not meet in December but is meeting after the meeting today. The committee will discuss the Remington Center Advisory Committee comments on proposed changes in the procedures governing the preparation and use of pre-sentence investigation reports.

### **B. Criminal Procedure**

Professor Schultz introduced Robin Ryan, Legislative Attorney and Drafter, with the Legislative Reference Bureau (LRB). Professor Schultz will meet with Atty. Ryan to transfer the Council's comments about the LRB's first drafts of the proposed revision of the Criminal Procedure Code to enable Ryan to begin to put the proposed revision into bill draft form.

### **C. Evidence and Civil Procedure**

Judge Leineweber reported that the committee is meeting today and is gathering information on electronic discovery.

### **D. Strategic Plan**

Judge Leineweber said there was no need for the committee to meet today given the decision by the Council to postpone any action on the NCSC study until the Council's staff attorney has been hired. Chairperson Stephens said that the committee will be in inactive status until that time.

### **E. PPAC Liaison**

Judge Leineweber reported that there was nothing to report except the Supreme Court heard the petition on video-conferencing and conferenced the petition. Judge Leineweber thought the petition was well received by the court, which wants follow-up on some issues.

## **VII. Other Business**

The Hiring Workgroup meeting scheduled for today was cancelled.

Justice Bradley expressed the Council's sincere appreciation to Judge Leineweber for his initiative and continuing efforts to get the NCSC to conduct the study, to get the NCSC's report finished and to find and obtain the grant money to help pay for it. The Council gave Judge Leineweber a well-deserved round of applause.

## **VIII. Adjournment**

The Council adjourned by consensus at 10:55 a.m.