

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
May 15, 2009

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

MEMBERS PRESENT: Chair Marla J. Stephens, Vice-Chair Beth E. Hanan, , Michael R. Christopher, Honorable George S. Curry, Representative Gary Hebl, Catherine A. La Fleur, Honorable Edward E. Leineweber, Robert L. McCracken, Stephen R. Miller, Kathleen A. Pakes, Professor David E. Schultz, A. John Voelker, Honorable Mary K. Wagner, Greg M. Weber, Honorable Maxine A. White.

MEMBERS EXCUSED: Honorable Ann Walsh Bradley, Honorable Patricia S. Curley, Allan M. Foeckler, William C. Gleisner, Professor Jay Grenig, Senator Lena Taylor.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Madu Enwemnw, Research and Policy Advisor for Senator Taylor; Kate Battiato, Office of Representative Hebl.

I. Call to Order and Roll Call

Chair Stephens called the meeting to order at 9:40 a.m.

II. Approval of April 17, 2009 Minutes

The minutes were approved by consensus with no amendments.

III. Appointment of a Nominating Committee

Council members White, Leineweber and Christopher volunteered to serve on the committee tasked with nominating candidates for the position of chair and vice-chair, to be elected at the June meeting. Chair Stephens appointed Council member Christopher to chair the committee, and asked anyone interested in serving as chair or vice-chair for council year 2009-2010 to notify him.

IV. Discussion Regarding Institute for the Advancement of the American Legal System's Rules of Civil Procedure Pilot Projects

Council member Leineweber provided an update regarding the Institute for the Advancement of the American Legal System (IAALS), a nonprofit organization based out of the University of Denver. The IAALS provided him with information regarding pilot projects in which they would like various states to participate. Council member Leineweber clarified that his report was only an update, and suggested that the Council obtain more information prior to a discussion regarding possible participation in a pilot project for civil justice reform. He added that the pilot project would probably involve simplified civil procedure rules likely to apply to cases with an amount in controversy greater than small claims, but would not be applicable to complex matters. He believes they will focus on pretrial practice and discovery. Several states

have expressed interest in the project, although expressing interest does not a guarantee that a state will be chosen to participate.

Attorney Southwick distributed a new study regarding civil justice in Wisconsin. Council member Leineweber suggested that civil justice reform may be needed based on the trend of increased case filings and decreased civil trials. However, he added that additional data is probably needed to attempt to establish the reason for these trends.

IAALS Executive Director Kourlis informed Attorney Southwick that they will travel to Washington D.C. this month to meet with the American College of Trial Lawyers Task Force to finalize the draft rules that they will be proposing. She will forward those drafts to the Council for review prior to the June meeting. Several council members indicated that these rules do not appear to address the perceived needs of courts in Wisconsin. There was also a concern that new rules would mean losing all the existing precedent interpreting the current rules. Council member Leineweber explained that these rules will likely address very fine points, not big issues such as limited judicial resources or the explosion of family law cases, so he asked council members to keep an open mind as they review the proposal. Several council members agreed that they would like the Council to review the proposed rules and continue to monitor this topic. Chair Stephens asked Attorney Southwick to continue to monitor the proposal and forward information to the Council.

V. Discussion and/or Action Regarding Publication of Legal Notices

Vice-Chair Hanan stated that Attorney Heuer wrote her regarding his concern about impending newspaper bankruptcies and the publication of legal notices in official newspapers. Attorney Southwick distributed several articles regarding the recent proposal by the legislature to post government notices on the internet, as opposed to publication in the official state newspaper. Council members generally did not view this topic as appropriate for Council action at this time. Vice-Chair Hanan volunteered to draft a response to Attorney Heuer for Council review at the next meeting. Attorney Southwick offered to conduct research regarding actions, if any, that other states have taken to address alternative methods of publication and notice.

MOTION: Council member Weber moved, seconded by Council member Wagner, that Vice-Chair Hanan draft a response to Attorney Heuer, and Attorney Southwick conduct additional research regarding action, if any, taken by other states to address service by publication in regions where local newspapers no longer exist. The motion was approved unanimously.

VI. Discussion and/or Action Regarding Wisconsin Statutes Chapter 799 and Time Computation in Small Claims Cases

Council member Leineweber explained that the question of time computation under Chapter 799 of the Wisconsin Statutes was brought to the Council by Chief Justice Abrahamson, and has been under review by the Evidence & Civil Procedure Committee. The primary issues, as well as the committee's proposed solution, are addressed in a memorandum drafted by Attorney Southwick that was distributed to the members prior to the meeting. The committee proposes the addition of a definition to define "day" as a "calendar day." The committee's

proposal is consistent with the unpublished court of appeals decisions that have addressed the issue of time computation, concluding that Wis. Stat. § 801.15 does not apply to small claims actions brought under chapter 799. Several judicial council members stated that, in practice, their courts use calendar days for time computation in small claims cases. The preliminary draft amendment to chapter 799 prepared by the State Bar's Bankruptcy, Insolvency and Creditors' Rights Section also uses "calendar days." Chair Stephens suggested that the committee consider specifying those sections that are not applicable to chapter 799. Judge White inquired as to whether the committee had discussed this matter with the Benchbook Committee. Judge Leineweber stated that the committee had not, but that they would be notified if, and when, a definition is added. Chair Stephens requested that both statutory sections (chapter 799 and 801.15) be circulated to council members prior to the next discussion of this item.

MOTION: Council member Weber moved, seconded by Council member Hebl, to table this item to allow the judicial council members time to assess the impact of this change on the practices in their respective districts and report back to the Council, as well as time to allow the Evidence & Civil Procedure Committee to obtain some additional information on current practices and report back to the full Council. The motion was approved unanimously.

VII. Discussion of Wisconsin Rules of Evidence

At the previous meeting, Chair Stephens asked the Evidence & Civil Procedure Committee to recommend the evidentiary rules that should be included in the review, and propose a work plan. Attorney Southwick distributed the proposal prior to the meeting. Chair Stephens stated that it appears to be a workable plan.

VIII. Annual Breakfast Meeting.

Chair Stephens stated that although the Council has funds in its budget to cover the cost of the Annual Alumni Breakfast, it may be best to reduce or eliminate those expenses this year. Several council members opposed cancelation of the alumni meeting, stating that it is an important opportunity for past members and current and new members to share valuable information regarding the work of the Council. The consensus was that the Council should hold the meeting and invite the alumni members, but that the meeting should be held in the Capitol to eliminate the expense of renting conference room space. Additionally, the menu should be significantly scaled back to further reduce the cost. Council member Hebl suggested that we hold the meeting in the Assembly Parlor. Judge White suggested that since the Council is not serving a full breakfast, the meeting should be renamed this year. The consensus was that it should begin at 9:30 a.m. to allow time for members and guests to travel to Madison.

MOTION: Council member Weber moved, seconded by Vice-Chair Hanan, that the Council hold its annual alumni meeting at the Capitol in a room capable of seating all attendees, and to provide coffee and breakfast pastries. The motion was approved unanimously.

IV. Committee Reports

A. Appellate Procedure

Chair Stephens reported that the Appellate Procedure Committee drafting workgroup (consisting of Greg Weber, Peg Carlson, Meredith Ross and Chair Stephens) has met twice to work on the presentence investigation amendments. They have another meeting scheduled, and hope to finalize the draft by the end of the Council year so that the full Council can review the proposal over the summer.

The three companion appellate procedure bills introduced and co-sponsored by Senator Taylor and Representative Hebl (2009 AB 122-24 and SB 98-100) have passed the Assembly unanimously. The Senate anticipates a vote on the bills on June 9.

B. Criminal Procedure

Committee chair Schultz stated that there was nothing new to report with regard to the criminal procedure amendments.

C. Evidence and Civil Procedure

Committee chair Leineweber reported that the petition regarding discovery of electronically stored information has been filed with the supreme court. The other items under review by the committee (small claims and rules of evidence) have already been discussed with the Council.

VIII. Other Business

A. PPAC Liaison's Report

There was no PPAC Report.

B. Council Attorney's Report

Attorney Southwick reported that there is an estimated additional \$1.6 billion state budget deficit, but at this time she does not know how it will impact the Council's budget.

IX. Adjournment

The Council adjourned by consensus at 11:30 a.m.