

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL  
MADISON, WISCONSIN  
November 21, 2008

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, Allan M. Foeckler, William C. Gleisner, Representative Bill Kramer, Honorable Edward E. Leineweber, Catherine A. La Fleur, Robert L. McCracken, Kathleen A. Pakes, Professor David E. Schultz, Honorable Mary K. Wagner, Greg M. Weber, Honorable Maxine A. White.

MEMBERS EXCUSED: Honorable Ann Walsh Bradley, Honorable Patricia S. Curley, Professor Jay Grenig, Stephen R. Miller, Senator Lena Taylor, A. John Voelker.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Robin Ryan, Legislative Reference Bureau Drafting Attorney; Eric Peterson, Legislative Director for Senator Taylor; Nancy Rottier, State Courts Legislative Liaison.

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

Chair Stephens called the meeting to order at 9:35 a.m. All members introduced themselves. Attorney Southwick stated that Wisconsin Eye will not be filming the meeting.

**II. Approval of October 17, 2008 Minutes**

The minutes were approved by consensus with no amendments.

**III. Discussion and/or Action Regarding Request to Review Rule 814.29, Security for Costs, Service and Fees for Indigents**

At the last meeting, council member Voelker volunteered to work with his staff in the Director of State Courts Office to determine current practices and problems, if any, associated with the requirement that an indigent party file an affidavit with the court to obtain a waiver under Rule 814.29.

In council member Voelker's absence, Attorney Southwick distributed the written results of a survey conducted by court staff. Further discussion was postponed until next month.

**IV. Discussion of Request to Review Chapter SCR 81 – Compensation of Court-Appointed Attorneys**

Council member La Fleur reported that she and council members Gleisner, McCracken, and Taylor met in Milwaukee to discuss compensation of court appointed attorneys. They prepared a recommendation to amend the Rule to incorporate factors to aid judges in determining

when to go above the minimum rates, and the Legislative Reference Bureau (LRB) is in the process of drafting it pursuant to Senator Taylor's request.

Robin Ryan, LRB drafting attorney, suggested that the Council's drafting requests to the LRB be initiated directly by the Council. She explained that drafting requests originated by a legislator are confidential, so the drafter is unable to communicate directly with the Council about them. Eric Peterson offered to contact the LRB on behalf of Senator Taylor to modify the drafting request to reflect that it is a Judicial Council request. Vice-chair Hanan suggested that the Council ask Attorney Southwick to prepare drafts, and noted that drafting proposals is one of the duties of the Judicial Council attorney. Chair Stephens asked council members to contact Attorney Southwick regarding all future LRB drafting requests.

Further discussion was postponed until the draft is available.

## **VIII. Committee Reports**

### **A. Appellate Procedure**

Committee co-chair Stephens reported that the committee canceled their November 19 meeting they did not have a sufficiently representative sample of committee members to engage in a productive discussion regarding presentence investigation reports.

She reported that two of the three redrafts of the appellate procedure bills are complete, and third redraft is a work in progress.

The committee's next meeting will be on December 10, 2008 at 1:30 p.m. at the Judicial Council office.

### **B. Criminal Procedure**

Committee chair Schultz gave a brief update on the project to amend the criminal procedure code. In addition to the two chapters previously received from the LRB, he received chapter 970 on November 6. The subcommittee (Schultz, Stephens, Pakes and Weber) will be meeting in December to prepare responses to the questions from the LRB drafters.

Chair Stephens noted that the John Doe statutes are among the court's initiatives for the next legislative session. She invited Nancy Rottier to update committee chair Schultz regarding the status of that project.

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

Committee chair Leineweber reported that the committee met at 7:30 a.m. prior to the regular Council meeting.

After fully vetting the proposed electronic discovery rules, the committee voted to recommend their draft to the full Council for further action at its January meeting, due to the

lengthy December agenda. Marquette Law School Professor Daniel Blinka will address the Council at its December meeting regarding possible amendments to the rules of evidence.

Committee chair Leineweber also informed the Council that the committee has begun working on the small claims court issue brought to the Council by Chief Justice Abrahamson, and that he will be preparing a memo for discussion at their next committee meeting.

## **IX. Other Business**

### **A. PPAC Liaison's Report**

There was no PPAC Report.

### **B. Council Attorney's Report**

Attorney Southwick informed the Council that she attended a Supreme Court Administrative Conference on October 28 to observe the court's discussion whether to send all rule change petitions to the Judicial Council for review. While the court took no action on the item, several justices expressed their intention to refer more petitions to the Council for review and comment in the future.

Attorney Southwick also attended the Judicial Conference annual meeting at which they elected Judge Curry to fill the vacancy on the Judicial Council created by Justice Gableman's resignation. The Judicial Conference also elected Judge Leineweber to a second term.

Attorney Southwick is working on a memorandum and presentation for the Council regarding public records law. She suggested that council members begin to formulate a plan to retain and preserve email and other documents that they generate pertaining to official Council business, or forward a copy to the Council office for preservation. She will convene the Council's records retention committee in December.

Chair Stephens emphasized the importance of achieving a quorum for the December meeting and asked council members to please notify Attorney Southwick as soon as possible if they are unable to attend.

Councilmember Weber noted that *State v. Ruiz-Velez*, 2008 WI App 169, requires transcription of audio recordings received into evidence as part of the record on appeal. He stated that courts are working to implement this decision, which may result in a rule change petition being referred to the Council.

## **X. Adjournment**

The Council adjourned at 10:15 a.m.