



## STATE OF WISCONSIN – JUDICIAL COUNCIL

### MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL MADISON, WISCONSIN September 20, 2019

The Judicial Council met at 9:35 a.m. in Room 328NW of the State Capitol Building, Madison, Wisconsin.

**MEMBERS PRESENT:** Chair William C. Gleisner; Sarah Walkenhorst Barber; Judge Eugene A. Gasiorkiewicz; Christian Gossett; Duane Harlow; Margo Kirchner; Dennis Myers; Judge Scott Needham; John R. Orton; Adam Plotkin; Thomas L. Shriner; Adam Stevenson (by phone); Judge Robert VanDeHey; Senator Van Wanggaard (by phone); Judge Jeff Wagner (by phone); and Sarah Zylstra.

**MEMBERS EXCUSED:** Judge Michael Fitzpatrick; Diane Fremgen; Representative Ott; Ben Pliskie; Sara Ward-Cassidy;

**SPECIAL GUESTS:** Michaela Paukner (Wisconsin Law Journal); Julie Tessmer Robinson (Wisconsin Law Library); and Paige Scobeck (Hamilton Consulting).

#### **I. Roll Call and approval of the Minutes of the June 21, 2019 Meeting.**

The roll call was completed and the minutes of the June 21, 2019 meeting were duly approved.

#### **II. Report on Possible Affiliation with the Legislative Council.**

Senator Wanggaard reported that the Legislative Council is prepared to clear space for a new home for the Judicial Council. The Legislative Council is in the Starbucks building on the Square. The Senator further reported that there is equipment (including computers and telephones) which the Council would be able to use. The Senator stressed that we would not be part of the Legislative Council. Because we have our own enabling legislation we would continue to maintain our separate existence and independence. The Senator stressed that we would be an autonomous organization and that we would be able to continue doing what we have done for decades. The Senator stated that the Supreme

Court was supportive of this move as well, based on a discussion the Senator had with the Chief Justice.

The Senator stated he hoped to get something accomplished between now and our next meeting. We look forward to an update from the Senator regarding when the Judicial Council can formally affiliate with the Legislative Council.

The members of the Council thanked the Senator.

### **III. Report by Chair Gleisner concerning Council's response to the latest Open Records Request.**

Gleisner reported that all open record requests had been satisfied and that no further open record requests had been received. However, Gleisner stated that the Council will be ready to respond to any further requests if and when they are made.

### **IV. Discussion of new projects for 2019 to 2020.**

At this point, the Council began a discussion as a Committee of the Whole.

Gleisner stated that we needed to return to the way we did business before the troubles of the couple of year. Gleisner began by reminding Sarah Barber of her agreement as the LRB representative to keep us apprised of new proposed legislation which might be of concern to the Council or its committees. Gleisner noted that we cannot rely on the LRB for job assignments, but it is important to be aware of new developments in the Legislature.

Gleisner then began a discussion of materials which he had downloaded from the United States Judicial Council and suggested that we might want to consider studying proposals now under consideration by the Conference with an eye toward adopting some of the Conference's proposals in Wisconsin. Tom Shriner raised concerns about adopting the proposed federal rules before they are adopted. Tom also noted the vastly superior resources available to the U.S. Judicial Conference than our Judicial Council and questioned whether we could properly process the Conference advisory committee work before the Conference adopts rules in final form.

Judge Gasiorkiewicz raised a concern that there has not been a representative of the Supreme Court on the Council for almost two years. The Judge further noted that it has also been almost two years since the Supreme Court has asked for our assistance. He said that this led him to question our relevance. Gleisner responded that we are relevant just by virtue of Wis. Stat. §758.13 and the Supreme Court has always taken our suggestions seriously. Gleisner noted that the Council has a number of powers which we have not often exercised, including subpoenaing witnesses and examining them under oath. Tom stated that he thought the U.S. Judicial Conference could well be a rich source of research for us.

Gleisner suggested that we consider appointing a committee to evaluate various reports from the U.S. Judicial Conference. Gleisner suggested that a committee be appointed consisting of Margo Kirchner, Sarah Barber and Sarah Zylstra. John Orton pointed out that we don't have any staff or resources at this point and the formation of a committee to study the work of the U.S. Judicial Conference could prove to be a very serious drain on our limited resources which will prove to be far more of a distraction than a benefit. John further observed that the U.S. Judicial Conference's work on criminal procedure and appellate practice is just not relevant to the rules in Wisconsin. After discussion, the consensus was that this suggestion was not workable.

We then turned to other possible ways to generate work for the Judicial Council. Sarah Zylstra, the newly elected member of the Council, pointed out that she was also a member of the Litigation Section of the State Bar. She reported that the Section keeps track of new legislation, and in fact has a committee responsible for doing that work. Sarah said she believed that there was information she could provide from the Litigation Section, subject to permission from the Section and the State Bar. Sarah Barber also stated that she can provide (and has in fact provided) information regarding proposed legislation which has already been made available. Senator Wanggaard pointed out that his office can also help Council members to locate pending information about newly proposed legislation. In fact, it is possible to setup automated notices about particular topics. This can be accessed through the Senator's web site.

Mr. Gossett pointed out that the District Attorneys have a system set up by which they can be advised of new developments which may be relevant to criminal law. Judge VanDeHey noted that Nancy Rottier prepares legislative updates for the Judges of Wisconsin. Judge

Tom noted that we can't sit around and wait for the Supreme Court or Legislature to ask for our assistance. Gleisner responded that the Judicial Council is not expected to sit around for one of the Three Branches of our Government to ask for assistance. Wis. Stat. §758.13(2) makes it clear that the Judicial Council has the duty to do its own investigations and pursue its own studies and share the results with the relevant Branches of our Government. Gleisner then read portions of §758.13(2), which sets forth the powers and duties of the Council, including the following:

The Council shall...

- (a) Observe and study the rules of pleading, practice and procedure, and advise the supreme court as to changes which will, in the council's judgment, simplify procedure and promote a speedy determination of litigation upon its merits.
- (f) Recommend to the legislature any changes in the organization, jurisdiction, operation and methods of conducting the business of the courts, including statutes governing pleading, practice, procedure and related matters, which can be put into effect only by legislative action.

(g) Recommend to the supreme court, legislature and governor any changes in the organization, operation and methods of conducting the business of the courts that will improve the efficiency and effectiveness of the court system and result in cost savings.

Based on Wis. Stat. §758.13, Gleisner opined that the Judicial Council is in reality a think tank and is not required to wait for requests from the Supreme Court or the Legislature. John Orton summarized as follows. Sarah Zylstra and Sarah Barber will in the future provide us with input from the State Bar Litigation Section and the Legislative Reference Bureau. Judge Gasiorkiewicz agreed to forward Nancy Rottier's Reports to the Judiciary regarding legislative developments.

#### **V. Committee Reports.**

There were no committee reports.

#### **VI. Adjournment.**

Meeting adjourned at approximately 11 a.m.