



STATE OF WISCONSIN – JUDICIAL COUNCIL

AMENDED MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
January 15, 2021

The Judicial Council met at 9:00 a.m. on January 15, 2021 via Zoom.

MEMBERS PRESENT: Chair William Gleisner; Judge Eugene Gasiorkiewicz; Judge Thomas Hruz; Judge Robert VanDeHey; Sarah Walkenhorst Barber; Diane Fremgen; Steven Kilpatrick; Margo Kirchner; John R. Orton; Adam Plotkin; Thomas Shriner; Adam Stevenson; Senator Van Wanggaard and Sarah Zylstra.

MEMBERS EXCUSED: Judge Scott Needham; Representative Ott and Ben Pliskie.

SPECIAL GUESTS: Supreme Court Justice Rebecca Dallet; Lynne Davis (State Bar); Michaela Paukner (Wisconsin Law Journal); and Hamilton Consulting.

We were all very pleased to welcome to our November 20th meeting Justice Rebecca Dallet from the Wisconsin Supreme Court, who joined our meeting as a guest.

- I. Roll Call and approval of the November 20, 2020 Minutes.**
- II. Report from Judge Hruz regarding his upcoming appearance before the Supreme Court regarding the Judicial Council Petition to amend Section 809.85 of the Wisconsin Rules of Appellate Procedure.**

Judge Hruz was recognized for his report. The Judge reminded the Council that a petition was filed with the Supreme Court late last year for an amendment to the Rules of Appellate Procedure, which has now been scheduled for a hearing before the Supreme Court on Wednesday, February 24 at 1:30 p.m.

- III. Discussion of attempted meeting with the Chief Justice.**

Gleisner reported that an effort was made to schedule a meeting with Chief Justice Roggensack and Gleisner, Sarah Zylstra and Senator Wanggaard. Scott Kelly from the Senator's office attempted to set up that meeting. However, Scott got back to me and reported that but the Chief declined to meet with anyone besides the Senator. Gleisner asked the Senator to report on any meeting he had with the Chief Justice. According to

the Senator, he and Scott did have a Zoom meeting with the Chief Justice for the purposes of discussing the future of the Judicial Council. As the Senator noted, the Chief Justice served on the Council and she told them that she understands the value of what the Council does.

Due to a letter she previously sent to the Legislature, she does not wish to come out and take a position regarding the future of the Council. The Chief did state that she did not think it was a good idea for the Council to be attached to the Court. So, the Senator stated that he though it was a good thing that a budget was submitted to the Legislature and the Governor, and he thinks the budget was reasonable.

Actually, it was the Chief Justice and her then assistant who had originally broached the idea of the Council being attached to the Legislative Council, which would give the Judicial Council office space and some limited staff support. The Senator likes that idea, especially since the Judicial Council should be autonomous. Ms. Sapenfield, the Director of the Legislative Council, thinks that such a relationship would be a good thing, and that the Legislative Council could supply a desk, computer and a mailing address for the Council. We need the blessing from the Committee . To make this work, we will need the blessing from JCLO (the Joint Committee on Legislative Organizations) and the Senator and his staff will start working on that.

The Chief Justice told the Senator that she understands what the Council does and she supports our work. She further told the Senator that she will not obstruct our efforts in anyway because she understands the importance of the Council and what it brings to the table. The Senator reported what he has said often in the past. He would hate to see the Council dissolved because the Council gets everyone to the table from a number of stake holders and gives everyone a chance to reason together in a nonpartisnt atmosphere to problem solve. Plus, the Council attacts high quality talent that does not cost the taxpayers of Wisconsin anything. If the Council is gone the Sentor thinks it will have a huge negative impact on the citizens of Wisconsin.

Justice Dallet asked the Senator what she or members of the Council could do to facilitate progress on finding space at the Legislative Council. Also, Justice Dallet wanted to know what we were doing to advance our budget request. Scott Kelly answered that the budget had already been submitted and he hoped the Governor would give us his support. If the budget route doesn't work, then the alternative is to reach out to JCLO. Senator Wanggard said really we are trying to sell something that should sell itself. Just look at the history of this organization.

Senator Wanggaard then changed topics slightly to report on what the Chief Justice had said about criminal procedure. The Senator reminde us of all thw work that had been done concerning criminal procedure when Professor Schultz was the Chair of the Council's Criminal Procedure Committee. The Chief Justice said that criminal procedure really needs to be addressed and that is an area where the Council could be of great assistance. Gleisner then asked if the Chief Justice gave any indication whether the

Council should direct its efforts to the Supreme Court or to the Legislature. Senator Wanggaard said that it should be approached on a case on case basis.

Justice Dallet reported that she did talk to the Criminal Justice Coordinating Council after talking with the Director of State Courts and the Chief Justice. Justice Dallet has received permission to form a committee on that body to work on criminal justice reform. Gleisner suggested that either Justice Dallet or someone else from Coordinating Council join the Judicial Council's Criminal Procedure Committee as an ad hoc member so that the Coordinating Committee and the Judicial Council can in effect work together on criminal justice reform. Both Senator Wanggaard and Justice Dallet thought that would be wise.

Tom Shriner reminded everyone that the Council's last effort to further criminal justice reform was lengthy and lasted over twenty years. And the problem with that was that everything agreement was reached between prosecutors and defense counsel, someone else would be elected to office and the whole thing ground to a halt while efforts were made to again reach a consensus. And of course finally it ground to a complete halt. Tom said that if we are going to again try our hand at criminal justice reform we can't do that without staff. We need staff or any effort at criminal justice reform will never get off the ground.

Judge VanDeHey (the current Chair of the Criminal Procedure Committee) then gave an update on the Criminal Procedure Committee. According to Judge VanDeHey, once Judge Blanchard resigned (former chair of the Criminal Procedure Committee), the Committee began a review of that bill in an effort to determine what could be salvaged from Professor Schultz's many years of effort. Judge VanDeHey stated that the conclusion was reached that most of the proposed reform bill was not at all controversial. One area that did present some challenges was the issue of discovery, which the Committee is still dealing with, particularly electronic discovery.

The Judge then noted that some of the bill was now outdated, but there is still much there that could form the basis of a reform effort. But Judge VanDeHey cautioned that we should avoid doing what happened previously. We don't want to bite off too much. Reform should occur in small bites. We should also stay away from issues which might appear to be procedural, but really are substantive and stray into political issues. Given our nonpartisan nature, the Council should not be touching anything political.

IV. The State Bar has called for broader criminal justice reform, and this is a topic we should address.

Gliesner gave a brief background report. On January 6, 2021, the President and President-Elect of the State Bar summarized the call for reform as follows: "The Jacob Blake case in Kenosha highlights the ongoing conflict with racial justice in Wisconsin and nationwide. It is a powerful reminder that Wisconsin needs broader criminal justice reform, and we call for the legal community, elected officials, and law enforcement to act now...The State Bar of Wisconsin, with more than 25,000 lawyers, must play a strong

role in addressing systemic racism and implicit bias in the legal system, including issues relating to race, gender, sexual identity, and religion. We will continue to address disparities by advancing policy priorities related to expungement, bail reform, juvenile justice, civil legal aid funding, exoneree compensation, and adequate investment in the justice system.”

Consistent with Wis. Stat. §758.13, I believe the Council should discuss how to respond to this call.

For use in guiding a discussion on criminal justice reform, accompanying this Agenda I am supplying the Council members with the following State Bar Position papers: 1) A position paper regarding expungement, juvenile shackling, juvenile jurisdiction and exoneree compensation; 2) Bail Reform; 3) civil legal funding; and 4) taxing justice.

Gleisner then opened the meeting up to a discussion of criminal justice reform. Gleisner then asked the members if any of the State Bar proposals fail to address procedure as opposed to substantive issues.

Adam Plotkin noted that a number of State Bar proposals are already in the works, especially expungement. Tom Shriner said that a number of the State Bar proposals relate to public policy issues and the Council should stay focused on procedure. Margo Kirchner observed that expungement is a procedural issue to the extent that you have to ask for it during your sentencing or you are barred from asking for it later. Senator Wanggaard stated that he has nine bills that will be introduced next week that deal with expungement

Judge VanDeHey noted that he is a member of the Governor’s Coordinating Committee on Criminal Justice and there are already people looking into criminal justice reform. Gleisner then asked Senator Wanggaard if he or a member of his staff could serve as an ad hoc member of Judge VanDeHey’s Criminal Procedure Committee. The Senator said that he would have to think about that.

Sarah Zylstra stated that as she read the State Bar’s call to action, she sees the suggestions as broad statements of policy and not procedural in nature. She also sees these as hot button issues which the Council should stay away from. Zylstra would much prefer that we encourage our Criminal Procedure Committee to work with Justice Dallet and the Coordinating Council.

Sarah Zylstra reported that as a member of the State Bar Litigation Section she becomes aware of pending petitions. In particular, the Council should be aware of a petition by the Director of State Courts relating to CCAP and records management and how long records should be kept on CCAP. Another petition, also from the Director of State Courts, regarding video conferencing and court proceedings. There is a third petition relating to conflicts of interest involving public defenders. If anyone wants to see those petitions,

just let Sarah know and she will forward them via email. Gleisner then asked Sarah to email all of those petitions to the Council members. Diane Fremgen from the Director of State Courts then addressed the two petitions that have originated from the Director of State Courts. First, Ms. Fremgen noted that all pending petitions are available on the Supreme Court's webpage. She stated that the petition dealing with record retention actually addresses the issue of how long the Clerk of Courts should retain records, whether in paper or in electronic format. The one dealing with court proceedings also addresses possible amendments of statutes necessitated by the pandemic.

Finally, Adam Stevenson is to contact the Governor's Office and ask that the Governor please include our budget request in the Governor's Budget.

V. Committee Reports.

- a) **Evidence & Civil Procedure Committee.** Tom Shriner said that the ECP committee was reaching the end of the Committee's work on proposed changes to the injunction rule in Wisconsin.
- b) **Criminal Procedure Committee.** Given the prior discussion, Judge VanDeHey had little to add, except to call attention to Governor Tommy Thomson's suggestion that prisons should be educational institutions.
- c) **Appellate Procedure Committee.** As to the Appeals Committee, Judge Hruz reported that the Appeals Committee continues to work on competency issues. The Appellate Procedure Committee meetings will also occur one week after Council meetings.

VI. Adjournment.

The meeting was adjourned at 10:15 a.m.