



STATE OF WISCONSIN – JUDICIAL COUNCIL

**MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
February 19, 2021**

The Judicial Council met at 9:00 a.m. on February 19, 2021 via Zoom.

MEMBERS PRESENT: Chair William Gleisner; Judge Hannah Dugan; Judge Eugene Gasiorkiewicz; Judge Thomas Hruz; Judge Scott Needham; Christian Gossett; Steven Kilpatrick; Margo Kirchner; Dennis Myers; John Orton; Adam Plotkin; Thomas Shriner; Representative Ron Tusler; Senator Van Wanggaard; Judge Robert VanDeHey and Sarah Zylstra.

MEMBERS EXCUSED: Sarah Barber; Lynne Davis; Adam Stevenson; and Ben Pliskie.

SPECIAL GUESTS: Supreme Court Justice Rebecca Dallet; Cale Battles (State Bar); Michaela Paukner (Wisconsin Law Journal); Adam Jordahl and Hamilton Consulting.

We were all very pleased to welcome to our February 19th meeting Justice Rebecca Dallet from the Wisconsin Supreme Court, who joined our meeting as a guest.

- I. Roll Call and approval of the January 15, 2021 Minutes.
- II. There was discussion about the Governor's decision not to include our budget request in the Governor's Budget. The consensus was that the Governor was not including the Council in his budget because he thought the Council should be funded by the Court.

- III. Gleisner reiterated the points he made in the agenda for this meeting. Regarding projects which the Council could undertake in the future. According to Gleisner, the Council has always striven to model our state rules of procedure and evidence on the same or similar federal counterpart. There are several reasons for this, principal among which are the following: 1) If we model our rules on the federal counterparts, we can make use of the extensive studies and hearings conducted by the United States Judicial Conference and its various advisory committees that led to the adoption of the federal rules. 2) If a state rule is close to or identical to a federal rule, then the Bench and Bar can use the usual extensive federal precedents available to interpret a federal rule in applying our counterpart state rule.

It has been some time since this Council has conducted a review of state vs. federal rules, but historically we used to do this on a regular basis. Gleisner supplied a 2009 memo from Evidence Professor Blinka of the Marquette Law School, comparing state rules of evidence with federal rules of evidence, together with suggestions which Professor Blinka made as to the difference between the Wisconsin rule and the federal counterpart.

Tom Shriner pointed out that the Council had looked at Professor Blinka's memo and suggestions years ago and that most of his suggestions had been acted upon. Gleisner suggested that Shriner should contact Professor Blinka again to learn his position on new changes to the Federal Rules and review our existing state rules in light of any new federal rules. Shriner agreed to do so. Gleisner asked Shriner to learn who has replaced Blinka as evidence professor and who was currently Marquette's civil procedure professor, and Shriner said he would do so. John Orton suggested that we also contact the UW Law School to learn who was the primary UW professor regarding evidence and civil procedure.

There was also discussion about updating Professor Blinka's memo, but the consensus was that should not be done at the present time.

In terms of new projects, Justice Dallet raised the issue of Federal Rule 44.1 which governs the interpretation of foreign laws. Justice Dallet asked if the Council could examine the Federal approach to such interpretations vis-à-vis the current Wisconsin approach.¹ Sarah Zylstra agreed to do some research concerning Federal Rule 44.1 and provide a report at the next meeting

¹ For the information of the Council, while not raised during the 2/19/21 Council meeting, a Wisconsin Court has recently addressed the issue of interpreting foreign laws in the case of *Hennessey v. Wells Fargo Bank*, 2020 WI App 64, 394 Wis. 2d 357, 950 N.W.2d 877. That case is now under review in the Wisconsin Supreme Court pursuant to a Petition for Review filed November 6, 2020. That case is currently being briefed in the Supreme Court.

regarding the current status of how Wisconsin handles foreign law interpretations versus how foreign law interpretation is done on the federal level. .

Also in terms of new projects, Representative Tusler noted that he is on the Uniform Laws Committee and that he may be able to supply information regarding the issue of spoliation. While there was interest in his suggestion, no action was taken on this suggestion. Shriner raised the issue of the uniform declaration law which has been pending for two years.

On another issue, Representative Tusler stated that he might be willing to consider reviewing our budget request and a greed to discuss our budget request with Senator Wanggaard. It is anticipated that Tusler and Wanggaard may have a report regarding this issue at the next meeting.

IV. Committee Reports.

(a) Evidence & Civil Procedure Committee.

Shriner reported that the Committee was making significant progress in drafting proposed changes to Chapter 813, and proposed new injunction rules may be ready for submission to the entire Council shortly.

(b) Criminal Procedure Committee.

Judge VanDeHey did not have anything new to report concerning the Committee's work.

(c) Appellate Procedure Committee.

Judge Hruz gave a report on then pending Petition 20-05 and invited Council members to listen to the Committee's presentation to the Supreme Court on February 24, 2021. Since then, the Supreme Court has granted that Petition and on March 9, 2021 issued an Order to that effect.

V. Adjournment.

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