



STATE OF WISCONSIN – JUDICIAL COUNCIL

**MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
WHICH FAILED FOR WANT OF A QUORUM
MADISON, WISCONSIN
May 21, 2021**

The Judicial Council met at 9:00 a.m. on May 21, 2021 via Zoom.

MEMBERS PRESENT: Chair William Gleisner; Judge Eugene Gasiorkiewicz; Judge Thomas Hruz; Judge Hannah Dugan; Steven Kilpatrick; Margo Kirchner; Dennis Myers; John Orton; Adam Stevenson; Senator Van Wanggaard

MEMBERS EXCUSED: Judge Needham; Sarah Barber; Diane Fremgen; Christian Gossett; Judge VanDeHey; Ben Pliskie; Adam Plotkin; Representative Ron Tusler; Thomas Shriner; and Sarah Zylstra.

SPECIAL GUESTS: Justice Rebecca Dallet; Justice Justice Jill Karofsky; Michaela Paukner (Wisconsin Law Journal); Adam Jordahl and Hamilton Consulting.

Due to a miscount on Zoom, it was determined after this meeting had concluded that there was not a quorum present for the meeting. Therefore, all business transacted at this meeting is null and void and no Minutes are appropriate. With that in mind, the following is a summary of what transpired at the meeting for the purposes of creating an appropriate record of a public meeting.

Gleisner noted that other bodies are going back to in-person meetings. Gleisner expressed the opinion that was unnecessary in the case of the Council. Gleisner cited the fact that the Council does not have funding so per diem reimbursement is not possible. Margo Kirchner expressed the view that it would be nice to have at least one or two in-person meetings each year. Gleisner said he was thinking of having an in-person meeting for June, regardless of what happens the rest of the year. Dennis agreed that June would be great.

Gleisner noted at 22 minutes into the meeting that we still did not have a quorum. Judge Dugan said she would join late and that would give us ten members. Judge Dugan joined at 24:24 and one member announced that we have a quorum, but that turns out not to have been correct.

Gleisner thought there was a quorum and called for approval of the minutes from April 16, 2021. They were erroneously approved. Justice Karofsky had asked that the Supreme Court issue be elevated to the head of the Agenda, and it was.

Gleisner asked Justices Dallet and Karofsky for their thoughts on how we should proceed with the Supreme Court. Justice Dallet asked we had met with the new Chief Justice, and Gleisner said no. Gleisner then asked Margo Kirchner to lead the discussion re the Supreme Court. Kirchner said that it was her thinking that the Council should wait until the new Chief Justice Ziegler got settled into her role before approaching her. Justice Dallet agreed that was the best course. Justice Dallet what was our primary “ask” and Gleisner responded that we are most interested in getting funding from some source.

Judge Gasiorkiewicz entered the discussion and told the Justices that the only way the Council can stay relevant is if we receive funding. Judge Gasiorkiewicz pointed out that we are doing everything on our own. We don’t even have a secretarial staff and it is just getting more and more difficult. The Judge acknowledged the efforts of Senator Wanggaard, but stated that nothing has worked for some time.

Judge Gasiorkiewicz pointed out that we used to get a little money from the Supreme Court but they cut us off sometime ago. So, according to the Judge, one of our asks is for money from the Supreme Court. The Judge said he knows Shriner would echo what he is saying, but of course Shriner is on vacation. Justice Dallet said she hears that and agrees with it, but the timing is not good for that right now. For right now Justice Dallet said the focus should be on reestablishing a good relationship between the Council and the Supreme Court. Justice Dallet said unfortunately, we are trapped in the past.

John Orton noted that he has had a number of meetings with legislative leaders and he stated that the letter written by Chief Justice Roggensack stills hangs over us like a big black cloud. That letter not only invited termination of our funding, but it invited termination of the Council altogether. Orton said there is still a movement under foot in the legislature to have us terminated as a body. Justice Dallet responded and said to Orton “what you are saying is that maybe what you need is a new letter from the new Chief Justice that takes away the sting of Justice Roggensack’s letter.” Orton agreed. Justice Dallet asked for a copy of that letter.

Margo Kirchner also asked that the Supreme Court fill the Supreme Court seat on the Council because that would contribute to the Council’s bona fides. Kirchner also stated that it would be helpful if the designee of the Director of State Courts begins attending Council meetings on a regular basis.

Justice Dallet stated that it would also be very helpful if Tom Shriner and Dean Kearney from the Marquette Law School have a meeting with the new Chief Justice, especially since Chief Justice Ziegler is a Marquette Law grad.

According to Senator Wanggaard, he has been working behind the scenes with several legislative leaders and is trying hard to provide relief to the Council. One approach still

remains the hope that the Council can be made part of the Legislative Council via what is called a 999 request. Wanggaard thinks it is a great idea to get something in writing from the new Chief Justice which is supportive of the Council and its right to exist. Wanggaard stated that if the Council goes away it is going to be a very expensive lesson on how much it will cost to replace a group of highly qualified volunteers with some sort of funded resource that can deliver what the Council is prepared to deliver now. Wanggaard would like to see a history of what the Council has done and the dollar effect of that history on the budgets of Wisconsin.

Justice Dallet asked if it would be helpful to get a positive letter from the Chief Justice before the 999 request is made. Wanggaard said that any positive support from the Supreme Court could help a great deal.

Justice Karofsky asked Wanggaard how he would feel about reaching out to Chief Justice Ziegler. Wanggaard said he could do that. Wanggaard went on to state that when he met with Chief Justice Roggensack she was supportive of the Council in principal but was upset with how it had handled the April problem. Wanggaard came back to the Leg Council and he stated that the Leg Council was agreeable right now to provide the Judicial Council with something like a "home." Justice Dallet also asked that the Council furnish some examples of the work performed by April Southwick.

John Orton noted that everyone he has contacted in the Legislative world has praised Senator Wanggaard's work on behalf of the Council and so Orton wanted to do a shoutout to Wanggaard for all of his support.

John Orton said, and Wanggaard agreed, that the cost benefit analysis on what the Council does is simply amazing. For the cost of \$166,000 the amount of work done by the Council is just amazing.

Gleisner thanked Justice Dallet and Karofsky for their interest and support.

Moving on to the issue of restyling the Wisconsin Rules of Evidence, Gleisner gave the following background. In his Committee Report last month, Tom Shriner gave us exciting news. There is the possibility that Professor Dan Blinka (MU Professor of Evidence) may be willing to become a "reporter" of a Council effort to update our Wisconsin Rules of Evidence. In such a capacity, Professor Blinka would presumably function initially in the capacity of an ad hoc member of the Evidence and Civil Procedure Committee. Professor Blinka is not necessarily advocating the adoption of new rules of evidence. However, our Wisconsin Rules of Evidence were adopted from the Federal Rules back in 1974. Since then, the Federal Rules of Evidence have been "restyled," and Professor Blinka is suggesting that we consider a similar restyle of our Rules of Evidence. This is an exciting prospect, but what in the world does it mean to "restyle" rules?

There was a motion and second to refer the issue of restyling the Rules of Evidence to the Evidence & Civil Procedure Committee. This motion passed but is null and void because the Council did not have a quorum. This issue will have to be taken up again at the June 18, 2021 meeting of the Council.