



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
October 15, 2021

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

MEMBERS PRESENT: Chair William Gleisner; Judge Hannah Dugan; Judge Eugene Gasiorkiewicz; Judge VanDeHey; Sarah Barber; Steve Kilpatrick; Margo Kirchner; Adam Plotkin; Tom Shriner; Adam Stevenson; Sarah Zylstra.

EXCUSED ABSENCES: Judge Thomas Hruz; Diane Fremgen; Christian Gossett; Dennis Myers; John Orton; Judge Scott Needham; Ron Tusler; and Senator Wanggaard.

DISTINGUISHED GUEST: Lynne Davis from the State Bar.

This was an unusual meeting. We began without a quorum. Tom Shriner opined that we could discuss topics without a quorum, we just could not take any action. Then toward the end of this meeting, Judge Gasiorkiewicz joined the meeting, thus giving us a quorum. We
Therefore approved the Minutes from the September 24, 2021 meeting.

Before the quorum was achieved, we discussed referring the issue of emergency rules to a committee for study. Tom Shriner suggested that we did not need a quorum to ask a committee to study the possible creation of emergency rules. Judge VanDeHey stated that he thought that most of the concerns regarding emergency rules could be addressed initially by his Criminal Procedure Committee. Judge VanDeHey agreed that his Committee would commence such a study.

Also before the quorum was established, we began discussing the issue of emergency rules in some detail. Sarah Zylstra raised the point that without a Supreme Court Justice present, we had to be concerned about possibly stepping the toes of the Supreme Court, which has been actively studying this issue since last year.

Tom Shriner observed that we don't necessarily have to study emergency rules and then submit a petition and memorandum to the Court asking for the adoption of certain rules.

Instead, Mr. Shriner suggested that there is an alternative method of communicating with the Court. His suggestion was to consider writing a letter to the Court advising them that we have studied the issue of emergency rules and then give the Court the benefit of our thinking, for what it is worth. In such a letter, we could raise relevant authority such as ABA Formal Opinions 477R and 482, as well as Pennsylvania Bar Formal Opinion 2020-300). Such a letter could open a new avenue of communication with the Court which would not require the same depth of study and preparation of formal documents, such as petitions and supporting memoranda.

Moving onto another subject, Mr. Shriner observed that there was no reason to write a letter to Professor Blinka. He is aware of the proposed restyling of the Wisconsin Rules of Evidence and is ready to assist when the Evidence and Civil Procedure Committee is ready to take up the restyling discussion.

Sara Zylstra raised one additional point. She would like to either receive a Word version of the Agenda or an OCR'd version. Right now, the Council members only receive a flat pdf of the Agenda, and thus it is impossible to click on the Zoom hyperlink.

Other than approving the September 24, 2021 Minutes, no other formal action was taken.

The meeting concluded at 11:00 a.m.