



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL MADISON, WISCONSIN JANUARY 21, 2022

The Judicial Council met at 9:00 a.m. on January 21, 2022 via Zoom.

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

EXCUSED ABSENCES: Judge Scott Needham; Diane Fremgen; Christian Gossett; Dennis Myers; Adam Plotkin; Ron Tusler; Judge VanDeHey; Senator Wanggaard.

DISTINGUISHED GUESTS: Supreme Court Justice Dallet; Supreme Court Justice Karofsky; Lynne Davis & Cale Battles from the State Bar; and Wisconsin Eye.

Roll call and approval of November 19, 2021 Minutes.

Gleisner began the discussion. He stated that it is obvious that there are many ways the Council can be useful, but he reiterated a point he has made before. He suggested that there is another way to communicate meaningful information to the lawyers and judges of Wisconsin, in addition to our statutorily mandated work with the Wisconsin Supreme Court or the Legislature.¹ Specifically, he suggested that our members begin to explore the authoring of research articles for publication in the State Bar's Inside Track and the Wisconsin Lawyer, or other legal publications like the Wisconsin Law Journal. What is needed is for our members to seek to publish research articles concerning procedural rules or related practice issues which are important to the Bench and Bar. These articles

¹ I believe that the suggestions in this Agenda are consistent with Wis. Stat. §758.13(2), which specifies that the duties of the Council include the following:

- (b) **Survey and study** the organization, jurisdiction and methods of administration and operation of **all the courts of this state**.
- (d) Receive, consider **and in its discretion investigate** suggestions from any source pertaining to **the administration of justice and to make recommendations**.
- (e) **Keep advised concerning** the **decisions** of the courts **relating to the procedure and practice** therein and concerning pending legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts [Emphasis supplied].

would not necessarily be published by the Council, but Council members who publish such articles might consider making reference to their Council membership. So, exactly what articles would be of interest to the Wisconsin Bench and Bar? Others may have additional suggestions, but I would suggest that members consider authoring articles. Certainly, Judge Gasiorkiewicz and I have done that.

One suggestion Gleisner made relates to the instances where Wisconsin Supreme Court or the Legislature create new Rules of Civil Procedure or Rules of Evidence, or otherwise amend existing Rules. When this occurs, members of the Council may be able to assist the Bench and Bar in understanding those Rules by publishing research articles which will elucidate the meaning of the new or amended rules, or help place those rules in a proper context. Another possible research article might be generated by members of the Council's three standing committees. For example, an article might be authored by members of the Evidence and Civil Procedure Committee concerning proposed amendments to our rules governing injunctions. Such an article might serve the added purpose of putting a proposed rule out for comment by stakeholders in the State Bar.

Gleisner also suggested that articles might be generated regarding unusual rules that involve situations not usually encountered by many lawyers. Maybe something involving FRCP 27(a) and our Wis. Stat. §804.02(a) concerning prelitigation depositions. Gleisner continued that the point is that there are a number of possible research articles which our membership could author in their capacity as recognized members of the Judicial Council which will communicate both important and useful information to the Wisconsin's Bench and Bar and which will be consistent with the Council's statutory mandate under Wis. Stat. §758.13. Gleisner then asked for input from the rest of the Council.

Judge Gasiorkiewicz said that he thought it would be an enormous imposition to ask volunteers like us to write articles. The Judge pointed out that the article that he and I co-authored caused a lot of negative feedback and did more harm than good. The Judge said that rather than ask members to write articles, the Judge said that it was his suggestion to ask the State Bar to give a "Judicial Council Corner" where the Council as an organization could report on developments at the Council and report on issues of importance to the State Bar. It wouldn't have to be an every month article, maybe just a quarterly article, so that the State Bar would have an idea about what we're doing and what we're working on. Sarah Zystra and I agreed with the Judge that such an approach had merit.

Lynne Davis said she had brought such a proposal to the attention of the State Bar sometime ago. Margo Kirchner recalls that and also remembers speaking with John Orton about such an approach back when Margo first joined the Council. Lynne stated that she would speak with the powers that be at the State Bar about such a suggestion and would report back to us. Gleisner observed that such a "Corner" would be a very useful tool for Tom Shriner to use in order to reach out to stakeholders concerning proposed changes to the injunction rules in Wisconsin. Sarah Zylstra said that the Litigation Section of the

State Bar (where she serves on the Board) does something similar through the use of a blog. Sarah's suggestion is that each member of the Council could take responsibility for writing something like a blog each month. Sarah's concern is that we may not have fresh content each month and that could be a problem.

John Orton does recall that this suggestion was made before and that we did check with the State Bar and they gave us some positive feedback, but it fell by the wayside because we don't have any staff. Judge Hruz agreed that an independent article by a member would be burdensome, but the Judge stated that we have a natural opportunity to author an article after a rules petition has been adopted by the Supreme Court, such as the reaction of the Court to the petition authored by the Appellate Procedure Committee last year. Sarah said that one of the unfortunate facts is that a lot of people in the State Bar have no idea what the Council does.

Gleisner pointed out that Judge Dugan had an idea for a project for the Criminal Procedure Committee that might be relevant to our discussion. Judge Dugan pointed out that expungement is a big deal just now, and that other groups have been writing on this topic. Judge Dugan said that we could "piggyback" off that research in order to create an article. Dugan will check with the Office of Judicial Education in this regard. Also, perhaps the Office of Judicial Education might also be another place we could send articles for distribution among the Judiciary. Judge stated that Council members don't need to do all the work. After all, State Bar members who attend our meetings could write articles.

Sarah Zylstra offered to do an article or articles, since her background on the Litigation Section will provide her with the ability to do this work. Judge Gasiorkiewicz came back and said that we needed to get approval from the State Bar before proceeding further.

Margo Kirchner pointed out that there are four State Bar representatives on the Council and so it isn't a matter of the Council trying to speak to the State Bar; in reality, it can be cast as the four State Bar members of the Council providing reports (on a rotating basis) to the State Bar so the constituencies of the four members can better understand the Council's business and purpose.

John Orton stated that a good way to prepare articles would be to repurpose petitions into articles. Sarah countered that we should not wait until our petitions were prepared before we prepare articles and circulate them to stakeholders. Sarah and Margo will follow up with the State Bar and report back.

At this point, Justices Dallet and Karofsky joined the Council meeting. Gleisner stated that we were still planning on making contact with the Chief Justice, but both Justices Dallet and Karofsky advised that we should wait a few more weeks before doing so.

There were no committee reports at this meeting due to Zoom difficulties.

The meeting concluded at 10:15 a.m.