



STATE OF WISCONSIN – JUDICIAL COUNCIL

AGENDA

WISCONSIN JUDICIAL COUNCIL
FEBRUARY 21, 2020 – 9:35 A.M.
ROOM 328NW OF THE STATE CAPITOL
MADISON, WISCONSIN

**Members wishing to call in should call (563) 999-2090
at 9:30 a.m. and enter Access Code 842997**

HOUSEKEEPING NOTE

Due to an anticipated problem in achieving a quorum, the January 17th Meeting of the Council was cancelled. As a result, this Agenda includes material which was to be covered in the January meeting of the Council.

INTRODUCTION

Since our September 20, 2019 meeting, we have been exploring ways to improve the operation of the Council. In our meeting of September 20, 2019, we reviewed our Legislative mandate, which is contained in Wis. Stat. §758.13. That mandate has remained unchanged for seventy years. For those of you who are new to the Council, I am furnishing with this Agenda the September 20, 2019 Council Agenda where I discuss that mandate.

Subsequent to the September 20, 2019 meeting, we created a Special Committee on Judicial Council Procedures and Workflow (also known as the “ad hoc” committee), consisting of Margo Kirchner, John Orton and Sarah Zylstra. That Committee provided the Council with a preliminary report, which was discussed at our last meeting on November 15, 2019 (*See* accompanying Draft Minutes of the Council’s 11/15/19 meeting).

Since our November meeting, Julie Tessmer Robinson of the David Prosser State Law Library has supplied me with a 2007 Report from the National Center for State Courts. That Report is entitled *Wisconsin Judicial Council Recommendations Regarding Priorities, Planning and Operations*. This Report contains an extremely interesting history of the Council and recommendations for how to improve the operation of the Council. I have furnished this 2007 Report to our ad hoc committee and I hope we will have a discussion of the Report at our February 21, 2020 meeting. I am furnishing

with this Agenda a copy of this Report to the entire Council.

2/21/20 AGENDA

- I. Roll Call and approval of the the November 15, 2019 Minutes, followed by introduction of new Council Member, Judge Thomas Hruz.
- II. Update from Special Committee on Judicial Council Procedures and Workflow (the “ad hoc” committee).
- III. Discussion of new projects for 2020, suggested by the ad hoc Committee:
 - A. The ad hoc Committee suggests that the following bills may be of interest to the Evicence and Civil Procedure Committee, Chaired by Attorney Shriner:
 - (i) **AB 47** – it takes guardianships related to children out of the guardianship statutes and creates a new section under chapter 48. It seems like a big change but there is no Senate companion bill so it may be nothing.
 - (ii) **AB 93** – there is a Uniform Deployed Parents Custody and Visitation Act. 13 states have adopted it. This bill is to have Wisconsin adopt it. There is no Senate companion but because this is a Uniform Law, we thought it worth sending on.
 - (iii) **AB 204** – this is creating rules and procedures for municipal courts. Seems quite extensive.
 - (iv) **AB 403**– would require a judge who does not disqualify him/herself after a motion for recusal/disqualification to file reasons for the decision; note that AB 402, 404, and 405 also address recusal and disqualification but concern substantive changes such as when recusal is required and what happens if the Supreme Court is equally divided regarding a judicial discipline decision; note that AB 406 addresses the authority of the Supreme Court to review a justice’s decision not to recuse (best left to the Supreme Court)
 - (v) **AB 408** – would prohibit a judge who was subject to a motion to recuse or for substitution from ordering destruction of evidence or records in the case
 - B. The ad hoc Committee suggests that the following bills may be of interest to the Criminal Procedure Committee, Chaired by Judge VanDeHey:
 - (i) **AB 11**- creates an entire new procedure for allowing criminal defendants to get access to a victim’s mental health records. At first read, I think the bill makes sense but I think it is significant enough for the criminal committee to at least look at it. Senator Wanggaard is one of the main sponsors.

- (ii) **AB 33** –would allow those convicted of minor offenses and otherwise eligible to move for expungement subsequent to sentencing (current rule requires that the matter be raised at sentencing or lost); we think that in early 2019 the Criminal Committee discussed looking at expungement and this proposed legislation.
- (iii) **SB 32** – would affect the procedure for handling victim statements.
- (iv) **SB 98** – would require certain hearings and time frames for review if bail is ordered but the defendant cannot pay; this bill is on this list to keep tabs on the issue, but this legislation would only go into effect if Wisconsin Constitution is amended (first consideration proposals are in SJR 13 and AJR 107)
- (v) **SB 99** – would change pretrial hearings regarding detention including changes regarding the standard of review, presumptions, and whether rules of evidence apply; this bill is on this list to keep tabs on the issue, but this legislation would only go into effect if Wisconsin Constitution is amended (first consideration proposals are in SJR 13 and AJR 107)
- (vi) **SB 430** – relates to (1) expediting criminal proceedings when a victim or witness is an elder person and (2) preserving the testimony of a crime victim or witness who is an elder person.
- (vii) **SJR 2** - is a proposed constitutional amendment on the ballot for voters in April; it is on this list to keep tabs on issue, not for any action or consideration at this time. The proposed amendment adds several new rights for alleged crime victims, including the rights to attend all proceedings, to protection from the accused throughout the criminal process, to be heard in proceedings (including release, plea, and sentencing), to timely notice of any release of the accused/defendant, to consideration of the effects upon the victim, to restitution, and to timely notice of the rights in the amendment. The alleged victim may assert and seek in any circuit court enforcement of these rights, and the court shall act promptly and provide reasons for the decision to the victim.

C. In addition, Judge VanDeHey has stated that perhaps the Council should consider directing the Criminal Procedure Committee to study the criminal justice proposals of Governor Evers.

D. Currently there are no bills which may be of interest to the Appellate Procedure Committee, Chaired by Jennifer Andrews, Staff Attorney of the Wisconsin Court of Appeals.

IV. Committee Reports.

- (a) Evidence & Civil Procedure Committee.
- (b) Criminal Procedure Committee.
- (c) Appellate Procedure Committee.

V. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's meeting will take place I Room 328 NW of the State Capitol Building at the above time. For more information, please contact the Chair of the Judicial Council, Attorney Bill Gleisner, at 414-651-3182 or wgleisner@sbcglobal.net.