

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
January 16, 2015

The Judicial Council met at 9:30 a.m. in Room 328 NW, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Chair Thomas W. Bertz, Vice Chair Honorable Brian W. Blanchard, Hon. Michael R. Fitzpatrick, William C. Gleisner, Jill M. Kastner, Devon M. Lee, Dennis Myers, Representative Jim Ott, Benjamin J. Pliskie, Honorable Gerald P. Ptacek, Thomas L. Shriner, Honorable Robert P. Van De Hey, Senator Van H. Wanggaard, Honorable Jeffrey A. Wagner, Greg M. Weber, Amy E. Wochos, Honorable Annette Kingsland Ziegler.

MEMBERS EXCUSED: Tracy K. Kuczenski, Professor David E. Schultz.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Katie Stenz, Wisconsin State Bar; Nancy Rottier, Director of State Court's office; Kyle Koenen, Sen. Wanggaard's office.

I. Call to Order and Roll Call

Chair Bertz called the meeting to order at 9:30 a.m. and members introduced themselves.

II. Approval of December 12, 2014 Minutes

MOTION: Council member Myers moved, seconded by Council member Kastner, to approve the December 12, 2014 minutes. Motion approved, with Council member Ziegler abstaining.

III. Discussion and/or Action Regarding 2013 Assembly Bill 383 Amending the Rules of Criminal Procedure

Vice Chair Blanchard reported that he and Attorney Southwick participated in a meeting with the Judicial Conference's Legislative Committee to discuss the amendments to the criminal procedure bill. During the meeting, the committee did not raise any concerns or opposition to the amendments, although members are awaiting the final version of the bill before considering whether they will take a position on the revised bill. The committee took a position in support of AB 383 when it was introduced in the last legislative session.

Attorney Southwick provided information on the history of AB 383 and the amendment process. She explained that the bill was introduced last session and received two public hearings. A few organizations expressed concern with some provisions in the bill, so the Council's Criminal Procedure Committee was greatly expanded to include 16 members who worked on proposed amendments. The committee met eight times over the summer, including five full-day meetings and two public hearings. All of the committee's recommended amendments were approved by the full Judicial Council at the September meeting. Since that

time, the committee and the Council have been working with the Legislative Reference Bureau (LRB) to revise the bill and prepare it for reintroduction in the current legislative session.

Attorney Southwick reported that in reviewing the latest draft of the bill, she noticed that two definitions were amended in proposed s. 967.025, definitions. These changes were not made at the Council's request, so she asked the Council to consider the amendments and determine whether they are acceptable. The Council approved the amendments to the definitions of "clerk" and "judge" by consensus.

Attorney Southwick explained that the LRB analysis of the bill has been revised to reflect the amendments. She circulated written comments from Council member Schultz containing some additional suggested amendments to the analysis. While the analysis is drafted by the LRB, in the past, they have been open to receiving comments or suggestions on its content.

MOTION: Council member Ptacek moved, seconded by Council member Wagner, to convey Council member Schultz's suggested amendments to the analysis to the LRB drafter. Motion approved, with Council members Ziegler, Ott and Wanggaard abstaining.

For the next steps, Attorney Southwick will finish proof-reading the bill and updating the red-lined version that she drafted to show how it will change current law. She hopes to complete her work within one week. If she does not find any additional substantive changes to the bill that were not requested by the Council, she will request that the LRB finalize the bill for introduction. At that point, it will be turned over to the Legislature for further action.

Chair Bertz inquired as to when the bill will be reintroduced. Council members Ott and Wanggaard discussed the possibility of holding joint hearings before the Senate and Assembly Judiciary Committees. Council member Ott noted the importance of having key members of the criminal justice system testify at the public hearing. He indicated that if the committee hearings go smoothly, the bill could reach the floor for a vote as early as March.

IV. Discussion and/or Action Regarding Review of Wisconsin Rules of Evidence

Attorney Southwick reported that after she finishes her work on the criminal procedure bill, she will circulate copies of the rules of evidence recommendations and requests for feedback to potentially interested groups. The State Bar has indicated that it is willing to publish notice in its electronic publications, including the Rotunda Report and Inside Track, that the Council is seeking comments on its recommended amendments to the rules of evidence.

Council Shriner provided some additional background information on this project. He explained that this is the first comprehensive review of Wisconsin's Rules of Evidence since their adoption in the 1970's. Wisconsin patterned its rules on the federal rules, which have undergone many amendments over the last four decades. During the course of its work on this project, the Council studied the federal amendments, as well as issues that have arisen in Wisconsin case law to identify which rules to study for possible amendment. After several years of work, the Council has recommended repeal of two rules (Wis. Stats. §§ 885.16 and 885.17, Deadman's statute); the creation of a bias rule; and amendments to three rules (Wis. Stat. § 901.07 the rule of

completeness; Wis. Stat. § 906.08, evidence of a witness's character for truthfulness; and Wis. Stat. § 906.09, impeachment by prior criminal conviction).

Council member Weber suggested that the Council might also be able to publish notice of its recommended amendments via the Wheeler Report. Attorney Southwick will explore that option.

V. Discussion and/or Action Regarding Judicial Council's 2015-2017 Budget Request

Prior to the meeting, Attorney Southwick circulated a document detailing Judicial Council accomplishments over the past five years. She suggested that the document could serve as a helpful resource for members as they talk to legislators about the Council's budget. She also suggested posting it on the Council website. The document concludes with a brief summary of current committee projects. She suggested that she could move the information on current projects to the beginning of the document, and it could be posted on the website in place of the current project update. Members agreed by consensus to post the document on the Council's website and agreed with the suggestion to move the project summaries to the beginning of the document.

Attorney Southwick inquired as to whether members felt the project summaries contained sufficient detail to apprise readers of the scope of the work. Council member Ziegler inquired what additional information could be added. Attorney Southwick responded that she could add status updates similar to what the Supreme Court includes on its agendas for administrative conferences, including dates of hearings, status of drafts, etc. Council member Ptacek noted that the meeting minutes are also on the Council's website and the minutes serve as a source of additional information regarding the Council's current projects. Members generally agreed that the current draft is sufficiently detailed.

Council member Gleisner suggested that it might also be helpful to draft an article for Wisconsin Lawyer magazine about the Judicial Council and its work. Attorney Southwick will explore that option.

VI. Committee Reports

A. Appellate Procedure

Committee chair Ptacek reported that the committee continues to work on reorganizing the procedural rules for prisoner challenges to agency decisions. The committee is nearing completion of its work and hopes to have a draft bill ready for the Council's review in a few months.

The committee also continues to study possible amendments to Rule 809.15, including transcripts of audio and visual recordings in the appellate record.

The committee previously drafted a bill amending the provisions regarding presentence investigations. With all the focus on the criminal procedure bill, the presentence investigation

report bill has yet to be introduced. The draft bill includes proposed amendments to both Wis. Stat. § 972.15, presentence investigations; and chapter 809, Rules of Appellate Procedure. Many of the proposed amendments in the presentence investigation report bill are to Rule 809.15, so it seemed logical to consolidate those ch. 809 recommendations with the proposed amendments to Rule 809.15 that the committee is currently drafting. Attorney Southwick explained that the proposed amendments to s. 972.15 will require adoption by the Legislature, but the amendments ch. 809 can be enacted by supreme court rule.

Committee chair Ptacek announced that because the committee is nearing completion of its work on its two current projects, he is seeking suggestions for new appellate procedure projects. Council member Weber offered to consult with the new administration at the Department of Justice regarding potential projects. Council member Shriner suggested contacting the State Bar Appellate Practice Section. Attorney Southwick stated that the Appellate Practice Section has a representative on the committee, so she can seek feedback from the section membership. Council member Blanchard will consult the court of appeals judges to inquire whether they have suggestions.

B. Criminal Procedure

Committee chair Blanchard reported that the committee has continued to work on the criminal procedure bill. The committee also has three pending projects and would like input from the Department of Justice regarding prioritizing its work. Greg Weber will meet with the new Attorney General to discuss which of the committee's pending projects may be a priority to the Department of Justice.

C. Evidence and Civil Procedure

Committee chair Shriner reported that the committee will be meeting following the Council meeting. Members will focus on responding to comments and concerns from the supreme court regarding Rule Change Petition 13-16, Uniform Interstate Deposition and Discovery Act.

The committee is also working on possible amendments to Wisconsin's class action statute to bring it more in line with the federal class action statute. Many view such as amendment as a logical way to provide Wisconsin judges and parties with some much-needed procedural direction for litigating class actions under state law. Wisconsin's current class action statute is very out-dated and provides little guidance.

VII. Other Business

A. PPAC Liaison's Report

There was no PPAC report.

B. Council Attorney's Report

1. Supreme Court Rule Change Petition 13-16, Uniform Interstate Deposition and Discovery Act

Attorney Southwick reported that the court discussed the Council's petition in administrative conference. The court had some minor concerns about a few provisions in the proposed rule. The court referred the draft back to the Council's Evidence & Civil Procedure Committee for further discussion and possible amendment. The court indicated general support for the proposed rule once the concerns have been addressed. As Council member Shriner indicated during his committee report, the Evidence & Civil Procedure Committee will begin addressing the court's concerns at its meeting following the Council's meeting.

2. Supreme Court Rule Change Petition 14-01, Identification of Crime Victims in Appellate Briefs and Opinions

Attorney Southwick reported that the court voted to adopt the proposed rule, with some slight modifications. The court agreed to address appellate opinions and decisions through the court's internal style manuals, instead of by rule. The court will also modify the rule to allow parties to be excused from compliance for good cause without requiring a court order.

3. Lease

Attorney Southwick reported that the new lease for the Council's office space has finally been fully executed. Under the new lease, rent is reduced approximately \$128 per month in the first year of the lease, and the increments at which it will increase annually are significantly reduced from the previous lease.

VIII. Adjournment

The Council adjourned at 10:25 a.m.