

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
MADISON, WISCONSIN
February 16, 2007

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

MEMBERS PRESENT: Marla J. Stephens, Chair; Beth E. Hanan, Vice-chair; Justice Ann Walsh Bradley, Michael R. Christopher, Susan L. Collins, Professor Jay Grenig, Honorable Edward E. Leineweber, Honorable James Mason, Robert L. McCracken, Bruce Munson, Kathleen A. Pakes, Professor David E. Schultz, Senator Lena Taylor, Honorable Mary K. Wagner, Greg M. Weber, Honorable Maxine A. White

MEMBERS EXCUSED: Representative Bill Kramer, John Voelker, Honorable Ted E. Wedemeyer

OTHERS PRESENT: Robert D. Donohoo, Marilyn Parks, Jeff Purtell, Honorable Earl W. Schmidt, Michael Tobin

I. Call to Order and Roll Call

Chair Stephens called the meeting to order at 9:30 a.m. She introduced Kathleen Pakes, the Governor's district attorney designee, and welcomed her to the Council. All Council members introduced themselves in around-the-table fashion. Chair Stephens then introduced the guests.

II. Approval of Minutes of January 19, 2007 meeting

The following three corrections were made to the January 19, 2007 meeting minutes:

Page 2, C. Strategic Planning, first sentence: Insert 'for' after 'waiting.'

Page 2, E. PPAC: Changed sentence to read: "Judge Leineweber reported that the video conferencing subcommittee *is nearing completion of* its work and will *soon* be making its full report to PPAC."

Page 3, first sentence: Delete 'and' and replace with 'as.'

MOTION: Greg Weber moved, seconded by Beth Hanan, to approve the minutes of the January 19, 2007 meeting with the three corrections as recorded.

Motion passed unanimously.

III. 2007-09 Budget Report

Chair Stephens reported the Governor's Budget Bill contains a status quo budget for the Council (continuation of the \$11,800 annual appropriation for independent contractors and meeting expenses). The Council previously agreed that no formal request to restore independent staff and funding should be submitted pending completion of our assessment of the Council and formulation of a strategic plan. However, Judge Leineweber had an opportunity to discuss the Council's budget with Rep. Weickert and Justice Bradley had an opportunity to discuss the Council's budget with Susan Goodwin in the Governor's office. Justice Bradley reported that the Governor would support and sign a budget bill providing for staff for the Council if the legislature added it to his budget. There was a brief discussion about how to regain the funding and staffing lost in 1995. Requests to restore independent staff and funding have been made in the past, but not to the current governor's administration.

IV. Committee Reports

A. Appellate Procedure Committee

Marla Stephens had no report. The Committee will not meet until the Council completes its work on the criminal procedure code revision project.

B. Evidence and Civil Procedure Committee

Judge Mason had no report. The Committee will not meet until the Council completes its work on the criminal procedure code revision project.

C. Strategic Planning Committee

Judge Leineweber reported that he is pursuing a grant from the State Justice Institute to enable the National Center for State Courts to provide an assessment of the Council and the current state of procedural rulemaking in the state. He expects a decision from SJI in early March. Chair Stephens thanked Judge Leineweber for his efforts to fund and conduct the study of the Council.

D. Internal Operating Procedure Committee

Bruce Munson had no report.

E. PPAC

Judge Leineweber had no report.

V. Chapter 975 – Criminal Procedure Revision

Professor Schultz led the Council in review and discussion of the Legislative Reference Bureau (LRB) drafts and the Council's drafts of proposed revisions. Professor Schultz provided a summary of the Council's review that took place at the January 19, 2007 meeting (attached). He also provided an agenda for this meeting's continued review (attached).

There were comments and questions about the process for finalization of this project. Professor Schultz indicated that those questions and concerns could better be answered when the revisions were completed, and with input from the LRB drafters who will be working to reconcile the drafts with the Council's revisions. Senator Taylor said that she is committed to help in any way she can and suggested having LRB staff present at the next meeting.

The discussion on the revisions proceeded.

- § 975.11. The Council approved the draft of § 975.11 that was finalized at the January 19, 2007 meeting with the following two revisions:
 - First paragraph: delete 'the state has shown' and replace with 'there is.'
 - COMMENT: Insert 'be' after 'may.'
- § 975.17 (2) (c). The Council suggested the following changes:
 - Amend (c) 1 to read: If one or more jurors who participated in determining the first plea become unable to serve, a different jury shall be selected to determine the 2nd plea only.
 - (c) 2: Delete 'solely.'
 - (c) 3: Delete 'trial' and replace with 'circuit.' Insert 'of twelve' after 'jury.'

Bob Donohoo directed the Council's attention to § 975.22. Discussion followed. No decisions were made.

A question arose about the possibility of receiving the written meeting materials more than one week in advance of the meeting. Chair Stephens indicated that may be difficult to accomplish, because the Council has no staff person, and all who prepare agenda items for the meeting have other full-time responsibilities. Prof. Schultz said he will complete the materials earlier if his schedule allows.

VI. Other Business

Senator Taylor discussed her plans as Chair of the Committee on Judiciary and Corrections. In her concern for the overall state budget, she intends to implement a tool such as a Justice Impact Statement to assess the costs of new legislation for all entities in the justice system. The Senator asked for the Council's assistance in assessing the effects of proposed legislation. Chair Stephens said that the Council's mission to study and make recommendations for efficiencies in court procedures was consistent with the Senator's goal.

Justice Bradley spoke of her respect for the Council and its members who have been working so long and who keep on coming. She expressed her gratitude for the Council continuing work on all its projects under the adverse conditions/circumstances of having no staff attorney, no support staff and the long wait for the completion of those projects. She said that she is impressed with the Council's accomplishments and its current project. She is grateful to play a part in re-invigoration of the importance of this group and observed that many Council projects have had a great impact on her career as a lawyer and a jurist.

VII. Adjournment

MOTION: Beth Hanan moved, seconded by Judge White, to adjourn the meeting.

Motion passed unanimously.