

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
April 17, 2015

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

MEMBERS PRESENT: Chair Thomas W. Bertz, Honorable Michael R. Fitzpatrick, William C. Gleisner, Jill M. Kastner, Dennis Myers, Representative Jim Ott, Benjamin J. Pliskie, Honorable Gerald P. Ptacek, Professor David E. Schultz, Honorable Robert P. Van De Hey, Senator Van H. Wanggaard, Greg M. Weber, Amy E. Wochos.

MEMBERS EXCUSED: Vice Chair Honorable Brian W. Blanchard, Tracy K. Kuczenski, Devon M. Lee, Thomas L. Shriner, Honorable Jeffrey A. Wagner, Honorable Annette Kingsland Ziegler.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Cale Battles, Wisconsin State Bar; Scott Kelly, Sen. Wanggaard's office; Ginger Mueller, Rep. Ott's office; Jeremy Perri and Adam Plotkin, State Public Defender's office.

I. Call to Order and Roll Call

Chair Bertz called the meeting to order at 9:35 a.m.

II. Approval of March 20, 2015 Minutes

MOTION: Council member Wochos moved, seconded by Council member Kastner, to approve the March 20, 2015 minutes. Motion approved unanimously.

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

Attorney Southwick reported that the Joint Finance Committee rejected the Governor's recommendation to eliminate the Judicial Council. However, the Joint Finance Committee shifted the obligation to fund the Council to the court. During the previous two budget cycles, approximately forty percent of the Council's funding has come from the Director of State Courts/State Law Library. The 2015-2017 budget shifts all of the Council's funding to the Director of State Courts/State Law Library. Attorney Southwick is scheduled to meet with the court's budget director the following week. She has not received any response from the court regarding the actions of the Joint Finance Committee.

Council member Fitzpatrick asked whether the Joint Finance Committee discussed providing any additional funding to the court's block grant sum to help offset the cost of the Judicial Council. Attorney Southwick responded in the negative.

Council member Gleisner asked about the possibility of securing private funding or grants for the Judicial Council. Council member Weber recalled that in the past, ethical concerns

were raised by members regarding the Judicial Council, as a governmental body, soliciting or accepting private donations. Attorney Southwick stated that if members would like a definitive answer, she could request an opinion from the Government Accountability Board (GAB). Members considered the option, but did not request a GAB opinion at this time.

Council member Ott explained that the current budget does not require the court to take an \$11 million lapse, as was required under the past budget. As a result, it is his understanding that the question is not whether the court has sufficient money to fund the Council, but how to separate the funds so that there is no appearance of a conflict of interest.

IV. Appointment of a Nominating Committee

Each year, a nominating committee is tasked with nominating candidates to serve as chair and vice chair for the upcoming Council year. The nominating committee announces its recommendation at the June Council meeting. The committee generally consists of three members. Chair Bertz asked for volunteers to serve on the committee.

Attorney Southwick reported that although Council member Wagner was unable to attend the meeting, he contacted her prior to the meeting to volunteer for the committee. Council members Gleisner and Myers also volunteered to serve on the committee.

Attorney Southwick asked Council members to talk with the nominating committee if they are interested in serving as chair or vice chair of the Council during the 2015-2016 year. Prior to the June meeting, she will schedule a meeting of the nominating committee so that members can discuss their recommendation.

V. Discussion and/or Action Regarding Bill Amending the Rules of Criminal Procedure

Attorney Southwick reported that the criminal procedure bill drafted by the Judicial Council has been introduced in the Senate as 2015 Senate Bill 82.

Attorney Southwick was contacted by Brookfield Deputy Police Chief Collins regarding his concern that the statutes do not provide law enforcement with authority to enforce state forfeiture offenses. Deputy Chief Collins previously requested that the Council address this issue in the 2013 criminal procedure bill. The Criminal Procedure Committee discussed his request and agreed that it would be better to address the issue in a separate bill. Deputy Chief Collins is again asking for an amendment to the 2015 criminal procedure bill. In the alternative, he would like the Council's support for including an amendment to address the issue in Assembly Bill 128. AB 128 reclassifies a number of misdemeanors as civil forfeitures. Deputy Chief Collins is concerned that the change creates many new offenses that law enforcement has no authority to enforce. Council member Weber suggested that Deputy Chief Collins is in the minority in his interpretation of the limits on the authority of law enforcement officers.

Council member Ott recalled that the amendment proposed by Deputy Chief Collins previously met with some resistance, although he could not recall the specific reasons. Attorney

Southwick recalled that there was some opposition to statutorily granting law enforcement specific authority to arrest for a violation of a civil forfeiture, even though the authority to arrest is also the source of an officer's authority to stop and detain a person to issue a citation.

Council member Schultz suggested that this issue stems from a gap in the statutes. The statutes currently permit law enforcement officers to arrest people for traffic violations that are civil forfeitures because the statutes specifically authorize it. The statutes do not grant broad authority to arrest for all civil forfeitures. He recalled that there was a civil suit for damages against a police department stemming from an arrest for a civil forfeiture violation.

Council member Weber stated that the Department of Justice has a petition for review pending before the Wisconsin Supreme Court that may address this issue peripherally (whether law enforcement can effectuate a stop based on a violation of a municipal ordinance). Council member Weber spoke in support of tabling the issue until the supreme court acts on the petition for review.

Attorney Southwick explained that with regard to Deputy Chief Collins' request, the Council can take no action. Alternatively, if members would like to consider the issue of enforcement of civil forfeitures further, she can put it on the Council's May agenda.

Members agreed by consensus not to reconsider amending the criminal procedure bill, but they were open to discussing the issue of law enforcement's authority to arrest for a civil forfeiture. Attorney Southwick will put this item on the May agenda and provide members with a link to AB 128.

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

Attorney Southwick reported that she has not received any additional comments regarding the Council's proposed amendments to the rules of evidence. She distributed copies of the minutes from the chief judges' meeting at which she presented the proposed amendments. The minutes contain a summary of the judges' discussion, as well as a few questions they raised regarding the proposal.

VII. Committee Reports

A. Appellate Procedure

Committee chair Ptacek reported that the committee continues to study possible amendments to Rule 809.15, the record on appeal. A draft is nearly complete, and the committee is waiting for feedback from court clerks to be relayed by Diane Fremgen.

The committee also continues to work on reorganizing the procedural rules for prisoner challenges to agency decisions. The project is nearing completion. Once the committee approves a final draft, Attorney Southwick will forward it to the Legislative Reference Bureau to prepare a bill.

B. Criminal Procedure

Attorney Southwick reported that the committee met to discuss prioritizing current projects and potential new projects. The Council has asked the committee to study the following issues: preliminary examinations, discovery depositions, and search warrants. These three areas were identified for further study because advances in technology might be rendering the current statutes outdated or because new technology could be used to improve the process.

The committee elected to begin studying the search warrant statutes. The committee was sensitive to the fact that there could be some costs associated with changes to preliminary examinations and discovery depositions. Given the current fiscal climate, members recommended delaying those two projects. The representative of the Wisconsin District Attorneys Association (WDAA) who previously served on the Criminal Procedure Committee recommended that the committee update the search warrant statutes, so Attorney Southwick will reach out to the WDAA to inquire whether they have any specific recommendations or suggestions for improvement.

C. Evidence and Civil Procedure

Attorney Southwick reported that the committee continues to discuss possible amendments to Wisconsin's class action statute to bring it more in line with the federal class action statute. Wisconsin's current class action statute is very out-dated and provides little guidance to the courts on issues such as class certification. The committee is studying each section of the federal rule and the reasons for recent amendments. The committee is also reviewing the versions of the federal rule that have been adopted by other states to study how other states have modified it.

VIII. Other Business

A. PPAC Liaison's Report

There was no PPAC report.

B. Council Attorney's Report

Attorney Southwick thanked members for their support during the difficult budget process. Council member Gleisner recognized the excellent letter written by Marquette Law School Dean Joseph Kearney. Attorney Southwick also noted the press release by the State Bar in support of the Council. All Council members extended their appreciation to Council members Ott and Wanggaard for their efforts in the Legislature in support of retaining the Council.

Council member Weber reminded members of the invitation that was circulated from the Department of Justice regarding the ceremony commemorating Crime Victims' Rights Week. At the ceremony, DOJ will be recognizing the rule drafted by the Judicial Council to protect the identity of crime victims in appellate documents. He noted that the rule has raised awareness.

He is already seeing crime victims' names withheld in briefs and opinions, even though the rule does not become effective until July 1, 2015.

IX. Adjournment

The Council adjourned at 10:15 a.m.