

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
MADISON, WISCONSIN
June 15, 2007

The Judicial Council met at 8:30 a.m., Madison Concourse Hotel, 1 West Dayton Street, Madison, Wisconsin.

MEMBERS PRESENT: Marla J. Stephens, Chair; Honorable Ann Walsh Bradley, Allan M. Foeckler, Kathleen E. Grant, Professor Jay Grenig, Beth E. Hanan, Vice-Chair; Honorable Edward E. Leineweber, Honorable James Mason, Robert L. McCracken, Bruce Munson, Kathleen A. Pakes, Professor David E. Schultz, Senator Lena Taylor, A. John Voelker, Honorable Mary K. Wagner, Greg M. Weber, Honorable Ted E. Wedemeyer, Jr., Honorable Maxine A. White.

MEMBERS EXCUSED: Michael R. Christopher, Susan L. Collins, Representative Bill Kraemer.

OTHERS PRESENT: Honorable Shirley S. Abrahamson, Honorable N. Patrick Crooks, Honorable David T. Prosser, Jr., Honorable Jon Wilcox, Honorable Raymond Gieringer, Jack R. DeWitt, George Steil, J. Denis Moran, David Schanker, John D. Ferry, Jr., Jeff Pertl, Eric Peterson, James C. Alexander.

I. Call to Order, Roll Call, and Welcome of Council Alumni & Special Guests

Chairperson Stephens recapped a good Council year. The Criminal Procedure Committee completed its revision of the proposed Code of Criminal Procedure. The Strategic Plan Committee arranged for an independent review of the Council by John D. Ferry, Jr., Court Management Consultant for the National Center for State Courts, and obtained a grant from the State Justice Institute to do so. Of course, the Committee on Joint Finance's 16-0 approval of Senator Taylor's motion to separate the Council from the Judicial Commission, and staff the Council, is a huge step forward in improving the effectiveness and efficiency of the Council.

Chairperson Stephens then gave each alumnus and guest an opportunity to introduce himself and share remarks. Chief Justice Abrahamson thanked Justice Bradley, Justice Prosser, and Senator Taylor for their invaluable work in getting needed legislation to allow the Council to move forward as a separate independent agency. Chief Justice Abrahamson said that this action was good not only for the court but also the legislature as both benefit from Council work. Chief Justice Abrahamson thanked the Council for its good work over the years.

Chairperson Stephens announced that David Schanker, Clerk of Supreme Court and Court of Appeals, agreed to be an *ad hoc* member of the Appellate Procedure Committee. She also announced that Beth Hanan was designated by the State Bar President-Elect, Diane Diel, to serve as her representative on the Council.

II. Approval of Minutes of May 18, 2007 meeting

MOTION: Kathleen Grant moved, seconded by Beth Hanan to approve the minutes of the May 18, 2007 meeting.

Motion passed unanimously.

III. Report of Nominating Committee-Election of Officers

As Chair of the Nominating Committee, Judge Wedemeyer announced that the Committee nominates Marla Stephens as Chair and Beth Hanan as Vice Chair for the next Council year. No nominations were received from the floor.

MOTION: Judge Wedemeyer moved, seconded by Greg Weber for unanimous approval of Marla Stephens as Chair and Beth Hanan as Vice Chair for the next Council year.

Motion passed unanimously.

IV. Proposed 2007-08 Council Meeting Dates

Jim Alexander said that the list of proposed meeting dates includes the usual third Friday of each month exclusive of July and August. The exceptions to the third Friday are October 2007, which has a conflict with the Judicial Conference. The December 2007 and March 2008 have conflicts because of holidays.

MOTION: Judge White moved, seconded by Judge Wagner to approve the meeting dates for 2007-2008 as follows:

2007	2008
Friday, September 21, 2007	Friday, January 18, 2008
Friday October 26, 2007	Friday, February 15, 2008
Friday, November 16, 2007	Friday, March 28, 2008
Friday, December 14, 2007	Friday, April 18, 2008
	Friday, May 16, 2008
	Friday, June 20, 2008

Motion passed unanimously.

V. Committee Reports

A. Appellate Procedure

Marla Stephens said that the Committee is meeting after the full Council meeting today and will meet over the summer. An Appellate Procedure Committee Projects Update was provided to Council members and is attached to these minutes. Senator Taylor suggested that the study on procedures governing the use of presentence investigation reports before and after sentencing be given priority since the pending state budget would provide increased funding for presentence investigation. The Committee suggests that the study of standards for amicus curiae participation in appellate cases be tabled indefinitely to allow the courts to review and possibly modify their own internal operating procedures governing this area.

MOTION: Judge Wedemeyer moved, seconded by Bruce Munson to table indefinitely the amicus curiae study.

Motion passed unanimously.

The appeals in small claims actions study seems better fitted to the Evidence and Civil Procedure Committee and, by consensus of the Council, the Evidence and Civil Procedure Committee will continue with that project.

B. Criminal Procedure

Professor Schultz said that the next stage in the Criminal Procedure revision project is to get a re-draft from the Legislative Reference Bureau (LRB). Professor Schultz will appoint an executive committee, consisting of committee member Bob Donohoo, J. Mason and Chair Stephens, to work with LRB. Senator Taylor asked to be kept advised of the progress of the committee's work with LRB.

Professor Schultz advised the Council that separate legislation on John Doe proceedings is being pursued by the Attorney General's office.

Judge Mason suggested that a one to two page document bullet pointing the highlights of the proposed Criminal Procedure revisions may be helpful in beginning to build support for the project.

C. Evidence and Civil Procedure

Judge Mason said there was no study pending in the committee.

D. Internal Operating Procedure

Bruce Munson said there was no report.

E. Strategic Planning Committee

Judge Leineweber reported that the National Center for State Courts study is going forward with John Ferry. A completion date of September is contemplated. John Ferry addressed the Council and generally outlined his plan for the study.

F. PPAC Liaison

Judge Leineweber said there was no report.

VI. Review of Pending Referrals to Judicial Council

Two lists of pending referrals are attached.

MOTION: Judge Wagner moved, seconded by Judge White to approve study on the timeliness of appeals in small claims cases.

Motion passed unanimously.

MOTION: Judge White moved, seconded by Senator Taylor to establish an Evidence and Civil Procedure subcommittee with Professor Grenig as chair to monitor the work of the Uniform Laws Commission, ALI, and electronic discovery rule development.

Motion passed unanimously.

The Council had a long discussion about whether it should consider a rule, and petition the Supreme Court to adopt a rule, permitting the citation of unpublished opinions for persuasive value. Earlier the Council had unanimously agreed that any such study should be the result of a motion to the full Council and that the full Council should conduct any study if that motion carries.

MOTION: Judge White moved, seconded by Al Foeckler, to hold the matter for the September Council meeting for further discussion and a decision on whether to proceed with the study on the citation of unpublished opinions.

Motion passed unanimously.

The Council discussed the advisability of launching into the study of the Rules of Evidence and possible changes.

MOTION: Judge White moved, seconded by Kathleen Grant, to invite Professor Dan Blinka to meet with the full Council and discuss the need for and scope of the study at a future Council meeting.

Motion passed unanimously.

The Council discussed the request from Bob McCracken that the Council and the Evidence and Civil Procedure Committee re-examine and make recommendations concerning the 20 day time period in which to file an answer to a complaint in civil action under § 801.09(2)(1), Stats.

MOTION: Judge Wagner moved, seconded by Kathleen Grant, to refer the matter to the Evidence and Civil Procedure Committee and have it consult with the Litigation Section of the State Bar concerning the issue.

Motion passed unanimously.

Judge White suggested the Council study and make recommendations concerning the permissible uses of assets confiscated from defendants in criminal cases and payments to crime prevention organizations. After discussion, the issue was tabled for consideration at a later Council meeting.

Chairperson Stephens then advised the Council that committee meetings were waiting to begin. The consensus of the Council was to adjourn discussion of the remaining pending referrals to the Council until the next meeting.

VII. Other Business

There was no other business.

VIII. Adjournment

MOTION: Judge White moved, seconded by Bruce Munson,
to adjourn. PASSED UNANIMOUSLY.

Council adjourned at 11:10 a.m.