



## STATE OF WISCONSIN – JUDICIAL COUNCIL

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AMENDED FINAL  
MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL  
MADISON, WISCONSIN  
September 21, 2018

The Judicial Council met at 9:35 a.m. in the Assembly Hearing Room, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Sarah Walkenhorst Barber; Sherry Coley (by phone); Diane Fremgen; Judge Eugene A. Gasiorkiewicz; William C. Gleisner; Christian Gossett (by phone); Duane Harlow; Margo Kirchner; Devon Lee; Dennis Myers; Judge Needham (by phone); Ben Pliskie; John R. Orton; Thomas L. Shriner; Steven Wright; Judge Jeffrey Wagner (by phone); Senator Van H. Wanggaard.

MEMBERS EXCUSED: Justice Annette Kingsland Ziegler; Representative Jim Ott; Judge Robert VanDeHey;

### **I. Roll Call and approval of the Minutes of June 15, 2018.**

Minutes were amended and then approved.

### **II. Report by Gleisner on meeting with Law Library staff over the summer, including email from Julie Tessmer regarding inability to transfer materials from State Historical Society to State Law Library.**

Gleisner reported on meeting with Julie Tessmer and Carol Hassler over the summer. The State Law Library reports that it cannot compel the State Historical Society to transfer Council holdings to the State Law Library. Gleisner reported that he requested that in the alternative the State Law Library and the State Historical Society collaborate on an index that will make clear where research materials are located. In other words, the index of the Law Library will show what materials are at the State Historical Society. And the index of the State Historical Society will show what materials are located at the Law Library. Gleisner reported that Tessmer and Hassler are working on cross-referenced indices.

The Law Library has plans underway to digitize its collection. Orton reported that the State Historical Society is second only to the Library of Congress in the size of its collection. He believes that the Historical Society will digitize its entire collection eventually. Gleisner stated that the Council documents are in poor shape (fragile paper documents) and need to be digitized as soon as possible.

### **III. Discussion of e-discovery survey submitted to Council by Judge Gasiorkiewicz.**

Judge Gasiorkiewicz reported that the survey was just for informational purposes. The Judge felt that the discussion of proportionality in this survey was worth reviewing, and proportionality is going to be an important concept under Act 235.

**IV. Report from Tom Shriner regarding Supreme Court Petition 18-03, which will be the subject of a public hearing before the Supreme Court on October 11, 2018.**

Tom Shriner reported that the Council approved Petition 18-03 because of a deficiency in the original default judgment rule because it provided only for how a plaintiff could get a default judgment and did not address how a defendant or cross-claimant could get a default judgment. This deficiency has existed for over twenty-five years and should be fixed. Tom will appear before the Court on the 11<sup>th</sup> of October.

**V. Discussion of proposed Budget, which must be acted upon at this meeting. A copy of this Budget will be distributed to the membership as far in advance of the September 21, 2018 meeting as possible.**

Senator Wanggaard appeared at the beginning of the budget discussion and Gleisner noted that the Senator continues to provide substantial assistance to the Council. Just before the meeting on the 21<sup>st</sup> Gleisner learned that Room 328 NW had not been reserved and that reservations could only be made through a legislator. Once again, Senator Wanggaard stepped in and made sure that Room 328 NW would be reserved for the upcoming Council year.

Gleisner reported on the extensive work and assistance provided by Colleen Holtan, Budget Director for the State Department of Administration. She provided extensive support and worked late into the night before this meeting, having delivered the Budget to Gleisner at 2:15 a.m. She also reproduced the Budget and had it delivered to Room 328 NW just before the meeting.

Professor Wright asked how we learned of the need to complete work on a budget by the date of this meeting, September 21, 2018. Gleisner reported that two weeks ago he received a call from Ms. Holtan stating that budgets were due to be filed with the State by September 17, 2018. Ms. Holtan got us an extension until September 21<sup>st</sup> and then worked with Gleisner at length in preparing the budget which was delivered to the Council the morning of the meeting on September 21.

Gleisner began by discussing the gifts and grants provision that has been added to the proposed budget. Gleisner stated that it has to be there or otherwise no one can successfully make a contribution earmarked for the Council. Clearly the Council is empowered to receive gifts and grants pursuant to Wis. Stat. 20.670 but, as Ms. Holtan pointed, out the Legislature must authorize receipt of gifts and grants and so a request for gifts and grants authority must be included in the budget. Gleisner likened a gifts and grants provision to a “fishing license” that would allow the Council to find funding elsewhere if the funding is not provided for by the State.

Senator Wanggaard stated that the budget requests were reasonable. The Senator said that he would still like to talk with the Supreme Court about reestablishing funding. The Senator said that it was a good idea for the Council to have staff, especially in view of all the work that the Council does without any charge.

Judge Gasiorkiewicz raised a concern about the “gifts and grants” portion of the budget on the grounds that it could compromise the Council from an ethical perspective. He stated that such a

provision could alter the perception that the Council is an independent policymaking body, depending on who makes contributions to the Council. The Judge also took issue with Gleisner's reference to a "fishing license." As he said, Judges can't go fishing for contributions, because of the Judicial Code of Ethics. It would be very unseemly if the Council attempted to solicit funds from individuals or organizations. Besides that, Judges who belong to the Council could be put in a difficult position if they are part of an organization that ends up soliciting funds. Thus, the Judge is against the gift and grant proposal. Gleisner replied that the Supreme Court has the gift and grant language in its statutory mandate [Wis. Stat. §20.680(2)(g)].

John Orton then asked the Senator if the gifts and grants proposal could cause a disincentive to the Legislature's providing funding. The Senator replied that it could possibly do that.

Ben Pliskie stated that the Council exists outside of all three branches of government. Pliskie further noted that, if anything could put a target on our back, the adoption of a gift and grant provision in our budget could do it. He stated that any form of the gift and grant provision will create an unhealthy perception which could damage us.

Professor Wright raised a concern that a gift and grant provision could create the perception that our organization is somehow for sale. Tom Shriner said that we should not be soliciting funds under any circumstances.

The Senator stated that we should submit a budget without the gift and grant provision and then have a chat with the Supreme Court justices to see if they can support us, to some degree. Someone should also have a chat with the Governor's Office and Joint Finance.

Diane Fremgen stated that she has had a discussion with the Director of State Courts and the Director wanted everyone to be aware that the Supreme Court does not oppose the Council; the Court thinks the Council does a good job. The Court just does not want to fund the Council. The Senator asked if that meant that the Court would not oppose the budget we are contemplating, and Diane said yes. In fact, Diane said that she believes the Court would support our budget, although the Court would not lobby for the budget. Gleisner asked the Senator if he agreed that the proposed budget is a GPR request and the Senator said yes.

Senator Wanggaard stated that what was important was to submit a budget, because that will get it before the committees that matter. The Senator said that the Council was unique and brought together members of the Judiciary, the Legislature and the Executive and provided for a vehicle to discuss what is best for our legal system.

The conclusion was to eliminate the gift and grant provision, and that was done.

A comparison was made of the old budget and the new proposed budget. In order to do this effectively, Colleen Holtan joined our conference call and explained the differences between the old and new budget. She said that rental would come out of supplies and services at page 20 of the budget (\$22,200). Start-up costs were originally set at \$3,000. However, John Orton made the point that additional first-time expenses would be necessary (desk, computer, printer, etc.), and so the one-time financing amount at page 20 of the budget was increased to \$9,000. Ms. Holtan said that the 1<sup>st</sup>-year budget request of \$98,300 and the 2<sup>nd</sup>-year request of \$111,400 at page 21 of the budget represented proration of the first year.

The narrative decided upon for the budget, describing the goal of the budget, was agreed upon and is set forth at page 19 of the budget as follows:

The Judicial Council [Council] requests the creation of a 1.0 FTE GPR unclassified attorney and the provision of \$9,000 in one-time financing in the first year. The Council also requests salary, fringe, and supplies and services authority of \$89,300 GPR in the first year and \$111,400 GPR in the second year, for a total of \$98,300 GPR and \$111,400 GPR in the first and second year, respectively. As passed by the Legislature, Assembly Bill 64 [the 2017-19 biennial budget bill] provided a budget for the Council of \$111,400 PR annually, with 1.0 PR FTE. Funding for the Judicial Council was provided from revenues transferred from the Wisconsin Supreme Court's Director of State Courts appropriations in amounts determined by the Supreme Court under s. 751.20, Wis. Stats. The Governor partially vetoed section 183 [as it related to s. 20.670(1)(k)] by reducing the amount under s. 20.670(1)(k), Wis. Stats., to \$0 in each fiscal year. Additionally, the Governor requested that the Secretary of the Department of Administration not authorize position authority for the Council and none was authorized. This initiative requests the creation of a 1.0 FTE GPR unclassified attorney so that the Council may appoint an attorney outside of the classified service as permitted under s. 758.13 (3)(g)2, Wis. Stats. It also requests GPR supplies and services authority in an amount equal to that which was reduced from s, 20.670 (1)(k), Wis. Stats., by the veto; and \$9,000 GPR one-time financing in the first year for costs associated with the recruitment of an unclassified attorney and the establishment of an office for the attorney. It should be noted that although funding for the Council's appropriations was eliminated, statutory language related to the Council and the Council's appropriations remain under current law. Further, although the Council's last appropriated budget [the 2015-17 biennium] was funded 100% with program revenue transferred from the Courts, funding for the 2011-13 and 2013-15 biennia was split 50% PR and 50% GPR; and funding for the 2007-09 and 2009-11 biennia was 100% GPR.

The proposed budget was passed unanimously. The budget can be viewed at as item 670 at: <https://doa.wi.gov/Pages/StateFinances/2019-21-Biennial-Budget-Agency-Requests-.aspx>.

A copy of the final budget as submitted is set forth following these Minutes.

VI. Adjournment.

Meeting adjourned at approximately 11 a.m.