



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
May 17, 2019

The Judicial Council met at 9:35 a.m. in the Senate Parlor, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Sarah Walkenhorst Barber; Judge Michael Fitzpatrick; Diane Fremgen; Judge Eugene A. Gasiorkiewicz (by phone); William C. Gleisner; Margo Kirchner; Judge Scott Needham (by phone, but muted); Adam Plotkin; Dennis Myers; John R. Orton; Ben Pliskie (by phone); Thomas L. Shriner; Judge Robert VanDeHey; Senator Van H. Wanggaard (by phone); Steven Wright.

MEMBERS EXCUSED: Representative Ott; Duane Harlow; Sherry Coley; Judge Jeffrey Wagner; Christian Gossett.

DISTINGUISHED GUESTS: Lynne Davis (State Bar); Paige Scobeck (Hamilton Consulting); Erika Stebel (Wisconsin Law Journal); Sarah Zylstra.

I. Roll Call and approval of the Minutes of March 15, 2019.

Minutes were amended and then approved.

II. New Business not on the Agenda.

Chair Gleisner asked Sara Barber to provide a brief report on the response of the LRB to our request that the LRB track new legislation which might impact on the rules of civil or criminal procedure. Sarah reported that the LRB had authorized her to do so. Chair Gleisner asked, and Sarah agreed, that the LRB also keep track of any new developments in the rules of evidence.

III. Report by Chair Gleisner on completion of the Council's response to the Amended Open Records Request.

Chair Gleisner reported that the request had been complied with in three stages and that no further requests had been received as of the date of the 5-17-19 meeting.

IV. Report from Professor Wright regarding the work of the Appellate Procedure Committee regarding 1) A Proposed Rule of the Committee concerning withdrawal of counsel from civil matters; and 2) A memorandum from the Committee concerning a proposed new project.

Professor Wright provided a report and draft proposed rule concerning procedures to use by counsel when seeking to withdraw from an appeal. Discussion was had, and the Council voted to

approve the rule in theory and also voted to return the matter to the Appellate Procedure Committee with directions that they place the rule in final form and prepare an accompanying Petition and supporting Memorandum addressed to the Supreme Court in support of the proposed Rule. The Committee is then to return the final rule, Petition and supporting Memorandum to the full Council for discussion and appropriate action.

Professor Wright asked that the Council authorize the Appellate Practice Committee to consider a new project. Namely, a study of Postconviction and Appeal Procedure Relating to Competency of Criminal Defendants. Professor Wright noted that Wisconsin has statutes governing competency proceedings for criminal defendants occurring before trial and through sentencing. Wisconsin does not have a statute for competency proceedings at postconviction and appellate stages. The Wisconsin Supreme Court has directed circuit courts in postconviction proceedings and parties on appeal to follow WIS. STAT. § 971.14(4) and the process established in *State v. Debra A.E.*, 188 Wis. 2d 111, 523 N.W.2d 727 (1994), to the extent feasible.

As Professor Wright noted further, there is no procedural rule to guide criminal defendants subject to involuntary medication orders on appeal. There is no procedural appellate rule on how to proceed with postconviction or appellate proceedings when a defendant is determined incompetent after conviction. Section 971.14 focuses on competency restoration but at the postconviction and appellate stages, involuntary treatment for that purpose may not be necessary.

Professor Wright concluded by stating the following. The Appellate Procedure Committee proposes to study the gap between WIS. STAT. § 971.14, case law, and the absence of procedural rules on how to pursue an appeal of an involuntary treatment order and how to proceed in light of postconviction competency problems. The committee would draft rules to codify case law and provide a structure for postconviction and appellate competency proceedings, including the possible structure for an expedited appeal of an involuntary treatment order before trial.

The Council voted to allow the Appellate Procedure Committee to begin work on such a study.

V. Reports by Professor Wright and Attorney Orton regarding conversations they have had with Senators Johnson and Marklein.

Both Professor Wright and Attorney Orton reported contacts with the named senators, but no commitments were made by either senator.

VI. Report of Senator Wanggaard.

Senator Wanggaard did not disappoint. Among other things, the Senator reported at length on a proposed interrelationship between the Judicial Council and the Legislative Council. However, immediately after the meeting the subject of Senator Wanggaard's report was challenged by the Civil Justice Council. No attempt is made here to reproduce the Senator's report, pending further direction from Senator Wanggaard.

VII. Adjournment.

Meeting adjourned at approximately 11:15 a.m.