



STATE OF WISCONSIN – JUDICIAL COUNCIL

AGENDA

WISCONSIN JUDICIAL COUNCIL
OCTOBER 18, 2019 – 9:35 A.M.
ROOM 328NW OF THE STATE CAPITOL
MADISON, WISCONSIN

**Members wishing to call in should call (563) 999-2090
at 9:30 a.m. and enter Access Code 842997**

INTRODUCTION

Before presenting the October 18, 2019 Agenda, I want to remind the members of the Judicial Council of our legislative mandate. That mandate is contained in Wis. Stat. §758.13 and has remained unchanged for seventy years.

I have heard it said a number of times that the Council does not have any new assignments from the Supreme Court or the Legislature. As a consequence, the Council is without work. This evinces a fundamental misunderstanding of the powers and duties of the Judicial Council. We are in fact a cross between an independent think tank and watch dog, charged with the power to study our Wisconsin civil and criminal justice systems, highlight shortcomings and recommend improvements to the Three Branches of State Government. Please take careful note of the following Wis. Stat. §758.13(2) and the language I have highlighted in that section:

- (2) Powers and duties.** The council shall:
- (a) Observe and study the rules of pleading, practice and procedure, and advise the supreme court as to changes which will, in the council's judgment, simplify procedure and promote a speedy determination of litigation upon its merits [double emphasis intended].**
 - (b) Survey and study the organization, jurisdiction and methods of administration and operation of all the courts of this state [Emphasis supplied].**
 - (d) Receive, consider and in its discretion investigate suggestions from any source** pertaining to the administration of justice and to make recommendations [Emphasis added].
 - (e) Keep advised concerning the decisions of the courts** relating to the procedure and practice therein **and concerning pending**

legislation affecting the organization, jurisdiction, operation, procedure and practice of the courts [Emphasis added].

(f) Recommend to the legislature any changes in the organization, jurisdiction, operation and methods of conducting the business of the courts, including statutes governing pleading, practice, procedure and related matters, which can be put into effect only by legislative action.

(g) Recommend to the supreme court, legislature and governor any changes in the organization, operation and methods of conducting the business of the courts that will improve the efficiency and effectiveness of the court system and result in cost savings [triple emphasis intended].

That is our mandate. We don't wait for the Supreme Court, the Legislature or the Governor to give us work. We are an independent body charged with a clear oversight function. It is very clear that is why we have been given extraordinary powers to discharge our independent duties as a think tank and watch dog. Consider the following clear statement of our extraordinary powers in Wis. Stat. §758.13(3)(c) (again, please note the emphasis):

(c) The council may appoint regular and special committees of its members **to investigate and report upon any matters relating to its duties. The council** or any committee thereof when so authorized by the council **is empowered to hold public hearings at such times and places within the state as may be determined. Any member of the council** or any committee thereof **shall have the power to administer oaths to persons testifying before the council** or committee. **By subpoena** issued over the signature of its chairperson or acting chairperson and served in the manner in which circuit court subpoenas are served, **the council** or any committee when authorized by the council, **may summon and compel the attendance of witnesses.** If any witnesses subpoenaed to appear before the council or committee thereof refuse to appear or answer inquiries propounded, the council or committee shall report the facts to the circuit court of Dane County and the court shall compel obedience to the subpoena [Emphasis added].

Pursuant to Wis. Stat. §758.13(3)(e), the Council has the power to compel cooperation by any department of the state, or any county or municipality and they must cooperate with us "to the fullest extent." It also is clear that pursuant to Wis. Stat. §758.13(3)(g)(2) that the Council has the right to appoint an attorney. While we have never pressed the matter, I strongly suspect that if litigated we could establish that such a power carries with it the implicit power to force the State to provide reasonable payment for a qualifying attorney.

In short, the Judicial Council is an honorable and independent agency which has the duty and power to act without waiting for work to be dolled out to it by any Branch of Government. I do not propose that we change our method of doing business. But I do propose that we abandon the notion that we must wait for the Courts or the Legislature to give us work. We should always bear that in mind.

10/18/19 AGENDA

- I. Roll Call and approval of the September 20, 2019 Meeting Minutes.
- II. Discussion by Chair Gleisner regarding the Introduction to this Agenda.
 - A. Nature of the Council's Legal Duties.
 - B. How to Implement our Duties pursuant to §758.13 going forward.
- III. Report from Sarah Barber concerning legislative bills.
- IV. Instruction by Sarah Barber on how to set up legislative notifications.
- V. Report by Sarah Zylstra regarding the State Bar's Litigation Section.
- VI. Committee Reports.
 - A. Evidence & Civil Procedure Committee.
 - B. Criminal Procedure Committee.
 - C. Appellate Procedure Committee.
- VII. Adjournment.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's meeting will take place in Room 328 NW of the State Capitol Building at the above time. For more information, please contact the Chair of the Judicial Council, Attorney Bill Gleisner, at 414-651-3182 or wgleisner@sbcglobal.net.