



STATE OF WISCONSIN – JUDICIAL COUNCIL

OCTOBER 20, 2023 AGENDA

WISCONSIN JUDICIAL COUNCIL
FRIDAY, OCTOBER 20, 2023 – 9:30 A.M.
WISCONSIN STATE CAPITOL
ROOM 328NW
MADISON, WISCONSIN

**Members wishing to call in should call
(339) 209-6255 at 9:30 a.m. on 10/20/23. There is no Access Code.**

**Special Notice: The Criminal Procedure Committee Meeting will
be held immediately following this meeting in Room 415NW.**

- 1) Roll Call and approval of the Minutes from September 15, 2023.**
- 2) What is an appropriate topic for Council Consideration and Discussion?**

At our September 15, 2023 Council meeting, there was an interesting colloquy between Judge Hruz and Justice Hagedorn as to what the Council can consider. Judge Hruz stated his belief (shared by other Council members) that the Council should by and large limit itself to matters which are clearly procedural in nature. Justice Hagedorn suggested that the Council could also address certain substantive issues, such as those which might arise during a consideration of pending *Supreme Court Petition 23-01* (proposing an amendment to Wis. Stat. §809.12).

A discussion (as to what the Council may properly consider) implicates both the Council's foundational rules contained in Wis. Stat. §758.13 and the rules of pleading and practice in Wis. Stat. §751.12. While Wis. Stat. §758.13(2) contains limitations placed on what the Council may consider,¹ that does not fully encompass the powers of

¹ Wis. Stat. §758.13(2) provides as follows: "(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. (b) Survey and study the organization, jurisdiction and methods of administration and operation of all the courts of this state. (d) Receive, consider and in its discretion investigate suggestions from any source pertaining to the administration of justice and to make recommendations. (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. (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. **Please note, there is no "section c" in the foregoing statute.**

the Council. Pursuant to Wis. Stat. §751.12(5), “The judicial council shall act in an advisory capacity to assist the court in performing its duties under this section.”

While the colloquy between the Council’s top jurists (Justice Hagedorn and Court of Appeals Judge Hruz) is interesting, it also addresses *the* issue which is at the heart of the Council’s *raison d’être*: What is the proper purpose and focus of the Judicial Council? I have been on the Council since 2008, and during that time the Council has never addressed this issue. To be sure, we have discussed why a particular subject is or is not within the purview of Wis. Stat. §758.13. But we have never discussed just the fundamental purpose and focus of the Council.

As a committee of the whole, I propose that we begin such a discussion at our meeting next Friday. And I suggest we begin by analyzing the issues raised by pending *Supreme Court Petition 23-1*. I am not suggesting that we consider taking a position on that Petition. Instead, for the purposes of discussion, I want to use *Petition 23-1* to help achieve a definition of the fundamental purpose and focus of the Council. With this Agenda, I am providing copies of the following: 1) *Petition 23-1*; 2) Main Memorandum in support of *Petition 23-1*; 3) Supplemental Memorandum re that Petition; 4) Response from Petitioners; 5) State Bar Comments; and 6) Judge Hruz’s comments.

Please do not analyze the *Petition 23-1* materials with the thought the Council will take any action on the Petition. Instead, analyze those materials so as to answer the question: What is the proper purpose and focus of the Judicial Council?

3) Should the Council address the Supreme Court regarding *Petition 23-01*?

The foregoing suggested study of *Petition 23-01* is meant to stand on its own. However, after studying all of the materials which are being provided with this Agenda concerning *Petition 23-01*, and given Judge Hruz’s June 20, 2023 letter to the Supreme Court (copy provided with this Agenda), should the Council provide any input to the Supreme Court regarding *Petition 23-01*?

4) Reports by Committees:

- a) Judge Hruz, Chair of the Council’s Committee on Appellate Procedure, will give a report regarding the Petition and Memorandum the Committee just filed with the Supreme Court requesting creation of new Wis. Stat. §809.19.
- b) Thomas Shriner, Chair of the Council’s Standing Committee on Evidence and Civil Procedure, will give a report.
- c) Judge Hanna Dugan, Chair of the Council’s Standing Committee on Criminal Procedure, will give a report.
- d) Margo Kirchner, Chair of the ad hoc Committee on the “Council Corner” (a monthly report to the State Bar on the work of the Council) will give a report.

5) Adjournment.

This Agenda was prepared by Attorney Gleisner.

PUBLIC NOTICE

All meetings of the Judicial Council and its committees are open to the public. The Council's October 20, 2023 meeting will only take place in person in Room 328NW of the Capitol Building. There will be no Zoom access to this meeting. Subject to limits imposed by the size of Room 328NW, members of the public are welcome. However, if any member of the public disrupts the meeting in any way, security will be called, and the disrupting member will be asked to leave. For more information, please contact the Chair of the Judicial Council, Mr. Gleisner, at 414-651-3182 or gleisnerwilliam@gmail.com.