



STATE OF WISCONSIN – JUDICIAL COUNCIL

AMENDED NOVEMBER 17, 2023 AGENDA

WISCONSIN JUDICIAL COUNCIL
FRIDAY, NOVEMBER 17, 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 11/17/23. There is no Access Code.**

- 1) Roll Call and approval of the Minutes from October 20, 2023.**
- 2) Several issues which came up at our October meeting merit further discussion during the upcoming November 17, 2023 meeting, including the following:**
 - A. As is clear from the October 20, 2023 Minutes (which accompany this Agenda), we discussed sending a letter to the Supreme Court concerning *Petition 23-1*. Members expressed doubt about the need to send such a letter. And while a motion was made and passed to send a letter, Justice Hagedorn noted that it would be just as effective for individuals to attend the December 11, 2023 hearing on *Petition 23-1*. Based on the discussion as recorded in our October 20, 2023 Minutes, I wish to revisit this issue at our November 17th meeting. There will be more than enough time to send such a letter before the December 11th hearing if the members still deem it necessary.
 - B. At our October 20th meeting, Judge Dugan raised a matter of serious concern regarding the new DAR recording system. A colloquy followed, part of which includes the following:

Judge Dugan stated that there is a concern among Judges and reporters about the fact that anybody, not just parties, can request recordings of court proceedings. There is a lack of rule uniformity between the counties and within the counties. Right now anybody can get those raw tape recordings and the way that they are done now makes it possible to hear people having potentially confidential conversations. You can hear sidebars, conversations between counsel and clients, prosecutors and witnesses, including police. Gleisner asked if the recordings

included privileged material and Judge Dugan said yes. And redacting is very time consuming and uncompensated for court reporters. Dugan said that we must figure out how to protect raw tape recordings of court proceedings, like for example by making raw tape recordings an exception to the Open Records law. According to Judge Dugan, Waukesha has a form which says the information is on a disk, but there is no control over that disk. Chair Gleisner observed that this means that privileged and confidential information might be released, including information such as the identity of children or other confidential information like addresses or security numbers. Judge Snow said the only way to handle this is to have the Court listen to a hearing again. Judge Dugan that is not workable solution. According to Judge Dugan, she does not want to hear what an attorney tells his or her client, and there is no compensation for in effect sitting through a hearing again. Gleisner suggested that the Council should start working on some rule to deal with the recording problem. Judge Dugan stated her committee was not going to do that.

I was deeply concerned by what Judge Dugan had to report. Therefore, I spent two days at the Prosser State Law Library researching the issue of DAR and related technologies. I retrieved a number of interesting research materials from the State Law Library, several of which I am supplying with this Agenda. I hope that Council members will review these materials in preparation for our upcoming November 17th meeting.

- 1) An excellent email authored by Judge Dugan.
- 2) March 2023 Wisconsin Supreme Court *Guiding Principles on the use of Digital Audio Recording (DAR)*.
- 3) November 2016 American Association of Electronic Reporters and Transcribers White Paper: *Analysis and Advantages of Digital Court Reporting in the Courts...*
- 4) 2013 National Center for State Courts (NCSC): *Making the Record Utilizing Digital Electronic Recording*.
- 5) 2017 National Center for State Courts (NCSC): *Best Practices for Court Privacy Policy Formulation*.
- 6) Guffin, "Digital Court Records Access: Social Justice and Judicial Balancing," 72 Maine Law Review 87 (2020).
- 7) A monograph from Liberty Digital Court Reporting discussing how digital court reporting is supported to work.

I have appointed Judges Gasiorkiewicz and Dugan as co-chairs of a new subcommittee of the Council dedicated to the study of DAR. I have asked that they work toward recommendations for the improved use of DAR technology in our Courts. Based on

the documents outlined above, I think it would be helpful at our 11/17/23 meeting for all Council members to weigh in on how this new subcommittee should approach its work. At our 11/17/23 meeting, I also think all Council members should help Judges Gasiorkiewicz and Dugan with suggestions for whom they should invite as new members. From my perspective, it is my sincere hope that we can secure membership on this subcommittee by a representative of the Chief Judges, a representative from the Director of State Courts and ad hoc representatives from Court Reporter and DAR reporter organizations.

3) Reports by Committees:

- a) Judge Hruz, Chair of the Council's Standing Committee on Appellate Procedure will give a report.
- 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 Report will give a report.

4) 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 November 17, 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.