STATE OF WISCONSIN – JUDICIAL COUNCIL

JANUARY 17, 2025 AGENDA

WISCONSIN JUDICIAL COUNCIL

January 17, 2025 – 9:30 A.M. WISCONSIN

STATE CAPITOL
ROOM 328NW
MADISON, WISCONSIN

Members wishing to join by telephone should call:
(339) 209-6255 at 9:30 a.m. on 1/17/25. There is no Access Code.

After we have achieved a quorum, we will begin with a review of and vote on the Minutes from our January meeting. I will also announce some changes on the Council. To begin with, we must bid a very sad farewell to one of our excellent members, Adam Plotkin. The new Chair of our Criminal Procedure Committee, Dan Blinka, Jr., has requested that I name an ad hoc member to his committee. Accordingly, I am at this time appointing Kara Janson to Dan's Committee. Kara is Senior Counsel for Criminal Law at the Wisconsin Department of Justice. Because she will only be an ad hoc member of Dan's Committee, I will not be adding her or her contact information to the Member Roll of the Judicial Council. I am unaware of any other new appointments at this time.

We will open our meeting with a discussion of a new topic. I am including some materials with this Agenda which I hope will facilitate a meaningful discussion.

While there is no reason for Tom Shriner's Evidence & Civil Procedure Committee to alter their excellent work on the Wisconsin Rules of Evidence, as a Judicial Council we must acknowledge and begin to study a very important development so that we can begin to plan on how we will promulgate rules to address the brave new world of artificial intelligence ("AI"). We may very well want to wait for the United States Judicial Conference to formulate new rules, but it is time to become conversant as a Council with the new developments in this area.

For example, at the beginning of this month, the American Bar Association conducted a webinar entitled "Do we Need New Rules of Evidence for AI-Generated Evidence?" A copy of the flier for this webinar accompanies this Agenda. According to that flier: "This webinar will explore the pros and cons of various proposals that have been submitted to the Federal Rules of Evidence (FRE) Advisory Committee since 2023 to address AI-generated evidence, both acknowledged and unacknowledged (i.e.,

deepfakes." Legal articles appear almost every month on this topic. *See, e.g.,* Edwards & Rich, *Discovering and Admitting AI Data in State and Federal Court,* 97 Wisconsin Lawyer 8 (Dec. 2024); Turner, *Deepfakes and the Legal Profession,* 98 Wisconsin Lawyer 21 (Jan. 2025).

I want to state that I am not convinced that AI will necessitate a complete rethinking or rewriting of the Rules of Evidence. I have been doing a great deal of work and research on this topic. As some of you may know, MU Professor Jay Grenig and I have co-authored a treatise since 2005 entitled *eDiscovery and Digital Evidence* (Thomson Reuters 2025). Accompanying these minutes is Chapter 21 from that treatise entitled "The Evolving Concept of 'AI,' 'AI Hallucinations,' and 'Deepfake Evidence.' This is already the second chapter in our treatise which addresses directly AI as evidence. Frankly, in my opinion there are many more similarities than differences between AI generated evidence and other forms of evidence. For example, as I argue in our treatise, there is no reason why many of the tried-and-true existing discovery rules and techniques cannot be used to discover AI generated evidence. I do not believe that we need to completely rewrite or even rethink the Rules of Evidence. Whatever the case, it is time for us as a Council to begin to think about this new topic and how we can help the Bench and Bar adjust to this brave new world.

1) Council Committees. We will hear from the following:

a) Thomas Shriner will give the Evidence and Civil Procedure Committee Report.

b) Judge Hruz will give the Appellate Procedure Committee Report.

c) Attorney Dan Blinka will update us on his work is work to date as new Chair of the Judicial Council's Criminal Procedure Committee.

d) Council Vice Chair Margo Kirchner will report on "Council Corner" and recent articles authored by Council members and what we can expect in future "Council Corner" submissions in *The Wisconsin Lawyer* and *Inside Track.*

2) 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 January 17, 2025 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.