



## STATE OF WISCONSIN – JUDICIAL COUNCIL

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RECORRECTED  
MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL  
MADISON, WISCONSIN  
January 19, 2018

The Judicial Council met at 9:35 a.m. in Room 328 NW, State Capitol, Madison, Wisconsin.

**MEMBERS PRESENT:** Chair Thomas W. Bertz; Vice Chair Honorable Brian W. Blanchard; Sarah Walkenhorst Barber; Sherry D. Coley (by phone); Diane Fremgen; Honorable Eugene A. Gasiorkiewicz (by phone); William C. Gleisner; Christian A. Gossett (by phone); R. Duane Harlow; Devon Lee; Honorable Scott Needham (by phone); John R. Orton; Representative Jim Ott; Dennis Myers (by phone); Thomas L. Shriner; Honorable Robert P. Van De Hey; Honorable Senator Van H. Wanggaard; and Jeffrey Wagner (by phone). .

**MEMBERS EXCUSED:** Honorable Annette Kingsland Ziegler.

**OTHERS PRESENT:** Erika Strebel, Wisconsin Law Journal.

### **I. Call to Order and Roll Call**

Chair Bertz called the meeting to order at approximately 9:35 a.m. with Gleisner as Acting Secretary.

Before proceeding to a discussion of the Agenda for this meeting, John Orton explained and discussed his “flow chart” which he presented as a check list of questions which the Council would have to address if it wished to take advantage of Gleisner’s offer to perform the ministerial functions of a secretary, such as opening mail, handling email directed to the JC, email among members, meeting agendas and notices and legal research. No action was taken on the flow chart, either for or against.

The Agenda for this Meeting was then addressed.

### **Agenda Item II: Approval of December 15, 2017 Meeting Minutes.**

### **Agenda Item III: Discussion and / or Action Regarding Judicial Council’s 2017-2019 Budget, Loss of Funding, Staffing, Office Space and Property.**

Vice Chair Blanchard continued his discussion about why the Council could not continue to operate effectively without funding. Attorney Shriner agreed with the observations of Blanchard, while Gleisner and Orton, relying on Orton’s flow chart, disputed the proposition that the Council required funding and a Staff Attorney to continue operating.

~~Motions made during the closed session either failed or were integral to the reason for which the permitted closed session was convened and in each case are to be detailed in the minutes of the closed session. Draft closed session minutes, which are confidential and contained in a separate document, will be distributed to Council members at the next meeting for consideration and approval.~~

This led to a discussion of the meeting conducted by Chairman Bertz and Judge VanDeHey with the Director of State Courts and Chief Justice Roggensack. Judge VanDeHey. Judge VanDeHey filed a written Report which read as follows:

Chair Tom Bertz has requested that I file a report on our January 12, 2018 meeting with Chief Justice Patience Roggensack and Director of State Courts, Randy Koshnick.

As background, on December 15, 2017, the Judicial Council voted to have the Executive Committee reach out to Director of State Courts Randy Koshnick, and Chief Justice Roggensack, to discuss any ideas they might have on how the Council should proceed in the wake of the Court's decision to defund the staff attorney's position. Tom Bertz and I volunteered to carry out the Council's directive.

The Chief Justice made three things very clear. First, the Council should not expect any funding from the court, either now or in the future. Second, the Court still supports and appreciates the work of the Council. The Director will continue to send a designee, and the Court will continue to appoint a Justice-- although Justice Gableman was next in line, so it is unclear which Justice will be appointed. The Chief further offered helpful suggestions including that the Council contact the Judicial Commission to see if it could provide some staff support as that is what occurred the last time the Council was without staff.

The third point that was made was the Court's continued displeasure with both the Executive Committee's initial action to approve Ms. Southwick's raise, and the Council's subsequent failure to rescind that action pursuant to the motion made by Director Koshnick. The Chief Justice understands former Director Moran's role in the Executive Committee's action as being much more passive than I recollect, but it was difficult to argue her point that once the Council knew Director Moran was not acting on behalf of the court, it failed to rescind the pay raise. While the Council may have viewed this as a moot point because of the Court's previous action, the Director and the Chief Justice certainly did not.

Respectfully submitted,

Judge Robert P. VanDeHey

Questions followed Judge VanDeHey's Report. The Judge responded that the message was very clear that there would be no funding from the Supreme Court now or in the future. However, Chairman Bertz added to the discussion that in his view the Supreme Court would not oppose funding if it were secured from some other source.

Questions were directed to Representative Ott and Senator Wanggaard as to whether it was possible that funding could be secured from the Legislature. The Senator said it would be difficult but not impossible to secure funding from the Legislature, but there was nothing that could be done in the immediate future. Representative Ott opined that funding would be a matter for the Joint Finance Committee and offered that he would check to see how and if that could be accomplished. In response to a question from the Legislators, John Orton stated that it would take at least \$150,000 this coming year to continue operating the Council in the same way it had been operated when April was Staff Attorney.

Judge VanDeHey was then asked about the Chief Justice's suggestion that the Council seek a home with the Judicial Commission. The Judge stated that it was his impression that this had been done in the past.

Attorney Shriner asked if the failure of Justice Ziegler to attend recent meetings of the Council meant that the Supreme Court was de facto withdrawing its support. Judge VanDeHey pointed to his Report and stated that the Chief Justice specifically stated that the Court continued to value the work of the Council and would continue to send a Justice. However, each year a new Justice is appointed and at this time that would mean Justice Gableman would be asked to sit on the Council. However, the Chief did not think he would necessarily do that given his decision to leave the Supreme Court. Right now, it is unclear which Justice will be tasked with attending the Council on behalf of the Supreme Court.

MOTION: Attorney Gleisner moved to have Judge VanDeHey approach the Judicial Commission to learn whether it would be willing to give the Council a home. The motion was seconded by Attorney Orton. With Representative Ott, Senator Wanggaard and Ms. Barber abstaining, the motion was approved unanimously.

#### **Agenda Item IV: Discussion and / or Action Regarding Frequency and Modes of Meetings and Communications Going Forward as a Council, and Through Committees.**

Attorney Shriner noted that while Orton's flowchart provided guidance, it still left unanswered how the Council would function as a practical reality. For example, how about a post office box and who would do legal research?

Judge Gasiorkiewicz stated that the law schools should be contacted about providing research assistance through the use of students. Judge Blanchard agreed and suggested that the Deans of both Law Schools should be contacted to learn if they have any interest.

MOTION: Judge Gasiorkiewicz moved to have the Council approach the law schools to determine whether they would be interested in offering students an opportunity to serve as research assistants to the Council. Gleisner seconded the motion.

Gleisner stated that he would be willing to supervise and mentor law student research assistants. Orton expressed his support for a research intern/extern as did Representative Ott. There was discussion about what the students would be called and Gleisner offered the term "Research Assistant," and further observed that such a title would be valuable to many law students.

Attorney Shriner stated that there would be no guarantee of steady work for such an assistant, and further stated that students could not possibly replace the work of a staff attorney. Gleisner

disagreed and argued that if properly supervised and mentored that it would be a win-win for the Council and the law students.

With Representative Ott, Senator Wanggaard and Ms. Barber abstaining, Judge Gasiorkiewicz motion was passed unanimously.

[At this point Attorney Coley temporarily left the meeting and Judge Gasiorkiewicz, who had been attending from his hospital room, also had to leave the meeting]

Attorney Orton then suggested that it was appropriate to continue the discussion from the last meeting regarding the wisdom of continuing the Council without a Staff Attorney. The Council members then repeated many of the points which had been made at the December 15, 2017 meeting. *See* discussion at pages 1-4 of the December 15, 2017 Minutes.

MOTION: Attorney Orton then moved that the Council continue to operate with Gleisner as Acting Secretary for the next six months. Gleisner seconded the motion, and after a brief discussion a roll call vote was called. With Representative Ott, Senator Wanggaard, and Sarah Barber abstaining, the vote was:

For: Bertz, Diane Fremgen, Gleisner, Myers, Orton and Judge VanDeHey;

Against: Judge Blanchard, Devon Lee, D.A. Gossett, Asst. A.G. Harlow Judge Needham, and Attorney Shriner.

The motion failed on a vote of 6 in favor to 6 opposed.

Shortly after the vote, Attorney Coley rejoined the meeting. Attorney Gleisner asked if she could record her vote and was advised by Attorney Shriner that without a motion to reconsider by a member of the prevailing voters on the motion, she could not.

Discussion was had about the hearing before the Assembly Judiciary Committee on January 4, 2018 regarding Assembly Bill 773. Gleisner described the general nature of the meeting, with Representative Ott providing background. Attorney Orton expressed concerns about how fast Assembly Bill came on for a hearing, noting that the bill was introduced over the holidays on December 21, 2017 and was heard before the Assembly Judiciary Committee on January 4, 2018. Attorney Orton felt this was intentional. Representative Ott strongly disagreed.

Senator Wanggaard advised the Council that a hearing would be held on a companion bill to Assembly 773 on January 30, 2018 before the Senate Judiciary Committee.

Discussion was then had again about the Council's vote to authorize Judge VanDeHey to approach the Judicial Commission about allowing the Council to find a home with the Commission. Attorney Lee stated that in order to be effective Judge VanDeHey needed April's old job description and the last budget for the Council. Judge VanDeHey then inquired if the Council Executive Committee could act in lieu of the Council, and Judge Blanchard stated he did not believe that it could.

**Agenda Item V: Discussion and / or Action Regarding Supreme Court Rule Petition 16-02A, Rules of Evidence.**

Attorney Shriner stated 16-02A is now history.

**Agenda Item VI: Discussion and / or Action Regarding Supreme Court Order Approving Petition 17-03, Class Actions.**

Attorney Shriner Attorney Shriner stated 17-03 is now history.

**Agenda Item VII: Discussion and / or Action Regarding Supreme Court Rule Petition 17-05, Multi-Party Briefing in Appellate Matters.**

Judge VanDeHey stated 17-05 is now history.

**Agenda Item VIII: Discussion and / or Action Regarding Supreme Court Rule Petition 17-07, Record on Appeal.**

Judge VanDeHey stated this is still pending.

**Agenda Item IX:**

**A. Appellate Procedure.**

According to Judge VanDeHey, there was nothing new to report.

**B. Criminal Procedure.**

Judge Blanchard did not have anything new. However, Judge Blanchard did announce his retirement from the Judicial Council effective at the conclusion of this meeting. His hard work and many contributions to the Council are greatly appreciated. He will be missed.

**C. Evidence and Civil Procedure.**

Attorney Shriner stated that this Committee would take up a number of existing action items, including sanctions under Wis. Stat. §804.12(4m), default judgments under Wis. Stat. §806.02 and unsworn domestic declarations act.

**V. Adjournment**

The meeting adjourned by consensus as approximately 11:30 a.m.