

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
February 20, 2009

The Judicial Council met at 9:30 a.m. in Room 328NW, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Honorable Ann Walsh Bradley, Honorable George S. Curry, Allan M. Foeckler, William C. Gleisner, Professor Jay Grenig, Representative Gary Hebl, Catherine A. La Fleur, Honorable Edward E. Leineweber, Professor David E. Schultz, A. John Voelker, Honorable Mary K. Wagner.

MEMBERS EXCUSED: Chair Marla J. Stephens, Vice-Chair Beth E. Hanan, Michael R. Christopher, Robert L. McCracken, Honorable Patricia S. Curley, Stephen R. Miller, Kathleen A. Pakes, Senator Lena Taylor, Greg M. Weber, Honorable Maxine A. White.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Madu Enwemnw, Research and Policy Advisor for Senator Taylor; Kate Battiato, Office of Representative Hebl; Assistant Attorney General Kate Lloyd.

I. Call to Order and Roll Call

In the absence of the Chair and Vice chair, Council member Schultz presided. He called the meeting to order at 9:45 a.m.

II. Approval of January 16, 2009 Minutes

MOTION: Council member Wagner moved, seconded by Council member Hebl, to approve the minutes with no amendments. Motion approved unanimously.

III. Discussion and/or Action Regarding Municipal Court Bill Draft LRB 1038/1

At Senator Taylor's request, the Council previously reviewed the Municipal Court Bill Draft and provided comments. Prior to the meeting, Attorney Southwick distributed a memorandum detailing additional changes to the bill consistent with the Council's recommendations. There were no questions or comments.

MOTION: Council member Wagner moved, seconded by Council member Grenig, that the Judicial Council support the proposed municipal court bill to the extent that it furthers the important goals of efficient judicial administration, and the enhancement of independence and professionalism of municipal courts; however, the Council's review of the bill was limited to its procedural provisions. Therefore, the Council takes no position on the policy matters addressed by the bill. The motion was unanimously approved, with Council member Bradley abstaining.

IV. Discussion and/or Action Regarding Request to Review Rule 814.29, Security for Costs, Service and Fees for Indigents

Council member Voelker reported that his staff followed up with court clerks regarding whether individuals represented by public defenders are generally required to submit an affidavit. The clerks confirmed that they are not because the public defender's involvement in the case indicates that a determination regarding indigency has already been made. There may be some confusion regarding the use of the affidavit in criminal proceedings, so Council member Voelker is going to talk with Chair Stephens to clarify this issue. Council member Wagner suggested that perhaps this matter may already be addressed on the form required to seek court appointed counsel in cases of non-indigency. Council member Voelker will obtain additional information.

Further discussion regarding this item was postponed pending Council member Voelker's discussion with Chair Stephens.

V. Discussion of Request to Review Chapter SCR 81 – Compensation of Court-Appointed Attorneys

Council member La Fleur reported that the workgroup met the previous day to review and discuss the draft bill prepared by the Legislative Reference Bureau (LRB) reflecting a two-tiered approach to determine rates for court appointed attorneys. In cases where the party is indigent, the rate must be at least \$70 per hour. However, for non-indigent parties, the workgroup proposes an increase in the hourly rate to a minimum rate of \$100 per hour, with additional factors for courts to consider when awarding rates exceeding \$100 per hour. The work group has asked the Legislative Reference Bureau (LRB) to make some additional changes to the proposed bill, and will schedule another workgroup meeting to review and discuss those changes.

Judge Wagner expressed concern regarding increasing the cost of court-appointed attorneys at a time when county budgets are being reduced. She also stated that the proposal could impact counties that currently contract for guardian ad litem services at rates considerably lower than those proposed by the workgroup.

VI. Discussion and/or Action Regarding Adoption of Public Records Policy

Acting chair Schultz reported that the records retention committee met and reviewed the draft public records policy prepared by Attorney Southwick and distributed to the Council for review prior to the meeting. He explained that the Council needs to take two actions related to the draft policy, including appoint Attorney Southwick as records custodian for the Judicial Council and approve the policy.

MOTION: Council member Hebl moved, seconded by Council member Curry, to appoint Attorney Southwick as records custodian. Motion approved unanimously.

The Council discussed whether the designation as records custodian should name an individual or the position title. Attorney Southwick confirmed that it should be tied to the position, as opposed to an individual. After some discussion regarding the appropriate title to designate, a second motion was made to clarify the designation as records custodian.

MOTION: Council member Hebl moved, seconded by Council member Voelker, to designate the Judicial Council’s attorney as records custodian. Motion approved unanimously.

Attorney Southwick stated that she will amend the public records policy to state that requests should be directed to: “Wisconsin Judicial Council, Attn: April Southwick.”

MOTION: Council member Lieneweber moved, seconded by Council member Hebl, to adopt the public records policy drafted by Attorney Southwick. Motion approved unanimously.

Judge Leineweber added that the record retention committee also discussed a records retention policy. Attorney Southwick is currently working on a draft.

VIII. Committee Reports

A. Appellate Procedure

Attorney Southwick reported that the committee last met on January 16 and continued to work on draft amendments regarding presentence investigative reports. Due to the unavailability of either co-chair, the committee canceled their regular February meeting.

The last of the three redrafts of the appellate procedure bills is now back from the LRB. Chair Stephens recommended some minor changes, which Senator Taylor’s office is working to complete. Representative Hebl has offered to author the third bill, and Senator Taylor and Representative Hebl have agreed to co-sponsor the three bills.

B. Criminal Procedure

Committee chair Schultz stated that no additional drafts regarding amendments to the criminal procedure code have been completed by the LRB since the last Judicial Council meeting

C. Evidence and Civil Procedure

Committee chair Leineweber reported that the committee will meet following the full Council meeting to work on the draft petition regarding the proposed electronic discovery rules. The committee will also continue to discuss the small claims appeal issue brought to the Council by Chief Justice Abrahamson.

Attorney Southwick reminded the Council that Marquette University Professor Daniel Blinka will be a guest speaker at the March 20th Judicial Council meeting to discuss proposed amendments to the rules of evidence.

IX. Other Business

A. PPAC Liaison's Report

There was no PPAC Report. The last meeting was canceled due to the weather.

B. Council Attorney's Report

1. Budget Update

Attorney Southwick announced that the Judicial Council is funded under the Governor's Executive Budget, but will be required to absorb a 6% budget cut. With regard to the cut, 1% represents an across-the-board cut to almost all state agencies. The additional 5% may be partially restored by funds from federal economic recovery legislation, subject to a determination by the Secretary of the Department of Administration. The budget will allow full funding for salary and benefits, but will require an adjustment to supplies. Attorney Southwick reported that due to the conservative nature of the Council's past spending, she believes they will be able to continue to operate sufficiently under the proposed budget.

2. LRB 1443/1 relating to operation of a motor vehicle while under the influence of an intoxicant

A co-sponsorship memo has been circulated regarding draft bill 1443 relating to operation of a motor vehicle while under the influence of an intoxicant (OWI). The bill requires the Judicial Council to establish advisory sentencing guidelines for OWI offenses, and make those guidelines and any revisions available to judges and attorneys through an annual report incorporating any changes for that year. Attorney Southwick will monitor the status of this bill, and provide updates to the Council.

3. Miscellaneous

In response to the *Ruiz-Velez* opinion requiring transcription of a videotaped interview, the chief judges' workgroup petitioned the court of appeals publication committee to withdraw the decision to publish. Their request was denied, but they will continue to work toward a resolution to this issue.

X. Adjournment

The Council adjourned by consensus at 10:30 a.m.