

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
May 16, 2014

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

MEMBERS PRESENT: Chair Thomas W. Bertz, Hon. Michael Fitzpatrick, William Gleisner, Tracy K. Kuczenski, Devon Lee, Dennis Myers, Honorable Gerald P. Ptacek, Honorable Patience Roggensack, Brad Schimel, Professor David E. Schultz, Thomas L. Shriner, Honorable Jeffrey A. Wagner, Greg M. Weber, Honorable Maxine A. White, Amy E. Wochos.

MEMBERS EXCUSED: Vice Chair Honorable Brian W. Blanchard, George Burnett, Senator Glenn Grothman, Representative Jim Ott, Benjamin J. Pliskie, A. John Voelker.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Sandy Lonergan, Wisconsin State Bar; Trevor Ford, Senator Grothman's office; Nancy Rottier, Director of State Court's office; Eric Heisig, Wisconsin Law Journal; Adam Plotkin, State Public Defender's office.

I. Call to Order and Roll Call

Chair Bertz called the meeting to order at 9:35 a.m.

II. Approval of March 21, 2014 Minutes

MOTION: Council member Myers moved, seconded by Council member Weber, to approve the March 21, 2014 minutes. Minutes were approved unanimously without amendment.

III. Appointment of a Nominating Committee

Chair Bertz appointed Council members Wagner, Gleisner and Myers to serve on the nominating committee and asked Council member Wagner to chair the committee. The committee was tasked with making a recommendation at the Council's June 20, 2014 meeting to fill the office of chair and vice chair for the 2014-2015 Council year.

IV. Discussion and/or Action Regarding 2013 Assembly Bill 383 Amending the Rules of Criminal Procedure

Attorney Southwick reported that the Criminal Procedure Committee has met twice since the last Council meeting. They have adopted a workplan and a copy was included in the Council's meeting material. Attorney Southwick explained that the workplan contains all of the sections of AB 383, as well as some provisions in current law, that the committee agreed to discuss for possible amendment. Attorney Southwick noted that the workplan is quite lengthy and the committee has a September deadline to complete its work, so it may not get to all the

items in the workplan. Members have agreed to try to prioritize items in the workplan. The committee has scheduled full-day meetings on June 17, July 15, July 29 and August 12. At the last meeting, the committee began working on some of the less controversial items on the workplan.

At the June 17, 2014 meeting, the committee will focus its discussion on preliminary hearings. Many committee members have raised concerns about AB 383's repeal of preliminary hearings, so members were in agreement that they should address it early in the summer meeting schedule. The meeting will begin at 9:00 a.m., and the committee has agreed to hear testimony from interested parties. Attorney Southwick will also inform potentially interested groups that they can submit written comments in advance of the meeting. At the July 15, 2014 meeting, the committee intends to begin discussing the discovery provisions in AB 383.

Representative Gary Hebl has volunteered to join the Criminal Procedure Committee as an ad hoc member.

The committee is scheduled to complete its work on AB 383 at its September 9, 2014 meeting. Recommendations from the committee will be presented to the full Council for consideration at the September 19, 2014 meeting.

V. Discussion and/or Action Regarding Judicial Council's 2015-2017 Budget Request and Budget Procedure

At the September 21, 2012 Council meeting, in conjunction with approving its 2013-2015 budget request, the Council generally discussed the budget process. The Council asked that an item be placed on the Council's May agenda in even numbered years to discuss potential budget requests and establish a budget procedure.

Attorney Southwick explained that the Judicial Council's budget request starts with a base number calculated by the Council's Department of Administration (DOA) analyst and derived from the previous budget. DOA also calculates the standard budget adjustments, which include any standard increases for salary/fringe benefits and projected rent increases. During the previous budget, the only decision item in the Council's budget was a request to restore full funding of the Council from general purpose revenue. The request was not approved, so the Council continues to rely on the Director of State Courts for a portion of its funding.

Attorney Southwick asked the Council to authorize her to once again request restoration of the Council's full funding from general purpose revenue in the 2015-2017 budget. Council member Weber expressed his hope that the Council's legislative members will also support and endorse this effort. Council member Shriner asked when the Governor's proposed budget will be submitted to the Legislature. Attorney Southwick stated that it will probably be submitted in January 2015.

The Council discussed the current split in its funding between general purpose revenue and program revenue received from the Director of State Courts. Attorney Southwick explained that general revenue covers the Council's operating expenses (supplies and services) and

approximately 50% of salary/fringe benefits, while the remaining 50% of salary/fringe benefits comes from program revenue. Council member Roggensack requested that Attorney Southwick provide the Council with a copy of the annual operating budget.

MOTION: Council member Ptacek moved, seconded by Council member Wagner, to authorize Attorney Southwick to request restoration of the Council's full funding from general purpose revenue in the 2015-2017 budget. Motion approved unanimously.

The past several budgets have included instructions to submit a zero-growth budget, which means a request that maintains the current budget level, factoring in standard budget adjustments for salary/fringe benefits and leased space. Although the budget instructions have not been released for the 2015-2017 budget, Attorney Southwick predicted that the instructions will direct zero-growth agency budget submissions. She explained that the Council's desktop and laptop computers will need to be replaced in the near future. Microsoft no longer supports the operating system used by the Council's desktop computer. Attorney Southwick indicated that she will defer to CCAP regarding which operating system the Council should select for an upgrade.

Members discussed that there is usually a surplus from the money budgeted for Council member travel reimbursement. Attorney Southwick explained that travel reimbursements are very difficult to estimate because the amount varies greatly based on how many Council members are appointed from outside Madison, how far they travel, how many Council and committee meetings are scheduled, how many meetings are attended, and whether or not members elect to request reimbursements. Each year, she does not know the exact amount of travel dollars that will be claimed until the final Council meeting in June, which coincides with the end of the budget year. Therefore, she is unable to determine in advance whether some of those funds could be reallocated to other expenses, such as upgrading the computer. Council member Roggensack suggested adding the technology upgrade to the Council's operating budget. Council member Gleisner suggested that the Council table further discussion on this item until the next meeting so that members can review the operating budget. Attorney Southwick will request an estimate from CCAP to upgrade the Council's computer and provide that information with a copy of the operating budget at the next meeting.

The Council discussed the process for approving the Council's budget submission. Historically, Attorney Southwick works with the Council's DOA analyst to prepare a draft budget, which is reviewed by Attorney Southwick and the Council's chair prior to submission. Because the budget submission is due prior to the Council's September meeting date, the Council reviews the budget request and approves it a few days after its submission.

Members asked whether the budget could be approved at the June meeting. Attorney Southwick explained that the instructions for preparing the budget have not been released yet. She anticipates that the instructions will be released in June or July. The DOA budget analyst generally finalizes the Council's budget submission just a few days before it is due date of September 15th. Council member Roggensack suggested that the Council could tentatively approve the submission based on the operating budget. Members agreed by consensus to approve an operating budget at the June meeting.

The Council considered moving its September meeting date so that it could approve the actual budget prior to submission. The Council also discussed tasking the Executive Committee with approving the budget request prior to submission.

MOTION: Council member White moved, seconded by Council member Myers, to authorize the Executive Committee to approve the 2015-2017 budget request prior to submission, subject to ratification by the full Council at the September 19, 2014 meeting. Motion approved unanimously.

VI. Committee Reports

A. Appellate Procedure

Committee chair Ptacek reported that the committee did not meet last month, but it is scheduled to meet following the Council meeting. The committee will continue to study Rule 809.15, the record on appeal. Members are considering issues such as electronic exhibits, supplementing the record, and the clerk's discretion in determining the contents of the record.

The committee will also continue to work on the issue of prisoner challenges to agency decisions. The Legislative Reference Bureau (LRB) has completed a preliminary draft bill consolidating the rules into one subchapter of the code. The committee will begin discussing revisions to the draft bill.

Council member Roggensack asked about the cost of preparing and reproducing electronic exhibits. Committee chair Ptacek stated that the committee is considering issues such as the cost of transcripts for recordings. Council member Shriner also explained that the Evidence & Civil Procedure Committee has been asked to study items of cost under Wis. Stat. § 814.04, including whether electronic reproduction/imaging should be a taxable cost.

B. Criminal Procedure

There was no further report.

C. Evidence and Civil Procedure

Committee chair Shriner reported that a representative from the Wisconsin Council of Administrators of Special Services will attend today's meeting to discuss the written comments previously submitted by his organization and the Wisconsin Association of School Psychologists regarding Wis. Stat. § 885.205, privileged communications between students and deans and school psychologists. The committee has been discussing recommendations such as repeal of s. 885.205 or its possible incorporation into Wis. Stat. § 905.04, physician-patient privilege.

A subcommittee continues to work on a draft of a proposed rule to codify *Alt v. Cline*, 224 Wis.2d 72, and its expert privilege rule.

The committee will receive an update on the issue of spoliation and preservation of evidence. The federal rules advisory committee has released an amended draft of Rule 37. The Evidence & Civil Procedure Committee will likely recommend an amendment of state law based on the revised federal rule.

Chair Bertz asked about the status of the class action project. Committee chair Shriner explained that the committee tabled it until the committee completes the Rules of Evidence project. The committee also has projects pending involving items of cost and service of subpoenas.

VII. Other Business

A. PPAC Liaison's Report

Council member Roggensack reported that PPAC continues to discuss how to best integrate their service to the court system, including better use of technology.

Council member Weber asked whether the video conferencing subcommittee is still in service. Nancy Rottier reported that the subcommittee is no longer active. Council member Fitzpatrick reported escalating problems with video conferencing that have resulted in considerably lower usage than when the program was initiated. For example, Rock County frequently experiences problems with video conferencing because the equipment varies from county to county and not all equipment is compatible. Council member Roggensack requested additional information from the circuit court judges on the problems with video conferencing so that the Supreme Court can work to address the issues.

B. Council Attorney's Report

Attorney Southwick has been asked to attend the State Bar Board of Governor's meeting in September to discuss the Council's petition to protect crime victim identity in appellate briefs and opinions. Originally, she was scheduled to speak at the June meeting, but the Board of Governors decided not to discuss pending rule petitions at the June meeting.

She reminded members that many of the rooms in the Capitol are closed for renovations, so the Council's June 20th volunteer recognition meeting will be in Room 412 East. The guest list has been updated and the invitations will be sent next week. Council member White suggested that the groups that are working with the Council on the criminal procedure bill should be invited. Attorney Southwick confirmed that they are on the guest list.

VIII. Adjournment

The Council adjourned at 10:45 a.m.