

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL  
MADISON, WISCONSIN  
June 21, 2013

The Judicial Council met at 9:30 a.m. in the Assembly Parlor, State Capitol, Madison, Wisconsin.

**MEMBERS PRESENT:** Chair Thomas W. Bertz, Christine Rew Barden, William Gleisner, Catherine A. La Fleur, Dennis Myers, Representative Jim Ott, Benjamin J. Pliskie, Honorable Gerald P. Ptacek, Brad Schimel, Professor David E. Schultz, Thomas L. Shriner, Marla J. Stephens, Honorable Mary K. Wagner, Greg M. Weber, Honorable Maxine A. White.

**MEMBERS EXCUSED:** Vice Chair Honorable Brian W. Blanchard, Senator Glenn Grothman, Tracy K. Kuczenski, Honorable Patience Roggensack, A. John Voelker, Honorable Jeffrey A. Wagner.

**OTHERS PRESENT:** April M. Southwick, Judicial Council Attorney; Hon. Ann Walsh Bradley, Supreme Court; Hon. Shirley Abrahamson, Supreme Court; Sandy Lonergan, Wisconsin State Bar; Nancy Rottier, Director of State Court's Office; Beth Hanan, Gass Weber Mullins; George Brown, State Bar; Pat Fiedler, State Bar President; Hon. Gerald Nichol; Hon. Raymond Gieringer; Gwen Wortock; Bob Wortock; Rich Moriarty, Department of Justice; Meredith Ross, University of Wisconsin Law School.

**I. Introduction of Guests, Volunteer Recognition and Discussion Regarding Council Projects**

Chair Bertz began the volunteer recognition portion of the meeting at 10:15 a.m. Guests introduced themselves. Chair Bertz presented plaques to out-going Council members. Attorney Southwick provided an update on the status of the Council's current projects and extended thanks to the Council's many volunteers.

**II. Call to Order, and Roll Call**

Chair Bertz called the meeting to order at 10:50 a.m.

**III. Approval of May 17, 2013 Minutes**

The May 17, 2013 meeting minutes were approved by consensus without amendment.

**IV. Election of 2013-14 Chair and Vice Chair**

Chair Bertz previously appointed Council members Stephens, Gleisner and M. Wagner to serve on the nominating committee. Council member Wagner reported that the committee nominated Tom Bertz to serve as chair and Judge Blanchard to serve as vice chair of the Council for the 2013-2014 Council year. There were no additional nominations from the floor.

**MOTION:** Council member La Fleur moved, seconded by Council member Myers, to accept the nominating committee's recommendation for chair and vice chair. Motion approved unanimously.

**V. Approval of 2013-2014 Meeting Dates**

The Council has historically met on the third Friday of each month from September through June. Attorney Southwick pointed out several potential conflicts with dates on the proposed 2013-2014 meeting schedule. The December meeting falls very close to Christmas and the April meeting date falls on Good Friday. Members discussed moving the April meeting to the third Thursday. Attorney Southwick noted that the third Thursday is a regular meeting date for the CCAP steering committee.

**MOTION:** Council member Shriner moved, seconded by Council member M. Wagner, to accept the proposed 2013-2014 meeting schedule modified to reflect no Council meetings in December 2013 and April 2014. Motion approved unanimously.

The approved meeting schedule is as follows:

Friday, September 20, 2013  
Friday, October 18 2013  
Friday, November 15, 2013  
Friday, January 17, 2014  
Friday, February 21, 2014  
Friday, March 21, 2014  
Friday, May 16, 2014  
Friday, June 20, 2014

**VI. Discussion/Action Regarding Potential Project:**

**A. Chapter 885.03, Service of Subpoena**

Council member Shriner explained that while studying the Uniform Interstate Deposition and Discovery Act, the Evidence & Civil Procedure Committee discovered a potential problem with current s. 885.03, service of subpoena. Sec. 885.03 permits service by leaving a copy of a subpoena "at the witness's abode." The committee expressed concern that merely leaving a copy of a subpoena at a witness's home is not necessarily sufficient to provide notice. Attorney Southwick conducted research of other notice statutes in Wisconsin and found that nearly all of them require that when notice is left at a residence, it must be left with someone competent and/or over a specified age. She provided a number of examples in a memo dated June 14, 2013. Council member Shriner stated that the Evidence & Civil Procedure Committee would like the Council to refer s. 885.03 to the committee for further study and a recommendation for amendment.

Council member Stephens suggested that perhaps all Wisconsin statutes governing service should contain consistent language. Council member Shriner stated that the committee would be willing to expand its study to encompass all statutes addressing service. Council member Gleisner observed that while due process is a procedural matter, many of the statutes

addressing service have nothing to do with court procedure so he questioned whether the scope might be too broad for a Council project. Council member Shriner advocated referring it to the committee for further study because improper notice/service can result in the deprivation of liberty or property.

**MOTION:** Council member Stephens moved, seconded by Council member Weber, to refer the issue, including all statutes regarding service, to the Evidence & Civil Procedure Committee for further study and a recommendation. Motion approved unanimously.

## **VII. Discussion/Action Regarding Proposed Amendments to the Rules of Criminal Procedure**

Attorney Southwick reported that she and Council member Schultz attended the recent meeting of the State Bar Criminal Law Section Board to answer questions and discuss the Judicial Council's proposed bill amending the code of criminal procedure. Board members made a number of very good suggestions regarding the bill's content including: 1) require that parties exchange copies of discoverable material, not simply make it available; 2) modify s. 971.75 (4) to parallel the language in sub. (2) which states "on stipulation or motion the court may extend the time" for a retention hearing; 3) 974.02 (3) does not contain a complete list of all of the post-conviction procedures; and 4) there is an inconsistency between s. 974.06 (5) and s. 974.08.

Members discussed the process for reviewing these suggestions and recommending changes to the bill draft. Council member Schultz noted that most of these suggestions are technical changes. However, he suggested that requiring the parties to exchange copies of discoverable material should be studied by the Criminal Procedure Committee prior to making a recommendation to the full Council. Council member Ott suggested that the changes can be rolled into one amendment proposed by the Legislative committee that hears the bill.

Attorney Southwick reported that the Legislative Reference Bureau has completed the final amendments that the Council requested and the drafter has prepared an analysis of the bill. Unfortunately, the budget bill has delayed it in editing, but it is very near completion.

## **VIII. Discussion and/or Action Regarding Presentence Investigation Report Bill**

Attorney Southwick reported that the bill is completed and ready for introduction, although the Council is still waiting for a fiscal estimate from the courts. There was no further discussion or action regarding this item.

## **IX. Committee Reports**

### **A. Appellate Procedure**

Attorney Southwick reported that the committee continues to discuss a rule for identifying crime victims in appellate briefs and opinions. The committee did not meet last month. Members will continue discussing and drafting a proposed rule at today's meeting. The committee hopes to finalize a rule for recommendation to the Council when meetings resume in September.

## **B. Criminal Procedure**

Attorney Southwick reported that the committee met earlier this month. Members continue to study procedural concerns related to police searches using GPS technology. As committee members study the issue, they have learned of other advances in technology that are also used for searches, such as smart phones. The issue is more complicated than the committee initially believed, but members are in agreement that a proposed rule(s) are needed.

## **C. Evidence and Civil Procedure**

Committee Chair Shriner reported that the committee will continue discussing the Uniform Interstate Deposition and Discovery Act at its meeting later today. The committee hopes to have a draft rule to present to the Council when meetings resume in September. The committee also continues to study *Alt v. Cline*, 224 Wis.2d 72, and whether to recommend codification of an expert privilege. The committee is also studying an amendment to Wisconsin's class action rule to bring it in line with its federal counterpart.

## **X. Other Business**

### **A. PPAC Liaison's Report**

Council member Wagner reported that PPAC will not meet again until August.

### **B. Council Attorney's Report**

#### **1. 2013-2015 Executive Budget**

Attorney Southwick reported that the budget bill has been approved by both the Senate and the Assembly and is awaiting the Governor's signature. She is unaware of any further amendments that affect the Council.

#### **2. Transfer of Structured Settlement Payments**

At the request of Council member Ott, Attorney Southwick drafted a letter to the Legislative Council in support of his request that a special study committee be appointed to take up the issue of a structured settlement protection act. Council member Weber suggested that a representative from the Department of Justice's consumer protection division would be interested in serving on the committee. Council member Ott suggested that if a special committee is appointed, the Judicial Council should make a recommendation regarding the committee's membership.

## **XI. Adjournment**

The Council adjourned by consensus at 11:30 a.m.