

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
September 19, 2008

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

MEMBERS PRESENT: Chair Marla J. Stephens; Vice-Chair Beth E. Hanan, Honorable Ann Walsh Bradley, Michael R. Christopher, Honorable Patricia S. Curley, Allan M. Foeckler, William C. Gleisner, Professor Jay Grenig, Catherine A. La Fleur, Robert L. McCracken, Stephen R. Miller, Kathleen A. Pakes, Professor David E. Schultz, Senator Lena Taylor (via telephone), A. John Voelker, Honorable Maxine A. White.

MEMBERS EXCUSED: Representative Bill Kramer, Honorable Edward E. Leineweber, Honorable Mary K. Wagner, Greg M. Weber.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Judge Daniel Koval, Madison Municipal Court; Assistant Attorney General Mark Neuser; Eric Peterson, Legislative Director for Senator Taylor; Sandy Lonergan, State Bar of Wisconsin.

I. Call to Order and Roll Call

Chair Stephens called the meeting to order at 9:40 a.m. The Council observed a moment of silence in honor of Judge Wedemeyer. The Chair welcomed new council members Judge Patricia Curley and Attorney Bill Gleisner, and noted council member Bradley's reappointment to the council. All members introduced themselves to the new members.

II. Approval of June 20, 2008 Minutes

The following amendments to the June minutes were noted: 1) Item V.- note that council member Bradley did not participate in the discussion of Municipal Court Bill Draft LRB 2894/1; 2) Item IV. - revise reference to council member Schultz's opposition, to read that the council should discuss televising meetings prior to making a decision; and 3) Item VI.- correct spelling of council member La Fleur's name.

MOTION: Council member Miller moved, seconded by Vice Chair Hanan, to approve the minutes as amended. Motion unanimously approved.

III. Approval of FY 2009-11 Biennium Budget

A copy of the FY 2009-11 budget request was provided to all council members prior to the meeting. Attorney Southwick explained that it is a *status quo* budget, reflecting the position salary authorized by the council, and a modest increase in supplies and services to reflect an anticipated rent increase. The budget was submitted on September 15, 2008, as required. The next step in the budget process is review of the request by Executive Budget Analyst Leah Wavrunek. Attorney Southwick will be meeting with Ms. Wavrunek next week to discuss the proposed budget and to answer any questions she may have regarding the council.

MOTION: Council member Voelker moved to approve the budget *nunc pro tunc*, as submitted on September 15, 2008; seconded by council member Christopher. Motion unanimously approved.

IV. Approval of 2008-2009 Meeting Location and Discussion Regarding WisconsinEye

At the last meeting, Eric Peterson informed the Council that council member Taylor was approached by WisconsinEye regarding broadcasting the public meetings of the Judicial Council. WisconsinEye broadcasts community affairs and public policy discussions from across the state via television and the internet. Council member Taylor offered the use of Room 411 South, State Capitol, for future council meetings.

Attorney Southwick explained that Wis. Stat. § 19.90 requires that a governmental body make a reasonable effort to accommodate any public request to record, film or photograph open sessions of public meetings. Chair Stephens clarified that the council has not received a request from WisconsinEye.

Council member White inquired as to whether there was a way to communicate the contents of documents being discussed to the viewers. Council member Christopher asked if filming the meetings would eliminate the need to prepare minutes. Attorney Southwick responded that it would not serve as a replacement for written minutes.

Discussion ensued about the configuration of the rooms and the technical requirements to record proceedings.

Chair Stephens called for a motion to move the council meetings to Room 411S. None was received. She then called for a motion to invite WisconsinEye to film the council's open meetings.

MOTION: Council member Christopher moved to invite WisconsinEye to film the regular, open meetings of the Wisconsin Judicial Council in Room 328 NW, seconded by council member Gleisner.

Council member La Fleur inquired of others who have had proceedings filmed, asking whether it has had an effect. Council member Voelker indicated that he has not observed any effect on judicial hearings or conferences. Council member Bradley agreed. Council member Voelker added that he has not received any public feedback as a result of broadcasting meetings. Council member Grenig suggested that this could change the council's drafting process, or result in the public attributing the comments of one individual to the council as a whole. Council member Gleisner stated that he supports the motion because he believes it is important for lawyers and the public to be aware of and understand the council's activities. Council member Pakes inquired about the public's ability to obtain the agenda and meeting materials. Chair Stephens suggested that they could be posted on the council's website and Eric Peterson indicated that WisconsinEye could also provide viewers with access to meeting materials. Attorney Southwick indicated that it has been her experience that many attorneys and other state

agencies are uninformed as to the work of the Judicial Council, so publicity might be beneficial. Also, televising the meetings would allow council members to watch a meeting if they were unable to physically attend. Council member Grenig stated that an archive of meetings would be valuable.

ACTION: The motion was approved following a voice vote, with council member Schultz and council member Miller opposing, and Chair Stephens abstaining.

Attorney Southwick will contact WisconsinEye.

V. Appointment of a Records Retention Committee

Attorney Southwick explained that as a state agency, the Council is required to retain certain records and must have a written records retention policy. She provided examples of unique information that the council must address, including audio recordings of open meetings, and historical council records. Currently, some historical records are housed with the Historical Society, and some are maintained by the State Law Library.

Chair Stephens asked the chairs of the standing committees to serve on the records retention committee and asked for any other volunteers.

ACTION: A committee consisting of Chair Stephens, Vice Chair Hanan, council member Schultz, council member Leineweber, council member Christopher and council member Voelker was approved by consensus.

Council member Voelker suggested that Attorney Southwick obtain the record retention schedules suggested by the state public record board. Chair Stephens asked Attorney Southwick to convene the committee after compiling the necessary materials.

VI. Discussion of Municipal Court Bill Draft LRB 2894/1

Madison Municipal Court Judge Koval was a guest speaker. He began by stating that the Municipal Judges' Association (MJA), drafter of the bill, received comments from the Chief Judges and would likely be incorporating some of their suggestions. He also stated that they anticipate receiving comments from the League of Municipalities, so this bill is not yet in final form. He stressed the MJA's desire to enhance the independence and professionalism of municipal courts as the driving factor behind the bill.

Judge Koval presented an overview of the draft. These statutes have not been revised since 1987. There are currently 252 municipal courts with 254 judges, half of whom are not attorneys. The bill proposes four year terms for municipal judges to reduce the political nature of the position. They also believe it is very important that court personnel receive supervision solely from the judge when doing work for the court, and that access to court records is controlled by the court. He clarified that the bill will not require municipalities to build separate offices or court rooms, but that they would have to dedicate space to court business while the court is in session that is separate from the police department. The bill also addresses service by

mail, procedures for failure to appear, and default judgments. The bill amends discovery rules, particularly with regard to expert witnesses. It also requires that municipalities provide a prosecutor at trial, adds safeguards for drivers' license suspensions, and clear guidelines for ordering jail time. It clarifies appeals and motions to reopen.

Judge Koval then conducted a question and answer session. Council member La Fleur asked why the draft stated that the court maintains control of the case until the judgment is final, and Judge Koval responded that some municipalities begin collection attempts prior to the judgment becoming final. Council member Pakes asked for clarification on the default judgment provision. Judge Koval explained that the draft prohibited drivers' license suspensions and commitment warrants on default judgments. He suggested using tax intercepts or other collection remedies. Council member La Fleur then asked whether there is any enforcement authority or oversight. (*I.e.* what happens if a municipality does not use a prosecutor?) Judge Koval responded that oversight would come from the state court system. Mandatory training for municipal judges will also enhance compliance with the rules. Chair Stephens inquired as to the timeline for the final re-draft. Judge Koval estimated 60-90 days.

Chair Stephens then asked the remaining two council work groups to report on their assigned portions of the bill. Council member Voelker addressed court administration changes. He noted that the superintending authority over municipal courts would be the chief judge or district court administrator, adding that in the past, this has been an issue. Notice and certification from the chief judge is needed for a municipal court to become operational. He favors this change because currently the state court system may not be aware that a municipality has created a court. He also noted that requiring a separate budget for the court furthers the court's independence. He agreed with the requirement that each court have "at least one clerk," but suggested clarification to allow for a part-time position. He also supports the requirement that the court control storage of and access to its records. He highlighted the Chief Judges' Municipal Court Committee recommendation requiring the judge's approval of any purchase of court equipment so as to prevent problems like electronic citations that do not comply with the required format. He explained that the requirement of a separate court facility is reasonable, and does not mean a separate facility used only by the court. He also supported the requirements for a separate court phone number or extension, and municipal court clerks' continuing education. Municipal court clerks often have little supervision as compared to circuit court clerks. The chief judges spent quite a bit of time discussing state-wide jurisdiction for municipal judges and support the proposal because a number of courts are multi-jurisdictional and don't follow the state court judicial district lines. If something happens to a judge, it's unclear under the current statute who has the authority to appoint a replacement. Requiring the chief judge to appoint the replacement provides a check on the state-wide jurisdiction. Council member Voelker favors the requirement that municipalities be represented by an attorney at trial. The chief judges are going to oppose the proposals to give municipalities a credit for the jail surcharge and to allow electronic recordings instead of a transcript on appeal. Council member White asked whether they had resolved how to handle some individual municipalities' requirement that the judge have a law degree. Council member Voelker indicated that it is not resolved, but that the chief judges are more aware of the issue now.

Chair Stephens asked council member Pakes to offer her comments on dispositions. Council member Pakes suggested adding a time limit to the requirement of court notification of payment to the department of transportation and requiring the recipient to agree to any court-ordered community service. Judge Koval responded that the community service provision will probably be further amended to reflect the intent to require community service for non-profit organizations only. Council member Pakes also suggested that a finding of guilt “shall,” as opposed to “may,” require forfeiture. Judge Koval responded that the draft envisioned cases such as those involving juvenile offenders where the judgment is held open pending completion of counseling.

Council member Bradley did not participate in the discussion regarding the draft municipal bill.

Attorney Southwick was directed to prepare a draft of the Judicial Council’s comments to council member Taylor. Eric Peterson relayed council member Taylor’s thanks for the Council’s review of the draft bill.

The council took a short break and reconvened at 11:30 a.m.

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

The Supreme Court asked the Council to review a request to increase the \$70 hourly rate for court-appointed attorneys. Council member Gleisner volunteered to join the work group. Chair Stephens asked the work group to discuss whether to expand the scope of the project to include public defender-appointed attorneys, who receive \$40 per hour. Council member La Fleur and council member Gleisner suggested a survey of current appointment practices and costs. Chair Stephens suggested that Attorney Southwick initially compile the information already available, and then convene the work group.

VIII. Committee Reports

A. Appellate Procedure

The committee met in June, July and September, and scheduled meeting dates for the 2008-09 council year. They also completed their presentence investigation (PSI) draft recommendations, which were circulated over the summer. They received feedback in writing and orally at their September meeting. Council member Voelker relayed a desire to provide input from the Judicial Conference on the PSI proposal. The committee will be working on this project for several months and welcomes further input.

Vice Chair Hanan and Attorney Southwick prepared and filed the Council’s memorandum in support of the Rule Change Petition 08-02 to allow citation to unpublished appellate opinions. Vice Chair Hanan will present the petition at the Supreme Court public hearing on October 14, 2008, and it will be carried on WisconsinEye. Attorney Southwick also

made a presentation to the State Bar Board of Governors, and the State Bar voted to support the petition.

Chair Stephens reviewed pending projects: a referral from the court of appeals regarding guilty plea appeals that is on hold pending the court's data collection, requests from committee members to take up time limits for filing a notice of appeal and proof of indigency under the security for costs statute, and redrafts of the appellate procedure bills (2007 SB 418, 2007 SB 419, and 2007 SB 420) for reintroduction in January.

Rule Change Petition 04-08 was granted over the summer regarding changes to petitions for review, and Chair Stephens submitted a practice pointer to the State Bar for publication.

B. Criminal Procedure

Council member Schultz gave a brief history of the on-going project to amend the criminal procedure code. He stated that as of June 28, 2008, he provided complete notes, comments, and answers to the Legislative Reference Bureau (LRB) regarding all the chapters previously drafted. On August 11, he received one chapter back from LRB and yesterday he received a second chapter. The sub-committee, consisting of Chair Stephens and council members Schultz, Weber, and Pakes, will review those drafts, answer any additional questions from LRB, and then present the final draft legislation to the Council.

C. Evidence and Civil Procedure

In council member Leineweber's absence, Attorney Southwick reported that a draft of proposed rules for electronic discovery was sent out for comments over the summer. All of the feedback was either positive or neutral. The committee will meet following the full council meeting, and is expected to refer the final version of the proposed rules to the full council.

IX. Other Business

Attorney Southwick delivered council member Leineweber's PPAC report, stating that the new video conferencing statute is causing a stir, and defense attorneys have raised some issues challenging local implementation practices.

Attorney Southwick reminded the council that Marquette Law School Professor Dan Blinka would be a guest speaker in December to discuss suggested changes to the rules of evidence. She also updated the Council on her efforts to reunite the historic Council records currently maintained by both the State Law Library and the State Historical Society. They are working together to improve both of their collections, and have shared minutes to allow them each to have a complete set. They have also shared indexes of their respective collections. Attorney Southwick's long term goal is to scan those records, and store them in a searchable database. However, due to the cost involved, it will probably require grant funds.

X. Adjournment

The Council adjourned by consensus at 12:10 p.m.