

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
MADISON, WISCONSIN
November 16, 2007

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

MEMBERS PRESENT: Marla J. Stephens, Chair; Michael R. Christopher, Kathleen E. Grant, Professor Jay Grenig, Beth E. Hanan, Vice-Chair; Catherine A. LeFleur, Honorable Edward E. Leineweber, Robert L. McCracken, Kathleen A. Pakes, Professor David E. Schultz, A. John Voelker, Honorable Maxine A. White.

MEMBERS EXCUSED: Honorable Ann Walsh Bradley, Allan M. Foeckler, Honorable Michael Gableman, Representative Bill Kramer, Bruce Munson, Senator Lena Taylor, Honorable Mary K. Wagner, Greg M. Weber (Represented by Kate Tripp), Honorable Ted E. Wedemeyer, Jr.

OTHERS PRESENT: James C. Alexander, Honorable James Mason, Eric Peterson, Kate Tripp.

I. Call to Order and Roll Call

Chairperson Stephens called the meeting to order at 9:30 a.m.

II. Approval of Minutes of October 26, 2007 meeting

MOTION: Judge Leineweber moved, seconded by Kathleen Grant to approve the minutes of the October 26, 2007 meeting as amended by striking the word recommended from the fifth paragraph on page 2, third sentence.

Motion passed unanimously.

III. Hiring and Transition Report

Chairperson Stephens reported that progress has been made on the transition of the Judicial Council to a separate independent agency. Human Resource personnel from the Courts and the Department of Administration are assisting in getting the job announcement out for the attorney position. The Council needs office space and that search will continue. The Hiring Workgroup will meet after the Council meeting.

John Voelker summarized for the Council the problems establishing an independent Judicial Branch agency. He announced that at least initially, the Supreme Court will provide administrative support until the Council is firmly established.

Michael Christopher said that progress in the transition looks good but the position description for the attorney position appears a bit daunting. Marla Stephens said the language in the position description was based upon numerous similar descriptions throughout state government. She agreed that it could be overwhelming, but all tasks listed must be performed somehow. Professor Grenig agreed that the description is along the lines of similar descriptions that he has seen.

IV. National Center for State Courts Study

Judge Leineweber reported that there was still no draft of the study. He has been in contact with the National Center for State Courts and the State Justice Institute and received assurances that our grant funding for the project is not in jeopardy. Judge Leineweber will continue his efforts to get a draft of the study from the consultant, John Ferry.

V. Discussion of Citation of Unpublished Opinions

Beth Hanan reported that the working group looked into available data on how the Federal Rule allowing citation of unpublished opinions has been working. The Rule is so new, however, there is not much commentary on how it has been received. The group reviewed the study done by Professor Stephen Barnett of Washington and Lee University of the effect of the citation of unpublished decisions in federal circuits that allowed it by rule before the Federal Rule was passed. Professor Barnett interviewed federal defenders in those circuits and generally found that there was no evidence that the Rule caused problems. A bullet point summary of Barnett's study was distributed to Council members and is attached to these minutes.

The Council discussed at length whether the amendment to Wis. Stat. § (Rule) 809.23 (3) set forth in a prior proposed petition of the Judicial Council or Federal Rule 32.1 of the Rules of Appellate Procedure is preferable. Copies of both the Council petition and Rule 32.1 are attached.

MOTION: Professor Schultz moved, seconded by Michael Christopher, that the Council go on record in favor of a change in the Rule so as to allow citation of unpublished opinions.

Motion passed unanimously.

Professor Schultz suggested that the work group prepare a draft petition for

Council review at the next Council meeting based upon the previous Council draft petition (but omitting language regarding persuasive value) and on the discussions had today. The consensus of the Council was that the work group should continue as Professor Schultz suggested.

VI. Committee Reports

A. Appellate Procedure

Marla Stephens reported that Senator Taylor requested a Bill draft on the follow-up legislation pertaining to the Rules of Appellate Procedure and including the proposals first set forth in the Council's Rule Change Petition 00-02. The committee will next meet on December 11, 2007 in Milwaukee to review the comments of the Remington Center Presentence Advisory Committee on the committee's draft of rules governing the use of presentence investigation reports.

B. Criminal Procedure

Professor Schultz had nothing to report except that LRB told him that it does not want to proceed with the revision of the Criminal Procedure Code as a "repeal and recreate" bill in order to maintain legislative history and catch all of the changes to the statutes that the revision will require.

C. Evidence and Civil Procedure

Judge Leineweber, the new chair, reported that the committee will meet after the Council meeting today.

D. Strategic Plan

See IV above.

E. PPAC Liaison

Judge Leineweber reminded the Council that the hearing on video-conferencing before the Supreme Court is scheduled for January 8, 2008.

VII. Other Business

Marla Stephens inquired whether Council meeting materials could be sent to Council members electronically. The consensus of the Council was to do so starting with the next Council meeting.

John Voelker distributed an index of circuit court forms that are available in languages other than English in response to inquiries from Council members at prior meetings.

VIII. Adjournment

The Council adjourned by consensus at 11:40 a.m.