



## STATE OF WISCONSIN – JUDICIAL COUNCIL

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### MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL

MADISON, WISCONSIN  
February 15, 2019

The Judicial Council met on February 15, 2019, commencing at approximately 9:40 a.m. in Room 328 NW, of the State Capitol in Madison, Wisconsin.

**MEMBERS PRESENT:** Judge Michael R. Fitzpatrick; Judge Eugene A. Gasiorkiewicz; Christian Gossett; Duane Harlow; Margo Kirchner; Devon Lee (by phone); Dennis Meyers; Judge Scott Needham; John R. Orton; Ben Pliskie (by phone); Thomas L. Shriner; Senator Van H. Wanggaard (by phone); Steven Wright

#### **I. Roll Call and approval of the Minutes of January 18, 2019.**

On Motion duly made and seconded, the Minutes were approved as amended.

#### **II. Consideration of Open Record Request from the Civil Justice Council.**

The Council discussed the Open Records Request from the Wisconsin Civil Justice Council. It was noted that Judicial Council wants to carefully consider and correctly respond to this request, but that it is difficult to do so because of a lack of staff. Duane Harlow offered to review this matter with the AG's Office of Open Government, to obtain some guidance regarding the Council's response to this request. It was agreed that Mr. Harlow and/or a representative from the Office of Open Government would report to Mr. Gleisner, the Chair of the Judicial Council, who will then inform the rest of the members regarding the steps which need to be taken to respond to this request.

#### **III. Report on Submission to the Legislature of Requested Amendment to §802.06(1)(b).**

A discussion then ensued regarding the recommendation submitted by the Judicial Council to the legislature by letter dated February 7, 2019. A letter from Representative Jim Ott dated February 14, 2019, was presented to the Judicial Council. It was noted that Representative Ott's letter correctly stated that the opening sentence of the February 7 letter incorrectly suggested that the work of the Judicial Council on § 802.06(1)(b) Wis. Stats. was at the

request of the chairs of the Senate and Assembly Judiciary Committees. The Council agreed that the letter inaccurately suggested that the Chairs were requesting and supporting the particular changes recommended in the letter. The Council noted that both Representative Ott and Senator Wanggaard routinely abstain from voting on Council recommendations to the Legislature, and that they had abstained from voting on the motion to approve sending the February 7 letter. The Council noted that the letter should have said that the Chairs of the Judiciary Committees only recommended that, if the Council were to recommend any changes, those changes should be presented to the persons to whom the letter was addressed. The Council was sorry for this miscommunication. Dennis Myers made a motion to authorize Thomas L. Shriner, Chair of the Evidence & Civil Procedure Committee, to issue a letter of correction and apology. This Motion was seconded by Judge Gasiorkiewicz, and unanimously adopted.

A discussion then ensued regarding the work of the Evidence & Civil Procedure Committee on Act 235. Mr. Shriner reported that the Committee had completed its work on Act 235, and except for the aforesaid recommendation to amend §802.06(1)(b) Wis. Stats, the Committee had decided that no further changes to Act 235 would be addressed by the Committee at this time, for the reasons set forth in the January 18, 2019, Minutes of the Evidence & Civil Procedure Committee. Until such time as the judiciary or the bar indicate that there is a particular problem with the Act, the Committee does not anticipate addressing the matter further.

#### **IV. Report on Recent Meeting Between Council Members and Senator Wanggaard.**

Professor Steven Wright reported that he met with Senator Wanggaard, along with Orton and Gleissner, to discuss how best to advocate for the adoption of the Council's budget request. He noted that the primary objective is to contact members of the Joint Finance Committee to inform them of the needs of the Council. A general discussion then ensued regarding various steps which the Council may take to encourage adoption of the Council's budget, including contacting the Governor's office and members of the Supreme Court.

#### **COMMITTEE REPORTS:**

##### **1. Report of Evidence and Civil Procedure Committee**

The Chair of the Committee, Mr. Shriner, reported that the Committee would be commencing work on a new project to evaluate the old rules regarding injunctions and temporary restraining orders, to determine whether those old rules should be updated using Federal Rule 65 as a template.

##### **2. Report of the Appellate Procedure Committee**

The Chair of the Committee, Professor Wright, reported that the Committee is in the process of getting feedback on its proposal to change the rules regarding the withdrawal of attorneys in appellate matters. He reported that the Committee is also discussing additional projects which it may submit to the Council for approval.

**3. Report of the Criminal Procedure Committee**

Committee member, Chris Gossett, reported that the Committee has been working on amendments to the laws regarding expungement. It was noted that the legislature is currently considering pending legislation regarding expungement. A discussion ensued regarding how the Council might best work with the legislature to evaluate and, if necessary, revise the pending legislation..

**V. Adjournment**

On Motion duly made, seconded, and unanimously adopted, the meeting was adjourned at approximately 10:50 a.m.

Respectfully submitted,

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John R. Orton, Vice-Chairman and Temporary Secretary