



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL MADISON, WISCONSIN March 15, 2019

The Judicial Council met at 9:35 a.m. in the Senate Parlor, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Sarah Walkenhorst Barber; Sherry Coley (by phone); Judge Michael Fitzpatrick; Judge Eugene A. Gasiorkiewicz; William C. Gleisner; Duane Harlow; Margo Kirchner; Devon Lee; Dennis Myers; John R. Orton; Ben Pliskie (by phone); Thomas L. Shriner; Judge Robert VanDeHey; Senator Van H. Wanggaard.

MEMBERS EXCUSED: Justice Annette Kingsland Ziegler; Representative Ott; Judge Scott Needham; Judge Jeffrey Wagner; Diane Fremgen; Christian Gossett; Steven Wright.

DISTINGUISHED GUESTS: Lynne Davis (State Bar); Julie Tessmer Robinson (State Law Library); Paige Scobeck (Hamilton Consulting); Erika Stebel (Wisconsin Law Journal).

I. Roll Call and approval of the Minutes of February 15, 2019.

Minutes were amended and then approved.

II. Report on compliance with Amended Open Records Request from Andrew Cook of the Hamilton Consulting Group on behalf of the Wisconsin Civil Justice Council.

Gleisner noted that he had discussed this issue for 30 minutes on phone with Assistant Attorney General Harlow. Since that call, Gleisner concluded that the Judicial Council is not a normal agency. Whereas most agencies employ officers and employees who only secondarily have personal email accounts, the Council is made up of volunteers and these volunteers include lawyers who use the computers on which they store Council records primarily for law practice related functions. Gleisner then noted that 90% of what is on his computer is attorney client privileged or governed by the work product rule.

Length discussion ensued with Duane Harlow about the pending open record request. Duane confirmed that he has been in consultation with Asst. AG Ferguson, who handles open record requests to the Justice Department.

Duane had the following advice. Each Council member should review laptops to find all emails that deal with Act 235. Gleisner noted that this search should be limited to those emails that are not attorney client privileged or work product documents. Duane agreed, citing the situation where the AG's office provides advice to an agency by email. The email is technically a record but is not discoverable. Judge Gasiorkiewicz noted that he doesn't have many emails that he saves from this organization.

John Orton made a motion regarding production of emails that relate to act 235 but which are not privileged, which was seconded by Duane Harlow. The substance of the motion was as follows:

Orton moved and Harlow seconded to have each member of the Judicial Council review his/her emails and forward to Chair Gleisner a hard copy of those emails dated between November 16, 2018 and February 4, 2019 if those emails constitute Judicial Council business regarding Act 235.

After discussion, the vote was unanimous to produce all act 235 emails which are not privileged to Gleisner for review with AG's office for ultimate production to Andrew Cook. Duane cautioned that it is better to err on the side of disclosure. The members were instructed that if they had any questions or concerns about the disclosure of a particular document they should contact Mr. Gleisner and together they could consult with Assistant Attorney General Ferguson of the DOJ.

II. Communication from the Uniform Law Commission and discussion of compliance with March 1, 2019 Request from the Commission. It was contemplated that this agenda item would also trigger discussion of follow-up contact with the Commission to learn of other developments which may be of interest to the Council.

Discussion was then had concerning a recent email from the Uniform Law Commission regarding Uniform Unsworn Declaration Act. Mr. Shriner noted that a bill adopting this uniform law had been forwarded to the Legislature but no action reported. Senator Wanggaard stated that he recalled this but did not know the status of this today. Sara from LRB stated that her recollection was that this was put in Act form as 2018 bill but was never acted on. Sara said that the bill would have to be reintroduced as a 2019 Act. She and Senator Wanggaard will work on this.

Tom Shriner raised a point that acts were being introduced in the Legislature of which the Council has no knowledge and this was undercutting the Council's ability to do its job. Gleisner asked Sara if she would be willing to act as a one person committee and advise the Council of new legislation which has been introduced. She will check with her boss, but she thinks this will be fine providing that it is understood that information regarding proposed legislation can only be made public after it is introduced. If it is still in the drafting stage it is confidential. Senator Wanggaard agreed with this and did not have an objection as long as we respected that confidentiality.

III. Review and discussion of the Governor's Budget Proposal concerning the Judicial Council and future action in light of that proposal.

The Council then turned to the Governor's failure to include the Judicial Council in his budget. Senator Wanggaard and Gleisner noted that this probably was the result of oversight. Senator Wanggaard stated that he would strongly support including the Council in the Legislature's budget and he was sure that Rep. Ott would concur with that.

VI. Adjournment.

Meeting adjourned at approximately 11 a.m.