



## STATE OF WISCONSIN – JUDICIAL COUNCIL

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### MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL MADISON, WISCONSIN November 20, 2020

The Judicial Council met at 9:00 a.m. on November 20, 2020 via Zoom.

MEMBERS PRESENT: Chair William Gleisner; Judge Eugene Gasiorkiewicz; Judge Christian Gossett; Thomas Hruz; Steven Kilpatrick; Margo Kirchner; Dennis Myers; Judge Scott Needham; John R. Orton; Adam Plotkin; Adam Stevenson; Senator Van Wanggaard (by phone); Judge Robert VanDeHey; and Sarah Zylstra.

MEMBERS EXCUSED: Representative Ott; Sarah Walkenhorst Barber; Diane Fremgen; and Ben Pliskie; and Thomas L. Shriner.

SPECIAL GUESTS: Supreme Court Justice Rebecca Dallet; Supreme Court Justice Jill Karofsky; Lynne Davis (State Bar); Michaela Paukner (Wisconsin Law Journal); and Hamilton Consulting.

*We were all very pleased to welcome to our November 20<sup>th</sup> meeting Justice Jill Karofsky from the Wisconsin Supreme Court, who joined our meeting as a guest.*

#### **I. Roll Call and approval of the October 16, 2020 Minutes.**

Roll call was taken and October 16, 2020 Minutes were approved.

#### **II. Discussion of request from the Neighborhood Law Clinic of the UW Law School to support their Petition to the Supreme Court.**

Gleisner asked if anyone had any objection to sending a letter in support. Judge Gasiorkiewicz raised a concern that the request from the Clinic did not say anything about whether the Petition would apply to all law school graduates or only to ABA approved law school graduates. Gleisner said that we could limit our letter to ABA graduates.

However, John Orton raised a more fundamental issue. Mr. Orton asked if supporting such a petition is within our charter as an organization. Judge

Eugene Gasiorkiewicz responded that he felt it was within our purview because on the purposes of the Council is to elevate the quality of legal services in Wisconsin to better serve the citizens of the State. Gleisner stated that within the meaning of Wis. Stat. §758.13 improving the quality of representation in the courts of Wisconsin is one of the appropriate goals of the Council. Judge Hruz said that the Court of Appeals has authorized Chief Judge Neubauer to send a letter in support of this Petition. Gleisner said that clinical courses helped him prepare to represent people. Judge Needham agreed.

Sarah Zylstra reviewed the Petition and determined that any student who would benefit under the Petition would have to be enrolled in an ABA accredited law school. Judge Gasiorkiewicz stated that satisfied his concern.

Gleisner noted that Tom Shriner was not on the call and so Gleisner asked Professor Adam Stevenson from the UW Law School to address the Petition. Professor Stevenson stated that that he was a supervising attorney for the students in the Clinic and he 100% supports the Petition. First, it expands the student practice rule. Second, it reduces the burden of obtaining administrative certifications. Third and most importantly it both increases practical opportunities for students and provides additional representation for citizens who otherwise might be unrepresented.

Dennis Myers moved to support the Clinic's Petition and Ms. Zylstra seconded that motion. The motion passed unanimously. Gleisner will prepare a letter to the Supreme Court in support of the Clinic's Petition.

### **III. Discussion of the formation of a special committee to study the effects of Covid-19 on the practice of law in the State of Wisconsin.**

Gleisner provided some introductory remarks concerning Wis. Stat. §758.13 and Wis. Stat. §751.12. Gleisner pointed out that we should avoid stepping on the toes of anyone, least of all the Supreme Court. Gleisner pointed out that his point was that we should study the effect of Covid on the practice of law, not provide solutions on how to deal with Covid. Such studies have been done in the past, for example when we studied the rules of evidence in conjunction with input from Professor Blinka. Gleisner pointed out that when we conducted studies of evidence, we would go out and study what the feds and other states had done with regard to a particular evidentiary rule. We did the same with regard to class actions or with regard to e-discovery. And that is how we have proceeded concerning the issue of injunctions. In other words, I did a 100 page memo studying what has been done concerning injunctions on both the federal level and in each of the other states in this country. It might take us months, and even years to complete such a study. But studies are what the Judicial Council does best and that is what Gleisner is proposing we do with regard to

the impact of Covid on the practice of law. Gleisner stated that we have often augmented our committees with ad hoc members and with law professors to help us with the burden of conducting studies. That is certainly what we did when we were working e-discovery rules. Moreover, we would not be looking for solutions. We would study what is happening on the state level, and what is happening on the federal level.

Ms. Zylstra opened the discussion by stating that it feels too big and unwieldy to be talking about Covid's effect on all the civil and criminal rules, especially since we don't have staff or funds. Margo Kirchner agreed with Zylstra and also raised a question about the wisdom of creating a "special committee" when we already have three standing committees. John Orton also agreed with Ms. Zylstra. Mr. Orton said maybe it would be a good idea just to address what rules work are necessary to address virtual hearings, but there is already a Supreme court task force and we don't want to duplicate what they're doing. Orton also noted that this is the type of undertaking that used to be done by staff. But now we don't have staff, and we don't have any funds.

Judge VanDeHey noted that the Director of State Courts is looking into Zoom and other digital issues and which is exploring what procedural rules need to be changed. A rule petition will be filed in the immediate future by the Director's Office. Judge Gasiorkiewicz said we are in a very difficult position vis-à-vis the Supreme Court. They don't support us financially, and that may be just one way in which they don't support us.

Justice Karofsky stated that it is important to focus on the relationship between the Supreme Court and the Council. Justice Karofsky stated that she and Justice Dallet 100% support the Council. How does this group go forward with a relationship with the Supreme Court. She asked us to consider how we should approach the Chief Justice. Senator Wanggaard agrees and so we need to plan further on how that should be accomplished. As the Senator noted, we must be careful to avoid suggesting that we are or should be an arm of the Supreme Court. We need to have a dialog with the Chief Justice. Justice Karofsky stated that the Council has much to contribute, but first the Council has to establish a good dialog with the Chief Justice.

Margo Kirchner stated that in approaching the Chief Justice we need to be careful to avoid stepping on the toes of Director of State Courts. Christian Gossett strongly agreed with this point.

The decision was made not to move forward with the special committee and to focus instead on the proposed meeting between the Council and the Chief Justice at a time to be determined. .

#### **IV. Committee Reports.**

##### **(a) Evidence & Civil Procedure Committee.**

Tom was not present and so there was no report from this committee.

##### **(b) Criminal Procedure Committee.**

Judge VanDeHey said this committee “has not met for some time.” There will be a meeting later this morning.

##### **(c) Appellate Procedure Committee.**

Judge Hruz stated that his committee was meeting this afternoon. The Committee is now focusing on a draft rule regarding appeals from orders determining a defendant’s competency and appeals from orders requiring involuntary commitments or medication under 971.14. The consideration of all of this will take place in stages.

#### **V. Adjournment.**

The Council adjourned at 10:20 a.m.