



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
May 20, 2022

The Judicial Council met at 9:00 a.m. on May 20, 2022 via Zoom.

MEMBERS PRESENT: Chair William Gleisner; Justice Brian K. Hagedorn; Judge Hannah Dugan; Judge Thomas Hruz; Judge Needham; Senator Wanggaard; Adam Plotkin; Sarah Barber; Lynne Davis; Sarah Barber; John Orton; Steve Kilpatrick; Margo Kirchner; Molly McNab; Tom Shriner; Adam Stevenson.

EXCUSED ABSENCES: Ron Tusler; Judge Eugene Gasiorkiewicz; Judge VanDeHey; Christian Gossett; Diane Fremgen; Amy Crowder; Sarah Zylstra.

DISTINGUISHED GUESTS: Ali Teske, Wisconsin Law Journal; and Wisconsin Eye.

- I. Roll Call revealed a quorum and the March 18, 2022 Minutes were approved.

Gleisner gave the following report concerning the very good work of Tom Shriner as Chair of the Evidence & Civil Procedure Committee as well as a request that Tom be vested with the powers under Wis. Stat. §758.13(c).

Attorney Shriner has been an excellent ECP Chair. He led a comprehensive review of Class Actions in Wisconsin which led to the adopting of Fed. R. Civ. P. 23 into law in Wisconsin by the Supreme Court (later enacted into law by the Legislature). He was also responsible for a comprehensive review of injunction law in Wisconsin.

Tom Shriner has now assembled a very impressive team to conduct the comprehensive review of Wisconsin's Rules of Evidence. He is responsible for the addition of two Professors of Evidence to the ECP as ad hoc members to help with this review. UW Law Professor David Schwartz is one such Professor. The other is the Dean of Wisconsin Evidence Law, MU Professor Dan Blinka. Both of these Professors are supported on the ECP Committee by law student interns who in turn are also ad hoc members of the ECP. To underscore the highly professional manner in which this review will be conducted, I am attaching just one of the preliminary worksheets from the ECP. In the accompanying

worksheet, one can see that each chapter of the Wisconsin Rules of Evidence will be evaluated side-by-side with the counterpart Federal Rule of Evidence.

Besides being a partner at Foley & Lardner, Tom Shriner is also a Professor at the MU Law School. To give you some idea the high regard in which Tom Shriner is held in the legal community, accompanying this Agenda is an email which I received recently from Professor Blinka.

The Council's Evidence & Civil Procedure Committee (ECP), Chaired by Tom Shriner, has embarked on an ambitious and comprehensive review of The Wisconsin Rules of Evidence. With regard to this review, it is very important to give the ECP all the powers necessary to complete its work with alacrity and professionalism. To that end, at our May Council meeting I will propose that ECP Chair Shriner be vested with all the powers set forth in Wis. Stat. §758.13(c), which statute provides in part as follows:

The council ... or any committee thereof when so authorized by the council is empowered to hold public hearings at such times and places within the state as may be determined. Any member of the council or any committee thereof shall have the power to administer oaths to persons testifying before the council or committee. By subpoena issued over the signature of its chairperson or acting chairperson and served in the manner in which circuit court subpoenas are served, the council or any committee when authorized by the council, may summon and compel the attendance of witnesses...

Without seeking further Council authority, if vested by the Council with the powers set forth in the foregoing statute I believe that ECP Chair Shriner can appoint subcommittees and hold public hearings on matters within the ECP's jurisdiction. More importantly, I believe that it is a fair inference from the foregoing statute that if vested with the powers set forth in this statute, ECP Chair Shriner can seek input from stakeholders (including lawyers and business leaders) to determine opinions of stakeholders concerning any proposal of the ECP to amend or repeal any provision of The Wisconsin Rules of Evidence.

Further, based on a fair inference from the foregoing statute, I will recommend to the Council at our May meeting that if the Council authorizes the submission of a Petition to the Supreme Court concerning the Wisconsin Rules of Evidence, then Attorney Shriner should draft and sign such Petition (and any supporting Memorandum) and represent the Council (in person or in writing) before the Supreme Court.

Following the delivery of that report, a discussion ensued. Tom Shriner stated that he does not need the powers enumerated in Wis. Stat. §758.13(c), Vice Chair Orton disagreed and pointed out that those powers would enable Shriner to move quickly without going back to the Council for approval whenever the ECP was ready to move forward. Orton moved and it was seconded to give Tom the powers enumerated in §758.13(c),

Gleisner then called upon Adam Plotkin to deliver a report concerning our renewed efforts to receive funding for the Council. Adam chairs an ad hoc Budget Committee chaired by Adam Plotkin and consisting of him, Margo Kirchner and Gleisner.

Adam reported that the Committee had been and had decided to pursue a full time GPR (general purpose revenue) staff member. The Committee also met with Justice Hagedorn to discuss how to generate support for funding. As Chair Plotkin noted, Justice Hagedorn is well qualified to discuss funding both as a member of the Supreme Court and as the member of Governor Walker's staff charged with drafting funding requests from the Legislature. Adam then reviewed the heart of the budget request which will be refined during meetings of the ad hoc budget committee over the summer.

Adam then stated that he wanted to discuss with the Council the base pay for a staff position and the attractiveness of working remotely to potential candidates. Member Molly McNAB asked if there was job description for this position, and Adam agreed to work on that.

What Adam wanted most at this meeting was an authorization from the Council to prepare and submit a budget request so that the Committee can move forward without seeking further authorization from the Council since the Council will not meet again prior to the due date for submission of the request on September 15 (in other words before the Council meets again in September). Adam received that authorization by unanimous consent.

Senator Wanggaard raised a concern about having a Council which is 100% remote. Gleisner then made a proposal. Since Senator Wanggaard has offered office space in the Legislative Council offices, he would be willing to commit to one day per week staffing that office. Accordingly we would have a physical space for delivery of U.S. mail, for receipt of voice mail and perhaps also a space (e.g., a conference room) where the Council could meet. This would give the Council a permanent home. The Senator stated he thought that was a great idea and will check with the Legislative Council concerning their thoughts.

Gleisner then moved on to other business. Gleisner noted that he has a strong interest in electronic evidence and e-discovery. However, in previous discussions of the Council (going back to work I did in helping to draft the first e-discovery rules in Wisconsin a number of years ago), the emphasis has always been on civil litigation. However, a recent article in the Wisconsin Lawyer reminded Gleisner that the Council needs to also focus on electronic evidence and procedure within the context of criminal procedure. Gleisner provided a copy of an article from last month's Wisconsin Lawyer entitled *Mobile Device Forensics for Criminal Defense Lawyers*. Gleisner then noted that Judge VanDeHey has other obligations on the date of this meeting and so Adam Plotkin will deliver the report of the Criminal Procedure Committee. Adam stated the Criminal Procedure Committee is looking into issues related to electronic evidence, etc.

Gleisner then appointed a Nomination Committee for the purposes of selecting a slate of candidates for Chair and Vice Chair of the Judicial Council for next year. Judge

Gasiorkiewicz will serve as Chair and the other members are as follows; Judge Dugan Judge Hruz; Judge Needham and Judge VanDeHey.

II. Committee Reports.

Attorney Shriner delivered the report of the Evidence & Civil Procedure Committee. He noted that finalizing work needs to be done on the amendment to the injunction revisions and that further will work will be done on the proposed “restyling” of the Rules of Evidence.

Criminal Procedure Committee. Adam Plotkin delivered the Report of this Committee in the stead of Judge VanDeHey. Adam reiterated that the Committee is working on issues related to the electronic practice of law in a criminal law context. Adam also reported that the Criminal Procedure Committee is looking at post conviction competency issues.

Judge Hruz delieved the Report of the Appellate Procedure Committee. Judge Hruz began by noting that the Appellate Procedure Committee is also investigating post conviction competency issues and Judge Hruz stated the thought it would be useful if his and Judge VanDeHey’s committees could work together on that topic. Judge Hruz also advised that appellate procedure improvements is a standing agenda item on his committee.

Adjournment.

III. Adjournment.

The meeting concluded at 10:15 a.m.