



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE
WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
September 16, 2022

The Judicial Council met at 9:30 a.m. on September 16, 2022 in Room 328NW.

MEMBERS PRESENT: Chair William Gleisner; Justice Brian Hagedorn; Judge Eugene Gasiorkiewicz; Judge Thomas Hruz; Judge Hannah Dugan (by phone); Sarah Barber; Karley Downing; Steven Kilpatrick; Margo Kirchner; Molly McNab; Adam Plotkin; Tom Shriner; Adam Stevenson (by phone); Nick Zales; and Sarah Zylstra.

EXCUSED MEMBERS: Judge Scott Needham; Judge VanDeHey; Ron Tusler; Senator Van Wanggaard; and John Orton (somewhere in Italy...).

SPECIAL GUESTS. Lynne Davis (by phone) on behalf of the State Bar; Cale Battles, also on behalf of the State Bar.

The first order of business involved the June 24, 2022 Minutes. Sarah Zylstra stated that an effort should be made to avoid another conflict between the June meeting of the Council and the State Bar's meeting. Tom Shriner suggested that we first approve the June 24, 2022 Minutes and then take up amendments to the Council Calendar as a separate issue. Thereafter, the Minutes of the June 24, 2022 were approved unanimously. It was then moved by Mr. Shriner and seconded by Ms. Zylstra to change the June 2023 meeting of the Council from June 16, 2023 to June 9, 2023. This was unanimously approved and so the new 2022-23 Calendar of the Council will read as follows: **2022-2023 Calendar:** The following are the dates for in-person meetings of the Council during 2022 to 2023 (which will all take place beginning at 9:30 a.m. on the following dates in Room 328NW of the State Capitol): September 16, 2022, October 21, 2022, November 18, 2022, January 20, 2023, February 17, 2023, March 17, 2023, May 19, 2023 and June 9, 2023.

The meeting then proceeded and Mr. Adam Plotkin, Chair of the Council's ad hoc Budget Committee, reported on the work done by the Council this summer. Some of the draft documents prepared for filing accompanied the Agenda for this meeting. Mr. Plotkin stated the request was for an attorney and authorization to rent office space in downtown

Madison. Sarah Zylstra stated that this is the first step in the process and have we had any conversations with anyone about the budget. Adam noted that this was the first step in the process which will take nine months. The Department of Administration will take several weeks to review our request and we then have a conversation with the Governor's Office. This Budget is just a benchmark to start the conversation. Tom Shriner pointed out that we are in a transition position and much will depend on who is Governor after November of this year. Shriner pointed out that Senator Wanggaard is a friend. Gleisner pointed out that the Senator had some personal emergencies to deal with, but the Senator has always been a very good friend and we need to continue to rely on his support. Gleisner pointed out that there is no need to entertain a motion concerning the work of the Budget Committee because all needed authorization for the work of the Council this past summer was obtained at the recent June meeting of the Council.

Tom Shriner stated that the Council's enabling statute (§758.13) authorizes expenses for the Council, but our funding ended in April of 2017. We have tried to revive that funding but the Governor vetoed our funding, not the Legislature. Sarah Zylstra said just remember "hope springs eternal." It was suggested that Council members reach out to the Governor's Office, but Adam Plotkin discouraged such an approach at this time. Justice Hagedorn observed that from his experience in the Governor's Office the issue of funding for the Council will probably be included with a number of other judicial funding issues and those issues will probably receive about five minutes of the Governor's actual time. The Governor's staff will create options and the Governor will select the options he favors and that will be the end of it. The Justice pointed out that his position on any Council issue is one of neutrality. With that said, you want to be strategic so attempt to align yourself with other issues or priorities so as to heighten visibility in any discussion of the Council's Budget requests.

Ms. Margo Kirchner, Chair of the ad hoc Committee on the "Council Corner" (a report which will appear in State Bar publications to the State Bar on the work of the Council) gave a report on work performed to date and plans for future work by the Council Corner Committee. Margo pointed out that she started out the work of the Council with an article in the May Wisconsin Lawyer and that was followed by an article by Judge Hruz and Christina Plum in the Inside Track State Bar publication. The point of "Council Corner" is to be a vehicle for the Council's State Bar representatives by which to inform the Bar members on the work of the Council. The next article will be written by Sarah Zylstra, due out in November and will report on the work of the Evidence and Civil Procedure Committee. Ms. Kirchner is looking for a volunteer to do a February article and it is expected that will involve the work of the Criminal Procedure Committee.

Mr. Thomas Shriner, Chair of the Council's Standing Committee on Evidence and Civil Procedure (ECP) delivered a report on the Committee's work. Shriner first said how delightful it was to meet again in person. Shriner pointed out that by and large the Wisconsin Rules of Civil Procedure have traditionally been fashioned on the Federal Rules of Civil Procedure. But the Wisconsin Rules were in fact modeled originally on the Federal

Rules as they existed at the time of the Judicial Reorganization of 1975. That is roughly fifty years ago and there are noticeable disparities between our Wisconsin Rules now and the existing Federal Rules, especially in the area of the Rules of Evidence. The Supreme Court has signaled that they prefer it when the State Rules of Procedure and Evidence closely resemble the Federal Rules. However, the Federal Judicial Conference has an enormous budget. We don't have anything like the Judicial Conference of the United States. The closest we have in Wisconsin is the Judicial Council.

The Judicial Council's ECP has been trying to update our State Rules. For example, the Council's ECP has been working to update our rules governing injunctions in Chapter 813. Because we lost our staff when we lost our funding, that project has consumed the Committee for almost two years, and we still have work to do regarding injunctions. Nevertheless, a great deal has been accomplished and the ECP is very near to issuing a proposal that will conform our Chapter 813 to Federal Rule 65. The ECP will also recommend splitting existing Ch. 813 into two parts, with one section containing just traditional injunction law like one finds in FRCP 65 and one which contains miscellaneous rules relating to domestic abuse, ne exeat, etc. Sarah Barber of the Legislative Reference Bureau has done an excellent job of assisting with the reworking of Chapter 813.

In the meantime, the ECP has begun work on modernizing ("restyling") Wisconsin's Rules of Evidence (located in Wisconsin Chapters 901 to 910). That project has just begun, but the ECP is already making significant progress thanks to the addition to the ECP of two very important ad hoc members, Professor Daniel Blinka of the Marquette Law School and Professor David Schwartz of the UW Law School. The ECP is beginning to study how best to conform these rules to the Federal Rules. One of the advantages of such an approach is to provide the Bench and Bar of Wisconsin with access to the rich source of precedent that interprets the Federal Rules.

Judge Thomas Hruz, Chair of the Council's Standing Committee on Appellate Procedure, reported on the work completed by his committee to date. Judge Hruz will also report on ongoing and future work of his Committee. Judge Hruz agreed with Tom Shriner that it is good to be back in Room 328NW. He praised the work of the Secretary of the Committee, Christina Plum. Judge Hruz stated that his Committee's main project right now relates to determining competency pursuant to Wis. Stat. §971.13, especially as it relates to competency hearings and involuntary administration of medicine.

The statute is silent as to what happens on appeal where there are issues related to stays in the case of competency hearings or involuntary administration of medication. There is a need for rules that address how to proceed when there is an appeal in cases involving such matters, and whether there should be automatic stays in such matters. Judge Hruz hopes to confer with Judge VanDeHey of the Criminal Procedure Committee because Judge Hruz believes that issues related to Wis. Stat. §971.13 present an opportunity for an overlap between the work of the Appellate Procedure Committee and the Criminal Procedure Committee. Judge Hruz is amazed at how the Council has continued to operate without

staff and that is true when dealing with issues such as §971.13. Judge Hruz also reported on a successful Petition to the Supreme Court that he presented.

Adam Plotkin, on behalf of Judge Robert VanDeHey, Chair of the Council's standing Committee on Criminal Procedure, reported on the work of the Criminal Procedure Committee.

There was then discussion of the future of the Council and its role going forward. The floor was opened for one for that discussion of whether there was any valid *raison d'être* for the continued existence of the Council. Tom Shriner pointed out that the Council is unique in Wisconsin, a point often echoed by Senator Wanggaard. The Council is the only entity where representatives from the Executive, Legislative and Judicial Branches of Wisconsin Government can meet and discuss issues related to procedures and methods governing the instrumentalities of delivering Justice to the Citizens of Wisconsin. All members agreed that the loss of the Council would be a serious loss to the Bench, Bar and citizenry of Wisconsin and that means to fund the Council need to be pursued with the Governor and the Legislature.

Adjournment at approximately 11:00 a.m.

Minutes prepared by Attorney Gleisner