



STATE OF WISCONSIN – JUDICIAL COUNCIL

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL MADISON, WISCONSIN November 18, 2022

The Judicial Council met at 9:30 a.m. on November 18, 2022 in Room 328NW.

MEMBERS PRESENT: Chair William Gleisner; Justice Brian Hagedorn (by phone); Judge Eugene Gasiorkiewicz; Judge Thomas Hruz; Judge Hannah Dugan; Sarah Walkenhorst Barber; Karley Downing; Margo Kirchner; Molly McNab; Judge Scott Needham (by phone); John Orton; Adam Plotkin; Tom Shriner; Senator Van Wanggaard; Nick Zales (by phone); and Sarah Zylstra.

EXCUSED MEMBERS: Lanny Glinberg; Judge Kristine Snow; Representative Ron Tusler.

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

The Roll was taken, and the October 21, 2022 Minutes were approved.

Official Recognition of Judge VanDeHey for his many years of service. We have some melancholy news. Our friend and long-time member of the Council, Judge Robert VanDeHey, is leaving the Council. His many years as a member of the Council Executive Committee and Chair of the Council's standing committee on Criminal Procedure did much to further the work of the Council. His services and hard work will be greatly missed.

Gleisner opened the meeting with a statement. Recognizing that the State Bar has attempted to dissuade the Council from even discussing State Bar funding (going so far as to asking that we eliminate such a discussion from our Agenda), Gleisner stated that in its 70-year history the Council has never avoided controversy. To suggest that there are some topics that are too hot to handle or should not be discussed, raises serious questions under the First Amendment and is contrary to our charter under Wis. Stat. §758.13. During our 70-year history we have never avoided an issue because it was complex or controversial. When we consider any issue, we look at all facets of an issue. When we look at issue we look at all options, including ones which may be questionable, in the interests of thoroughness.

Gleisner noted that the Council has been without funding for five years. That is not just a long time, Gleisner stated that for a public agency that may be some kind of record. Gleisner referred to a November 7, 2022 Rotunda article by a State Bar official, it is written “The State Bar of Wisconsin supports the Judicial Council’s modest request for funding so that it can carry out its unique task.”

Gleisner noted that when he suggested a discussion about funding the Judicial Council by and through State Bar, Gleisner was not thinking of an ethics provision drafted and adopted at the request of the State Bar. Gleisner simply wanted to start a discussion about funding. With the understanding that those outside the Council should not be dictating our Agenda, Gleisner opened the meeting to a general discussion of funding.

Judge Hruz stated that he thought it was a good idea to form a committee from the Council for the purposes of commencing a discussion with the State Bar about funding. Tom Shriner stated that such a committee should probably be limited to those members of the Council representing the State Bar (such as Margo Kirchner, John Orton and Sarah Zylstra) should be the members of a Committee to meet with the State Bar to discuss how the State Bar can assist with funding. Shriner stated that we should stay focused on the only place we are likely to get salvation and that is from the Legislature.

Tom Shriner then stated that Gleisner is correct that the Council cannot go on without funding for much longer; it just won’t. We need to find funding, or we need to face the reality that the Council must end. Shriner stated that some of the recent projects of the Council has brought home to him just how impossible it is for an organization such as the Council to continue operating without funding. There is no way that the Council can continue without funding, given that the members of the Council all have day jobs (working primarily as lawyers or judges). Shriner commended Senator Wanggaard on all his efforts, but his colleagues in the Legislature aren’t listening. Tom also stated that whatever caused us to lose our funding is history. There is no reason to revisit why we lost our funding.

Sarah Zylstra raised another point. It isn’t just a matter of funding from the State Bar. In reality, we are a state agency and we should only be expending funds which have been provided to us by the Legislature. The monies, if any, from the State Bar would amount to funds that are not properly appropriated to us by the Legislature. Thus, it is not just that it may be unethical for the State Bar to provide us with funds, it is that taking money from somewhere besides the Legislature may be questionable if not in fact illegal. Quite simply, unlike other agencies the Council does not have a special provision called the “Gifts and Grants” mechanism that allows them to accept funds from someplace other than the Legislature, but the Council does not have that. It was ok when we were receiving funding from the Supreme Court because we were in fact receiving Legislative funding that was redirected to the Council and that would be permissible. That is just fact.

John Orton made a motion for the Council to appoint a committee that can meet with the State Bar to discuss funding. Tom Shriner seconded that motion. The motion carried, but with the following members abstaining: Sarah Barber; Justice Hagedorn; Molly McNab; and Senator Wanggaard.

Then there was discussion as to whether a meeting of a Council Committee and the State Bar should be subject to the Open Meeting Law. After discussion, it was decided that such a meeting would be tabled for now. John will investigate this matter and report on this at our January meeting.

Molly McNab raised an ethical issue. It is not enough to say that the State Bar can permit us to reach out to State Bar members directly. The State Bar is a lobbying organization and there are strict laws which prevent lobbying organizations to permit others to use their name to raise funds. One more reason why this entire issue should be tabled until John Orton has a chance to research the issue further.

Margo Kirchner said that we should be working with the Governor's Office and attempting to get the Governor to add the issue of funding to the Governor's version of the Budget. Senator Wanggaard stated in response: "The Governor is not going to have a budget; full stop." Senator Wanggaard said that the way to go is to submit materials and a report to Senator Wanggaard that provide a compelling reason for the Legislature to refund the Council.¹ The Senator said that discussing the possibility of funding from the State Bar is a discussion that is not going anywhere. Molly McNab is correct, and we should move on. The Senator stated that he is working hard on having funds for the Council added to the Budget that the Legislature is working on and the Senator needs everyone to get behind that effort.

The Senator also stated that Adam Plotkin, Chair of the Ad Hoc Budget Committee,² had done an excellent job on the Budget proposal and that is what opens the door for the Legislature to provide funding.

Senator Wanggaard said that all members of the Council need to reach out to friends in the Legislature and point out the importance of the Council. Point out how very unique the Council is since all parts of the political world are represented on the Council, from the Legislature, to the Executive, to the Supreme Court. And the cost of keeping the Council going is one of the best bargains there is for State taxpayers.

¹ In fact, Chair Gleisner did reach out to Senator Wanggaard after this meeting and this will be addressed in the Agenda for the January 20, 2023 Judicial Council meeting.

² Adam is chair of the Council's Ad Hoc Budget Committee. Margo Kirchner is another member of that committee and together Adam and Margo did a great deal to prepare and file a timely Budget Proposal.

Reports by the Chairs of each Council Committee:

We then heard the reports of the Council's Standing Committees as follows:

- A. Ms. Margo Kirchner, Chair of the ad hoc Committee on the "Council Corner" (a monthly report to the State Bar on the work of the Council) reported on work performed to date, as well as the recent 11/7/22 Rotunda article (another copy of that article accompanies this Agenda).
- B. Mr. Thomas Shriner, Chair of the Council's Standing Committee on Evidence and Civil Procedure, reported as follows:
 - 1. Work completed to date on revisions of Wisconsin's rules concerning injunctions.
 - 2. Work on his committee's ongoing work on revisions to Wisconsin's Rules of Evidence.
- C. Judge Thomas Hruz, Chair of the Council's Standing Committee on Appellate Procedure, reported on the work completed by his committee to date.
- D. Because Judge Robert VanDeHey is no longer a member of the Council, there was no Report of the Committee on Criminal Procedure at the 11/18/22 meeting.

Adjournment at 11 a.m..