

MINUTES OF THE MEETING OF THE JUDICIAL COUNCIL
MADISON, WISCONSIN
May 18, 2007

The Judicial Council met at 9:30 a.m., Room 328 NW, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Marla J. Stephens, Chair; Honorable Ann Walsh Bradley, Michael R. Christopher, Susan L. Collins, Professor Jay Grenig, Beth E. Hanan, Honorable Edward E. Leineweber, Honorable James Mason, Robert L. McCracken, Bruce Munson, Kathleen A. Pakes, Professor David E. Schultz, A. John Voelker, Honorable Mary K. Wagner, Greg M. Weber, Honorable Ted E. Wedemeyer, Jr., Honorable Maxine A. White.

MEMBERS EXCUSED: Allan M. Foeckler, Kathleen E. Grant, Representative Bill Kraemer, and Senator Lena Taylor.

OTHERS PRESENT: Catherine A. LeFleur, Jeff Pertl, Nancy Rottier, James Alexander.

I. Call to Order and Roll Call

Chairperson Stephens called the meeting to order at 9:30 a.m. Chairperson Stephens introduced Catherine LeFleur, the State Bar Representative-elect who will begin her service on the Council July 1, 2007. Chairperson Stephens also introduced Jeff Pertl, Senator Lena Taylor's aide, who was instrumental in gaining approval of separate staff and funding for the Judicial Council before the Committee on Joint Finance by a 16-0 vote.

Senator Taylor appeared by telephone to express her regret at being unable to attend the meeting as she believes the Judicial Council is of great importance. Senator Taylor congratulated the Council on the prospect of being re-created as a separate agency with staff and challenged it to continue its good work in the future. The Council in return warmly thanked Senator Taylor for bringing the motion, and forging the bipartisan support for the motion, to recreate the Council as a separate agency and provide an attorney position and funding to staff it.

The Council also expressed its appreciation to Justice Bradley, Justice Prosser, and Marla Stephens for their hard work in the bringing the necessary information about the Judicial Council to each member of the Joint Finance Committee.

II. Approval of Minutes of March 16, 2007, meeting

With the change of Senator Taylor's first name in the second to last paragraph in Section IV,

MOTION: Greg Weber moved, seconded by Bruce Munson to approve the minutes of the March 16, 2007 meeting.

Motion passed unanimously.

III. JFC Motion 81: Re-Creation of the Judicial Council as a Separate Agency

Jim Alexander reported that the Joint Finance Committee passed Senator Taylor and Representative Suder's Motion 81, to recreate the Judicial Council as a separate agency, by a 16-0 vote at its executive session on the Judicial Commission budget. Passage of the motion was bipartisan and provides for 1.0 GPR funded attorney position and \$78,200 GPR in 2007-08 and \$99,400 GPR in 2008-09. The motion also provides that the attorney staffing the Council may not make a contribution to a candidate for state or local office while serving as the attorney for the Judicial Council.

Jeff Pertl said that when Joint Finance completes its work on the budget bill (2007 SB 40) it will go to each house of the legislature for approval. He predicted that a conference committee will be appointed by leadership in each house to compromise differences between the versions of the budget bill passed by each house. The budget bill then goes to the governor. Pertl advised the Council to keep track of the proposal as it works its way through the legislature and on to the governor. If the budget bill is not passed by July 1, 2007, the budget for this fiscal year will remain in effect until a new budget is passed and signed into law.

IV. Appointment of a Nominating Committee

Judge Wedemeyer, Judge Leineweber, and Susan Collins volunteered, and were appointed, to serve on the Nominating Committee. Chairperson Stephens appointed Judge Wedemeyer to act as chair. The Committee is to report to the Council its nominations for chair and vice-chair of the Council for the 2007-08 Council year at the June 2007 meeting.

V. Committee Reports

A. Appellate Procedure

Marla Stephens reported that the committee will meet after the full Council meeting today. The committee will discuss the current need for a follow-up bill on the Appellate Procedure changes that require legislative approval. The committee will also continue studying and drafting changes to procedures governing the use of pre-sentence investigation reports. The UW Law School Remington Center has also convened an advisory committee to study changes in Presentence investigation report procedures. Both Stephens and committee co-chair Greg Weber are members of the Remington Center Advisory Committee. She reported that the Council's Appellate Procedure Committee recommended coordinating its efforts with those of the Remington Center and the sense of the Council was to do so.

B. Criminal Procedure

Professor Schultz reported that the Council completed its review of the LRB revision of Chapter 975, thereby completing its part of the process. Professor Schultz's summary of the March 16, 2007 review is attached to these minutes. Professor Schultz said that he would appoint an executive committee of the Criminal Procedure Committee to work with LRB to get a bill in final form.

C. Evidence and Civil Procedure

Judge Mason reported that the Supreme Court adopted the Council's revised petition revising the procedures to obtain discovery from persons outside the state. Judge Mason thanked Beth Hanan for her work on the project. The committee will meet after today's Council meeting. Judge Mason said that changes to the rule prohibiting citation of unpublished court of appeals opinions for precedential value may be again ready for review. Chairperson Stephens will agenda this suggestion for discussion at the June Council meeting. Judge Mason said that the Committee is also considering a study of the Rules of Evidence at the suggestion of Marquette Law School Professor Dan Blinka, who believes some of the rules may be ready for change. The Committee also will review reconsideration motions in small claim cases as requested by the Supreme Court in 2004.

D. Strategic Planning Committee

Judge Leineweber reported that the committee is meeting after the full Council meeting today. John Ferry has been hired by the National Center for State Courts to conduct the study of the Council being funded by a grant from the State Justice Institute. The study will go forward with the main focus being to study and plan how the Council can be most effective in the future, and how to best use the proposed funding and staff position.

E. Internal Operating Procedure

Bruce Munson said the committee had no report.

F. PPAC Liaison

Judge Leineweber reported that the PPAC Videoconferencing Subcommittee's proposed rules governing the use of videoconferencing in court have been adopted by PPAC and will be filed as a rule change petition. He will forward a copy of the final draft to Criminal Procedure Committee chair Schultz.

VI. Other Business

Jim Alexander reminded all that the June meeting will be a breakfast meeting starting at 8:30 a.m. Judicial Council alumni and committee members will be invited to attend.

VII. Adjournment

MOTION: Judge White moved, seconded by Michael Christopher, to adjourn. PASSED UNANIMOUSLY.

Council adjourned at 10:45 am