

MINUTES OF THE MEEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
June 20, 2008

The Judicial Council met at 10:30 a.m. in State Court Conference Room GL26, Tenney Plaza, 110 East Main Street, Madison, Wisconsin.

MEMBERS PRESENT: Marla J. Stephens, Chair; Beth E. Hanan, Vice-Chair; Honorable Ann Walsh Bradley, Allan M. Foeckler, Kathleen E. Grant, Catherine A. La Fleur, Honorable Edward E. Leineweber, Robert L. McCracken, Stephen R. Miller, Kathleen Anne Pakes, Professor David E. Schultz, Honorable Mary K. Wagner.

MEMBERS EXCUSED: Michael R. Christopher, Honorable Michael Gableman, Professor Jay Grenig, Representative Bill Kramer, Senator Lena Taylor, A. John Voelker, Greg M. Weber, Honorable Ted E. Wedemeyer, Jr., Honorable Maxine A. White.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Douglas Kammer, Assistant Attorney General Mark Neuser, Eric Peterson, Legislative Director for Senator Taylor.

I. Call to Order and Roll Call

Chair Stephens called the meeting to order at 10:35 a.m. Chair Stephens opted to take the agenda items out of order to accommodate those members having previous engagements which would require them to leave prior to the conclusion of the meeting.

II. Approval of 2008-2009 Meeting Dates

Absent discussion, the following 2008-2009 meeting dates were approved by consensus:

Friday, September 19, 2008
Friday, October 17, 2008
Friday, November 21, 2008
Friday, December 19, 2008
Friday, January 16, 2009
Friday, February 20, 2009
Friday, March 20, 2009
Friday, April 17, 2009
Friday, May 15, 2009
Friday, June 19, 2009

III. Nominations and Election of 2008-09 Chair and Vice Chair

Kathleen Grant reported on behalf of the nominating committee consisting of Hon. Ted Wedemeyer, Kathleen Grant, Greg Weber, and Hon. Maxine White. The committee nominated Marla Stephens to continue as chair and Beth Hanan to continue as vice-chair of the Council.

MOTION: Hon. Mary K. Wagner moved, seconded by Kathleen Grant, to appoint Marla Stephens as the chair and Beth Hanan as the vice-chair of the Judicial Council for 2008-2009. Motion unanimously approved.

IV. Approval of May 16, 2008 Minutes

After introducing the item and hearing no discussion, Chair Stephens declared the minutes approved by consensus.

Before moving on the discussion items, Eric Peterson asked to address the Council. He informed the Council that Senator Taylor was approached by WisconsinEye, a network that broadcasts community affairs and public policy discussions from across the state via television and the internet, regarding broadcasting the public meetings of the Judicial Council. Mr. Peterson conveyed Senator Taylor's offer to use Room 411 South, State Capitol, should the Council elect to have WisconsinEye broadcast its public meetings. The room is equipped with microphones at each seat and presentation technology. Chair Stephens expressed her opinion that this could raise awareness of the Council and the issues on which they are working. Professor Schultz suggested that the Council discuss this proposal prior to making a decision. Chair Stephens requested that this issue be placed on the September agenda for discussion. In the meantime, Attorney Southwick was instructed to make *status quo* arrangements for the 2008-2009 Council meetings.

V. Discussion of Municipal Court Bill Draft LRB 2894/1

Attorney Southwick distributed a summary of the Council's sub-committee reports for review and further discussion by the full Council.

At this time, Jim Alexander, Executive Director of the Judicial Commission, arrived at the meeting. The Council requested Jim's attendance to express their gratitude and presented him with a gift of recognition for his assistance to the Council prior to adoption of the 2007-09 biennial budget, 2007 Wisconsin Act 20, which restored the Judicial Council's independence from the Commission, and re-appropriated funding for a full-time Judicial Council Staff Attorney. Chair Stephens also stated that a gift of recognition would be personally presented to Laury Bussan, Judicial Commission administrative assistant, following the meeting. Jim Alexander then left the meeting.

Chair Stephens began discussion of the municipal court bill's substantive areas with the post-judgment provisions. Chair Stephens noted changes included that a motion to reopen would be required in cases of default judgments, and if denied, the defendant could then appeal the denial. The draft also makes an appeal bond discretionary, as opposed to mandatory under current law, and it would be paid to the court instead of the municipality. The draft provides that an appeal to circuit court must be based on the record unless a new trial is specifically requested. Chair Stephens expressed concern regarding the lack of a transcript payment provision for the indigent. Judge Wagner raised the fact that there would be an electronic recording. Chair Stephens questioned whether circuit court judges would want to listen to the recording. Judge Wagner added that the circuit court judge could order transcription of the tapes. A question was

raised regarding who would prepare the transcript, and serve as an authorized court reporter. Chair Stephens summarized some of the issues surrounding the record, including: 1) can the court order a party to prepare a transcript; 2) can the court order an indigent party to prepare a transcript; 3) can the court order the municipality to pay for the transcript; 4) can the court order a court reporter to prepare the transcript; and 4) would this process vary by county? Current law requires the municipal judge to direct the preparation of a transcript and the certification of same. The change basically shifts the responsibility and cost from the municipality to the parties. Consensus is that current law is preferable.

Judge Wagner next summarized the changes affecting judges. She noted that most of the proposed changes in this area were policy decisions about which the Council had previously decided that it would not make recommendations. She then discussed the amendment from county-wide jurisdiction to state-wide jurisdiction, indicating that the subcommittee questioned the wisdom of the change in light of the diverse legal background and education of municipal court judges. Judge Wagner explained that there had been an occasion when a judge passed away, and there was no one else in the county to fill the seat. Due to current county-wide jurisdiction, the vacancy could not be filled in a timely manner. Judge Wagner moved on to address the separation of the court from the police department. The subcommittee was sensitive to the limited space available to small towns and expressed concern that this may force some small communities with limited facilities to abolish their courts. The subcommittee was also sensitive to the limited staff in small towns and questioned the feasibility of requiring that each court have a designated clerk serving under the judge's authority. The subcommittee also recommends against requiring municipal judges to wear robes because it would be out of place in some jurisdictions. Chair Stephens followed up on concerns about space by relaying information presented by Judge Gramling at the Senate Judiciary hearing in May. He indicated that the intent was not to require a separate building for the courts, or even a separate room. It would simply be expected that while a room was used for court proceedings, no other use would simultaneously be occurring. There was also discussion regarding the value in the Chief Judge certifying the facilities. Ultimately, the consensus seemed to be that this was a policy issue not appropriate for Council recommendation, and best left to the municipalities to voice their concerns and seek clarification.

Professor Schultz then presented the comments of the pretrial procedures subcommittee. He began by stating that there were relatively few substantive changes to this area. He recommended the use of language consistent with other statutes, and made several drafting suggestions (see the written materials).

The subcommittee assigned to review dispositions was not prepared to discuss those changes, although they did note that many municipal judges are not attorneys and questioned the level of required training. There were also concerns raised regarding whether judges were bound by any code of ethics or rules of professional conduct. Attorney Southwick explained that the Judicial Commission does investigate complaint against municipal judges. This topic will be addressed further at the next meeting in September when the court administration subcommittee offers their comments.

The Council expressed an interest in hearing from a municipal court judge involved in the drafting of the proposed legislation, so Attorney Southwick will arrange to have a speaker at the next meeting. Attorney Southwick also presented some factual information regarding the number of cases heard by municipal judges, the amount of revenue generated by municipal courts and the number of complaints received by the Judicial Commission.

Justice Bradley did not participate in the discussion of the draft bill. Further discussion will continue at the September meeting.

VI. Discussion of Request to Review Chapter SCR 81 – Compensation of Court-Appointed Attorneys

Cathy La Fleur reported to the Council that her working group had not been able to convene. The supreme court asked the Council to review concerns raised by Attorney Charles Senn regarding the hourly rates paid to court-appointed attorneys. The rates have not been reviewed since 1993. The Council discussed the counties' current practices and ability to pay. The general consensus was that this is a very broad, complex issue. The Council is looking forward to receiving the recommendation of the work group.

VII. Committee Reports

A. Appellate Procedure

Chair Stephens reported that the committee will be meeting following the regular Council meeting. They plan to complete the final revisions to the presentence investigation report recommendations so that a draft can be circulated to the stakeholders over the summer. They will also be setting their 2008-2009 meeting dates.

Chair Stephens also spoke with Eric Peterson regarding the three legislative bills requested by the Council (2007 SB 418, 2007 SB 419, and 2007 SB 421) that did not pass last session. Eric confirmed that Senator Taylor intends to reintroduce that legislation in the upcoming session.

B. Criminal Procedure

Professor Schultz reported that Chapter 975 of the proposed revisions to the criminal procedure code was submitted to the Legislative Reference Bureau (LRB). The LRB returned a list of questions, and Professor Schultz will prepare responses. If he needs assistance, Chair Stephens, Kathy Pakes and Greg Weber have volunteered. Once he has submitted responses to the questions regarding Chapter 975, Professor Schultz will review the drafts of the remaining chapters previously prepared by the LRB and submit revisions and responses to their questions based on his notes and records from previous criminal procedure committee meetings. He has already completed his review of Chapter 967, and is nearly finished with Chapter 968. He intends to have all of the chapters back to the LRB this summer. Once the LRB completes the drafting process, the Council will need to determine the level of final review it will require.

C. Evidence and Civil Procedure

Bob McCracken reported that the committee completed a draft of proposed rules for electronic discovery and will seek comments on the draft over the summer. The committee will meet again on September 12 to review those comments and prepare a final version of the proposed rules to submit to the Council in the fall.

VIII. Other Business

There was no PPAC report.

Attorney Southwick provided a transition report. She met with many individuals, including the chairs of each committee to discuss the status of their current projects and identify pending projects. She also met with Robin Ryan, LRB, who is drafting the bills for the criminal procedure amendments. She met with the Council's Department of Administration (DOA) staff to discuss financial matters, including preparation of the budget.

Chair Stephens reminded the Council that its biennial budget request would be due prior to the next scheduled meeting and proposed a status quo budget. There were no objections.

IX. Adjournment

The Council adjourned by consensus at 12:15 p.m.