

MINUTES OF THE MEETING OF THE WISCONSIN JUDICIAL COUNCIL
MADISON, WISCONSIN
June 19, 2015

The Judicial Council met at 9:30 a.m. in the Assembly Parlor, State Capitol, Madison, Wisconsin.

MEMBERS PRESENT: Chair Thomas W. Bertz, Honorable Michael R. Fitzpatrick, William C. Gleisner, Jill M. Kastner, Devon M. Lee, J. Denis Moran, Dennis Myers, Representative Jim Ott, Honorable Gerald P. Ptacek, Professor David E. Schultz, Thomas L. Shriner, Honorable Robert P. Van De Hey, Honorable Jeffrey A. Wagner, Senator Van H. Wanggaard, Honorable Annette Kingsland Ziegler.

MEMBERS EXCUSED: Vice Chair Honorable Brian W. Blanchard, Tracy K. Kuczynski, Benjamin J. Pliskie, Greg M. Weber, Amy E. Wochos.

OTHERS PRESENT: April M. Southwick, Judicial Council Attorney; Prof. Ralph Cagle, Lisa Roys, Cale Battles and Lynne Davis, Wisconsin State Bar; Scott Kelly, Sen. Wanggaard's office; Adam Plotkin and Kathy Pakes, State Public Defender's office; Erika Strebel, Wisconsin Law Journal; Nancy Rottier and William Walker, Director of State Courts Office; Gwen Wortock; Dyan Wagner; Hon. Ed Leineweber; Hon. Ray Gieringer; Rebecca St. John; Assoc. Dean Bethany Pluymers and Prof. Carrie Sperling, University of Wisconsin Law School; Hon. Earl Schmidt; Ginger Mueller, Office of Rep. Jim Ott; Christine Barden; Chief Justice Patience Roggensack; Justice Jon Wilcox (retired); Justice David Prosser; Justice Patrick Crooks; Chief Justice Shirley Abrahamson; Justice Ann Walsh Bradley; Julie Tessmer and Amy Crowder, State Law Library; Matthew Robles; Prof. Meredith Ross; Hon. Tim Vocke.

I. Introduction of Guests, Volunteer Recognition and Discussion Regarding Council Projects

Chair Bertz began the volunteer recognition portion of the meeting at approximately 10:00 a.m. Guests introduced themselves. Attorney Southwick presented a plaque to out-going Council member Jill Kastner, and recognized several additional out-going members who were unable to attend the meeting. Attorney Southwick provided an update on the past year's accomplishments, the status of the Council's current projects. She extended her thanks to the Council's many volunteers whose work made it possible.

II. Call to Order, and Roll Call

Chair Bertz called the meeting to order at 10:40 a.m.

III. Approval of May 15, 2015 Minutes

MOTION: Council member Kastner moved, seconded by Council member Myers, to approve the May 15, 2015 minutes. Motion approved unanimously.

IV. Election of 2015-16 Chair and Vice Chair

Council members Wagner, Myers, and Gleisner previously volunteered to serve on the nominating committee. Council member Gleisner reported that the committee unanimously nominated Tom Bertz to serve as chair and Judge Brian Blanchard to serve as vice chair of the Council for the 2015-2016 Council year. There were no additional nominations from the floor.

ACTION: Members unanimously approved the nominating committee's recommendation for chair and vice chair, and commended both Chair Bertz and Vice Chair Blanchard on their past service.

V. Approval of 2015-2016 Meeting Dates

Prior to the meeting, Attorney Southwick circulated a proposed meeting schedule. The Council has historically met on the third Friday of each month from September through June. Attorney Southwick reported that it does not appear that any dates on the proposed 2015-2016 meeting schedule conflict with holidays or other major events. She noted that the proposed date for the June meeting is actually on the fourth Friday in June 2016 to allow some additional time to plan and prepare for the Council's annual volunteer recognition meeting. Members questioned whether the June date will conflict with the State Bar's annual conference. State Bar staff members later confirmed that the proposed June meeting date does not conflict with the State Bar's 2016 annual conference.

MOTION: Council member Gleisner moved, seconded by Council member Wagner, to accept the proposed 2015-2016 meeting schedule as presented. Motion approved unanimously.

The approved meeting schedule is as follows:

Friday, September 18, 2015
Friday, October 16, 2015
Friday, November 20, 2015
Friday, December 18, 2015
Friday, January 15, 2016
Friday, February 19, 2016
Friday, March 18, 2016
Friday, April 15, 2016
Friday, May 20, 2016
Friday, June 24, 2016

VI. Discussion and/or Action Regarding Bill Amending the Rules of Criminal Procedure (Pending Assembly Bill 90 and Senate Bill 82)

There were no updates from the legislative members.

VII. Discussion and/or Action Regarding Proposed Amendment Addressing Enforcement of State Forfeiture Offenses

At the previous meeting, members asked the Criminal Procedure Committee for a recommendation prior to the Council's consideration of a proposed statutory amendment addressing enforcement of state forfeiture offenses. Attorney Southwick reported that the Criminal Procedure Committee met on June 9, 2015. Mike Queensland, staff attorney with the Legislative Council, was present at the committee meeting. Attorney Queensland clarified that the Legislative Council study committee that drafted AB 128 did not consider the enforcement concerns that have been raised by Brookfield Assistant Chief Collins, and he felt that the issue is probably outside the scope of the study committee's assigned work. Therefore, the committee was generally opposed to recommending that enforcement of civil forfeiture offenses be addressed through an amendment to AB 128. The Criminal Procedure Committee recommended that the Judicial Council accept enforcement of civil forfeiture offenses as a project and refer it to the committee for further study and, if warranted, the committee will draft a stand-alone bill to clarify the issue of enforcement.

Council member Gleisner supported a comprehensive study of the constitutional issues that may be implicated. Council member Fitzpatrick expressed concern that enforcement of forfeiture offenses is a substantive issue and not a procedural matter. He suggested that it might be more appropriate for a separate Legislative Council study project. Members discussed the process to request a Legislative Council study. Council member Ott explained that if the Legislative Council accepts it as a project, it would be studied during the summer of 2016. Council member Shriner agreed that this is a substantive matter that should be left to the Legislature, and expressed his opinion that it is not appropriate to accept it as a Judicial Council project. Council member Lee opposed accepting it as a Judicial Council project because the issue has been considered by the Legislature in the past and the Council was not asked by the Legislature to take up the issue again. Therefore, she did not feel it would be a good use of the Council's limited resources.

MOTION: Council member Gleisner moved, seconded by Council member Myers, to deny the request to accept enforcement of civil forfeiture offenses as a Judicial Council project. Motion approved unanimously.

VIII. Discussion and/or Action Regarding Potential New Projects

Prior to the meeting, Attorney Southwick circulated a memo, dated June 11, 2015, containing two potential projects suggested by Jenny Andrews, Chief Staff Attorney for the Court of Appeals. The Appellate Procedure Committee previously discussed the proposals from Attorney Andrews and agreed that they should be presented to the full Council for consideration. The two projects are substitution or withdrawal of counsel in certain civil appellate cases, and whether circuit courts should continue to trial in a case where some issues have been bifurcated and a final judgment or order in part of the case is on appeal.

MOTION: Council member Shriner moved, seconded by Council member Lee, to accept the two issues as Judicial Council projects and refer them to the Appellate Procedure Committee for study and a recommendation. Motion approved unanimously.

IX. Committee Reports

A. Appellate Procedure

Committee chair Ptacek reported that the committee continues to work on reorganizing the procedural rules for prisoner challenges to agency decisions. The committee is expected to approve a revised draft at today's meeting. If the committee approves the final changes, Attorney Southwick will forward it to the Legislative Reference Bureau so that the draft bill can be revised over the summer. The committee will review the bill in the fall and forward it to the full Council for consideration.

The committee also continues to study possible amendments to Rule 809.15, the record on appeal. A draft amendment is nearly complete.

B. Criminal Procedure

With the civil forfeiture issue addressed, there was no further report.

C. Evidence and Civil Procedure

Committee chair Shriner reported that at its meeting later in the day, the committee will discuss a few minor amendments that the supreme court made to new Wis. Stat. § 887.24, drafted by the Judicial Council. The new rule adopts a slightly modified version of the Uniform Interstate Deposition and Discovery Act, conformed to Wisconsin law.

The committee will also take up a matter referred to it by the Judicial Council at the previous meeting regarding the proposed amendments to the rules of evidence. The committee will discuss a response to the questions received from the Chief Judges, and discuss its recommendation to the Council regarding how to proceed with adoption of the proposed amendments. The proposed changes could be adopted by the supreme court or the Legislature, or a combination of the two.

The committee also continues to work on possible amendments to Wisconsin's class action statute (Wis. Stat. § 803.08) to bring it more in line with the federal class action statute (Rule 23). The committee is studying federal Rule 23, as well as the various ways that other states have modified the federal model. Committee chair Shriner reported that the federal Rules Advisory Committee is currently considering additional amendments to Rule 23. Potential amendments at the federal level could delay the committee's work on a proposed revision to Wisconsin's rule.

X. Other Business

A. PPAC Liaison's Report

There was no PPAC report.

B. Council Attorney's Report

Attorney Southwick reported that the Wisconsin Law Journal featured as its cover story the crime victim privacy rule drafted by the Judicial Council and recently adopted by the supreme court. Attorney Southwick also wrote an article on the new rule for publication by the Wisconsin State Bar. She anticipates that it will be published in early July to coincide with the rule's effective date.

C. Legislative Report

Council member Ott reported that the Legislature is considering a bill that would criminalize first offense operating while intoxicated, but if no second offense is committed within a five-year period, the defendant could petition to have the first offense reduced to a civil forfeiture.

XI. Adjournment

The Council adjourned by consensus at approximately 11:20 a.m.