



WISCONSIN LEGISLATIVE COUNCIL

JUDICIAL DISCIPLINE AND RECUSAL

Room 328 Northwest
State Capitol

August 5, 2010
10:00 a.m. – 12:45p.m.

[The following is a summary of the August 5, 2010 meeting of the Special Committee on Judicial Discipline and Recusal. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chair Hebl called the committee to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Gary Hebl, Chair; Sen. Glenn Grothman, Vice-Chair; Rep. Frederick Kessler; and Public Members Troy Cross, Mac Davis, Diane Diel, and Andrea Kaminski.

COMMITTEE MEMBERS EXCUSED: Rep. Daniel LeMahieu; and Public Members Thomas Basting, Stephen Hurley, Lynn Laufenberg, and David Schultz.

COUNCIL STAFF PRESENT: Ronald Sklansky and Don Salm, Senior Staff Attorneys; and Jessica Karls-Ruplinger, Staff Attorney.

APPEARANCES: Sen. Fred Risser, Co-Chair, Joint Legislative Council; Terry C. Anderson, Director, Legislative Council; James Alexander, Executive Director, Wisconsin Judicial Commission; N. Patrick Crooks, Justice, Wisconsin Supreme Court; Mike McCabe, Wisconsin Democracy Campaign; and Patience Roggensack, Justice, Wisconsin Supreme Court.

Opening Remarks

Senator Fred Risser and Terry C. Anderson welcomed members of the Special Committee. Senator Risser explained how the committee was formed and the role of the committee. Mr. Anderson

introduced the Legislative Council staff members assigned to work with the committee and explained general rules and guidelines for study committees, as well as the process for reimbursement of expenses for public members.

Chairperson's Remarks

Chair Hebl welcomed the committee and explained that the committee will address the issue of judicial discipline at the first meeting and judicial recusal at the second meeting. He suggested that committee members keep an open mind regarding the current systems of judicial discipline and recusal and changes to those systems. He reminded committee members that meetings may be recorded by WisconsinEye.

Introduction of Committee Members

Chair Hebl introduced himself and asked committee members to introduce themselves.

Presentations by Invited Speakers

Patience Roggensack, Justice Wisconsin Supreme Court

Justice Roggensack explained that the Judicial Commission hears and reviews complaints of alleged judicial misconduct and prosecutes cases of judicial misconduct. She compared Wisconsin's system of judicial discipline to the federal system of judicial discipline by noting that the federal system has a more limited scope of review and types of punishment than the state system and that the federal system does not include the discipline of U.S. Supreme Court Justices.

In addition, Justice Roggensack indicated that Wisconsin's system is probably the best system for judicial discipline. She explained that the system for judicial discipline was effective in the cases against Justices Ziegler and Gableman and that the system is fair. Lastly, she stated that it is appropriate that the Special Committee was created to study judicial discipline.

Justice Roggensack responded to questions from committee members. In her responses, she opined that the decision in the case against Justice Gableman was final because the Judicial Commission did not satisfy its burden of proof. She noted that the Wisconsin Supreme Court does not act as an appellate court for judicial disciplinary proceedings but that it reviews the record independently. She also suggested that the statutes could be amended to clarify that if the Judicial Commission does not meet its burden of proof, a case will be dismissed. Lastly, Justice Roggensack mentioned that the disciplinary statutes are clear that either a jury hearing or panel hearing is held, but not both.

N. Patrick Crooks, Justice Wisconsin Supreme Court

Justice Crooks explained that the area of judicial discipline is an area of shared powers where the Legislature sets the procedure for discipline and the Wisconsin Supreme Court decides whether a justice or judge committed misconduct and, if so, the appropriate discipline. He suggested that the decision in the case against Justice Gableman did not provide a final resolution because the Judicial Commission did not dismiss the charges against Justice Gableman or request a jury hearing.

In addition, Justice Crooks opined that the Judicial Commission may request a jury hearing in the case against Justice Gableman, but that the Judicial Commission decided not to, citing concern about

whether it has authority to do so. Justice Crooks indicated that the Legislature could amend state statutes to allow a jury hearing if a panel hearing provides no resolution, and vice versa.

Justice Crooks responded to questions from committee members. In doing so, he suggested that the case against Justice Gableman may be able to proceed to a jury hearing, if the Legislature amends the state statute to provide such authority for the Judicial Commission. He agreed that the Legislature could amend state statutes to provide that a tie decision in the Supreme Court ends the disciplinary proceedings, and he also noted that the role of Supreme Court should not be removed from disciplinary proceedings. Lastly, he expressed concern about allowing court of appeals judges to sit on the Supreme Court to avoid a tie vote in disciplinary proceedings.

James Alexander, Executive Director, Wisconsin Judicial Commission

Mr. Alexander explained that the Judicial Commission filed a statement of discontinuance in the case against Justice Gableman. He noted that the decision in the case against Justice Gableman was an exception to the standard process for judicial discipline. He also explained that if the Judicial Commission wanted to proceed with a jury hearing, it would have had the case dismissed and started over with the jury hearing, but that the Legislature could amend state statutes to provide for both a panel hearing and a jury hearing.

In addition, Mr. Alexander mentioned the concerns raised about Supreme Court Justices disciplining colleagues and suggested that if a court of appeals judge were disciplined, a similar issue may be raised with the panel, which is composed of court of appeals judges.

Mike McCabe, Wisconsin Democracy Campaign

Mr. McCabe described his experience in filing a complaint against Justice Ziegler with the Judicial Commission, noting that disciplinary proceedings have little transparency and no opportunity for public input to the Judicial Commission or panel.

In addition, Mr. McCabe explained that the system of requiring Supreme Court Justices to discipline other Supreme Court Justices creates a public perception of a division on the Supreme Court. He suggested that the Special Committee consider a significant departure from the current system of judicial discipline, including an alternative to requiring that justices and judges discipline colleagues.

Mr. McCabe responded to questions from committee members. In doing so, he mentioned that the Supreme Court has been harmed the most by its role in disciplining other Supreme Court Justices and that a different system could be considered for Supreme Court Justices.

Discussion of Committee Assignment

Chair Hebl mentioned the three memos prepared for the committee:

- Memo No. 1, *Legislative and Judicial Authority* (July 28, 2010).
- Memo No. 2, *Discipline and Removal of Justices and Judges under Wisconsin Law* (July 28, 2010).

- Memo No. 3, *Overview of Judicial Discipline Procedures and Available Sanctions in the 50 States and the Surrounding States; and An Overview of Federal Law Regarding Judicial Discipline of Federal Judges* (July 28, 2010).

Committee members asked questions regarding the differences between procedure and substance concerning judicial discipline; and regarding judicial discipline systems in other states.

Chair Hebl noted that committee members may submit names of recommended speakers for future meetings.

Other Business

The committee will meet again on *Thursday, September 16, 2010, at 10:00 a.m., in Room 328 Northwest, State Capitol, Madison.*

Adjournment

The meeting was adjourned at 12:45 p.m.

JKR:ty