

**Federal Practice Committee Meeting
Minutes
Cornhusker Hotel - Lincoln, NE
Thursday, October 7, 1999
Gary D. McFarland**

Present for this meeting were: Chief Judge William G. Cambridge, Bankruptcy Judge John C. Minahan, District Judge Joseph F. Bataillon, Magistrate Judge David L. Piester, Magistrate Judge Thomas D. Thalken Mary Gryva, Carol McMahon-Boies, Gary McFarland, Alan Stoler, Stu Dornan, Bob Kirby, Tom Monaghan, Michael Schleich, Bob Cannon, Marsha Fangmeyer, Robin Hadfield, Roger Kirst and John Guthery. The meeting began at 12:00 Noon.

1. Remarks from Chief Judge Cambridge. Chief Judge Cambridge thanked John Guthery for his services as the Federal Practice Committee Chair. Additionally, the Chief Judge thanked those Committee members whose terms are coming to a conclusion, and the current members serving on the Committee. Chief Judge Cambridge announced that he would be stepping down as Chief Judge and Judge Kopf would become Chief Judge effective November 1, 1999.
2. Approval of Minutes of July 9, 1999 Meeting. The minutes of the meeting held July 9, 1999, in Kansas City during the Judicial Conference were approved with no comments.
3. Report from the Chair - John Guthery. John thanked all of the Committee members for their support during his term as Chair.
4. Report from Committees:
 - A. Lawyer Appointment Committee. Robin Hadfield, Pro Se Staff Attorney, discussed a proposed form which will be sent out with the attorney renewal forms at the end of the year. This form solicits information regarding court appointments. Robin explained that currently the court is using a list for appointments, and this list is out of date. Since the Prisoner Litigation Reform Act (PLRA) the cases are now undergoing a considerable amount of review. This review will then result in the issues being narrowed down prior to appointment of counsel. Robin asked that any comments on the proposed form be referred to her. Robin feels that the court appointments will be less in number. A cut-off date for comments, November 1, 1999, was established.

Chief Judge Cambridge informed the Committee that currently we have a \$500.00 limit per case for the expenses of court appointed counsel. The Chief Judge asked if Committee members felt that this was an appropriate amount and also informed the Committee that the Fund is above \$200,000.00, and that we are processing less cases due to the PLRA. The Chief Judge pointed out that these funds are non-appropriated funds, and consequently, are for the benefit of the bench and Bar. Chief Judge Cambridge asked that the Committee consider three questions.

1. Should the \$500.00 amount for expenses be increased? The \$500.00 of expenses under the Plan can be reached without prior approval, anything over \$500.00 would need prior authorization.
2. Should the annual renewal fee be eliminated at this time due to the size of the Fund?
3. Chief Judge Cambridge would like input as to how the Federal Practice Fund should be expended.

Comments regarding these questions should also be submitted to Robin Hadfield by November 1, 1999.

Gary McFarland informed the Committee that the annual renewal fee is a labor-intensive effort for the Clerk's Office. Gary suggested that the collection of the renewal fee be eliminated until such time as the Fund needs to be replenished. Following this discussion, there were other suggestions for use of the funds. Suggestions were as follows:

1. Costs related to the new courthouse.
2. Additional training for Bar members.
3. Stipend to lawyers who take cases.

After this discussion, Roger Kirst suggested that since the collection of the renewal fee was an impact for the Clerk's Office, consideration should be given to making this a bi-annual collection. Bankruptcy Judge Minahan interjected that he feels that a stipend for court-appointed counsel should be provided, which should not exceed the interest income per year of the fund. Chief Judge Cambridge replied that he was not sure that it was ethical for the Court to bankroll litigation. Additionally, while this stipend would be extended to counsel for plaintiffs, that did not consider indigent defendants. Tom Monaghan stated that the appointments do not happen until after the case is filed, consequently, the Court would not be encouraging litigation. Discussion was then held regarding the number of cases in which counsel have been appointed. Magistrate Judge Piester pointed out that there has been a significant decline in the number of cases due to PLRA. Following this discussion, John Guthery suggested that consideration be given to reducing the fee that is charged for various Bar training programs. The Fund could then be used to supplement the cost of training. Bankruptcy Judge Minahan suggested that the Federal Practice Funds could be used to purchase a Xerox machine for people to use in the public space at a reduced charge. Magistrate Judge Piester relayed that some cases require a lot of expense, such as class actions, therefore, the Fund should be kept at a high level. Following all of this discussion, John Guthery suggested that work on these questions be

concluded prior to the next meeting. However, a decision needs to be made as to collecting fees for the Fund. After a lengthy discussion, it was decided to continue to collect the \$5.00 renewal fee at this time. Judge Bataillon suggested the appointment of a sub-committee to review these questions regarding the Federal Practice Fund, and then to make suggestions to the full Committee at the next Bar meeting. A resolution was made to continue the collection of a \$5.00 renewal fee, and to have a committee look at this issue for next year. John Guthery asked for volunteers to serve on the Committee, which will examine these issues; the following volunteered: Stu Dorman, Bob Kirby, Marsha Fangmeyer, and Roger Kirst.

- B. Technology Committee Report - Bob Cannon, Chair. The Technology Sub-Committee has met. This Committee consists of Bob Cannon, Tom Monaghan, Gary McFarland, and John Guthery. The Sub-Committee had met previously to discuss various technology issues related to the Clerk's Office operation. The issues discussed were the Case Management/Electronic Case Filing (CM/ECF), which will be an Internet access to Court files and the filing of pleadings. The next discussion was held on the technology in the courtrooms, the DOAR equipment, and the new courthouse. A suggestion was made by the Sub-Committee that at the next training seminar put on by the Bar in March, that a video be completed of a mock trial using the DOAR equipment. This suggestion was made to peak interest in use of the equipment. A discussion was held regarding the use of e-mail, first for Committee members, next for Sub-Committee members, for the Federal Practice Committee, for use in contacting members of the Clerk's Office, and lastly, for contact with the judges. The Sub-Committee recognizes that the contact with judges may raise some ethical issues.
- C. Rules Committee - Magistrate Judge Thalken. Magistrate Judge Thalken distributed the proposed Rules for civil cases. He asked for comments regarding same to be sent to him, either by e-mail, fax, or regular mail by November 1, 1999. He informed the Committee that the criminal and civil rules will be separated. Magistrate Judge Thalken gave a brief description of the proposed Rules and the reasons for the changes. Judge Thalken also asked that if there were any Rules that needed to be changed, but were not included in the proposed list, that suggestions be made to him, once again, by November 1, 1999.
- D. North Platte Committee - Marsha Fangmeyer, Chair. Marsha had no report.
- E. Seminars Committee - David Stickman, Professor Roger Kirst, Co-Chairs - Roger Kirst. This Committee continues to work on the March meeting. At the meeting held on July 9, a suggestion was made to include in the March seminar, training on the changes in State practice. However, those changes have not been made, consequently, this matter would not be ripe for training in March. The training will be in Omaha, possibly at the Creighton Law School. Discussion was held regarding the hiring of outside speakers for this training. Chief Judge Cambridge

interjected that this would be a great use for Federal Practice Funds, i.e., to reimburse speaker costs. The sub-committee will examine this issue. There was a suggestion made that if the new Omaha Courthouse was completed, that the seminar could possibly be held at the new courthouse. Gary McFarland interjected that the date of completion is not certain at this time.

During discussion of training needs, Bob Kirby interjected that since the Court is examining ways of improving the amount of time from filing to disposition, both in civil and criminal cases, that this issue might be a subject for training. After the suggestion, discussion was held regarding the question of early intervention by the Court prior to scheduling orders for civil cases. It was suggested that this would move cases along. This intervention could either be by Magistrate or Article III Judges. Bankruptcy Judge Minahan suggested that consideration be given to a shift in the paradigm as to case processing. He reported that processing cases is considerably different in Bankruptcy Court than District Court, however, the Bankruptcy Court would process approximately 6,000 cases this year. To process this large of a volume of cases, Bankruptcy has established a process whereby a preliminary pretrial statement is submitted. This pretrial statement informs the Court of the positions of the parties, which causes the attorneys to get together early on in the case. Bob suggested that this would definitely be a good training topic for the next seminar, and to get suggestions prior to the seminar. Chief Judge Cambridge then stated that he was thrilled that there was this type of discussion going on in the Federal Practice Committee, as it is so in line with the Strategic Planning, which the Court is currently doing. The idea of moving cases along quicker and getting ideas from the Federal Practice Committee fits very nicely with the goals which have been established at the Strategic Planning Session held in July. Consequently, Chief Judge Cambridge actively seeks input from the Committee as to any proposed changes for processing cases. As to moving criminal cases, Stu Dornan suggested that the first appearance before the magistrate judge may not be a proper time for setting the progression of the case. Stu feels that this is too early for the issuance of a progression order, due to the fact that defense counsel is not fully familiar with the case at this early date. Stu suggested that there be a meeting with the judge, prosecutor, and defense counsel early on in the case to examine the issues that will need to be dealt with to process the case in order to move the case along on a quicker schedule. Tom Monaghan suggested that early judicial intervention in criminal cases would shorten up the time from filing to disposition.

F. ADR/Mediation Committee - Mark Weber, Chair - Bob Kirby - report.

General discussion - see notes regarding training issues on page 7.

5. At this time, John Guthery had to leave this meeting to attend another meeting. John gave a very brief report.

6. U.S. District Court Opinions on the Internet - John Guthery. John Guthery announced that the District Court Clerk's Office and the Bar Association computer people will be coordinating the placing of District Court opinions on the Internet.
7. Report Regarding U.S. District Court Clerk's Office Projects - Gary McFarland. Gary McFarland gave a report on various Clerk's Office projects. This report included discussion on FAST4, a new accounting system for the Clerk's Office, a detailed discussion of CM/ECF, an announcement of training for the DOAR equipment at the end of October, and discussion regarding the high-tech courtrooms which will be placed in the new Omaha Courthouse and Courtroom No. 1 in Lincoln. He also reported that Courtroom No. 1 in Lincoln will be refinished and infrastructure work will be accomplished for the installation of the high-tech equipment.
8. Report Regarding Dedication Ceremony for New Courthouse - Chief Judge Cambridge. Chief Judge Cambridge announced that Gary McFarland had been working with John Guthery and the Omaha Bar president in planning the celebration for the building dedication. However, at this time, with the tenuous schedule for completion of the courthouse, it was decided to wait on further planning until we have a firm date for the move-in. Gary McFarland suggested that the building dedication may be as far away as June of 2000. Chief Judge Cambridge then explained that he had contacted Alex Bigler, who will be supplying the 15 foot solid bronze Seal for the floor of the atrium, as to the possibility of having medallions made for passing out as mementos of the building dedication. He reported that do this, a lost wax method would be \$50.00 per medallion, however, if the sand process is used, the cost would be reduced to \$20.00. Chief Judge Cambridge will send a medallion to Committee members for approval.
9. Appointment of Committee Members - Chief Judge Cambridge. Since Chief Judge Cambridge will be stepping down as Chief Judge on November 1, 1999, District Judge Kopf will be making the new appointments as the Chief Judge.
10. Old Business. Magistrate Judge Thalken passed out copies which were supplied by the Administrative Office regarding the preliminary draft of changes for the Bankruptcy and Civil Rules.
11. New Business. Magistrate Judge Piester reported that training had been held for new mediators. Fifteen new mediators have been trained. These mediators will work with an experienced mediator, and following this work, will then apply for approval to become mediators.

The meeting adjourned at 1:40 P.M.