

**MINUTES OF THE
FEDERAL PRACTICE COMMITTEE MEETING**

Friday, March 30, 2001

**Held in the Jury Assembly Room, Fifth Floor
Robert V. Denney Federal Building & U.S. Courthouse
Lincoln, Nebraska**

The meeting was called to order at 1:15 p.m. by Chief District Judge Richard Kopf. Federal Practice Committee members attending the meeting were: Clerk of Court Gary McFarland, Paul Boeshart for U.S. Attorney Tom Monaghan, Federal Public Defender David Stickman, Carole McMahon-Boies (2000 Chairperson), Laurie Smith Camp (2001 Chairperson), William Wright (2002 Chairperson), Roger Kirst, Stuart Dornan, Robert Kirby, Mary C. Gryva, Michael Schleich, Alan Stoler, and Howard P. Olsen. Others in attendance were Senior District Judge Warren Urbom, and Magistrate Judges David Piester, Kathleen Jaudzemis and Thomas Thalken. Charles Lowe, Ralph Whitten, Robert Cannon, Kathleen Rockey, and Thomas Dahlk were absent from the meeting.

1. Chief Judge Kopf Provided an Explanation of the Case Management Reports Utilized by the Judges.

Chief Judge Kopf provided an explanation of the case management reports that the Nebraska District Court judges currently rely on. Those reports track: (a) all civil and criminal pending motions, (b) civil dispositive and nondispositive motions pending more than 60 days, (c) reports and recommendations by magistrate judges pending more than 30 days, (d) dispositive motions in criminal cases pending more than 30 days, (e) pending social security and bankruptcy appeals, etc. Chief Judge Kopf stated that the court now has a greater case management capacity than we did before and that these reports help measure the timely disposition of cases.

2. Luta Pleiss from the Clerk's Office Provided a Case Management/Electronic Case Files (CM/ECF) Demonstration.

Luta Pleiss of the Clerk's Systems staff provided a case management/electronic case files (CM/ECF) demonstration. She demonstrated the steps an attorney will take to file a motion with CM/ECF.

Ms. Pleiss listed the following equipment requirements for using CM/ECF:

- * IBM-compatible or MAC PC
- * 486/66 - 16MB RAM minimum
- * Windows 3.1 or higher
- * Internet or DNC access
- * Adobe Acrobat PDF Reader software (free download)
- * Adobe Acrobat PDF Writer 3.0 and/or Acrobat Exchange (\$129 with Bar ID)
- * Netscape 3.0 or higher (free download). Currently, the CM/ECF software works with Netscape, but does not work well with Internet Explorer.
- * a scanner (optional)

CM/ECF is optional, but the court will strongly encourage its use.

To begin, only civil cases will be filed on the CM/ECF system. Civil cover sheets can be filled out online. CM/ECF will accept a PDF document with a scanned attachment. Currently, filing fees are not being accepted on line, but they are working on the credit card payment option.

There is resistance to placing criminal cases on this electronic system, because of the need to protect defendants who are cooperating with the government. However, Judge Kopf believes that this will get resolved, and criminal cases will go online. Documents placed under seal will not be placed on the CM/ECF system. There has been no decision yet about whether to enter pro se filings, and 2254 and 2255 motions, into the CM/ECF system.

Some benefits of the CM/ECF system are: improved access to case files, it is available 24 hours/7 days a week, case information is always current, Internet access from any location, no waiting for file room retrieval, no lost folders or documents, no couriers or post office mailings, and no more parking meters.

Ms. Pleiss explained that for groups of 10 or more, the Clerk's office will send a CM/ECF trainer to their law offices, at no charge. Training sessions will be held at the Omaha, Lincoln and North Platte courthouses, and elsewhere if requested. These training sessions will begin in the fall of 2001. And, a toll-free telephone

assistance line, as well as an E-mail address, will be available to help troubleshoot user problems.

Ms. Pleiss stated that the U.S. Bankruptcy Court for the District of Nebraska will receive their CM/ECF software in June 2001. The U.S. District Court is expected to receive their CM/ECF software in September 2001, and the software should be operational by November 2001, and in full force by January 2002.

Congress has required courts to charge users for case information. In the past, these charges have generated \$14 million annually. Congress has required the courts to charge for CM/ECF.

The National Security Council has approved the CM/ECF system. The court and public servers are separated by a firewall. Attorney passwords will be provided by the court upon registration.

3. Recognition of Carole McMahon-Boies for Her Service as Chairperson.

Chief Judge Kopf expressed his appreciation to Carole for her work, particularly in planning the Eighth Circuit Judicial Conference scheduled for July 11-13, 2001. Carole will also be speaking at the Judicial Conference on civility.

Carole proposed changes in civil subpoena procedures for documents. In a recent case, Carole represented a plaintiff who sued her employer (a title company). The defendant sent their intent to issue subpoenas to Carole (plaintiff's counsel) on the same day they issued subpoenas to former employers of the plaintiff. Carole stated that she had no time to object to the subpoenas before they were issued. As a result, the plaintiff was "marked" as one who sues her employer. The case ultimately settled and did not go to trial.

Judge Thalken proposed that when completing the Rule 26 report, attorneys should deal with subpoenas in this report in order to protect their clients. If the plaintiff does not consent to the release of certain records, then the problem should be brought to the magistrate judge to resolve.

4. Introduction of Laurie Smith Camp as the Chairperson for 2001.

Laurie Smith Camp will serve as the 2001 Chairperson of the Federal Practice Committee. She has served as an ex-officio representative of the Nebraska Attorney General's Office since 1991. Charlie Lowe will now serve as the ex-officio member.

5. Introduction of Bill Wright as the Chairperson for 2002.

Bill Wright will follow Laurie Smith Camp as the 2002 Chairperson of the Federal Practice Committee. Bill stated he is committed to disseminating information to attorneys who practice in federal court.

6. Report by Gary McFarland on Status of Federal Practice Fund.

Clerk of Court Gary McFarland reported that there is \$230,113.39 in the Federal Practice Fund.

Gary explained that he receives approval from Chief Judge Kopf before making any disbursements from the fund. Checks require two signatures; those of the Clerk of Court and Chief Deputy Clerk. The Federal Practice Fund report is kept by the Court's budget analyst, Gary verifies the report, and then it is submitted to Chief Judge Kopf. A biennial audit of the Federal Practice Fund will take place this year.

7. Report by Judge Kopf on Possible Additional Expenditures from the Fund.

The members agreed that the additional expenditures from the Fund described below should be made.

A. Mediation Training.

Magistrate Judge Piester explained that every year a skills workshop for federal mediators is held. Expenses of this annual workshop range from \$3,000-\$4,000. Lunch is provided and some participants receive mileage reimbursement.

An initial three-day training workshop conducted by a professional trainer from New York is also held for new federal mediators.

Magistrate Judge Piester requested \$5,000 annually for mediator training. Chief Judge Kopf stated that Congress requires federal courts to have at least one EDR alternative.

B. Attendance Expenses of FPC Members at FPC Meetings.

Chief Judge Kopf proposed to reimburse Nebraska FPC members for their travel expenses to Committee meetings, at the government per diem and mileage rate. A member indicated that he is uncomfortable with being reimbursed for his travel expenses. Judge Kopf replied that he believes there are some people who would like to serve on the Federal Practice Committee, but the expense of same discourages them from doing so. Judge Kopf indicated that it would be up to individual Committee members on whether or not they seek reimbursement.

Senior District Judge Warren Urbom indicated that the time and effort given by attorneys to Bar and FPC matters is done out of a desire to help. However, he believes that any FPC work is really done at the request of the court and thus the court has an obligation to help and reimburse FPC members.

C. Attendance Expenses of FPC Members and Historical Society Directors at Eighth Circuit Judicial Conference.

Chief Judge Kopf explained that attorneys' attendance at the Eighth Circuit Judicial Conferences has decreased, and their attendance ought to be encouraged. Judge Kopf would like to see all FPC members in attendance at Judicial Conferences, which are now held every two years.

Federal Public Defender David Stickman stated that the Judicial Conference seminars are outstanding and are geared more towards civil practice. He stated the Judicial Conferences are also an opportunity to meet with federal judges in a more relaxed setting.

Chief Judge Kopf encouraged FPC members to attend the Eighth Circuit Judicial Conference this year, and recommended that members be reimbursed for their travel expenses. He believes reimbursement might help get them there.

Senior District Judge Urbom expressed his reservation about paying for all the travel expenses.

Magistrate Judge David Piester expressed his support for the proposed reimbursement for the reason that attorneys “stop the meter” from their practice for three days while attending the Judicial Conference. Furthermore, since the Federal Practice Committee is on the Conference agenda, attorneys are expected to attend.

Magistrate Judge Thomas Thalken recommended that the reimbursement be capped at a certain amount.

Chairperson Carole McMahon-Boies believes that attendance at this year’s Judicial Conference will be beneficial to FPC members. These members can reevaluate whether they should attend the next Judicial Conference.

Chief Judge Kopf recommended that FPC members expenses be reimbursed for their travel expenses at the lesser of their actual expenses or \$900.00. Magistrate Judge Jaudzemis seconded the motion. Senior District Judge Urbom was comfortable with this recommendation.

D. Attendance Expenses of Lawyer Members of Eighth Circuit Pattern Jury Committee at Meetings of the Committee.

Senior District Judge Warren Urbom has served on the Eighth Circuit Pattern Jury Committee since its inception in 1983. Senior District Judge Scott Wright of Kansas City, Missouri, has served as Chair of the Committee since 1983. The Committee meets for two days in advance of Judicial Conferences. There is also a subcommittee consisting of attorneys mostly from Missouri. The Committee’s model jury instructions are available on the District Court’s web page. These instructions are viewed as the best.

At a recent meeting of the Eighth Circuit Chief District Judges, concern was raised about the fact that attorneys who serve on the Eighth Circuit Pattern Jury Committee are not reimbursed for their travel expenses, and serve gratis.

Each chief judge agreed to go back to their district and come up with some money to help reimburse the attorneys who serve on the Eighth Circuit Pattern Jury Committee for their travel expenses.

Chief Judge Kopf proposes paying \$1,000 from the Federal Practice Fund. Judge Kopf will write Chief Circuit Judge Roger Wollman and Circuit Executive Millie Adams indicating that the District of Nebraska has \$1,000 available for this purpose and request instructions on which fund to disburse the money to.

8. Report by Judge Kopf and Carole McMahon-Boies about Eighth Circuit Judicial Conference.

For lawyers, the Conference, which is in St. Louis at the Adams Mark Hotel, runs from Wednesday, July 11 through Friday, July, 13, 2001. The FPC Breakfast is at 7:00 a.m. on Friday, July 13. FPC members are encouraged to attend the entire conference. Judge Kopf will mail lawyer registration packets shortly to FPC members.

9. Report by Judges Kopf and Piester on Strategic Plan Efforts to Reduce Time to Disposition in Civil Cases.

Magistrate Judge Piester explained that since the FPC meeting at Mahoney State Park, the judges have adopted a checklist of proposed actions for expediting civil cases.

Attorneys will begin to see changes, most of which are experimental. An example is the fast track progression order for civil cases; the case will go to trial within six months of filing, and no summary judgments will be allowed.

The FPC had requested early judicial intervention. As a result, a new Form 35 report has been drafted, and a preliminary planning conference is held about three months after the parties meet and confer.

The judges are serious about reducing the time to disposition in civil cases. In order to speed up criminal cases, magistrate judges are setting hearing dates for motions to suppress, etc. at the time of arraignment.

10. Fall FPC Meeting During the NSBA Annual Meeting

The FPC members agreed to meet during the NSBA Annual Meeting. The FPC meeting is scheduled for Wednesday, October 17, 2001, from 1:30-3:30 p.m. in the Jury Assembly Room on the Fifth Floor of the Robert V. Denney Federal Building and U.S. Courthouse in Lincoln. Judge Kopf will check into rescheduling the meeting to noon for a brown bag luncheon.

11. “For the Good of the Order”

Magistrate Judge Thalken inquired whether the FPC will be providing a free seminar for attorneys this year. He believes we need to invigorate the FPC in its outreach to the Bar.

Chief Judge Kopf explained that these seminars involve an enormous amount of work and that there had previously been discussions about hosting these seminars every two years rather than annually. Judge Kopf also expressed his appreciation to Roger Kirst for the excellent educational seminar he organized last year.

Laurie Smith Camp, Roger Kirst, David Stickman and Chief Judge Kopf will visit regarding the possibility of a FPC educational seminar in 2001. Perhaps the CM/ECF training this fall could serve as the 2001 FPC educational seminar.

FPD David Stickman stated that the Criminal Justice Act Committee will be hosting a seminar on April 17, 2001, in Omaha. The emphasis of the seminar will be on criminal defense.

A resolution honoring Senior U.S. District Judge William G. Cambridge will be read at the Eighth Circuit Judicial Conference in July.

The meeting adjourned at 3:20 p.m.