

**Minutes of the
Federal Practice Committee Meeting
Friday, April 15, 2005
Eighth Circuit Conference Room, 4th Floor
Roman L. Hruska Courthouse**

1. CALL TO ORDER

The Federal Practice Committee Meeting was called to order by Chairperson Charles E. Lowe at 11:00 a.m., Friday, April 15, 2005. Mr. Lowe welcomed the committee members and briefly described his new role as the chairperson of the committee.

2. INTRODUCTION OF ATTENDEES

District Judge Laurie Smith Camp also welcomed everyone and asked that those present introduce themselves. Federal Practice Committee members in attendance were Patrick J. Borchers, Thomas H. Dahlk, Mary C. Gryva, Wendy Engman Hahn, Denise M. Lucks, Charles E. Lowe, Robert J. Kirby, Roger Kirst, Michael L. Schleich, Lisa D. Stava, David R. Stickman, and Jeanette Stull. Also in attendance were District Judge Laurie Smith Camp, Magistrate Judge Thomas Thalken, Magistrate Judge F.A. Gossett, III, Deputy Clerk of Court Therese Bollerup, Bankruptcy Court Clerk Dianne Zech, District Court Accountant and Budget Analyst Terry Brownfield, First Assistant United States Attorney Sally Johnson, and Eighth Circuit Branch Librarian Jeri Kay Hopkins.

3. APPROVAL OF PREVIOUS COMMITTEE MINUTES

Chairperson Lowe inquired whether there were any changes or corrections to the minutes of the last meeting held on October 21, 2004. Robert Kirby moved and Mary Gryva seconded that the minutes be approved as presented. The minutes of the October 21, 2004, Federal Practice Committee Meeting were unanimously approved.

4. REPORT FROM THE EIGHTH CIRCUIT LIBRARIAN

Jeri Kay Hopkins, Branch Librarian for the U.S. Courts Library of the Eighth Circuit, provided the committee members with an informational library brochure and gave a brief presentation about what services she can provide for attorneys. Charlie Lowe inquired about whether there was a list of what books and publications are maintained at the library and stated that such a list would be helpful to the practicing bar. Jeri advised she was not aware of such a list, but that she would check and respond to the Committee at a later date. .

5. REPORT FROM THE CLERK OF COURT

A. Local Rules; Annual Revision Procedures

Denise Lucks, Clerk of Court, gave a report about the most recent updates to CM/ECF. She described the new version of ECF that is to be installed on April 16, which should allow the public free access to any written opinions by judges, containing a reasoned analysis. This access is necessary to comply with the E-Government Act of 2002. Another feature of the new version is that headers, containing the case name, case number and page number, will be placed on the top of each page of all PDF documents filed electronically. Denise also mentioned the possibility of attorneys being able to open their own civil cases and appeals in the future. This is being tested in a couple other courts and she is in contact with those courts. She anticipates our court may try this with a limited number of lawyers and she plans to discuss this in the fall at the Best Practices Forum.

B. Redaction Issues

Therese Bollerup, Deputy Clerk of the Court, explained the importance of protecting privacy and the difficulties involving redaction of documents to ensure compliance with the E-Government Act. Court transcribers are being asked by attorneys to redact information other than the five categories specified in the Act. Dave Stickman inquired as to who is responsible to make sure the documents are properly redacted. Therese advised that it is not the obligation of the Court. She stated that attorneys will need to file motions in this regard and that there will be a special events motion to accomplish this. Therese emphasized the importance of raising the awareness that electronically-filed documents are now being placed on the web.

C. Docket

Denise provided the committee members with a one-page State of the Docket Report for the Month of March 2005 reflecting the current number of civil and criminal cases, including a breakdown for each individual judge. It was noted that the number of criminal cases assigned to Judge Kopf was higher than the number assigned to other district judges, primarily because Judge Kopf received a number of cases from Judge Shanahan's docket shortly after Judge Shanahan took senior status. It is anticipated that the number of cases assigned to Judge Kopf will be comparable to that of the other judges by the summer. Denise reported that Chief Judge Bataillon has requested that a visiting judge come to Omaha every other month to try civil cases. Denise also reported that Judge William Riley will be trying civil cases again this summer.

6. REPORT FROM THE JUDGES

A. Local Rules; Annual Revision Procedures

Judge Smith Camp reported on the new Local Rules that took effect last August. She acknowledged in particular the hard work of Therese Bolleup and Cheryl Zwart in the rewriting of the Local Rules. One of the goals of Docket and Local Rules Committee was to reduce the number of General Orders that supersede Local Rules, and Court anticipates that the Local Rules will be revised on an annual basis. The Docket and Local Rules Committee appreciates any feedback from the bar with regards to the Local Rules, and currently has a list of several items that need to be addressed. Therese Bollerup requested that if an attorney spots a problem to please e-mail her. If the problem is a CM/ECF issue, the Administrative Procedures can be amended rather than the Local Rules. Charlie solicited comments and concerns from the committee members regarding the new Local Rules. He noted that his office has difficulties in situations in which the opposing party is pro se. His co-workers sometimes find it hard to follow the Local Rules, when the other side does not.

B. Sentencing Guidelines, Recent Developments

Judge Smith Camp reported that with the recent decisions in *Blakely*, *Booker*, and *Fan Fan*, the Sentencing Guidelines are not mandatory, but play an important advisory role. She stated that it is anticipated that Congress will monitor sentencing practices to see how much weight is given to the guidelines. The judges in the Nebraska District are communicating among themselves in an effort to minimize disparate sentencing practices. Mary Gryva mentioned two recent cases in which trial court sentencings were reversed. Dave Stickman commented that this was an exciting time for his office, and that he perceived several disparities in sentencing practices among the district court judges. Mary Gryva also expressed concern about disparate practices in sentencing. Judge Smith Camp encouraged written feed-back from lawyers regarding the perceived inconsistencies in sentencing practices within the district court. Mr. Stickman, Ms. Gryva and Ms. Johnson expressed a willingness to provide such feedback through memoranda to the District Judges.

C. Efforts to Obtain Fourth Judge, Use of Visiting Judges

Judge Smith Camp reported that there is currently a bill pending before Congress to give Nebraska a fourth permanent judgeship. She advised that the progress of such bills appears to be delayed by an interest among some in Congress to divide the 9th Circuit into more than one circuit court. In the meantime, we will continue to use of visiting judges and take advantage of Judge Riley's gracious offers to try civil cases.

D. Utilization of Magistrate Judges

Magistrate Judge Gossett reported on the utilization of magistrate judges and provided a handout containing a table listing the three Nebraska magistrate judges and the number of civil cases currently assigned to them. The table reflected how many cases were consents direct from the wheel, consents from Article III Judges, cases awaiting opt in/opt out and total number of consents pending. Judge Gossett reminded the committee members that advantages of consenting to a magistrate judge are (1) that the parties are provided a date certain for trial, and (2) the parties have a judge certain, which they may not have if the case must be referred to a visiting judge. Currently, there are very few civil cases tried before Nebraska Article III judges because of the heavy criminal case load and the use of visiting judges to try civil cases. Judge Thalken advised that once a case is assigned to a visiting judge, it may be too late to consent to trial by a magistrate judge, although theoretically the case could be assigned to a magistrate by the visiting judge with consent of the parties. Cases not handled by the visiting judge go back to the Article III judge originally assigned to the case, although Judge Riley usually keeps all cases assigned to him. It was noted that magistrate judges have limited time to try cases.

E. Strategic Plan Goals

Denise Lucks gave a presentation that provided a history of the Court's Strategic Plan and Goals. Previous goals that have been attained included reducing time to dispose of cases, paperless filing, reducing the non-utilization of jurors, addressing parking issues for jurors, adopting governing bylaws, establishing ongoing relationships with our congressional delegation, increasing diversity of court staff, creating a consent docket, expanding the Court's Community Education Program, creating a Docket and Local Rules Committee, reducing the length of North Platte sessions, consolidating administrative services, implementing a new Court Reporter Plan, creating a Nebraska docket, creating a standing Budget Committee, and the studying of video conferencing in criminal cases. For 2005, the Court hopes to obtain feedback at the November, 2005 Nebraska State Bar Association Meeting. A Strategic Planning Session has been scheduled for July 2006.

F. Mediation Plan - www.ned.uscourts.gov (Mediation)

Judge Smith Camp relayed Magistrate Judge Piester's concerns that the use of mediation has been declining. It was noted that the court's mediation plan is located on the court's website, and that the Federal Practice Committee plays an integral role in the administration of the plan. Robert Kirby advised that Douglas County is developing mandatory mediation in civil cases. Wendy Hahn questioned whether a court can order the parties to mediate. Dean Borchers noted that Creighton Law School has received substantial funding for a new alternative dispute resolution program and that Creighton would be willing to work with the Court to study ways to make the Court's mediation program more effective. Dean Borchers advised that Arthur Pearlstein is coming to Creighton in May in connection with the ADR institute and that he might be willing to assist

the Court with a re-drafting of its mediation plan. Judge Smith Camp inquired about whether the committee would want to designate a mediation subcommittee to look into the Douglas County program and the resources available through Creighton's new institute. Mr. Lowe noted concerns in his office about mandatory mediation including the difficulty of having government representatives present during mediation.

7. FEDERAL PRACTICE COMMITTEE BUDGET

A. Receipts and Disbursements

Terry Brownfield reviewed the income and expenditures with the committee. Revenue is generated from attorney assessment fees and interest. Terry then summarized the recurring yearly expenses which include assessment mailings, Open Doors to Justice, Eighth Circuit Conference Expenses, the IFP attorney contract, and other known expenses such as training.

B. Approval of Recurring Expenses

Mr. Lowe suggested that the committee approve the payment of the recurring expenses in the future without having to have the approval of the whole committee. Robert Kirby made a motion and Dave Stickman seconded the same that these recurring standard expenses be paid in the future without having to have the approval of the whole committee. The motion was unanimously approved.

8. REVIEW OF THE STATE OF THE BANKRUPTCY COURT

Bankruptcy Clerk, Diane Zech, reported that the new Local Rules for the Bankruptcy Court have been approved. She noted that there has been an increase in bankruptcy filings which has been attributed to the new bankruptcy law that Congress recently passed and is expected to go in to effect in the near future. The Bankruptcy Court will be conducting a one-day seminar on June 24, 2005, regarding the new Local Rules.

9. IFP ATTORNEY: CONTRACT (APPOINTMENT OF SUBCOMMITTEE) AND TRAINING (FUNDING)

Judge Smith Camp advised that Kelli Paris Asaka is the attorney currently on contract with the Federal Practice Committee as the IFP Attorney. Judge Smith Camp suggested that a subcommittee be formed to review the current contract with Ms. Asaka that will expire at the end of this year. Judge Smith Camp also suggested that training be available to the IFP attorney and that such training be paid for by the Federal Practice Committee. The Nebraska State Bar Association is planning an NCLE seminar on Civil Rights Litigation that may be helpful to the IFP attorney. Members of the Federal Practice

Committee willing to serve on the IFP subcommittee should express their willingness to Charlie Lowe so that he may appoint the subcommittee.

**10. EIGHTH CIRCUIT JUDICIAL CONFERENCE,
COLORADO SPRINGS, COLORADO, OCT. 19-21**

A press release prepared by Millie Adams, Circuit Executive, was distributed to the committee members. Chairperson Lowe advised that the next meeting of the Federal Practice Committee will be held during the Eighth Circuit Judicial Conference, scheduled for October 19-21, 2005, at the Broadmoor in Colorado Springs, Colorado. He encouraged all committee members to attend and noted that basic travel and hotel expenses can be paid with committee funds.

11. FOR THE GOOD OF THE ORDER

A flyer was distributed in connection with the 2004-2005 Creighton Chapter Speaker Series, cosponsored by Public Interest Law Form, regarding an upcoming lecture by the Hon. Lawrence Piersol on criminal sentencing in the federal courts after the Supreme Court's decision in *United States v. Booker*. The talk is scheduled for Friday, April 22, 2005, in The Commons, at 11:30 - 12:40 p.m.

A handout from the United States Court of Appeals announcing an Appellate Practice Institute, cosponsored by the Minnesota State Bar Association CLE and the Eighth Circuit Bar Association, scheduled for May 11, 2005, was also made available to the committee members.

12. NEXT MEETING AT THE EIGHTH CIRCUIT JUDICIAL CONFERENCE

Chairperson Lowe again advised that the next meeting of the Federal Practice Committee will be held during the Eighth Circuit Judicial Conference in October. The time and day of the meeting have not been scheduled. Judge Smith Camp advised that in the past, the committee has met during a breakfast, and that the agenda for the Eighth Circuit Judicial Conference has not yet been prepared. Committees will be notified once the agenda has been confirmed.

13. ADJOURNMENT

There being no other business, Chairperson Lowe adjourned the meeting at 12:40 p.m.