

**Minutes of the
Federal Practice Committee Meeting
Friday, October 21, 2005
Broadmoor Hotel
Colorado Springs, CO**

1. CALL TO ORDER

The Federal Practice Committee Meeting was called to order by Chairperson Charles E. Lowe at 7:05 a.m., Friday, October 21, 2005. Mr. Lowe welcomed members of the Committee, and referred them to the Committee membership roster, asking members to note their attendance, correct any errors in data, and indicate any continued interest in serving on the Committee if their membership terms were scheduled to expire at the end of 2005.

2. INTRODUCTION OF ATTENDEES

Judges and members of the Nebraska Federal Practice Committee introduced themselves. In attendance were Chief Judge Joseph Bataillon, Judge Richard Kopf, Judge Laurie Smith Camp, Judge Warren Urbom, Judge Lyle Strom, Judge David Piester, Judge F.A. Gossett, Judge Timothy Mahoney, Thomas Dahlk, Wendy Hahn, Michael Heavican, Charles Lowe, Denise Lucks, Robert Kirby, Roger Kirst, Todd McWha, Howard Olsen, David Stickman, Alan Stoler, and Jeanette Stull. Also in attendance were Judge William Riley of the U.S. Court of Appeals for the Eighth Circuit, Michael Fenner (Omaha), Krista Kester (Lincoln), Jeff Makovicka (Lincoln), and Mary Kay O'Connor (Omaha).

3. APPROVAL OF PREVIOUS COMMITTEE MINUTES

Chairman Lowe inquired whether there were any changes or corrections to the minutes of the last meeting, held on April 15, 2005. Approval of the minutes was moved and seconded. The minutes were unanimously approved.

4. REVIEW OF FEDERAL PRACTICE FUND FINANCIAL REPORT

Each member of the Committee was provided with a copy of the Federal Practice Fund summary showing receipts and expenditures as of September 30, 2005, with a closing balance of \$162,487.25. Mr. Lowe invited discussion regarding the receipts and expenditures, and Judges Kopf and Bataillon described the nature of certain case-related expenditures that had been authorized since the last meeting. It was moved and seconded that the accounting be approved, and the motion passed unanimously.

5. REPORT OF SUBCOMMITTEE REVIEWING AND MAKING RECOMMENDATIONS REGARDING EXTRAORDINARY EXPENDITURES FROM THE FEDERAL PRACTICE COMMITTEE FUND

Mr. Lowe noted that a subcommittee has been formed to respond to inquiries from the Court regarding non-recurring expenditures from the Federal Practice Fund, such as recent expenditures related to the visit of a delegation of Russian Judges. The subcommittee has provided the Court with expeditious guidance regarding such expenditures, and the suggestions of the subcommittee are appreciated by the Court. Members of this subcommittee are Roger Kirst, Mary Gryva and Todd McWha.

6. REPORT OF SUBCOMMITTEE REVIEWING CONTRACT WITH ATTORNEY TO REPRESENT IN FORMA PAUPERIS PLAINTIFFS IN CERTAIN CIVIL ACTIONS

This subcommittee is composed of Judge Smith Camp, Wendy Hahn, and Robert Kirby. Judge Smith Camp noted that the current attorney contract with Kellie Paris Asaka expires on December 31, 2005, and a copy is available on the Court's website. Judge Smith Camp also stated that Kellie Paris Asaka had expressed a desire to have the contract renewed, but Ms. Asaka also expressed some concern about the fact that she is generally appointed in cases after certain discovery has occurred and after there have been rulings on dispositive motions. Ms. Asaka expressed an interest in providing some training programs for inmates or inmate legal aides as a part of her duties under the contract. Judge Smith Camp also reminded the Committee that it approved an expenditure for training for Ms. Asaka in civil rights (42 U.S.C. section 1983) cases, that Ms. Asaka did complete with the assistance of the funding. Judge Gossett noted that there are certain limitations posed by Ms. Asaka's representation. For example, she is a solo practitioner and has no back-up assistance when she is on vacation or is sick; and it may not be practical to appoint her in cases west of Omaha. Judge Smith Camp questioned whether the contract should be exclusive, or whether judges should be authorized to use the Federal Practice Fund to pay a stipend to other appointed counsel, in addition to reimbursement for out-of-pocket expenses. Judge Kopf pointed out that the Federal Practice Fund Plan does authorize such expenditures at this time, and Judge Bataillon stated that the reason for the contract with Ms. Asaka was to promote the development of expertise in one lawyer (or firm) that would develop credibility with pro se plaintiffs, particularly those incarcerated, and be able to provide general advice to them as well as representation in court-appointed matters. Judge Bataillon suggested that the contract with Ms. Asaka should provide the "default" measure for judges to take when they believe that appointment of counsel is appropriate in pro se civil cases, although other options remain available. It was moved and seconded that the contract with Kellie Paris Asaka be renewed for one year, to December 31, 2006, and the motion was approved unanimously.

7. REPORT OF SUBCOMMITTEE ASSISTING WITH COURT'S MEDIATION PROGRAM REVISIONS

Members of the subcommittee are Patrick Borchers, Robert Kirby, Charles Lowe and Jeanette Stull. Jeanette Stull reported for the subcommittee. On August 4, 2005, Judge Piester led a meeting of more than 20 interested persons to appraise the Court's mediation program. A copy of the report of the meeting was sent to all members of the Federal Practice Committee and Judicial Council on September 26, 2005, and a copy is attached to these minutes, for reference. In general, the consensus of the participants at the meeting on August 4, 2005, was that mediation will not be widely utilized unless trial judges (Article III judges) require parties to consider mediation. Judge Kopf expressed concern that any mandatory mediation policy could violate litigants' Seventh Amendment right to a jury trial. Judge Strom agreed. Michael Heavican and Charlie Lowe both noted that their clients, federal and state governments and officials, would oppose any form of mandatory mediation. Judge Piester noted that the progression orders issued in Lincoln provide for mediation, with an opt-out provision, while the progression orders issued by magistrate judges in Omaha do not. No issue on this topic was put to a vote, but the judges noted that their Judicial Council meeting was scheduled for the following week, and the matter could be discussed at further length among the judges at that time.

8. REPORT FROM THE CLERK OF COURT

A. Attorney Assessments

Denise Lucks discussed attorney assessments, noting that the time and expense of mailing and receiving annual assessments in the sum of \$5.00 was not cost-effective, and the Court was considering alternate methods of assessment, including the possibility of increasing attorney admission and/or pro hac vice fees, or issuing assessments every two or three years for larger sums.

B. Visiting Judge Schedule

Visiting judges are now scheduled to assist with the civil and criminal dockets every two months, with their calendars posted on the Court's website.

C. CM/ECF Update

Changes have been made in the Court's CM/ECF procedures. Attorneys and their assistants should check the Court's Administrative Procedures on the Court's website regularly for updates.

D. State of the Docket

The Court's docket has eased somewhat this year with the filing of fewer criminal cases, but Nebraska continues to be one of the busiest districts in the nation. Last year, Nebraska was second among the 94 federal districts in the average number of trials per judge (41). Despite the heavy case load, the Court continues to bring cases to a relatively speedy disposition, on average.

E. Spanish Interpreter Authorization

The Court has been authorized to hire a Spanish-speaking court interpreter, which should result in cost savings.

9. REPORT FROM THE JUDGES

A. Proposed Revisions to Local Rules/Administrative Procedures

Judge Smith Camp noted that the Court plans to update its local rules on an annual basis, with the revisions being presented to the Judicial Council at its October meeting. Proposed revisions will be posted on the Court's website, and lawyers are encouraged to read the proposed revisions and express any comments or concerns through the Docket and Local Rules Committee's e-mail address (lrc@ned.uscourts.gov) or directly to a judge. Judge Smith Camp welcomed such comments, directed to her attention, as Chair of the Court's Docket and Local Rules Committee. Most notable in the revisions proposed for the Judicial Council's October 31, 2005, meeting are:

NEGenR 1.4(a) Related Cases. Attorneys will have an affirmative duty to notify the court when a case is or may be related to any other case, either pending or closed. Failure to inform the court may result in sanction on counsel and parties.

NECivR3.3(c) Multiple Plaintiffs in Prisoner Civil Rights Cases. The assigned judge has the discretion to require each plaintiff to pay the full district court filing fee.

NECivR 5.3(a),(b) Privacy. The requirement that home street addresses be redacted has been removed from the mandatory provisions of rule 5.3(a). (Home addresses must be redacted under the criminal privacy rules.) Redaction of home street addresses is now discretionary under rule 5.3(b). Additional categories of information that may be redacted on a discretionary basis are found in 7 (information about a cooperating individual), 8 (information about the victim of a crime), 9 (national security information), and 10 (sensitive security information under 49 U.S.C. section 114(s)) of rule 5.3 (b).

NECrimR 11.1, 31.2 Interpreter Costs. The revised rules will allow the court to impose as a sanction interpreter costs.

B. Court's Order on Modification of Ethics Rule

Judge Kopf discussed the modification of the Court's ethics rule (posted on the Court's website under general orders) that allows the Court to take appropriate action against an attorney who engages in behavior unbecoming of a member of the bar. The change de-links the Court's disciplinary policy and the Code of Professional Responsibility, recognizing that the Court may refer to a variety of sources when determining whether or not an attorney's conduct warrants discipline.

C. Suggestions for Enhancing Committee Self-Governance

Judge Bataillon noted that he encourages the Federal Practice Committee to increase its efforts at self-governance. He hopes the Committee will set its own budget, determine appropriate assessments and expenditures (particularly recurring expenditures), and provide advice to the Court.

**D. Thanking Out-going Members and Chair;
Discussion of 2006 Membership**

Judge Smith Camp thanked out-going President, Charlie Lowe, for his exemplary service as Chair of the Federal Practice Committee during 2005, and all in attendance gave Mr. Lowe a round of applause in appreciation for his service and leadership. Mr. Lowe will continue to serve the Committee as immediate past-Chair. Judge Smith Camp announced that Alan Stoler will serve as the new Chair of the Committee for 2006.

E. Bankruptcy Court

Judge Mahoney gave the Committee an update on the filings in the Bankruptcy Court in the wake of Congress's new Bankruptcy bill, limiting eligibility for certain Chapter 7 filings. He noted that he serves as Nebraska's only bankruptcy judge at this time, although a second position is available to be filled when necessary.

10. NEXT MEETING AND ADJOURNMENT

There being no other business, A motion to adjourn was seconded and unanimously approved with the date for the next meeting to be set by Mr. Stoler in consultation with the judges. Chairperson Lowe adjourned the meeting at 8:30 a.m.

REPORT OF MEETING ON MEDIATION UNITED STATES DISTRICT COURT DISTRICT OF NEBRASKA AUGUST 4, 2005

OVERVIEW

As a result of statistics showing decreasing use of the court's mediation program, Magistrate Judge Piester, in his capacity as "ADR Administrator," with assistance of Debora Brownyard, Director of the Nebraska Supreme Court's Office of Dispute Resolution, called together a group of mediators, academicians, members of the Federal Practice Committee, and others interested in mediation to determine if the court should take some action.

The court wishes to express sincere gratitude to the participants at the meeting and to those who were invited but could not attend and submitted comments. These people gave a half day of their valuable time, sometimes more, to travel to Lincoln and engage in a serious discussion about the court's mediation program. They were not reimbursed for their time or expenses. Their participation, before and during the meeting and in volunteering to help implement suggested actions afterward, is a dramatic testimonial to how important they view the mediation program to be. Their time, contributions, and efforts are gratefully appreciated.

The group met on August 4, 2005 in the Denney Courthouse and Federal Building. The purposes of the meeting were: (1) To identify reasons the bar and/or civil litigants are seemingly reluctant to mediate federal civil cases in Nebraska; (2) To determine what---if anything---should be done about that; (3) If some action is appropriate, to determine what, specifically, is necessary to improve the program in accordance with the liability exposures of the Uniform Mediation Act; (4) To plan how best to coordinate those actions with existing mediation providers and the new Werner Institute at Creighton Law School; and (5) If possible, to establish a timetable for those

actions. The meeting was productive in first, tapping the experience of litigators who have mediated cases in this and other federal district courts, and second, in generating ideas and proposals for this court.

Prior to the meeting participants were given the program's statistical history and annual reports; pertinent literature; comments of approved mediators at the time of their renewing their approval status; information from the Eastern District of Missouri describing their mediation program; and copies of letters and emails received from invited persons who could not attend the meeting. (Copies of these packets can be obtained from Magistrate Judge Piester).

The meeting included a short review of the establishment and early history of the program; description and discussion of other courts' practices in mediation; identification of problems in this court's program as experienced or known by the participants; identification of an overall purpose that should be served by the court's mediation program; identification of which problems should be addressed immediately and those that are "long term"; and prioritization of those that should be addressed immediately. Finally, participants offered their help and action in improving the program.

SUMMARY

After several hours of discussion the group developed overwhelming consensus on several points:

- I. The overall goal of the court's mediation program should be to reduce the court's civil caseload and workload by providing litigants an informal, effective, prompt, and less expensive alternative to litigation to resolve their disputes, while preserving an enhanced sense of fairness to the

parties and ensuring access to the court's formal litigation functions when necessary.¹

- Increasing use of the mediation program is likely to serve this goal, especially in view of the court's large criminal caseload and loss of the fourth judgeship.
- The court's "product" is "fairness in the resolution of disputes." This product should be paramount and apparent in any ADR program.
- Parties who participate in mediation report that it enhances their view of the fairness of the procedure, because they are "heard" and actively involved in crafting the ultimate resolution of the dispute

II. Because "lawyers will follow the judges," the district, bankruptcy, and magistrate judges MUST support the program and actively encourage parties to mediate their disputes; without such active support, actions by others will be ineffective in increasing use of mediation.

- Mediation is still new to lawyers, and they are reluctant to try it unless pushed
- Judges can initiate discussion of mediation at all conferences with counsel
- Judges can schedule blocks of time for mediation and require counsel to report on their settlement progress, selection of their mediator, and when the mediation is scheduled
- Judges can promote mediation at bar meetings, circuit judicial conferences, bench-bar conferences, etc.
- Judges will benefit from mediation in the form of more time available for other (criminal) cases

¹ Actually this overall goal is a composite of several expressions that were met with approval by the group.

III. Some types of cases should be put on a track that includes an “almost mandatory” mediation, in the sense that the court’s management “default” should be “to mediate” unless the parties opt *out*, instead of the present “not to mediate” unless the parties opt *in*. This procedure should include:

- Judicial review of the case before placing it on a “mediation track”
- A clear procedure for opting out of the mediation track
- Giving “priority” status in setting trials and pretrial conferences to cases that have been mediated
- Some aspects of the procedures used in the Eastern District of Missouri (e.g., Schedule mediation during Rule 16 conferences; mediators selected by counsel; both “facilitative” and “evaluative” mediators used; mediators report parties’ “good faith” participation to court, etc.).

IV. There is a need to educate judges, lawyers, mediators and the public on all aspects of Alternative Dispute Resolution, including skills training for lawyers acting as advocates as well as mediators or neutrals, and the ethical requirements of applicable statutes.

A. Judges:

- Must be comfortable in recommending mediation and thus must know about it.
- Should attend mediation conferences and programs, perhaps in conjunction with Werner Institute, Nebraska Mediation Center Association Training Institute, and/or Federal Judicial Center
- Could consult District Court Judges in Douglas County
- Should learn results of mediation programs in other courts
- Could have meeting with national experts

B. Lawyers:

- Must know what to expect in a mediation and how to prepare themselves and their clients for it
- Must become comfortable in acting as advocates in a mediation setting, i.e. avail themselves of training
- Should learn differences in mediators, e.g., "facilitative" vs "evaluative"
- Should come to expect mediation as a normal part of the progression of a civil case, plan time and budget accordingly
- Federal Practice Committee Seminar

C. Mediators:

- Approved mediators must keep current on legislative and other requirements, especially regarding ethics
- Court should offer benefits/incentives to unapproved mediators to become approved
- Federal Practice Committee Subcommittee on Mediation could monitor program, field inquiries on training needs, etc.

D. Public:

- Court can include mediation discussions in public educational materials distributed to students, jurors, etc.
- Court can publicize mediation through distribution of annual reports, news releases, speaking appearances, etc.
- Court can distribute written materials of Nebraska ODR
- Court can distribute written materials on this program to lawyers with request they give to clients
- Court should do better at quantifying mediation results
- Court should stress "fairness" and "control" as benefits of mediation; "mediation is as valuable to the citizenry as the jury trial"

- V. The court should continue to require of its approved mediators some threshold of experience, education, and training in skills and ethics, and should continue to offer training for mediators, both initial and “continuing mediator education,” especially regarding ethics.
- Current mediator requirements for approval are OK
 - Can’t “certify” or “guarantee” quality, but can provide training to enhance skills and inform lawyers, litigants about it
 - Need to keep current on ethical requirements and challenges under Uniform Mediation Act, Nebraska Dispute Resolution Act, and new Rules of Professional Responsibility
 - Growing number of cases against mediators nationally, challenging confidentiality, strategies, etc.
 - Need for refresher skills sessions, maybe have approved mediators sit in on other approved mediators’ sessions with permission
 - No need now to alter court’s training schedule (but plan workshop for 2006)

PROPOSED COURSES OF ACTION -- GENERAL

Participants also agreed that some actions should be taken in the “near term” in support of the court’s program, IF the judges decide to actively encourage mediation. Suggested actions include:

- Federal Practice Committee should promote mediation by planning a continuing legal education seminar for the bar, and also one for approved federal mediators, especially on ethics requirements of the Uniform Mediation Act.
- Court staff should do better at inquiring whether cases that are ended by rulings of the court have been mediated.

- Court should coordinate with Werner Institute at Creighton Law School to better tabulate/quantify the effectiveness of mediation.
- Court should have a local rule embodying the “opt out” approach for civil cases to be mediated.

NEXT STEPS

Finally, participants were asked to suggest actions that could be taken now to improve the program. Such actions included the following:

1. Present mediation ideas at the next Federal Practice Committee meeting; perhaps ask for a vote on supporting the program and urging judges to take more active roll in promoting it;
2. Discuss/promote mediation with Nebraska’s federal judges;
3. Propose a semi-mandatory mediation local rule or alteration to the Mediation Plan, perhaps including rule for early referral to mediation after initial discovery, and stressing the intrinsic value/benefits of mediation as providing “fair process” and “access to justice,” and present such proposal to the district, bankruptcy, and magistrate judges;
4. Hold a workshop in 2006 for approved mediators on the Uniform Mediation Act and ethics cases and concerns;
5. Continue tracking mediation of federal cases by asking about it when the case ends, and concentrating on asking about it when the case ends by court ruling;

6. Consider a follow-up meeting of this group.

At the conclusion of the meeting Judge Piester stated that the participants, others who submitted comments, and the judges would receive a report of it and any other actions that take place as a result. Many participants again stressed that if the judges do not promote mediation, none of the other actions will be effective, so there was some apprehension about whether and how the program could go on for very long without their active support.

Again, the court expresses sincere gratitude to all who participated in the meeting and to all who sent comments and to all who volunteered to assist in implementing the proposed actions. Such contributions bode well for the mediation program.

APPENDIX

I. LIST OF PARTICIPANTS

Patrick Borchers	Dean, Creighton Law School
Ron Volkmer	Professor, Creighton Law School
James J. DeMars	Attorney Non-approved Mediator
Suzanne Curren Carney	Attorney, Approved Mediator
Kelly Phipps	Director, The Mediation Center, Lincoln
Jeanette Stull	Attorney, Member, Federal Practice Committee
Charles E. Lowe	Asst. Atty General, Chair of Federal Practice Committee
Mary Lee Brock	Director of Omaha Concord Mediation Center
David Eaton	Attorney, Approved Mediator
Jim Zalewski	Attorney, Approved Mediator
Jay Welch	Attorney, Approved Mediator
Dick Lydick	Attorney, Approved Mediator
Jim Ruby	Attorney, Approved Mediator
Lorin Galvin	Attorney, Approved Mediator and Counsel for Conciliation & Mediation, Douglas Co. District Court
Richard Register	Attorney, Approved Mediator
Randy Goyette	Attorney, Approved Mediator
Bob Kirby	Attorney, Approved Mediator, Member, Federal Practice Committee
David Hubbard	Attorney, Approved Mediator

Gail Perry	Attorney, Approved Mediator, Member, Federal Practice Committee
John Brownrigg	Attorney, Approved Mediator
Debora Brownyard	Attorney; Director of Nebraska Office of Dispute Resolution

II. CONTRIBUTING COMMENTS:

Terrance O. Waite	Attorney, Approved Mediator
James C. Zalewski	Attorney, Approved Mediator
James DeMars	Attorney, Non-approved Mediator
David J. Blair	Attorney, Non-approved Mediator
Lorin C. Galvin	Attorney, Approved Mediator, Counsel for Conciliation & Mediation, Douglas Co. District Court
Brad Schweer	Attorney, Approved Mediator
Steve Willborn	Dean, University of Nebraska College of Law

III. DETAILS OF THE MEETING

After the introductory portions of the agenda were completed, the participants “brainstormed” various problems, trends, needs and observations they saw as affecting this district’s mediation program. Thirty-eight items were identified, as follows:

Item #	Item
1.	Statistics: how to track cases settling through negotiation, mediation?
2.	What are the types of cases that are clogging the system? Which are suitable for ADR? a) contract b) employment discrimination c) medical malpractice (prefer trial) d) criminal cases
3.	Why are judges reluctant to mandate ADR? a) believe it's unconstitutional b) don't like to force people to do certain things
4.	Other parties or attorneys have stopped the ADR process (UT)
5.	Timing - When is mediation best during a case?
6.	A demand first before mediation--require it?
7.	“Mediator beats up on me.”
8.	Bar doesn't understand - a) benefits of mediation b) how to represent client in mediation c) uses of mediation and ADR Need training, education, CLE

9.	Not much ADR culture in NE? But there has been ADR on the statutes since 1991; in fed court since 95; Werner Institute; NMCA Training Institute
10.	Lawyers' attitude and behavior: Still see broaching settlement talk as sign of weakness; need to be told to do it.
11.	Belief that one will prevail on Summary Judgment; too late to mediate afterward?
12.	Need for mandatory rule to use mediation; attorneys then can expect and plan for this; impacts time allocation on case and budget
13.	Do we need to show that there's case law and/or rationale that "mandatory" mediation IS constitutional?
14.	Plaintiffs' attorneys believe they might lose control; client wants \$\$ and to settle vs. lawyers' interest in litigating an unusual case; lawyer can "roll dice" while client cannot.
15.	Need for education on ADR: judges; lawyers; federal mediators (reduce/prevent comments such as "My mediator beat up on me").
16.	How do courts address mediation of cases involving federal and state agencies? Things that may preclude use of ADR: settlement authority; pre-summary jgt. stage; constitutional issues shouldn't be mediated; responsibility for public fisc precludes settlement discussion.
17.	Lawyers follow the lead of the court & judiciary; so if no judicial leadership for ADR, there won't be mediation. If judges don't have a rule promoting mediation, there won't be a referral.
18.	Starts with court & rule; Judges must believe in rule, e.g. Douglas County District Court's Rule 4.3 (but even then not all judges follow rule); non-judicial person does the "arm twisting," e.g. ADR coordinator; educating attorneys and clients as to the use of mediation; Lawyers work harder to settle with a mandatory ADR rule
19.	Concern of lawyers to be "forced" to mediate: client's needs; strategy of lawyer. Question: does mediation work if it's mandatory?

20.	Role of lawyer in mediation? Arguably as much "lawyering" in this capacity as in trial, but lawyers need to understand how it's different.
21.	Mandatory mediation does work = work harder to settle; Question: what about the "unsettleable" case? The worse the case (catastrophe) = increased ability to settle in mediation because non-legal needs (emotional, interactional) are met in mediation.
22.	Mandatory mediation does not equal requirement to agree, only to come to the table
23.	Even at settlement conferences, lawyers aren't ready! Mandatory mediation makes it more likely that eventually, lawyers will know what to expect and come ready to mediate/negotiate for their clients
24.	Settlement conferences = Judges; mediation = Mediators; thus, impact on work time
25.	Option: mandatory conference with neutral to educate attorneys and parties about mediation (and that neutral would be foreclosed to mediate that particular case)
26.	Insurance companies were introducers of mediation here; early on insurance company paid mediator; now, mediation costs are split
27.	Docket control = mandatory mediation
28.	Rule ideas: Opt out provision; provision for judge as neutral; contact lien holders and subrogoes prior to mediation; "ADR" rule with a menu in which mediation is one of several choices
29.	"Mandatory" rule a transitional phase?
30.	Draft rule for mandatory mediation to require objections to be made in writing by motion at least 28 days in advance of the scheduled mediation timeline
31.	Judicial education about mediation; bring in an "evangelical" judge (as was done in Omaha)
32.	There is "mandatory" mediation in other places: one experience is that mediator merely signed "attended" 50% of referred cases.
33.	What is mandated? Who polices?

34.	NE District Court: about a 90% settlement rate in mediation, including those cases resolving after going through an “unsuccessful” mediation
35.	Prisoner cases: there is mediation being done in prisons, which may be helping reduce the number of cases coming to the federal court
36.	Resistance to mediation by the bar; federal court needs more objective empirical evidence of efficacy of mediation?
37.	Nebraska Mediation Center Association & NE Office of Dispute Resolution can ally with federal practice committee
38.	8 th Circuit ADR? “settlement person” mandatory?

Next, participants were asked to discuss the items and after that, to “vote” on the ones they saw as both “fixable” and of a “priority” nature. Through discussion, some items were combined since they were expressions of the same ideas. At the end of that process, those receiving the highest numbers of “votes” were as follows:

- Lawyers follow the lead of the court & judiciary; so if no judicial leadership for ADR, there won’t be mediation. If judges don’t have a rule promoting mediation, there won’t be a referral.
- Need for almost-mandatory rule to use mediation with an “opt out” provision; attorneys then can expect and plan for this at the beginning of the case; impacts lawyers’ time allocation on case and budget
- Need for education on ADR: Judges; lawyers; federal mediators; (reduce/prevent comments such as “my mediator beat up on me”); public

Participants then discussed these items at some length to ensure that the entire group agreed these were indeed the priorities that should be addressed by the court. Agreement was unanimous.

Participants then identified six actions that should be taken immediately, and several volunteered to assist in implementing them. The six actions and those volunteering to help on each are listed below:

1. Present mediation ideas at the next Federal Practice Committee meeting; perhaps ask for a vote on supporting the program and urging judges to take more active roll in promoting it: Charlie Lowe, Jeannette Stull, Dean Borchers, Bob Kirby.
2. Discuss/promote mediation with Nebraska's federal judges: All present
3. Propose a semi-mandatory mediation local rule or alteration to the Mediation Plan, perhaps including rule for early referral to mediation after initial discovery, and stressing the intrinsic value/benefits of mediation as providing "fair process" and "access to justice, and present such proposal to the district, bankruptcy, and magistrate judges: Jay Welch, Suzanne Curran Carney, Judge Piester
4. Plan a workshop for approved mediators on the Uniform Mediation Act and ethics cases and concerns, for 2006: Dave Hubbard, Dick Lydick, Suzanne Curran Carney, Gail Perry
5. Continue tracking mediation of federal cases by asking about it when the case ends, and concentrating on asking about it when the case ends by court ruling: Court staff
6. Consider a follow-up meeting of this group: Judge Piester will report.