

Minutes of the Federal Practice Committee Meeting

Wednesday, October 17, 2007

3:00 p.m. - 4:30 p.m.

Jury Assembly Room

Robert V. Denney Federal Building

1. Introduction of attendees

Those in attendance introduced themselves. Federal Practice Committee members in attendance were chair Howard Olsen; Mick Mickle and Bob Homan, on behalf of U.S. Attorney Joe Stecher; David Stickman; Charles Lowe; Roger Kirst; Alan Stoler; Jeanette Stull; Robert Kirby; Thomas Dahlk; Rick Lange; James Nisley; David Pedersen; and Sherman Willis via Polycom. Judges in attendance were Chief Judge Joseph Bataillon, District Judge Richard Kopf, District Judge Laurie Smith Camp, Magistrate Judge David Piester, and Magistrate Judge F.A. Gossett. Others in attendance included Clerk of District Court Denise Lucks, Chief Deputy Clerk M. Therese Bollerup, Administrative Supervisor Pat Williamson. Doug German from Nebraska Legal Aid attended to give a presentation on the *cy pres* doctrine.

2. Approval of minutes from 04/23/07 meeting

The committee approved the minutes of the April 23, 2007, Federal Practice Committee meeting.

3. Review of Federal Practice Fund report and 2008 budget

Pat Williamson presented the Federal Practice Fund reports for the period-ended September 30, 2007. The Federal Practice Fund balance is \$186,999.79. See attached [balance sheet](#).

Action taken. The committee approved the accounting reflected in the Federal Practice Fund report.

Pat Williamson presented an initial discretionary budget for 2008, as well as a historical income / expenditures report. Judge Kopf questioned the Eighth Circuit Conference attendee expenses listed in the report, explaining that two non-judicial officers typically attend the Conference on behalf of the Historical Society. He requested that the report include their proportionate share of expenses.

Action taken. The committee approved the 2008 budget and Judge Kopf's request that the Eighth Circuit Conference attendee expenses include the non-judicial officers' expenses at the Conference.

Post-meeting update: Pat Williamson modified the budget report by (1) decreasing the interest income estimate; (2) eliminating the discretionary expense for the wireless

Internet access project; and (3) adding an additional \$1,000 to the Eighth Circuit Conference attendee expenses. The attached budget report includes the modifications.

4. Presentation by Doug German, Executive Director of Legal Aid of Nebraska

Doug German discussed the potential use of *cy pres* to support the work of Legal Aid of Nebraska, and in turn, the many lower-income Nebraskans who need legal representation. He explained that *cy pres* is a legal doctrine applied when the original purpose of a trust has been expended and an estate or judge must designate the trust's next best use. The same doctrine may apply to the residue in class actions, settlements, sanctions, penalties, and punitive damages.

Mr. German stated that designating Legal Aid of Nebraska as the next best use for these leftover monies is justified. The legal profession depends on Legal Aid to provide court access to Nebraskans who cannot otherwise afford legal representation. He explained that one out of six Nebraskans qualifies for services, but Legal Aid is only able to assist 16% of them. He distributed materials, including information on how to establish a nexus between the underlying litigation and Legal Aid. He explained that designating an organization like Legal Aid may be beneficial to parties in litigation because it is a tax deduction for the party who pays out the money. It also prevents the residue from going back to a defendant.

5. Report from Howard Olsen

A. Mediation training - report

Howard Olsen and other meeting attendees reported that August's mediation training was a success. He suggested asking the Werner Institute for an exit report.

B. Wireless Internet access in the courthouses

Howard Olsen reported that the committee authorized a survey to assess attorney interest in having wireless Internet access in the courthouses. He thanked Denise Lucks for assisting him with the survey.

Action taken. The survey reflected that many attorneys are interested in wireless Internet access in the Omaha and Lincoln courthouses. After some discussion, however, the committee decided to forgo proceeding with the wireless Internet access project. Committee members reasoned that many attorneys already have remote access to the Internet, whether through wireless cards or other devices, such as Blackberries. In addition, such a large expenditure is unwise given the rapid growth of wireless technology.

Mr. Olsen recommended distributing an e-mail to the Nebraska federal bar explaining that the committee voted against providing wireless Internet access in the courthouses and also mentioning General Order 2007-10 and alternate sources of wireless access.

C. Utilization of North Platte courthouse

Howard Olsen reported that he continues to research the reasons western Nebraska attorneys file cases in Lincoln and Omaha instead of North Platte.

D. 2008 Eighth Circuit Judicial Conference

As it becomes available, the clerk's office will assist in disseminating information to the committee and the bar about the 2008 Eighth Circuit Judicial Conference in Chicago, which is scheduled for August 13-15, 2008.

E. New chair and new members

Howard Olsen reported that Jeanette Stull will serve as the committee's new chair, effective January 1, 2008. Outgoing committee members include Robert Kirby, Thomas Dahlk, and Wendy Hahn. Howard Olsen and Judge Smith Camp thanked them for their service on the committee. Alan Stoler will remain on the committee for another year to assist with planning the 2008 Eighth Circuit Judicial Conference.

Mr. Olsen reported that Chief Judge Bataillon will be appointing three new members to the committee. He encouraged the committee to make recommendations to Chief Judge Bataillon. Chief Judge Bataillon noted that the committee could use more Lincoln attorneys.

6. Clerk of District Court report

Clerk of District Court Denise Lucks reported that the court is participating in a pilot project that makes digital audio files of court proceedings available to the public over the Internet through the Public Access to Court Electronic Records (PACER) system. The judges involved in the pilot are Judge Kopf and the magistrate judges. She reported that 298 audio files have been uploaded to CM/ECF and the public has downloaded 125 files since the pilot began. She stated that an online training module and written procedure are available on the court's Web site for those who want to learn how to download a digital audio file.

Ms. Lucks reported that the court will likely go live with the new version of CM/ECF in December. The new version allows a user to hyperlink to any other documents filed on CM/ECF. It also allows a user to download an entire docket sheet instead of downloading each .pdf individually. The new version will enable judges to rule on motions directly from the motion report or docket sheet.

Ms. Lucks reported that CM/ECF training will only be held in May and October, following new attorney admissions. She stated that online training and written procedures will also be available on the court's Web page. In-person training sessions will be provided outside the May and October dates if necessary.

Ms. Lucks reported that the July 31 strategic planning session on courtroom technology provided the court with a lot of ideas, but no plan. To develop a plan, the court hired an outside consultant to make recommendations to replace or upgrade all courtroom technology in the three courthouses. Ms. Lucks will ask the Judicial Council for approval to construct a strategic plan once the court receives the report from the outside contractor, which she hopes to receive by the end of November.

Ms. Lucks reviewed the court's docket as of the end of September. She also noted that according to Nebraska's Judicial Caseload Profile for the 12-month period ending June 30, 2007, our district's civil filing to disposition time increased significantly due 184 related FLSA cases assigned to Judge Kopf. The median time decreases from 11.8 to 8.9 when the 184 FLSA are excluded from the computation. Ms. Lucks also reported that the profile shows Nebraska with the sixth heaviest criminal felony caseload per judgeship in the country with weighted filings at 537 per judgeship.

The Administrative Office will not publish the Judicial Caseload for the 12-month period ending September 30, 2007, until January 2008. The clerk's office will post the report to the Internet upon receipt.

7. Proposed revisions to local rules / administrative procedures

Therese Bollerup reported that the Local Rules Subcommittee of the Docket and Local Rules Committee conducted its annual review of the local rules and will be offering proposed amendments to the Judicial Council at its October 26 meeting. The majority of the changes stem from embedding the substantive portions of the administrative procedures into the local rules so that attorneys will only have to reference the local rules. If the Judicial Council approves the amendments, the amended rules will be posted for comment and the bar can evaluate them before they are sent to the Eighth Circuit for approval.

Ms. Bollerup reported that a new federal rule is expected in December of 2008 that will standardize how days are counted under the federal rules. It will be a "days are days" approach that should eliminate much of the confusion inherent in the current rules. The amended local rules do not include the anticipated change.

Howard Olsen reported that the committee authorized a survey regarding the local rules. The results reflect that 84% of those surveyed would like the rules to be more user-friendly. The committee discussed the survey results. Chief Judge Bataillon stated that the amended local rules are likely to be approved at the October Judicial Council meeting, with the prospect that next year the local rules will be re-drafted to incorporate changes in the federal rules taking effect in December of 2007. Judge Kopf explained that the federal rules of procedure are amended every year and every year the Local Rules Subcommittee proposes amendments to the local rules to reflect changes made at the federal level. Judge Smith Camp described the background leading to the decision to propose changes to the local rules annually at the Judicial Council's October meeting.

Action taken. The committee voted in favor of bringing the survey results to the court's attention.

8. Report from Judges

Chief Judge Bataillon reported on the slow progress of the proposed legislation to get Nebraska another judgeship.

Judge Smith Camp presented Howard Olsen with a gift and thanked him for his service as chair of the committee.

9. For the good of the order

None.

10. Adjournment

The meeting was adjourned at 4:30 p.m.

**FEDERAL PRACTICE FUND
U.S. DISTRICT COURT - DISTRICT OF NEBRASKA
DISCRETIONARY BUDGET REPORT - 2008**

Income:		Projected	Notes
1	Beginning Balance	\$171,980.12	
	Income:		
2	Attorney Assessment Fees*	\$ -	No collections in 2008
3	Interest	\$ 7,200.00	
4	Total Income	\$ 7,200.00	
Discretionary Expenses:		Projected	Notes
5	Case-Related Expenses	\$ 8,000.00	
6	Prisoner Civil Rights Cases	\$ 9,000.00	
7	8th Circuit Conference - Attendee Expenses	\$ 8,500.00	Committee & Historical Society attendee expenses / Chicago - August 2008
8	Light Refreshments - Meetings	\$ 100.00	Light refreshments for Federal Practice meetings
9	Historical Society	\$ -	
10	Model Jury Instructions	\$ -	
11	Continuing Education / Training	\$ -	Discuss whether to limit contributions to continuing education training every other year. Expenses for mediation training authorized in 2007.
12	Total Expenses	\$ 25,600.00	
13	Ending Balance	\$ 153,580.12	
14	Net Change in Fund	\$ (18,400.00)	

* Annual attorney assessment renewal fee \$15 (pre-1998); \$5 (1998-2006); \$10 biennially (starting in 2007)

Note: Installation of wireless Internet for in Omaha, Lincoln, and North Platte courtrooms was not adopted.

**FEDERAL PRACTICE FUND
U.S. DISTRICT COURT - DISTRICT OF NEBRASKA
HISTORICAL INCOME/EXPENDITURES
2003-2007**

	2003	2004	2005	2006	2007**
1 Beginning Balance	\$208,141.84	\$171,269.46	\$171,951.77	\$153,059.94	\$164,684.92
Income:					
2 Attorney Assessment Fees*	\$ 13,445.00	\$ 24,775.00	\$ 5,050.00	\$ 15,980.00	\$ 32,775.00
3 Interest	\$ 2,240.34	\$ 1,298.13	\$ 4,041.20	\$ 7,217.90	\$ 5,519.61
4 Projected add'l Assessments- 2007					\$ 660.00
5 Projected add'l Interest - 2007					\$ 2,880.00
6 Total Income	\$ 15,685.34	\$ 26,073.13	\$ 9,091.20	\$ 23,197.90	\$ 41,834.61
Expenses:					
7 Attorney Assessment Mailings*	\$ 1,056.85	\$ 3,529.13	\$ 1,208.13	\$ 292.57	\$ 1,251.00
8 Open Doors to Justice	\$ 4,263.05	\$ 2,890.29	\$ 2,586.63	\$ -	\$ -
9 Case-Related Expenses	\$ 18,653.72	\$ 6,386.35	\$ 14,805.41	\$ 3,224.83	\$ 5,737.55
10 Prisoner Civil Rights Cases	\$ 2,244.00	\$ 11,647.05	\$ 1,640.00	\$ 4,266.24	\$ 8,055.38
11 Mediation Expenses	\$ 8,559.02	\$ -	\$ 48.51	\$ 100.00	
12 8th Circuit Conf Attendee Expenses	\$ 6,184.74	\$ -	\$ 6,807.49		
13 EPA Fee Study Expenses	\$ 2,236.29	\$ -	\$ -		
14 Assistance to Bar, Societies, Training	\$ 5,000.00	\$ -	\$ -	\$ 2,636.11	
15 Historical Society	\$ 1,000.00				
16 Model Jury Instructions	\$ 3,000.00			\$ 1,000.00	
17 Russian Judges Visit	\$ -	\$ -	\$ 817.04		
18 Miscellaneous Expenses	\$ 360.05	\$ 938.00	\$ 69.82	\$ 53.17	\$ 1,795.48
19 Projected additional expenses - 2007					\$ 17,700.00
21 Total Expenses	\$ 52,557.72	\$ 25,390.82	\$ 27,983.03	\$ 11,572.92	\$ 34,539.41
22 Ending Balance	\$ 171,269.46	\$ 171,951.77	\$ 153,059.94	\$ 164,684.92	\$ 171,980.12
23 Net Change in Fund	\$ (36,872.38)	\$ 682.31	\$ (18,891.83)	\$ 11,624.98	\$ 7,295.20

* Annual attorney assessment renewal fee \$15 (pre-1998); \$5 (1998-2006); \$10 biennially (starting in 2007)

** 2007 financial data through August 31, 2007. (Additional 2007 projected expenses include: prisoner cases - \$4,700; case-related expenses - \$8,000; mediation training - \$5,000.)