

## **Minutes of the Federal Practice Committee Meeting**

Friday, March 28, 2008

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

Jury Assembly Room

Robert V. Denney Federal Building

### **1. Introduction of judges, members, and staff**

Those in attendance introduced themselves. Federal Practice Committee members in attendance were Federal Public Defender David Stickman; Charles Lowe; Professor Roger Kirst; Chairperson Jeanette Stull; Mary Kay O'Connor; Rick Lange; Sherman Willis via Polycom; Vincent Valentino; David Pederson; and Melanie J. Whittamore-Mantzios. Judges in attendance were District Judges Richard Kopf and Laurie Smith Camp. Others in attendance were Pat Merritt on behalf of Clerk of District Court Denise Lucks; Mick Mickle on behalf of U.S. Attorney Joe Stecher; and Pat Williamson.

### **2. Approval of minutes from 10/17/07 meeting**

The committee approved the minutes of the October 17, 2007, Federal Practice Committee meeting.

### **3. Review of Federal Practice Fund report and 2008 budget**

Pat Williamson discussed the financials for the Federal Practice Fund. The balance was \$171,623.77, as of February 29, 2008.

He also reported that the Federal Reserve interest rate cuts lowered the amount of interest paid on the money market account. The interest rate declined from 3.38% on December 31, 2007, to 1.65% on February 29, 2008; these figures do not reflect March's rate cuts. U.S. Bank's rates are competitive with market rates.

### **4. Appointments to the Nebraska Branch of the Eighth Circuit Historical Society**

Judge Kopf discussed the Eighth Circuit Historical Society and its Nebraska branch. He explained Chair Jeanette Stull's duty to appoint a president, secretary, and treasurer to the society's Nebraska branch, none of whom may be judges or employees of the court. A judge must be appointed to serve as the director of the branch. The branch director and president will sit on the Eighth Circuit Historical Society Board of Directors.

**Action taken.** Ms. Stull made the following appointments with the committee's approval: President, Jeanette Stull; Treasurer, Frank Mihulka; Secretary, John Sharp; and Director, Judge Kopf.

Judge Kopf will coordinate a branch executive committee meeting.

## **5. Report from committee chair**

### **A. Working group's courtroom technology training session - report**

Jeanette Stull asked Mick Mickle and David Stickman to discuss the training session. Mr. Mickle reported that the purpose of the training session was to educate attorneys on audiovisual and PowerPoint technology in the courtroom. The feedback was very positive; attorneys appreciated the training, as well as the camaraderie among the attorneys.

Mr. Stickman reported that he invited panel attorneys to sign up before other members of the bar. All 64 available slots were filled the first day the invitation was extended to the bar. The attorneys were informed that the Federal Practice Committee sponsored the event. Participating attorneys' reviews were tabulated and are available. The training was a success and there is a demand for holding it again.

The Federal Practice Committee provided financial support in the amount of \$546.33.

### **B. Possible changes to the local rules in light of the October 2007 survey**

Committee members discussed the October 2007 survey and whether the local rules should be amended given the results. The committee focused on the planning report process and its usefulness, as the process was the overarching concern of survey respondents.

Judge Kopf asked the committee to consider whether there is a way to simplify the pretrial process. He suggested that the Docket and Local Rules Committee implement a pilot project in order to experiment with the planning report process and its usefulness in the different categories of cases before making any major changes to the local rules. Also, the clerk's office and the magistrate judges should be involved in the discussion of potential changes to the planning report process.

Judge Smith Camp informed the committee that the Docket and Local Rules Committee will be asking the Judicial Council in April to consider approving revisions to the local rules at the Council's January meetings, instead of October meetings. This change would allow the Docket and Local Rules Committee to sooner incorporate rule changes made at the national level. Also, Docket and Local Rules Committee members are drafting two sets of proposed revisions to the local rules. One set of revisions will incorporate the national rules, as well as some general editing. The other set of revisions will include comprehensive changes to the rules.

Committee members went on to discuss the planning report process. In particular, whether or not the process should be a default rule the attorneys may opt out of if both

parties agree. Ultimately, the committee tabled the issue. Judge Smith Camp will share the committee's discussion with the Docket and Local Rules Committee.

**C. Possible changes in two-step scheduling approach**

Jeanette Stull reported that she received an e-mail from Judge Piester informing her the magistrate judges are considering the use of one progression order in place of the current two-step scheduling approach, and he was interested in hearing what committee members thought about the possible transition.

Judge Kopf stated that the issue raised by Judge Piester is directly related to the committee's discussion of the planning report process. Further, the magistrate judges will need to be involved in a discussion of changes to the planning process.

**D. 2008 Eighth Circuit Judicial Conference in Chicago and support to committee members**

Jeanette Stull reminded committee members that the Eighth Circuit Judicial Conference will be held in Chicago, August 13-15, 2008. Also, the committee will provide financial support to any members of the committee who attend. The next Federal Practice Committee meeting will be held in Chicago during the Judicial Conference.

Judge Smith Camp reported the conference materials are available. She asked committee members to contact her if they have difficulty accessing materials off the Web.

**6. Report from the clerk**

Pat Merritt reported on behalf of Denise Lucks. She distributed a handout including information regarding case statistics in the district. Ms. Merritt explained that since the committee's last meeting, the AO released its statistics for the 12-month period ending September 30, 2007. Weighted filings have dropped from 600 to 513. The Judicial Conference looks at weighted filings when it determines whether an additional judgeship is needed. For small courts, the Conference uses a standard of weighted filings above 500 per judgeship. As of September 30, 2007, the criminal caseload rose 6%<sup>1</sup> since 2006, while the civil caseload decreased by 18%. The following tables show the percentage increases and decreases for Omaha, Lincoln, and North Platte:

<b>Civil Caseload</b>	
<b>Office</b>	<b>Percentage Increase or Decrease</b>

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<sup>1</sup>The 6% figure is derived from the 2006 and 2007 Nebraska Judicial Caseload Profiles. During the March 28 meeting, the clerk's office reported a 4.7% increase in criminal cases based upon data from Table D produced by the Administrative Office's Statistics Division.

Omaha	28% decrease
Lincoln	8% increase
North Platte	22% decrease

<b>Criminal Caseload</b>	
<b>Office</b>	<b>Percentage Increase or Decrease</b>
Omaha	11% increase
Lincoln	6% decrease
North Platte	N/A

Ms. Merritt reported that Nebraska ranks sixth in the nation in criminal filings; seventh in supervised release violation hearings; tenth in trials completed; and fourth in number of cases terminated. It is interesting to note that the average number of criminal felony filings per judgeship is 85, while Nebraska's criminal felony filings per judgeship is 190. Also, during calendar-year 2007, attorneys opened 333 of the 439, or 76%, of the civil cases they were permitted to open in CM/ECF. This is a dramatic increase from last year where, by the end of calendar-year 2006, attorneys had only opened 41% of new civil cases. Ms. Merritt asked that committee members inform Denise Lucks or Therese Bollerup of any ideas for presenting statistical information in a more helpful format.

Ms. Merritt also reported that the court continues to test the latest version of CM/ECF. The Judicial Conference Committee on Court Administration and Case Management has set a date of May 15, 2008, for district courts to comply with Judicial Conference policy on transcripts and the new release includes the software changes needed to implement this policy. The new policy requires the clerk to limit access to transcripts to viewing on the public PCs in the clerk's office and to internal court users for 90 days from filing on CM/ECF. As soon as testing is complete, the clerk's office plans to discuss any policy issues with the judges and then announce the change and offer any necessary training to the bar. In addition, the clerk's office will train court reporters and transcribers. The court will continue to make digital audio files of court proceedings available to the public over the Internet through the Public Access to Court Electronic Records (PACER) system. Again, the judges involved in the pilot are Judge Kopf and the magistrate judges.

Finally, Ms. Merritt stated that the clerk's office is in the process of finalizing the draft courtroom technology strategic plan and will present the five-year plan to the Judicial Council at its April 25 meeting.

**7. Report from judges**

None.

**8. For the good of the order**

None.

**9. Adjournment**

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