

MINUTES OF THE FEDERAL PRACTICE COMMITTEE MEETING

Thursday, December 1, 2011

1:45 p.m.

Fourth Floor Conference Room
Roman L. Hruska U.S. Courthouse
Omaha, Nebraska

The meeting was called to order by Chair Jay Jolley. Members in attendance included Andy Barry, Aimée Bataillon, Meghan Blinn, Stuart Dornan, Bassel El-Kasaby, Michael Fenner, Deborah Gilg, Roger Kirst, Denise Lucks, Mary Lee Ranheim, David Stickman, Gene Summerlin, Erin Tangeman, Melanie Whittamore-Mantzios, and Diane Zech. Judges in attendance included Chief District Judge Laurie Smith Camp, District Judge Joseph F. Bataillon, Senior District Judge Warren K. Urbom, Senior District Judge Richard G. Kopf, Magistrate Judge Thomas D. Thalken, Chief Bankruptcy Judge Thomas Saladino. Others in attendance included Therese Bollerup and Pat Williamson.

1. Introduction of Judges, Members, and Staff

Those in attendance introduced themselves.

2. Approval of Minutes

The committee approved the minutes of the April 29, 2011, meeting.

3. Review of Federal Practice Fund Financial Report

Pat Williamson reported there is \$204,311.72 in the federal practice fund. This money is spread across three accounts at the Omaha Federal Credit Union, with the majority stored in a CD at a rate of 1.25%.

Pat explained the accounts ledger and outstanding authorization spreadsheet attached to the meeting's agenda. In addition, Pat invited committee members to comment on the proposed 2012 federal practice fund budget.

Chief Bankruptcy Judge Saladino and Diane Zech explained that the bankruptcy court recently adopted a mediation plan to supplement the district court's mediation plan. The 2012 budget includes projected expenses in the amount of \$2,000 to pay for mediation expenses in bankruptcy court cases.

Action taken. Pat will add tentative line items to the budget: 1) \$2,000 contribution to the American Association of Legal Historians' reception on November 12 in St. Louis to honor Senior Eighth Circuit Judge Morris Arnold; and 2) gifts for visiting dignitaries, such as a Chief Standing Bear medallion. In addition, Pat will reduce the number of CLE attorney programs to one.

Post-meeting update: Chief Judge Smith Camp and the budget subcommittee approved the 2012 federal practice fund budget.

4. Budget Subcommittee Report

David Stickman advised that Pat's report was comprehensive, and he had nothing to add.

5. Chair's Report

Judicial Council Meetings held July 29, 2011, and October 31, 2011: Jay Jolley provided a comprehensive update to the committee on issues discussed during the July and October Judicial Council meetings.

- The court is facing serious budgetary constraints this fiscal year and next year. Because of the budget crisis, the court will not hire replacements for Deputy-in-Charge Pat Merritt and Jury Administrator Peg Williams, who have announced their retirements.
- Nationally, the Judiciary has announced that courts should examine the consolidation of pretrial services and probation as a cost containment initiative. Dave Stickman advised the Judicial Council that he supports keeping the offices separate.
- U.S. Marshal Martinez indicated during the October Council meeting that the budget will most likely impact staffing in his office, and as a result, the court will not be able to freely accommodate attorneys' requests for scheduling changes.
- Judge Bataillon formed an ad hoc North Platte committee to study alternatives for holding court in North Platte due to the rent and associated expenses of maintaining the facilities.
- Magistrate Judge Zwart continues to handle attorney discipline cases for the court.
- The district court is participating in the national "cameras in the courtroom" pilot program. Article III judges may video record in Judge Smith Camp's courtroom most civil matters if the parties consent. The equipment will be installed in courtroom number 1 in Lincoln at the end of this year. The digital recordings will be uploaded to the AO's Web site at www.uscourts.gov and be available for public viewing.

2014 Eighth Circuit Judicial Conference: Jay reminded committee members the 2014 Eighth Circuit Judicial Conference will be held in conjunction with the Nebraska State Bar Association's annual meeting in Omaha. The court will need financial support from the federal practice fund, along with committee members' time and talent.

CLE programs: Jay hopes the committee will plan a CLE program on federal labor law or immigration law early next year. Jay suggested that the committee form a CLE subcommittee at its next meeting. Bassel El-Kasaby volunteered to serve on the subcommittee.

6. Clerk's Report

State of the Docket/Caseload: Denise Lucks referred the committee to the state of the docket and caseload reports attached to the meeting's agenda. As of October 31, 2011, there were 545 pending civil cases and 575 pending criminal cases. Based on reports available in CM/ECF for the 12-month period ended October 31, civil cases decreased by 11.5% over the same period last year, and the number of criminal felony defendants decreased by .2%.

Judicial Caseload Profile: The Administrative Office published statistics for the 12-month period ending June 30, 2011. Nebraska's civil cases per judgeship decreased by 9.8% over the same period last year, while criminal felony cases per judgeship increased by 1.16%. Weighted filings decreased by 12.9% to 447 filings per judgeship. Nebraska ranks seventh in the nation in criminal felony filings. The reports are available on the court's Web site at <http://www.ned.uscourts.gov/judvac/>.

Amended Plan for the Federal Practice Fund and Committee: Denise recommended that the committee approve the Amended Plan for the Federal Practice Fund and Federal Practice Committee. Denise explained that the plan has been revised to reflect recent changes in the *Guide to Judiciary Policy*, Volume 13, Chapter 12, and local practices. Changes of note to the plan include:

- Expanded sections outlining permissible and impermissible uses of the fund (II(A) and III(A));
- A new section directing the clerk's office to maintain a compilation of requests for fund expenditures that were sent to the Office of General Counsel for guidance (II(A)(2));
- A new section formalizing the role of the committee's budget subcommittee (II(B));
- Inclusion of the Bankruptcy Court Clerk on the committee (VIII(B)(1)); and
- Authorization of the chief judge to appoint a designee to oversee the committee and subcommittees (II(B)(1) and VIII(B)-(F)).

Action taken. The committee approved the amended plan. Denise stated that she will advise the Nebraska Judicial Council that the committee approved and will seek formal adoption by the Council.

7. Judge Bataillon's Report

National Budget for the Judiciary: Judge Bataillon provided the committee members with an update on the budget crisis.

- The Judiciary faces losing 1/3 of its staff if Congress does not appropriate sufficient funds. Locally, Judge Bataillon said that the court hopes to keep all of its staff in FY 2012 and FY 2013. Judge Kopf added that the court will most likely need to furlough all non-chambers staff in FY 2013 for up to 79 hours per employee.
- The Committees of the Judicial Conference are requiring courts to justify keeping courthouses open that do not house a resident judge. Judge Bataillon said that he expects a report from Ad Hoc North Platte Committee

Chair Woody Bradford before the Nebraska Judicial Council's April 27, 2012, meeting. Judge Bataillon encouraged committee members to share their thoughts about alternatives to holding court in North Platte with Mr. Bradford.

Jay advised the committee that the federal practice fund cannot be used to assist the court with its budget.

2014 Eighth Circuit Judicial Conference: Judge Bataillon informed the committee that Michael Kinney and Aimée Bataillon are serving on the planning committee for the 2012 conference. Their experience on the planning committee will help the court in its planning for the 2014 conference. Judge Smith Camp thanked Judge Bataillon for volunteering to serve as the 2014 Eighth Circuit Judicial Conference point of contact for the court. Judge Bataillon added that CLE programs will be offered during the conference.

8. Judge Smith Camp's Report

New Chair: Judge Smith Camp announced that Aimée Bataillon agreed to accept the appointment as the 2012 chair.

Stephanie Stacy: Judge Smith Camp stated that Stephanie Stacy resigned from the committee after her appointment to the Lancaster County District Court Bench.

New Chair and Suggestions for New Members: Judge Smith Camp thanked Jay Jolley for his excellent service to the court as the 2011 chair and advised the committee that Jay agreed to remain on the committee next year. Judge Smith Camp also thanked Melanie Whittamore-Mantzios, Gene Summerlin, and Maren Chaloupka for their exceptional work on the committee. Judge Smith Camp asked the committee to send suggestions for additional appointments to Ms. Bataillon. The court needs to appoint two committee members from Lincoln, one from Omaha, and one from greater Nebraska for the 2012-2014 term.

Production of Trial of Standing Bear ("Waaxe's Law") at National Indian Museum in Washington, D.C.: Judge Smith Camp attended the play written by former law clerk Mary Kathryn Nagle at the National Indian Museum in Washington, D.C., on October 7, 2011.

Model Jury Instructions: Judge Smith Camp shared a letter from Senior District Judge Bill Wilson (AR-E) with the committee. Committee members should send criminal and civil suggestions for the Eighth Circuit Model Instructions to Judge Smith Camp. Judge Smith Camp will forward the suggestions to the appropriate model instruction subcommittee member.

Gifts for Visiting Dignitaries: Judge Smith Camp proposed that the committee purchase small gifts for visiting dignitaries. The clerk's office will research options.

Tribute/Roast of Judges Bataillon and Kopf: Judge Smith Camp invited all members to attend the ceremony and reception to honor Judges Bataillon and Kopf.