AMENDED
PLANS FOR ADMINISTRATION OF THE FEDERAL PRACTICE FUND
and
THE FEDERAL PRACTICE COMMITTEE
(As of November 2, 2001)

FEDERAL PRACTICE FUND PLAN

I. THE FEDERAL PRACTICE FUND.

A. In establishing the Federal Practice Fund, the court exercises the authority granted the district courts by the Administrative Office of the United States Courts implementing policies of the Judicial Conference of the United States, as set forth in the Guide to Judiciary Policies and Procedures, Administrative Manual, Vol. I-A, Chapter VII, Part M, "Attorney Admission Fees" (Dec. 1999) and related provisions of the Guide; the authority granted by NELR 67.4 and 83.4(g); the provisions of 28 U.S.C. § 1914(b); and the court's inherent authority.

B. This plan sets forth the policies of the court which have been followed in the past and it is intended as a written expression and collection of those policies. Nevertheless, previous orders and related policies or guidelines to the extent inconsistent with this plan are repealed. See, e.g., General Orders 94-14 and 94-15.[1]

II. ESTABLISHMENT; SOURCES.

A. There is hereby established the "Federal Practice Fund" (hereinafter "Fund"). It shall consist of non-appropriated funds.

---

[1]These orders may be found in http://www.ned.uscourts.gov (General Orders).

B. Sources of monies to be placed in the Fund shall include: attorney admission fees (in excess of the basic admission fee otherwise set by the Judicial Conference of the United States); annual assessments collected from the members of the bar of this court for such purpose; earnings from the investment of the monies in the Fund; and any monies remaining in the Fund at the end of each fiscal year.

III. PURPOSES.

A. The Fund may be used to pay mediation and litigation costs (excluding attorney fees) of indigent litigants when attorneys have been appointed as counsel in accordance with the local rules.

B. The Fund may be used to pay attorneys appointed to serve as guardians ad litem in this court. The reimbursable expenses of the guardian ad litem may include attorney fees when the guardian ad litem has been authorized to hire counsel.

C. The Fund may be used to pay for educational programs for the members of the bar of this court and to provide technologically advanced equipment for the use of the members of the bar of this court to efficiently and economically present evidence in this court, when such equipment is not otherwise reasonably available.

D. The Fund may be used to pay expenses for the involvement of members of the bar of this court, especially members of the Federal Practice Committee, in advising the judges of this court on matters of practice, including travel expenses related to attendance at the Eighth Circuit Judicial Conference and other conferences or seminars that assist those members in providing counsel

to the judges of this court.

E. The Fund may be used to pay the expenses of disciplinary proceedings in this court pursuant to NELR 83.5(j) or otherwise.

F. The Fund may be used to support the work of the Federal Practice Committee, the Historical Society of the United States Courts in the Eighth Circuit and the District of Nebraska Branch, including, but not limited to, paying for the travel or other expenses of attorney members of such societies, branches, or committees.

G. The Fund may be used to pay for any activity which benefits the bench and bar of this court.

H. The Fund may be used to pay the expenses of the Fund.

IV. COLLECTION; INVESTMENT; ACCOUNTING; REPORTS.

A. Except for categories of lawyers exempted by the court[2], the clerk shall annually assess each of the regular members of the bar of this court such sum as shall be decided by the majority of the active district judges of the court. (This sum shall be in addition to any basic admission fee established by the Judicial Conference of the United States.) In the case of a tie vote, the decision of the chief judge shall prevail.

B. Unreasonable accumulation of funds shall be avoided. However, the court recognizes that in the past very large, but unanticipated, sums of money were

---

[2]See, e.g., General Order 93-06, available in http://www.ned.uscourts.gov (General Orders).

needed to defray the litigation expenses of appointed counsel. Therefore, the reasonableness of any accumulation of funds must be measured against the potential for large unanticipated litigation expenses of appointed counsel.

C. Except for lawyers who are exempt, and if not otherwise directed by the court, the clerk shall annually collect $5.00 from each regular member of the bar of this court as the annual assessment. (This sum shall be in addition to any basic admission fee established by the Judicial Conference of the United States.)

D. Such sums shall be deposited by the clerk in interest-bearing accounts insured by the appropriate federal agency, or in government securities, or money market funds invested in government obligations, in such fashion as shall leave available to the Fund sufficient liquid funds to meet its known or anticipated obligations on a timely basis as they are expected to come due, while maximizing to the extent practicable the amounts earning income.

E. The monies in the Fund's accounts shall be kept separate from all government funds and from other non-appropriated funds held by the clerk pursuant to official responsibilities, and shall be separately accounted for in the books of the office of the clerk. The Fund's account(s) shall be subject to audit from time to time or as may be required and conducted by the Administrative Office of the United States Courts, or, in lieu thereof, by an independent auditor selected by the chief judge. The costs of such independent audit, if the auditor is not a government employee acting in an official capacity, shall be borne by the Fund. Upon dissolution of the Fund, a final audit shall be performed and a written accounting rendered to the court. Copies of the report of each audit shall be provided to the active district judges of this court, and may, upon request, be provided to any active member of the bar of this court.

F. At least semi-annually, but more frequently if directed by the chief judge, the clerk shall provide to the judges of this court a report showing deposits to and expenditures from the Fund during the reporting period, the outstanding balances in the Fund's accounts, and the amounts then known to be authorized for future expenditure.

V. CUSTODIAN; SUCCESSOR CUSTODIAN.

A. The clerk of the court is appointed custodian of the Fund. The custodian shall:

1. Receive, safeguard, deposit, disburse, and account for all monies in the Fund;

2. Establish appropriate bookkeeping and accounting systems for the Fund;

3. Ensure that financial statements and operating reports are prepared in a timely fashion and sign such statements and reports, thereby certifying that the statements and reports accurately present the financial condition of the Fund;

4. Invest the monies in the Fund in accordance with this Plan; and

5. Perform such other functions as directed by the chief judge.

B. Whenever a clerk of this court leaves office, his or her successor in office shall become the successor custodian of the Fund. The outgoing custodian shall prepare, certify, and deliver to the new custodian the following statements in conjunction with an exit audit or inspection by an auditor or disinterested person as designated by the court:

1. A statement of assets and liabilities as of the close of the last fiscal year, and a similar statement as of the date of the transfer;

2. A statement of operations or of receipts and disbursements covering the period since the last audit, up to the date of transfer to the successor custodian; and

3. A statement of the balance in any Fund accounts as of the date of transfer to the successor custodian, to the extent not included in (1), above.

C. The clerk's successor shall execute a receipt for all monies in the Fund after being satisfied as to the accuracy of the statements and records provided by the outgoing custodian. Acceptance may be conditioned upon audit and verification when the circumstances warrant.

VI. USES AND PROCEDURES.

A. The Fund may be used for the purposes set forth in this Plan, to the extent that appropriated funds or resources are not available. The Fund shall not be used to supplement appropriated funds for any purpose. The Fund shall not be used to purchase materials or supplies available from statutory appropriations. The Fund shall not be used to supplement salaries or expenses of employees or judges of this court or provide such persons with an extra benefit. The Fund may be used to pay for the expenses of personnel from other courts (such as judges and employees) and other persons whose attendance at a function benefits the bench and bar of this court.

B. In the event the Fund is used to purchase equipment, such equipment shall thereupon become the property of the United States District Court for the

District of Nebraska, and shall be available for use by the members of the bar of this court subject to any guidelines established by the active district judges of the court. The Federal Practice Fund shall not be used to augment the purchase of computers and other information technology equipment which is otherwise subject to funding by the Judiciary Information Technology Fund.

C. Without limit, litigation and mediation expenses may be incurred and paid at the sole direction of the chief judge if, in his or her opinion, the guidelines have been complied with. Other expenses not exceeding $5,000 in the aggregate may be incurred or paid at the direction of the chief judge alone. Additional expenses may be incurred or paid at the direction of the chief judge upon the approval of a majority of the active district judges. In the event of a tie vote, the decision of the chief judge shall prevail.

D. The other judges of the court, employees of the court, members of the Federal Practice Committee and bar members generally may inform and advise the chief judge and the active district judges as to proper or suggested uses of the Fund and other matters of policy concerning its administration.

E. Where practical, before expenses are incurred, prior authorization should be sought. The guidelines for reimbursable attorney (litigation and mediation) expenses adopted on the date of this order are attached hereto and marked as Exhibit A. Except for applications submitted by a judge, applications for authorization to incur expenses to be paid by the Fund shall be made in writing, as follows:

1. for litigation expenses in a pending case, to the district, magistrate, or bankruptcy judge assigned to the case in accordance with the guidelines;

2. for mediation expenses in a pending case, to the district, bankruptcy, or

magistrate judge who is considering referring the case to mediation pursuant to the court's guidelines and Mediation Plan;

3. for all other expenditures, to the chief judge.

F. Except for applications submitted by a judge, applications for authorization to incur expenses shall set forth the purposes for which the expense would be incurred, the estimated cost, the efforts made by the applicant to keep the cost as low as possible, and the efforts made by the applicant to obtain funds from other sources to pay the expense. Applications for litigation expenses in pending cases may be submitted in camera, if, as set forth in the application, disclosure of the application or its purposes would compromise the litigation strategy of the party in whose behalf it is made.

G. An application for authorization to incur litigation or mediation expenses to be paid from the Fund constitutes an agreement that in the event the applicant obtains a monetary recovery in the case, either by judgment or settlement, the applicant will, unless otherwise ordered, repay the Fund from such recovery before the remainder is distributed. The assigned judge may, on motion, waive up to $1,000.00 otherwise required to be repaid, if such waiver is required in order to effect settlement of the case; any larger waiver must be approved by the chief judge.

H. Applications submitted by a judge shall be made as directed by the chief judge.

I. Approval of an application for authorization to incur expenses to be paid from the Fund shall be in writing or by electronic mail (e-mail) and shall set forth the maximum amount approved. For litigation and mediation expenses, the original authorization shall be by order and shall be filed in the case file, under seal if appropriate; all other authorizations shall be in writing or by electronic

mail (e-mail) and shall be maintained by the clerk of the court. If the authorization is by e-mail, the clerk shall retain a hard copy of the e-mail. All authorizations, including those granted in camera and under seal, shall be available for inspection by the auditors.

J. Only the chief judge, or in the absence of the chief judge, the active district judge next senior in service, shall be permitted to direct the custodian to make payments or disbursements from the Fund. Such directive shall be in writing or by electronic mail (e-mail) and shall identify the amount to be disbursed. If the directive is by e-mail, the clerk shall retain a hard copy of the e-mail. The clerk of the court shall maintain the directive and make it available for inspection by the auditors.

K. All disbursements from the Fund shall be made by check. All checks must be signed by the clerk and the chief deputy clerk. Before signing checks, the clerk and chief deputy clerk are ordered to separately satisfy themselves that all disbursements are made in accordance with this Plan.

VII. DISSOLUTION.

A. The Fund may be dissolved by majority vote of the active district judges of the court. In the case of a tie vote, the decision of the chief judge shall prevail.

B. At the time of dissolution, notice shall be given to all persons known or believed to have incurred expenses for which the Fund may be authorized or obligated to pay, and such persons shall be given at least thirty days to submit their claims for payment.

C. After all of such claims have been received and paid, a final audit shall be conducted. The remaining balances in the Fund, if any, shall be disposed of

in accordance with the majority vote of the active district judges in ways which fulfill or further the purposes of the Fund. In the case of a tie vote, the decision of the chief judge shall prevail.

FEDERAL PRACTICE COMMITTEE PLAN

I. FEDERAL PRACTICE COMMITTEE; PURPOSE.

A. Pursuant to the inherent power of the court, there is hereby created a Federal Practice Committee. See also Guide to Judiciary Policies and Procedures, Administrative Manual, Vol. I-A, Chapter VII, Part M, "Attorney Admission Fees" § 2.3.1.(4), at M-3 (Dec. 1999) (authorizing any court that maintains an attorney admission fund to create an advisory committee consisting of members of the bar).

B. When requested, the committee shall advise the court, and the chief judge, on matters relating to the practice of law in this court. When requested, the committee shall also advise the court, and the chief judge, regarding the Federal Practice Fund. When requested, the committee shall also conduct specific activities which benefit the bench and bar of this court, such as, but not limited to, the sponsorship of educational seminars.

C. While the court believes a strong collaborative relationship between the bench and bar is appropriate, neither the court nor the chief judge is obliged to seek or follow the advice of the committee on any particular matter. Under no circumstances shall the committee have any power to act for or bind the court or any of its judges or employees. Members of the committee are not by virtue of such membership agents, servants, or employees of the United States and they have no power to act for or bind the United States because of their

membership on the committee.

D. This plan sets forth the policies of the court which have been followed in the past and it is intended as a written expression and collection of those policies. Nevertheless, previous orders and related policies or guidelines to the extent inconsistent with this plan are repealed.

II. MEMBERS; CHAIR PERSON; PROCEDURES.

A. The Federal Practice Committee shall consist of not more than nineteen (19) members. Except for the clerk of the district court, all such members must be regular members of the bar of this court or faculty members at the Creighton University School of Law or the University of Nebraska College of Law.

B. The clerk of this court, the United States Attorney, the Federal Public Defender, a lawyer designated by the Nebraska Attorney General, a faculty member designated by the Dean of the Creighton University School of Law, a faculty member designated by the Dean of the University of Nebraska College of Law, and the chair person of the committee from the preceding year shall be "ex officio" members of the committee.

C. In addition, not more than twelve (12) lawyers appointed by the chief judge shall also serve as "at large" members of the committee, each serving a term to be designated by the chief judge. The chief judge is encouraged, but not required, to stagger the terms of these twelve (12) members. There is no limit on the number of years any such members may serve, but the chief judge is encouraged to appoint new members on a regular basis.

D. All members of the committee, both "ex officio" and "at large," shall have one vote, and the decision of the majority shall govern. In the case of a tie vote, the

decision of the chair person of the committee shall prevail.

E. The chief judge shall select one of the members of the committee as the chair person. Subject to the oversight of the chief judge, the chair person shall preside over the meetings of the committee and act for the committee when it is not practical to convene a meeting of the committee. Meetings may be conducted by telephone. Unless authorized by the chief judge, the meetings of the committee shall not be open to the public.

F. Subject to the oversight of the chief judge, the committee shall meet as frequently as is necessary at the call of the chair person. While not required, it is suggested that the committee meet at least twice a year. Judges and employees of the court may attend any such meeting and participate therein. The committee is encouraged but not required to hold a meeting at the annual meeting of the Nebraska State Bar Association and also during the Eighth Circuit Judicial Conference.

G. Subject to the oversight of the chief judge, the chair person may preside over the meeting as he or she deems appropriate. If requested by the chief judge, the committee shall consider any matters put before it by the chief judge.

H. Subject to the oversight of the chief judge, the chair person may appoint such subcommittees, consisting of members of the committee, as he or she deems appropriate. Such subcommittees shall have the powers delegated by the chair person.

I. The court or chief judge may dissolve the committee at any time. The chief judge may remove a chair person and appoint a new chair person at any time. The chief judge may remove a member of the committee at any time and appoint a new member at any time. All members of the committee serve at the

will of the chief judge and the court.

J. No member of the committee shall receive any compensation for service on the committee except for reimbursement of expenses incurred while doing committee business. Reimbursement of any such expenses must be approved by the chief judge and shall be paid only from the Federal Practice Fund.

K. The present members, chair person, and chair person "elect" of the committee are reappointed for the terms previously designated by the chief judge.

- - -

The foregoing Amended Federal Practice Fund Plan and the Federal Practice Committee Plan were adopted by the court on this 2nd day of November, 2001, and IT IS SO ORDERED. IT IS FURTHER ORDERED that the Chief Judge is authorized to take such action and to prepare, sign, and file such standing or general orders as may be necessary or advisable in his discretion to implement these plans.

BY THE COURT:

Richard G. Kopf, Chief Judge

Exhibit A

GUIDELINES FOR REIMBURSABLE ATTORNEY EXPENSES FROM THE FEDERAL PRACTICE FUND

The court appreciates the professional services provided by members of its bar who accept appointments in civil cases. Among other reasons, the Federal Practice Fund has been established and its resources made available to reimburse appointed counsel in civil cases for out-of-pocket expenses incurred in representing indigent parties. See NELR 67.4. See also NELR 83.4 (f) and (g).

Although the local rule limits amounts payable to those reasonably incurred after advance authorization for those expenses for which no other source of payment exists, these guidelines are intended to authorize you to incur some expenses without prior authorization. They also should answer questions about the nature of reimbursable expenses and assist you in receiving reimbursement.

1. PRE-AUTHORIZED LIMIT; AUTHORIZATION TO EXCEED. You are authorized to incur reasonable and necessary reimbursable expenses (calculated in accordance with these guidelines) up to $500, without submitting to the court any application for prior authorization. You must obtain advance approval from the court before incurring any reimbursable expense which would take the total of such expenses over $500. For example, if you have incurred reimbursable expenses of $490 and propose to take a deposition, you must apply for advance authorization to incur the expense. The application should be captioned, "Application for Authorization to Incur Expenses," should be filed in the case, and should set out sufficient information for the court to evaluate the necessity of incurring the expense, the estimate of the amount expected to be needed, and how you have sought to keep that amount to a minimum. Your application may include several items of expense or just one, depending on your knowledge of the anticipated expenses. (If information disclosed in your application will jeopardize your client's position or

strategy in the case, you may submit it first in camera to the magistrate judge assigned to the case and seek leave to file it under seal). File the application sufficiently in advance of incurring the expense to allow the court a few days to reach it; if it is urgent, ask the clerk's staff to walk it down to the magistrate judge who is assigned to the case (don't do this often). If you incur an expense for which prior authorization was required without receiving that prior authorization, it will not be reimbursed.

2. CLIENT'S RESPONSIBILITY; REPAYMENT. The client should be advised that neither the granting of an application to proceed in forma pauperis nor the appointment of counsel waives the client's responsibility to pay expenses of litigation. NELR 3.5(h). In addition, the client should be advised that, unless otherwise specifically ordered, any amounts disbursed from the Federal Practice Fund must be repaid to the Fund if the case is settled with a payment of money, if fees and costs are awarded under 42 U.S.C. § 1988 or other applicable statute, or if the plaintiff is awarded money damages.

3. AUTHORIZED EXPENSES; EXAMPLES. Following is a list of expenses which may be incurred and are eligible for reimbursement in accordance with the above provisions. It is not exclusive.

a. Lodging and meals. When you are out of town solely on business associated with your appointment, lodging and meal expenses actually incurred up to the government per diem allowance provided for court personnel are reimbursable. Unless prior court approval is granted, the court will not reimburse lodging and meal costs for law clerks, paralegals, secretaries, investigators, or others.

b. Mileage. Travel costs for appointed attorneys are reimbursable at the applicable government rate.

c. Copying. Actual costs up to twenty cents per page for copies of records and

documents necessary for case preparation are reimbursable. No reimbursement is available for copies of cases or articles. If a governmental defendant attempts to impose higher copying costs, you should bring this to the court's attention before incurring the costs.

d. Computerized research. Reimbursement is available for the cost of services such as Lexis or Westlaw.

e. Expert witnesses. Reimbursement is available for expert witness fees and expenses, limited in accordance with government travel regulations pertaining to court employees.

f. Depositions. Court reporter fees for depositions of essential witnesses are reimbursable. To keep expenses down, we encourage telephone depositions for out-of-town witnesses, tape-recorded depositions, and forgoing copies of non-essential transcripts.

g. Witness and service fees. These are reimbursable.

h. Telephone calls and postage. Necessary long distance charges and postage incurred in your representation are reimbursable. Excessive phone calls to and from the client will not be reimbursed, so be careful about accepting repeated collect calls from your client.

i. Mediation Expenses. If your case is mediated through the court's Mediation Plan, your client's share of the fee is reimbursable. If the case is mediated privately, only that portion of the fee which equals the amount that would have been payable by your client under the Mediation Plan is reimbursable.

j. Other, necessary out-of-pocket expenses as justified.

4. PROCEDURE. Once authorization to incur expenses has been received, counsel are asked to advance reimbursable costs and then file a "Request for Reimbursement." The request should be captioned in the case and should provide a sufficient explanation of the costs to allow the court to understand the need for them. All expenses, even those under the $500 amount, must be explained. If your request exceeds $500, you must state which of the expenses were incurred after the $500 limit was reached, and whether you were given advance approval to incur those expenses. When practicable, we request that you delay filing requests for reimbursement until the representation is completed. (If you file an interim request and disclosure of its contents might jeopardize your client's position or strategy in the case, you may first submit it to the assigned magistrate judge in camera and request that it be filed under seal). A copy of your request for reimbursement should be submitted to the chief judge, who, under the local rules, is the only person who may authorize the clerk to pay out the funds. You may also submit explanatory materials to the chief judge. A copy of the explanatory materials need not be served on opposing counsel or parties, as they will not address the merits of the case.

5. QUESTIONS. Your inquiries regarding the administration of the Fund should be directed to the custodian of the Fund, who is the clerk of the court.