

MINUTES
FEDERAL PRACTICE COMMITTEE
May 16, 1997
Lincoln, Nebraska
Chambers of Judge Richard Kopf

Those Present: Court of Appeals Judge C. Arlen Beam, Chief District Judge William G. Cambridge, Magistrate Judge David L. Piester, Magistrate Judge Kathleen A. Jaudzemis, Magistrate Judge Thomas D. Thalken, Pat Barrett, Mark Christensen, Norbert Ebel, Ed Hotz, Tom Monaghan, Bob Rossiter, Laurie Smith Camp, David Stickman.

COURTHOUSE GROUNDBREAKING

Chief Judge Cambridge announced that the ground-breaking for the new courthouse would be held Friday, May 30, 1997, at 3 o'clock.

MINUTES

Approval of the minutes of the previous Federal Practice Committee meeting was the first order of business.

SEMINARS SUBCOMMITTEE

Dave Stickman reported that 98 people signed up for the seminar held at the time of the Nebraska State Bar Association meeting. Thirty-seven did not show up. Many favorable comments were made. Extra books are available. It is contemplated that future seminars will include 1983 cases, expert notification, the nuts-and-bolts of practice in the federal court. The seminars could be held during the time of the Nebraska State Bar Association meeting or they could be held at UNL since the Creighton Law School is now being renovated. Magistrate Judge Jaudzemis stated that she does an update of employment law each year and that she already has outlines on Title VII, ADA, etc. Employment law

could be covered in one session and the outline could be passed out.

It was the consensus of the committee that the annual Nebraska Bar Association meeting is the best time to schedule a seminar. 1983 cases is a good topic but should only be one of several sessions. A session could be had on jury, on Rules. Magistrate Judges Kathleen Jaudzemis and Thomas Thalken volunteered to put together some topics. All agreed that the seminar should not have speakers who compete with the Bar Association speakers. There will be no charge made for handouts. Bankruptcy judges could do the nuts-and-bolts of one bankruptcy chapter. A copy of the State Bar's agenda should be obtained before our program is made up.

The scheduling of the Federal Practice meeting at the Eighth Circuit conference is up to the new chairperson — probably July 24th or the 25th. Chief Judge Cambridge suggested that those on the Federal Practice Committee who attend the Federal Practice Committee meeting should be reimbursed for attending. Reimbursement for attendance at the Committee meeting is a valid expenditure. It was moved and seconded that expenses to attend this meeting in Minneapolis - - mileage to and from their homes, one night's lodging and one day's subsistence be paid to those committee members who are in attendance. The lodging costs will be the costs of the hotel and the subsistence expense will be limited to \$50. Transportation to and from their homes will be the mileage or airfare, whichever is less. This motion carried.

Magistrate Judge Thalken reported on the Western Nebraska Bar Association seminar. He stated that he had driven 400 miles and seven people showed for the seminar. Fifty people had attended a banquet the night before. He handed out notebooks left over from the seminar at the Nebraska Bar Association meeting. He talked about the small number of cases being filed in North Platte and the small number that are pending. He brought out the Judicial Conference guidelines regarding non-resident chambers. There was somewhat of a surprise at the small activity in North Platte. Chief Judge Cambridge advised that he had signed orders reassigning all cases on the North Platte docket and instead of cases being left out in limbo, we now have Article III Judges and Magistrate Judges assigned. We will have to change the Local Rule to abide by these reassignments. These cases will be reassigned just before trial to the judge who has the next trial rotation in North Platte.

Tom Monaghan stated that the U. S. Attorney would not be requesting more criminal cases be tried in North Platte. More cases will probably be filed in Omaha or Lincoln. He stated it was possible a part-time Magistrate Judge would be needed in the North Platte area. The initial appearance is the big thing.

LAWYER APPOINTMENTS SUBCOMMITTEE

Ed Hotz stated that he, along with Pat Barrett and Bill Dittrick, and Bob Rossiter were examining the present system for appointment of lawyers to cases, getting information from the attorneys, and that an impressive report has been made from the questionnaires submitted and returned from attorneys. Five

hundred eighty-nine attorneys responded.

The recommendations growing out of the questionnaires:

- 1) To formalize an appointment system that utilizes volunteer attorneys to the extent that volunteers can be obtained and to encourage volunteers to develop practice manuals or sample pleadings to aid the younger lawyers who have no experience.
- 2) Use a panel of more experienced attorneys for inexperienced attorneys to call for direction and to answer questions.
- 3) There use to be a sense that when one starts to practice law that law firms encouraged young attorneys to volunteer. There is a need to talk to senior partners to get young attorneys to take these cases and not make it a penalty of time and money to the young attorney.

There was some concern about being sued by inmates after handling a case. Also, there was some question about whether the Attorney General's Office might ask for sanctions on account of statements made in the pleadings or violations of the rules. It was stated that some lawyers are intimidated by the Federal Rules and the fear of being sanctioned because of a violation of a Rule. Appointed attorneys ought to be given some latitude if inexperienced. Laurie Smith Camp brought out that the civility of people in the Attorney General's Office and the Bar has improved considerably.

Also, the need for appointment of attorneys since the Prison Litigation Reform Act has gone down. There has been a drop in cases. Motions are not being filed to make people run around.

The conclusion was that we do not need to look at an involuntary system as we did a year ago. Magistrate Judge Jaudzemis brought out that we should not appoint attorneys out-state if they have to come to Omaha or Lincoln.

It is time to make a list by calling firms and asking support for volunteers. Anyone in the law firm can come in and do the work. When the renewal notices are mailed later this year, possibly a question can be added to the notice asking if you are willing to handle court appointments. Volunteer people are so much superior to making appointments and getting conflicts and withdrawals. We have approximately 46 volunteer attorneys signed up now and we can go to the law firms for younger persons. Ed, Bob, Pat, and Bill will make calls or letters to law firms requesting volunteers. Magistrate Judge Thalcken stated that the Federal Practice Committee should establish a list of attorneys that can be submitted to the court for court appointments. A pitch can be made to new attorneys who are sworn in; however, it is better if they have a couple years of experience. The list should be updated at least yearly. A motion was made that a volunteer

system be established and the Federal Practice Committee or subcommittee generate this list and update it at least annually for the judges of the court to make court appointments. Paralegals could be used to assist in updating if necessary. Chief Judge Cambridge brought out that we are steering away from the Iowa Buyout Plan for now. Before appointments are made calls could be made to the attorney to determine if there is any conflict. The volunteers will expect to be furnished material. Bob and Pat volunteered to prepare a packet on employment cases. The outline could be used for the 1983 cases. The motion carried.

Chief Judge Cambridge commended Ed, Pat, Bill and Bob for the work completed on the survey and analysis.

In Omaha there is no need to appoint attorneys on employment cases, except for extreme cases. There is a market out there. If private attorneys do not take cases, it must be because the cases are not good. If the market did not take these cases; if only one attorney took these type of cases, then there would be a need for appointment. There are a great number of employment cases pending in this district, possibly up to 1/3 of the pending.

TECHNOLOGY SUBCOMMITTEE

Bart McLeay was not present. Chief Judge Cambridge stated there was another system other than the Elmo. It is the DOAR presenter

and that it has attachments, other capabilities and features. Other than the communicator, there is the illustrator with pads and pen, the printer, a disk partner, and a cabinet to hold the equipment. The disk partner allows exhibits entered into the box to be called up by barcode or number. It is contemplated that one system be obtained for Omaha and one for Lincoln except that only one disk partner would be obtained for the purpose of trying it out in Omaha first. The cost of all this equipment for both Omaha and Lincoln would be between \$35 and \$50 thousand. Tom Monaghan felt this was too expensive and that he would like to confer with his systems manager. He felt the matter should be tabled until someone from Bart's committee can work on this.

It was brought out that the new courtrooms would have the conduit so that they can be wired for electronic equipment. It was then suggested that the Federal Practice Committee hire a consultant for recommendations. The new Minneapolis Courthouse with an electronic courtroom will possibly be open before or after one of the cocktail parties at the Eighth Circuit Conference. The Federal Practice Committee could then see this equipment. Bob Rossiter will check if a demonstration is available. Magistrate Judge Thalken brought out the fact that this has been talked about for one and one-half years and we need to get a commitment to get this going. Bob will talk with Bart and update him.

Chief Judge Cambridge later stated that he would like to have some agreement as to the evidence presenter or asked whether everyone wanted to first see the Minneapolis courtroom, or could authority be given to go ahead and make a purchase. The

consensus was if the subcommittee and judges like the equipment, they should go ahead and get the equipment.

ADR/MEDIATION SUBCOMMITTEE

Magistrate Judge Piester stated that out of 105 cases that came back from mediation, there were 15 settled before mediation. There was about a 40% settlement rate of those mediated (3 or 4 partial settlements) but the settlement rate should be approximately 50%. There should have been more dollars talked about; more talking about the money aspect. Comments were made that the mediators did not really know how to present the case, that it takes a lot of time to get to the exchange of offers, that mediation was too early, that more people with authority need to be at the sessions. However, maybe the program is okay as a fledgling. Chief Judge Cambridge stated that the judges are satisfied. It is realized this is not a panacea and that not all cases will be settled. The consensus is that we will continue to work with the alternatives available. It was brought out that most of the evaluations are positive even when cases do not settle.

NORTH PLATTE SUBCOMMITTEE

John Gale has agreed to head the Federal Practice subcommittee on North Platte.

CHAIRPERSON FOR REMAINDER OF YEAR

No one volunteered to fill the position. Gail Perry was not in attendance but it was thought she may wish to become chairperson. Bob Rossiter will speak with her and if she is agreeable she will serve. This was agreeable with all of the Federal Practice Committee.

Chief Judge Cambridge stated that the Eighth Circuit Judicial Conference would be the week of July 22nd and that our Federal Practice Committee meeting would be either the 24th or 25th. The question with reference to the meeting is whether a breakfast or luncheon would be preferred. After some discussion it appeared that a breakfast may be best.

PRO HAC VICE FEE

Chief Judge Cambridge stated that the judges voted at the last Judges Meeting to eliminate the pro hac vice fee. The entire \$50 from such fee goes into the U. S. Treasury and so we get nothing unless we increase the fee over \$50. Now we are not getting anything from the full admission fee either. The total admission fee of \$50 goes into the U. S. Treasury. Our annual renewal fee is our only source of income to the Federal Practice Fund.

JUROR ORIENTATION FILM

The State Bar Association has prepared an orientation film for new jurors. It cannot be used alone to orientate new jurors, the judges will continue to charge the jury. We will get copies when they are available.

PETITION FOR REVOCATION OF PROBATION

The petition for revocation was brought up at the last Judges' Meeting, and it was decided that it should be worded 'report' rather than 'petition'.

CJRA COMMITTEE

This committee is also that committee. A study by the Rand Committee concluded that early discovery has the effect of saving

expenses and delay. The issue was raised as to whether we should be doing anything about this. Presently, discovery has to be completed within so much time before trial. Should we set completion date without reference to trial date. The consensus is to keep it as it is now. Magistrate Judge Jaudzemis believes that would have value if they new the trial date was in the fifth or sixth month but if there are two years between filing and trial, it is questionable if it is valid for the discovery to be completed within twelve months and twelve months between completion of discovery and trial. Chief Judge Cambridge will circulate the Rand report to members of the committee and discussion can be had later. We need a serious discussion. If discovery is cut off early and we wait six months for trial and then have motions to continue, it is only costing more money.

PAYMENT OF FEES FOR NCLE

NCLE courses for people who belong to the Federal Bar. Should there be payment? Can we show to members of the Federal Bar they are getting some benefit from this. The seminar is limited to 100-150 people so who would benefit from payment of the money. It had been suggested that any member of the Federal Bar would be sent a check for the tuition. But, is this for the betterment of the Bar. The purpose of the \$15.00 renewal fee is for costs incurred by appointed attorneys. Discussion was had as to why we should not stop assessing the \$15.00 and if need money again, can restart the assessment. The Federal Practice Fund can be used under the guidelines for anything that benefits the bench and the bar. We cannot use it for any payment for which funds are appropriated. The money in the Federal Practice Fund accumulated


while we were looking into the Iowa Plan, but since we are not going to do this, we need to perhaps look at cutting back. However, the renewal fee is our only source of funds. Chief Judge Cambridge thought it would be a good idea to wait until later in the year to take up this issue as the renewal letter is sent out in December. Payments should benefit all members of the bar, not just a few. Also, it is better to reduce the amount of the annual fee rather than to quit it and to restart it.

NEW COMMITTEE CHAIR

Bob Rossiter has advised that Bart McLeay will serve as Chair of this committee.

The next meeting of this committee is tentatively scheduled for Tuesday, October 14, 1997, at the Cornhusker Hotel in Lincoln, Nebraska.

Prepared by:


Norbert H. Ebel, Clerk
U.S. District Court
District of Nebraska