

**Federal Practice Committee Meeting
Minutes
Mahoney State Park, Ashland, NE
Tuesday, May 23, 2000
Gary D. McFarland**

Present for this meeting were: Chief Judge Richard G. Kopf, Magistrate Judge David L. Piester, Magistrate Judge Kathleen A. Jaudzemis, Magistrate Judge Thomas D. Thalken, Tom Dahlk, Bill Wright, Carolee McMahan-Boies, Gary McFarland, Bob Cannon, Dave Stickman, Roger Kirst, Laurie Smith-Camp, and Charles Lowe. The meeting began at approximately 2:00 P.M..

1. CM/ECF. Chief Judge Kopf and Gary McFarland informed the committee of the selection of our court to be one of the first wave courts for CM/ECF, with possible implementation on or about January 1, 2001. Chief Judge Kopf stated that this would be the biggest impact upon the court in the last 40 to 50 years, as it will change the way that we operate. Chief Judge Kopf stated that once CM/ECF is implemented, it will be mandatory for the filing of all new cases. Gary pointed out that the first wave is for civil cases only. Bob Cannon interjected that there is strong need for training. As to training, Gary McFarland informed the committee that Luta Pleiss, our trainer, will be attending a training seminar and we will begin to put together a training package. Gary pointed out that the move to the new federal building is becoming imminent as of next month, and that until we are in the building there would not be much done on CM/ECF. Bob Cannon suggested that a short presentation be made at the July 28 Federal Practice Seminar. Nothing was decided as to this issue. Magistrate Judge Thalken suggested that there be a notice given to the Bar as to the equipment requirements for participation in CM/ECF. Carolee McMahan-Boies interjected a question as to how sealed items would be handled. Gary explained that sealed items are being handled in the Western District of Missouri and accommodations will be made to handle sealed matters.

2. Rules Committee. Magistrate Judge Thalken stated that he is waiting for the July 31 strategic planning before making any Rule changes. The federal rules have been amended and could take effect in December of 2000. Judge Thalken thought that it would be best to wait until all changes in the rules are in effect and the court has gone through the next session of the strategic planning. Carolee McMahan-Boies raised the issue of subpoenaing records, such as medical records. Carolee stated she had received a few letters regarding this issue and will forward same to Judge Thalken. Carolee suggested that there be a change in the Local Rules to clarify this issue.

Magistrate Judge Jaudzemis discussed the fact that Rule 26 has been changed and there will no longer be an option for a district to opt out of Rule 26.

3. Federal Practice Seminar - July 28. Roger Kirst presented a draft brochure (Attachment 1). Roger stated that Roger Marcus will be the key-note speaker. Roger discussed the proposed program with the committee members. Roger stated that the Embassy Suites have reserved one-quarter of the ballroom for this seminar. Discussion ensued as to

whether this would be enough space to accommodate the attendance. The charge for one-quarter of the ballroom is \$400.00. Roger did not know if the price would be less if half the ballroom were rented. After discussion, it was decided that Roger should contact the Embassy Suites and negotiate a price for one-half of the ballroom.

Bob Cannon suggested that the following topics be discussed at the seminar:

- a. Strategic Planning goals
- b. DOAR and high-tech courtrooms
- c. CM/ECF

Chief Judge Kopf interjected that strategic goals may not be determined by that time, i.e., the meeting for the judges and court unit executives is scheduled for July 31, 2000.

There was some discussion as to the due date for registration for the seminar. No decision was made.

4. Mediation Report. Magistrate Judge Piester went over the statistics for the mediation report, which had been previously submitted to the judges. Discussion ensued as to the question if mediation should be stopped since the private mediation is more successful than the center-based. Chief Judge Kopf interjected that it is a Rule requirement that we have some type of ADR and/or mediation, and that it was his feeling that the current mediation plan meets the congressional requirement.

Bob Kirby relayed that during the sessions in the morning when the judges were not in the meeting, attorneys stated that it might be better to have a mediation system that will allow for mediation rather than solicit a willingness for mediation. Bob stated that there is an impression that whoever asked for mediation first may be showing a weakness of their case. No decision was made on this issue.

Another suggestion was made that mediation be combined with early judicial intervention in the progression of the case. Bob Cannon stated that lawyers prefer settlement conferences as opposed to mediation. There was discussion regarding mediation centers versus private mediators. It was everyone's observation that more cases are going to private mediation than the mediation centers. Judge Piester was asked if there were any training sessions being planned for mediators. He stated that there were none at this time.

5. Carole McMahon-Boies stated that the Judicial Conference has been scheduled for July 10th through the 13th in St. Louis. There is a possibility that Supreme Court Justices Sandra Day O'Connor and Clarence Thomas may be in attendance at the conference.

The meeting was concluded.

DRAFT of May 22, 2000

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Discovery Practice in 2000

July 28, 2000 8:45 am to 4:45 pm
Embassy Suites Hotel, Omaha, Nebraska
Seminar, materials, and lunch included at no cost.

What is good discovery practice?

What can be done about abusive or dilatory discovery practice?

How will discovery practice be changed by the 2000 amendments to the Federal Rules of Civil Procedure?

All of these questions will be examined during this one-day seminar on discovery presented by the Federal Practice Committee for the District of Nebraska.

Our keynote speaker for this seminar is Richard Marcus, who has been studying discovery and writing about discovery rules and practice and was a leader in drafting the 2000 amendments to the discovery rules as:

Special Reporter for the Discovery Subcommittee of the Advisory Committee on Civil Rules of the U.S. Judicial Conference

Co-author of the volumes on Federal Rules 26 to 37 in West's Federal Practice and Procedure series (popularly known as the Wright & Miller treatise)

Horace O. Coil ('57) Chair in Litigation at Hastings College of the Law in San Francisco and co-author of casebooks on civil procedure and complex litigation.

Seminar Faculty

Hon. Joseph F. Bataillon
United States District Judge, Omaha

Thomas E. Johnson, Esq.
Baird, Holm, McEachen, Pedersen, Haman & Strasheim, Omaha

Prof. Roger W. Kirst
University of Nebraska College of Law, Lincoln

Hon. Richard G. Kopf
Chief United States District Judge, Lincoln

Prof. John P. Lenich
University of Nebraska College of Law, Lincoln

Prof. Richard L. Marcus
Hastings College of the Law, San Francisco

Carole McMahon-Boies, Esq.
Pepperl & McMahon-Boies, Lincoln

Hon. David L. Piester
United States Magistrate Judge, Lincoln

Robert F. Rossiter, Jr., Esq.
Fraser, Stryker, Meusey, Olson, Boyer & Bloch, Omaha

Schedule

8:00 Registration Ballroom Lobby, Embassy Suites, Omaha

8:45 Introductions
Hon. Richard G. Kopf, Chief Judge, District of Nebraska
Prof. Roger W. Kirst, Program Chair

9:00 How and Why the Discovery Rules Keep Changing

Prof. Richard L. Marcus

Review of the purposes and effects of amendments to the discovery rules adopted in 1983 and 1993.
Examination of changes adopted by the Supreme Court that will become effective on December 1, 2000.
Description of discovery issues that may be addressed in future amendments, including discovery of electronic information and inadvertent disclosure of privileged or protected material.

10:15 Break

10:30 Discovery with a Purpose

Carole McMahon-Boies, Esq.
Robert F. Rossiter, Jr., Esq.

An examination of how a plaintiff or defendant can organize a plan for successful and efficient discovery, with suggestions of where to look for information, what discovery tools to use for which information and in what order, and how to anticipate what material will be needed to respond to discovery requests.

11:30 Planning and Writing the Discovery Plan

Hon. David L. Piester

An examination of what should be in the Discovery Plan.

12:15 Lunch Included in seminar at no charge

1:30 Taking a Deposition Properly and Dealing with Improper or Abusive Tactics

Vignettes of Deposition Experiences, by
Prof. John P. Lenich
Carole McMahon-Boies, Esq.

Discussion: What the Rules Say and the Judges May Do, by
Hon. Joseph F. Bataillon
Hon. Richard G. Kopf
Prof. Richard L. Marcus

Vignettes of deposition behavior will provide examples of practice that may appear aggressive, improper or abusive. The panel will discuss what is permitted and forbidden by the Rules, whether and how to respond during the deposition, and when and how to obtain judicial intervention.

2:45 Break

3:00 Privilege and Work Product in Discovery

Professor Roger W. Kirst

A survey of the privileges and other protections most often involved in discovery disputes, with suggestions of how to recognize whether material can be withheld, how to document the assertion of the privilege, and how to contest whether the material is protected from discovery.

3:45 Discovery of Electronic Data

Thomas E. Johnson, Esq.

A presentation on when, why and how to seek electronic records such as e-mail, voicemail, and documents created in an electronic medium. Information regarding preservation, spoliation, and reconstruction of electronic records will be provided.

4:45 Adjourn

Hotel Rooms

The Embassy Suites is holding some rooms for Thursday night, July 27, for those attending this program. The rate is \$124 for a single or double room. The reservation must be made directly with the hotel at 402-346-9000 or through the Embassy Suites system at 1-800-EMBASSY before July 8.

Parking

Registration

Please register for this one-day seminar by sending the registration form as soon as possible. There is no registration fee, but advance registration is necessary to ensure that space will be available for you, as well as refreshments and lunch. The Registration Deadline is Friday, July 14.

Registration will be handled by Law College Education Services at the University of Nebraska College of Law. Mail your registration form to:

Mari Crispin
Law College Education Services
University of Nebraska College of Law
P.O. Box 830902
Lincoln, Nebraska 68583-0902

Telephone: 402-472-1258
Fax: 402-472-4790

Registration Form
[Deadline is Friday, July 14]

Please register me for the Federal Practice Committee Seminar on Discovery Practice in 2000 at the Embassy Suites Hotel, Omaha, on Friday, July 28, 2000.

Name _____

Address _____

Telephone _____

Fax _____

Email (if any) _____