

**MINUTES
OF THE
FEDERAL PRACTICE COMMITTEE
MEETING
Friday, April 4, 2003**

Chief District Judge Richard G. Kopf called the meeting to order at 1:05 p.m. The meeting was held in the Jury Assembly Lounge, Room 598, at the Robert V. Denney Federal Building and United States Courthouse, in Lincoln, Nebraska.

Federal Practice Committee members in attendance were: Clerk of Court Gary D. McFarland, United States Attorney Michael G. Heavican, First Assistant USA Sally R. Johnson, Federal Public Defender David R. Stickman, Linda L. Willard for Charles E. Lowe, Roger W. Kirst, Robert J. Kirby (FPC Chairperson), Alan G. Stoler, William T. Wright, Thomas H. Dahlk, Todd R. McWha, Jeanette Stull, and Michael Schleich.

Federal Practice Committee members unable to attend were: Patrick J. Borchers, Howard P. Olsen, Jr., Kathleen K. Rockey, Stuart J. Dornan, Mary C. Gryva, and Brenda Council. In addition to Chief Judge Kopf, other federal judges in attendance were: District Judge Thomas M. Shanahan, District Judge Laurie Smith Camp, Chief Bankruptcy Judge Tim Mahoney, Magistrate Judge David L. Piester, Magistrate Judge Kathleen A. Jaudzemis, and Magistrate Judge Thomas D. Thalken.

1. Report of the Ad Hoc Committee on Whether to Combine the Omaha and Lincoln Dockets

The following persons served on the Ad Hoc Committee on the Omaha and Lincoln Dockets: Mike Heavican, Dave Stickman, David Buntain, Bob Rossiter, Jr., Gary McFarland, and Chief Judge Kopf. Chief Judge Kopf thanked the members of the Ad Hoc Committee for their good work on this important subject.

Chief Judge Kopf asked that the Federal Practice Committee consider the Report of the Ad Hoc Committee. He explained that the Ad Hoc Committee's bottom line recommendation is to combine the Omaha and Lincoln civil dockets and leave our present magistrate judge selection system in place. Each district judge (regardless of duty station) will have an equal opportunity of drawing civil cases regardless of where the civil case is filed. On the other hand, separate criminal dockets will be maintained at least in the near term. Judges would be willing to travel to another city to try a case

if the circumstances warranted it.

The Federal Practice Committee approved the Report of the Ad Hoc Committee on the Omaha and Lincoln Civil and Criminal Dockets, and agreed that combining the Omaha and Lincoln civil dockets was sensible. There will be a broader release of the Report to the bar, if the judges believe that the recommendation is appropriate (discussion will take place at their May meeting). The judges will then take a final vote on it at their July strategic planning meeting. It is likely that shortly thereafter we will combine the Omaha and Lincoln civil dockets so that there is only one docket.

Chief Judge Kopf reported that the court has already combined the Omaha and Lincoln civil dockets for cases involving the State of Nebraska. On behalf of the Nebraska Attorney General's Office, Linda Willard reported no problems at this point. She stated that as long as the judges agree to hold trial at a location convenient for the litigants and witnesses, there should not be any problem.

2. Contract with Lawyer to Represent Indigent Prisoners

The District Court has entered into a contract with Omaha Attorney Kellie Paris Asaka to represent indigent prisoners in civil rights cases. The court has yet to make an appointment, although Magistrate Judge Jaudzemis stated that there will be one or two appointments next week.

The District Court's pro se staff attorney, Julia Gold, is very careful in recommending which cases warrant the appointment of this lawyer. The contract lawyer is not appointed at the outset of the case. Rather, Julia Gold evaluates the case after a period of time. Since Ms. Asaka's contract is limited to 15 cases per year, we do not want to inundate her with cases where her primary work would be on motions to dismiss rather than cases where protracted discovery or trials may be necessary.

3. Amend Federal Practice Fund and Committee Plans to Explicitly Permit Payment of Attorney Fees from the Fund

Inasmuch as we are now doing so with a contract lawyer, Chief Judge Kopf suggested we amend the Federal Practice Fund and Committee Plans to explicitly permit the payment of attorney fees from the Fund. Judge Kopf proposed the following

amendments, and such others as may be appropriate to conform the Plans to our practice.

Section III A would be amended to state:

"Regarding indigent litigants, the Fund may be used to pay the costs of litigation (including mediation expenses) and attorney fees for court appointed counsel when appropriated funds are not available for such purposes. Except as otherwise determined by the chief judge in special cases, it will be the practice to pay attorney fees only to lawyers who are under contract with the court to provide representation to indigent parties and then only in the amounts so stipulated in the contract."

Section VII C should be amended to strike the first sentence and add the following:

"Without limit, litigation costs (including mediation expenses) and attorney fees may be incurred and paid in the sole discretion of the chief judge."

There being no objection by the Federal Practice Committee, Chief Judge Kopf will present the above amendments to the judges at their May meeting.

4. Nebraska Branch of the Eighth Circuit Historical Society

Chief Judge Kopf explained that when Circuit Judge Donald Lay was the Chief Judge of the Eighth Circuit Court of Appeals, he encouraged the creation of the Historical Society of the United States Courts in the Eighth Circuit. This nonprofit organization was intended to look after the history of all the federal courts in the Eighth Circuit. Now there are branches of that 501(c) corporation in each of the district courts. The purpose of the branches is to insure that the history of the federal courts in their geographic areas is preserved.

Current officers of the Nebraska Branch are: Mary Hewitt Jones – President; Chief Bankruptcy Judge Timothy J. Mahoney – Vice President; Cathy Stegman – Secretary; and, Frank Mihulka – Treasurer.

Current and recent projects of the Nebraska Branch are:

- (1) The Nebraska Branch has contracted with John Wunder, J.D. and Ph.D. at the University of Nebraska at Lincoln to begin writing the history of the Nebraska federal court. The contract with Dr. Wunder pays him \$15,000, but does not include publication costs. Dr. Wunder believes his work will come in two publishable manuscripts.
- (2) The Nebraska Branch has used the services of Professor of Law Richard Shugrue at the Creighton University Law College to conduct video-taped interviews of Senior Judges Cambridge, Urbom, and Strom, as well as Senior Circuit Judge Beam. The Nebraska Branch of the Society has compensated Dr. Shugrue for his efforts.
- (3) Chief Judge Kopf also reported that the Nebraska Branch was the recipient of U.S. District Judge Richard Robinson's papers and memorabilia. Recently, the Nebraska State Historical Society took possession of Judge Robinson's papers and memorabilia. Also, taped interviews of various federal judges were given to the State Historical Society by the Nebraska Branch. The State Historical Society has agreed to archive those important items and make them available to scholars and the public. However, there will be continuing costs to preserve these materials, such as digitizing the video tapes.

Chief Judge Kopf serves as the President of the Historical Society of the United States Courts in the Eighth Circuit (the overall 501(c) parent group). The Historical Society will be meeting in July during the Eighth Circuit Judicial Conference. At that time, there will be an effort to persuade each district court to use their Federal Practice Funds to help fund the branches.

Chief Judge Mahoney commented that each year the Nebraska Branch of the Historical Society sends a request to the bar encouraging them to join the Nebraska Branch. Unfortunately, not too many people join despite the low \$15 membership fee. The Nebraska Branch does not have a truly consistent source of funding. It would be

helpful to know that on an annual basis we would have a certain amount of money coming in from the Federal Practice Fund.

Bob Kirby stated he felt this request was something very consistent with the Federal Practice Fund.

Accordingly, Chief Judge Kopf requested that the Federal Practice Committee approve an annual contribution of \$3,000 from the Federal Practice Fund to support the Nebraska Branch of the Historical Society. Chief Judge Kopf stated the Federal Practice Committee would review the contribution on an annual basis, as well as receive a report from the Nebraska Branch. The Federal Practice Committee approved the request.

5. Appointment of a Committee to Study Continued Federal Practice Fund Funding of Mediation Efforts

Chief Judge Kopf explained that in 1990, the federal district courts were required by statute to adopt some sort of alternative dispute resolution mechanism resolution as an adjunct to litigation. Congress required us to have this service, but provided no funding. We asked Magistrate Judge Piester to put together the program. Judge Piester has spent an enormous amount of time building a very fine program.

As a component of the mediation program, we felt we needed to provide training for mediators. Because Congress did not provide funding, we began to use the Federal Practice Fund to support training. We are roughly eight years into the program and, the judges now feel we should take a look at whether to continue funding mediation training from the Federal Practice Fund.

Magistrate Judge Piester explained that two types of mediation training are held:

- (1) A three-day training session called **FedMed**. This training is required in order to mediate federal court cases. The last FedMed training was held in December 2002. FedMed is held whenever we think there is an interest. No further FedMed training is scheduled at this point. Each of the participants are required to pay \$400, and the Office of Dispute Resolution contributed money as

well. Such training is also supported by money from the Federal Practice Fund.

- (1) A five to six hour **skills workshop**, which usually includes an ethics component. This “skills” workshop generally costs \$3,500. However, \$5,000 from the Federal Practice Fund has been set aside for the next skills workshop which is scheduled for October 3, 2003.

Chairperson Bob Kirby stated that mediation training has an economic impact on the Fund, particularly when we do not have a full group seeking to become new mediators. If there was a larger group enrolling, then it makes more sense for the Fund to contribute to the training. Bob Kirby also stated that mediation is still in the beginning efforts in the State of Nebraska. Mediation is more prominent on the coasts.

Chief Judge Kopf stated that the judges believe mediation is a good thing and the court is required to have it. The question is whether the Federal Practice Fund should support the educational component of mediation and, if so, to what degree.

Chief Judge Kopf asked Chairperson Bob Kirby to set up a committee to examine this issue. Magistrate Judge Piester will serve on the Committee, in addition to other Federal Practice Committee members. The Committee will present a report to the judges for consideration at their July 2003 strategic planning meeting.

6. Update from Bob Kirby on the Eighth Circuit Judicial Conference to be held July 15-18, 2003, in Minneapolis, Minnesota

Chief Judge Kopf encouraged all Federal Practice Committee members to attend and emphasized that travel expenses will be paid from the Fund.

Chairperson Bob Kirby is our representative on the Eighth Circuit Judicial Conferences Planning Committee. Bob commented that this year’s conference will include some wonderful speakers. There will be speakers on the post-911 world. Stephen Jones, defense counsel for Timothy McVeigh, will also speak on domestic security versus freedom. He thought the highlight of the conference will be the panel of judges and lawyers discussing litigation challenges, with Nebraska Circuit Judge

William J. Riley as moderator.

7. Report from Gary McFarland on Federal Practice Fund Balances

Clerk of Court Gary McFarland indicated that the Federal Practice Fund December 31, 2002, year end balance was \$208,141.84. The Fund's balance as of March 10, 2003, was \$197,784.81. The Fund is earning 1.27%. We recently sent a \$1,000 check to Circuit Executive Millie Adams to support the work of the Model Jury Instruction Committee to defray the expenses of the lawyers who labor on behalf of that important group.

Chief Judge Kopf stated that the Federal Practice Fund is audited just like appropriated funds. Auditors from the Administrative Office of the United States Courts review the Fund on a regular basis. All disbursement checks are signed by both Clerk of Court Gary McFarland and Chief Deputy Clerk Denise Lucks.

8. Next Meeting Date

Chief Judge Kopf had suggested Thursday, October 23, 2003, at 1:30 p.m. as the date for the next Federal Practice Committee meeting. Due to various NSBA Annual Meeting seminars that day, Judge Kopf will look again at the calendar/NSBA schedule and explore setting the meeting on some other date during the bar meeting. The meeting will be held in the Jury Assembly Lounge, Room 598, at the Robert V. Denney Federal Building and United States Courthouse, in Lincoln, Nebraska.

9. For the Good of the Order

Chief Judge Kopf expressed his appreciation to **Magistrate Judge Jaudzemis** for her faithful service to the court. Words cannot express the Court's appreciation for the judge's service. She will always be a valued member of this court, despite her retirement. A spontaneous round of applause followed.

Judge Smith Camp reported that she will be heading the **Docket and Local Rules Committee**. The Committee is a standing and permanent committee of the Nebraska Judicial Council. Among other things, it is charged with revising local rules

and general and standing orders. She encouraged the Federal Practice Committee members to forward any suggested revisions or inconsistencies to her attention.

Chief Judge Kopf stated that with the continual revision of the civil and criminal procedures, the government e-bill, etc., we need a committee of judges to look at our local rules, general and standing orders, and docket management on a standing basis, rather than on an ad hoc basis.

Chief Judge Mahoney stated that he is a member of the Docket and Local Rules Committee. He wants to make certain that we get as much coordination as possible between District Court and Bankruptcy Court rules, civil procedures and general orders.

Bob Kirby asked if there would be an e-mail address or website for contacting the Docket and Local Rules Committee. Judge Smith Camp believes e-mail would be a good way to contact the Committee. The Committee has just been formed, and Bob's suggestion will be placed high on their to-do list.

Magistrate Judge Thalken asked whether any **Federal Practice Committee seminars** are scheduled. Chief Judge Kopf asked Professor Roger Kirst to give some thought to the next seminar. Chief Judge Kopf will place this matter on the Committee's agenda for its July meeting in Minneapolis.

Judge F.A. Gossett was unable to attend the Federal Practice Committee meeting as he is in London visiting a friend who is retiring from the bench. The Magistrate Judges have begun an orientation for Judge F.A. Gossett. There will be a few internal procedural changes until we get Judge Gossett on board. The FBI's background investigation of Judge Gossett should be complete around mid-June, but Judge Kopf hopes that it can be completed sooner.

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Chairperson Bob Kirby moved to adjourn. Chief Judge Kopf seconded the motion. Meeting adjourned at 2:10 p.m.

[Minutes taken by Chief Judge Kopf's Judicial Assistant, Kris Leininger.]