

**Minutes of the
Federal Practice Committee Meeting
Thursday, November 2, 2006
Eighth Circuit Conference Room, 4th Floor
Roman L. Hruska Courthouse**

1. CALL TO ORDER

The Federal Practice Committee Meeting was called to order by Chairperson Alan Stoler at 3:30 p.m., Thursday, November 2, 2006. Mr. Stoler welcomed the committee members and others in attendance.

2. INTRODUCTION OF ATTENDEES

District Judge Laurie Smith Camp also welcomed everyone and asked that those present introduce themselves. Federal Practice Committee members in attendance were Patrick J. Borchers, Thomas H. Dahlk, Kathryn Derr, Wendy Engman Hahn, Rick Lange, Charles E. Lowe, Robert J. Kirby, Roger Kirst, James Nisley, Mary Kay O'Connor, Howard Olsen, Lisa D. Stava, David R. Stickman, Joe Stecher, and Jeanette Stull. Also in attendance were District Judge Laurie Smith Camp, District Judge Lyle E. Strom, Magistrate Judge Thomas Thalken, Magistrate Judge F.A. Gossett, III, Chief Bankruptcy Judge Timothy J. Mahoney, Bankruptcy Judge Thomas Saladino, Deputy Clerk of Court Therese Bollerup, and Administrative Supervisor Pat Williamson.

3. APPROVAL OF PREVIOUS COMMITTEE MINUTES

Chairperson Stoler inquired whether there were any changes or corrections to the minutes of the last meeting held on October 21, 2005. It was moved and seconded that the minutes be approved as presented. The motion was unanimously approved.

4. REVIEW OF THE STATE OF THE BANKRUPTCY COURT

Chief Bankruptcy Judge Mahoney stated that over 12,000 cases had been filed the previous year. He reported that Judge Saladino was fully on board and that they are in the process of coordinating bankruptcy court procedures in Lincoln and Omaha.

5. FEDERAL PRACTICE COMMITTEE BUDGET

A. Receipts and Disbursements

Pat Williamson provided a summary of the Federal Practice Fund through September 30, 2006, and reviewed the income and expenditures with the committee. Revenue is generated from attorney assessment fees and interest. Pat then summarized the recurring yearly expenses, which included assessment mailings, Eighth Circuit

Conference Expenses, the IFP attorney contract, and training. He advised that the Open Doors to Justice program has been suspended for the coming year.

B. Attorney Assessments

Judge Smith Camp provided an historical background regarding assessments and a discussion was had on the cost of mailing the annual notices. Judge Thalken moved to send out notices every other year requesting the amount of \$10.00, rather than sending out a notice every year for \$5.00. Rick Lange seconded, suggesting that starting at the end of this year, the notice should be sent by e-mail to all those lawyers on the court's e-mail system to help reduce the cost of mailing. The motion, as amended, was unanimously approved. Therese Bollerup advised that the Clerk's Office would keep track of assessments received by the e-mail notice. Those attorneys, practicing in federal court who do not respond to the e-mail, will be sent a notice by mail.

6. REPORT FROM THE CLERK OF COURT

A. CM/ECF Update

Therese Bollerup, Deputy Clerk of Court, gave a report about the most recent updates to CM/ECF. She described Version 3.0 that is to be released in December or January, and advised that training will be offered. She also advised that Version 3.1 is scheduled to be released next Spring. Therese reported that some attorneys have been opening their own civil cases. Mary Kay O'Connor inquired if there will be a deadline for mandatory opening of civil cases by attorneys, and Therese advised that there is none at this time.

B. State of the Docket

Therese provided the committee members with a one-page State of the Docket Report For the Month of October 2006 reflecting the current number of civil and criminal cases, including a breakdown for each individual judge. She noted that the number of cases assigned to Judge Kopf was considerably higher than the number assigned to other district judges, primarily because Judge Kopf agreed to accept a group of related civil cases. The committee recognized and commended Judge Kopf's characteristic hard work. Judge Smith Camp noted that it could be argued that the judges with the lowest number of cases are working the hardest, because they are disposing of their cases. Accordingly, she commended Judge Strom for having fewer pending cases.

Therese also provided a Judicial Caseload Profile prepared by the Administrative Office in Washington. She noted that the Nebraska District ranked 7th in the nation for filings and 4th in the nation for trials.

C. Proposed revisions to Local Rules/Administrative Procedures

Therese provided copies of the Minutes of the Docket and Local Rules Committee Meeting held September 22, 2006, which contained the proposed revisions. These revisions will be presented to the Judicial Council at its January, 2007, meeting, after Version 3.0 is active. She noted that she anticipates that the new revisions will be effective in January, 2007.

7. RECAP OF RETREAT AT MAHONEY STATE PARK

Alan Stoler reported that the retreat held at Mahoney State Park on August 28, 2006, focusing on federal criminal practice, was well-attended and resulted in lively discussion among prosecutors, defense counsel and judges, on a variety of important topics. One of the issues addressed at the retreat was consistency among the federal judges on matters related to criminal procedure and sentencing. Break-out groups met with panels of judges, prosecutors and defense attorneys to discuss concerns, and then the groups met in general session to share the results of these discussions. Representatives from the Bureau of Prisons gave an informative presentation in the afternoon.

One issue raised at the retreat that concerned both criminal and civil practice in Federal Court was whether a Jury Questionnaire should be developed to provide additional information to attorneys about potential jurors prior to trial. A committee was formed to prepare a draft Jury Questionnaire, and it was suggested that the questionnaire be circulated among the members of the Federal Practice Committee before presenting it to the Judicial Council at its next meeting scheduled for January 27, 2007. Those serving on the committee are Mary Kay O'Connor, Shannon O'Connor, Susan Lehr, and Alan Stoler.

8. REPORT FROM THE JUDGES

A. Judicial Council Meeting - Judge Smith Camp

Judge Smith Camp reported that Alan Stoler, David Stickman and Joe Stecher were invited to attend the October 27, 2006 Judicial Council Meeting and that Nebraska was the first district to include such lawyer representatives in judicial council meetings.

B. Efforts to Obtain Fourth Judge - Judge Smith Camp

Judge Smith Camp provided a brief history of the fourth federal district judgeship in Nebraska and the efforts to obtain a permanent fourth judgeship. In 2003, the case numbers justified having five federal judges in the District of Nebraska, but the current case numbers justify four. She doubts that a fourth judge could be appointed prior to the 2008

elections, even if Congress were to authorize the fourth judgeship. Judge Strom stated that the Court has been working to make a fourth judgeship permanent since 1991.

C. Goals of the Court's Strategic Plan - Judge Smith Camp

Judge Smith Camp reported on the District Court's two goals that were promulgated at the Judicial Council, Strategic Planning Meeting held in July: 1) Diversity of Court personnel and the broadening of the applicant pool for employee positions to encourage more minority applicants; and 2) Consistency among the judges regarding procedures and practices followed by each chambers. The issue of consistency regarding criminal matters was discussed at the Mahoney retreat and the retreat helped to point out procedural differences among chambers. It is anticipated that some changes in procedures will occur next year, in the interest of consistency.

D. North Platte Courthouse - Judge Lyle Strom

Judge Strom touched on the subject of the Court's continued efforts to keep the courthouse in North Platte open. Currently, trials are scheduled 4 months a year - February, May, August, and October.

E. Revision of Bankruptcy Rules - Judge Timothy Mahoney

Judge Mahoney advised that his court will be making major amendments to the Bankruptcy Rules to adjust to the Code.

F. Civil Consents - Judge F. A. Gossett

Judge Gossett discussed the merits of parties consenting to the trial of civil cases to the Magistrate Judges, reminding the members that such trials are given a date certain if the case is assigned to a Magistrate Judge.

G. Visiting Judges - Judge Thomas Thalken

Judge Thalken discussed how the use of visiting judges has helped the district judges in Nebraska, and that five to six cases are assigned at one time to a visiting judge. Initially, only civil cases were assigned to visiting judges, but recently criminal cases have also been assigned to visiting judges.

9. MEDIATION TRAINING

Judge Smith Camp, on behalf of Judge Piester, requested input from the committee regarding the use of funds for mediation training. It was noted that a well-qualified trainer charges approximately \$12,000 for three days of training, plus expenses for travel, lodging, meals, and preparation of materials. Previously, the Federal Practice Committee has

approved \$5,000 of Federal Practice Funds for such periodic training, with participants bearing the remainder of the cost through registration fees. Ideally, the Court would prefer to offer a full three-day (“fed med”) training program every three years, and a one-day workshop for previously-approved mediators every other year. No such training has occurred since 2003. Members of the Committee questioned whether there was significant interest among the bar for such training, especially in light of the fact that lawyers without such training or any status as a federally-approved mediators are offering their services and accepting mediation business for state and federal litigation. Members of the Committee also questioned whether any such training could be accomplished jointly with the Nebraska State Bar Association. The Committee’s subcommittee on mediation is composed of Bob Kirby, Pat Borchers, Charles Lowe and Jeanette Stull. Judge Smith Camp said that she will forward to the subcommittee members information from Judge Piester’s e-mails on this topic, and will ask that the subcommittee make a recommendation regarding (1) what training should be offered, (2) where it should be offered, (3) whether it might be offered in conjunction with an NSBA program, and (4) how much money from the Federal Practice Fund should be allocated to subsidize the cost of the training.

10. IFP ATTORNEY: CONTRACT

Judge Smith Camp advised that Kelli Paris Asaka is the attorney currently under contract with the Court for civil IFP representation, and her contract will expire December 31, 2006. Judge Gossett noted that some attorneys have volunteered to handle pro se prisoner cases involving civil rights matters, and that judges are at liberty to appoint other attorneys in any given case. Judge Smith Camp inquired of the committee members whether there were any objections to renewing the Asaka contract for another year. There being none, Judge Smith Camp will advise Chief Judge Bataillon accordingly.

11. THANKING OUT-GOING MEMBERS AND CHAIR; ANNOUNCING THE 2007 CHAIR; DISCUSSION OF 2007 MEMBERSHIP

Judge Smith Camp thanked Alan Stoler for all his efforts this past year, especially for the very successful seminar held at Mahoney State Park, and presented him with a token of appreciation. She also thanked the members who will be rotating off the Committee at the end of this year: Lisa Stava, Brenda Council, and Todd McWha. Those members whose three-year terms will expire on December 31, 2006, but who have requested that they remain on the Committee are: Alan Stoler, Jeanette Stull, and Robert Kirby. Judge Smith Camp thanked those members for their willingness to continue to serve on the committee. Judge Smith Camp announced that Howard Olsen has agreed to chair the Federal Practice Committee in 2007 and she requested suggestions from Committee members for nominees to submit to Chief Judge Bataillon to fill the three Committee vacancies (one in the second congressional district and two in the third congressional district).

12. NEXT MEETING OF THE EIGHTH CIRCUIT JUDICIAL CONFERENCE

The next meeting of the Eighth Circuit Judicial Conference will be a judges-only meeting in Vail, Colorado, scheduled for July 11-13, 2007. In 2008, the Eighth Circuit plans to hold its annual conference in Chicago and to make that conference open to lawyers.

13. ADJOURNMENT

There being no other business, Chairperson Stoler adjourned the meeting at 4:40 p.m.