

***Minutes of the
Federal Practice Committee Meeting
Monday, April 23, 2007***

***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 Howard P. Olsen, Jr, at 2:00 p.m., Monday, April 23, 2007.

2. INTRODUCTION OF ATTENDEES

Federal Practice Committee members in attendance were Sally Johnson (on behalf of Joe Stecher), David Stickman, Charles Lowe, Patrick Borchers, Roger Kirst, Alan Stoler, Jeanette Stull, Robert Kirby, Wendy Engman Hahn, Thomas Dahlk, Mary Kay O'Connor, Kathryn Derr, Sherman Willis, and Vincent Valentino. Rick Lange, James Nisley and David Pedersen sent regrets due to conflicts in their schedules. Judges in attendance were Chief Judge Joe Bataillon, Judge Richard Kopf, Judge Laurie Smith Camp, Senior Judge Warren Urbom, Magistrate Judge David Piester, Magistrate Judge Thomas Thalken, Chief Bankruptcy Judge Tim Mahoney, and Bankruptcy Judge Thomas Saladino. Clerk of the Court Denise Lucks attended via telephone; Deputy Clerk Therese Bollerup and Administrative Supervisor Pat Williamson were in attendance. Members and judges in attendance were introduced.

3. APPROVAL OF PREVIOUS COMMITTEE MINUTES

Judge Urbom moved for approval of the minutes of the meeting held on November 2, 2006. Mary Kay O'Connor seconded the motion. The minutes were approved.

4. FEDERAL PRACTICE COMMITTEE BUDGET

Pat Williamson distributed the [balance sheet \(attached\)](#) of the Federal Practice Fund account as of March 31, 2007, showing a balance of \$187,444.56. He also distributed an accounting of transactions and outstanding authorizations. Judge Bataillon encouraged the Committee to plan a yearly budget to express the Committee's intentions for the proper use of the Fund. Dean Pat Borchers, Thomas Dahlk and Bob Kirby agreed to serve on a Budget Subcommittee, and were so appointed by the Chair, Howard Olsen.

5. REVIEW AND APPROVAL OF REGULATIONS FOR DISTRICT OF NEBRASKA BRANCH OF THE HISTORICAL SOCIETY OF THE UNITED STATES COURTS IN THE EIGHTH CIRCUIT

At the Chair's request, Judge Kopf explained the proposed changes in the regulations of the Nebraska Branch of the Eighth Circuit Historical Society, and the reasons for the proposed changes. Pat Borchers moved for the adoption of the [amended regulations](#). Alan Stoler seconded the motion. Following discussion, the amended regulations were adopted.

6. DISCUSSION OF THE NORTH PLATTE COURTHOUSE

Howard Olsen discussed the need to use the North Platte courthouse, to prevent a possible closure of the facility. Judge Bataillon explained the formulas used by the Administrative Office to designate courthouses for closure, and noted that the North Platte courthouse is not likely to be slated for elimination in the near future.

7. MEDIATION TRAINING

Howard Olsen confirmed that the Werner Institute at Creighton Law School is still planning to present mediation training later this year, although a specific date has not been set. Members of the subcommittee on mediation (Pat Borchers, Charlie Lowe, Jeanette Stull and Bob Kirby) will follow up with Arthur Perlstein to confirm the dates of the training.

8. EIGHTH CIRCUIT JUDICIAL CONFERENCE - CHICAGO, 2008

Judge Smith Camp announced the 2008 Eighth Circuit Judicial Conference in Chicago, August 11-15, 2008, at the Chicago Marriott Downtown Magnificent Mile. This will be a "family friendly" conference, and Associate Justice Samuel Alito and his wife are expected to attend. Judge Smith Camp moved that the Federal Practice Fund reimburse members of the Committee for certain expenses incurred in attending this conference, specifically, registration, the lesser of mileage at the federal rate or coach-class air fare, and per diem for the Chicago area. (\$205 per day, with a "last day" rate of \$64). The motion was seconded by Dean Borchers. The motion was passed.

9. JURY QUESTIONNAIRE

The judges and Howard Olsen thanked Mary Kay O'Connor and the Jury Questionnaire subcommittee for their excellent work on the development of a very useful jury questionnaire.

10. WIRELESS INTERNET ACCESS IN COURTHOUSE

Denise Lucks reported on the proposed addition of wireless internet access in the courthouses for the convenience of lawyers and the public. Judge Kopf explained that government funds cannot be used to provide such access. The Court is in the process of gathering bids for the project. When bids are received, the Committee will be asked to determine whether this is a project that should be supported through the Federal Practice Fund. The Court will be issuing a general order, and a revised local rule, to ensure that wireless access does not disrupt Court proceedings.

11. CM/ECF UPDATE, STATE OF THE DOCKET AND REVISION OF LOCAL RULES

Denise Lucks provided an update of CM/ECF procedures, and summarized the state of the docket, providing attendees with a written account of current case assignments. Therese Bollerup summarized the Court's procedure for revision of local rules and encouraged lawyers to bring to the Court's attention any suggestions for revisions in local rules.

12. EFFORTS TO SECURE FOURTH JUDGESHIP

Judge Bataillon reported regarding the Court's efforts to secure a fourth judgeship, and noted that the likelihood of success in Congress appears to be greater this year than it has been for several years. Judges Bataillon and Kopf both described the Court's strategic plan goal involving an effort to achieve consistency among judges in procedural matters. Judge Kopf noted that the Federal Practice Committee conference in the summer of 2006 was very helpful in highlighting differences in the way that the judges handle certain procedural matters in both civil and criminal cases. He said that where the judges choose not to be consistent, they will try to be "transparent" about their differences, so that lawyers are aware of the different procedures employed by the judges.

13. SCHEDULING OF THE NEXT MEETING

The next meeting of the Federal Practice Committee will be held in Lincoln, Nebraska, in the jury assembly room at the federal courthouse, fifth floor, in conjunction with the NSBA annual meeting. Judge Smith Camp and Howard Olsen will confer and select the date and time. (The date and time have now been set for Wednesday, October 17, 2007, at 3:00 p.m.)

14. ADJOURNMENT

There being no other business, Chairperson Olsen adjourned the meeting at 3:45 p.m.

***Amended and Restated Regulations for the District of Nebraska Branch
of the Historical Society of the United States Courts
in the Eighth Circuit***

Pursuant the Amended and Restated Bylaws¹ of the Historical Society of the United States Courts in the Eighth Circuit (Society), the District of Nebraska Branch (Nebraska Branch) does hereby amend, adopt and restate its regulations:

1. Purpose of Nebraska Branch and Relationship to Other Entities.

A. The Nebraska Branch shall function as a local historical society for the United States District Court for the District of Nebraska. The Nebraska Branch may conduct projects, keep and exhibit collections, hold exhibits, prepare and distribute publications, accept gifts, and, in general, engage in such other activities as are customary and appropriate for a historical society.

B. Under no circumstances shall the Nebraska Branch be considered to be controlled by the United States District Court for the District of Nebraska or any of its judges or employees. While the Nebraska Branch shall work closely with the Federal Practice Committee of the United States District Court for the District of Nebraska (Federal Practice Committee), and while the Nebraska Branch may seek contributions from the Federal Practice Fund, the Nebraska Branch shall remain separate from the Federal Practice Committee and the Federal Practice Fund.²

C. The Nebraska Branch is part of the Society and shall operate in manner consistent with the bylaws and mission of the Society. The Society's mission is to preserve and celebrate the

¹The Bylaws may be found at <http://www.lb8.uscourts.gov> under “Quick Links,” “8th Circuit Historical Society” and “Incorporation/Bylaws.” Paragraph 2 of those Bylaws deal with “Branches and Branch Regulations.”

²For information regarding the Federal Practice Committee and the Federal Practice Fund, consult www.ned.uscourts.gov under the tabs “Forms/Plans/Orders,” “Court Plans/Policies” and “Amended Plans for Administration of the Federal Practice Fund and Federal Practice Committee.” The Federal Practice Committee consists of up to 19 members and the majority of those members are practicing lawyers. A practicing lawyer is selected by the chief judge to serve as the chair person of the committee. The Federal Practice Committee advises the court on matters related to federal practice including expenditures from the Federal Practice Fund, a fund derived primarily from attorney admission fees. No appropriated funds may be included in the Federal Practice Fund.

rich history of the federal courts of the seven states that make up the Eighth Circuit. Toward this end, the Society has organized separate branches for each of the United States district courts located in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota, as well as a branch for the circuit court of appeals that encompasses all of these states. The Society is a not-for-profit corporation organized and operating under the laws of the State of Missouri. It is governed by a board of directors made up of representatives of each of the branches. The Society and its branches are tax exempt organizations pursuant to section 501(c)(3) of the Internal Revenue Code, and contributions to the Society and its branches are tax deductible. The Society and its branches are not a part of, nor are they controlled by any of the courts, judges or employees of the courts.

2. *Construction of Regulations with Codes of Conduct.*

The Society and the Nebraska Branch recognize the importance of the Codes of Conduct governing federal judges and employees.³ These regulations shall be construed in accordance with those ethical norms.

3. *Membership.*

Regular members of the Nebraska Branch shall consist of all persons admitted to practice before the United States District Court for the District of Nebraska. Honorary members (persons or entities not admitted to practice before the court) may be admitted to membership upon such terms and conditions as the Nebraska Branch may from time to time provide.

4. *Financial Support for the Nebraska Branch.*

A. The Nebraska Branch anticipates that its primary source of support shall come from the Federal Practice Committee through contributions authorized by that Committee from the Federal

³See Volume II, *Guide to Judiciary Policies and Procedures* Chaps. 1, 4-6 (revised May 31, 2005) (collecting *Code of Conduct for United States Judges, Published Advisory Opinions, & Compendium of Selected Opinions*). The *Code of Conduct for United States Judges* and the *Published Advisory Opinions* are available over the Internet at www.uscourts.gov under the tabs “Library” and “Manuals/Policy.” The *Code of Conduct for Judicial Employees* may be found there also. Note that *Advisory Opinion No. 104* (addressing court historical societies and the ethical strictures that apply to federal judges and court employees who are involved in such entities) is particularly relevant.

Practice Fund.⁴ However, the Nebraska Branch recognizes that it has no entitlement to any such contributions.

B. Regular members of the Nebraska Branch shall not be charged dues by the Nebraska Branch.

C. Annual dues may be levied for honorary members in such amount as the Nebraska Branch may from time to time approve. Should any such honorary member be in default in the payment of dues, his or her honorary membership may be terminated without notice.

5. *Officers, Appointment, Powers and Duties.*

A. All officers of the Nebraska Branch shall be appointed by the chair person of the Federal Practice Committee.

B. The officers of the Nebraska Branch shall consist of a president, and a secretary-treasurer. The office of president and the office of secretary-treasurer shall be held by different persons. The chair person of the Federal Practice Committee may also designate a separate person as the secretary and a separate person as the treasurer. In the event any officer is unable to serve, the chair person of the Federal Practice Committee shall exercise the powers of the vacant office until a successor is appointed.

C. No officer of the Nebraska Branch shall be a judge or an employee of a federal court.

D. Officers shall hold office for a term of two years and thereafter until their successors are chosen and qualify in their stead. Any officer may be removed at the sole discretion of the chair person of the Federal Practice Committee.

E. The president of the Nebraska Branch shall be the chief executive officer of the branch with all powers and duties typically attendant to such position.

F. The secretary-treasurer of the Nebraska Branch shall have all powers and duties typically attendant to such positions.

⁴According to the governing document, the “Fund may be used to support the work of the . . . 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, . . .” *Amended Plan for the Administration of the Federal Practice Fund*, ¶ III(f) at 3.

G. All funds of the Nebraska Branch shall be held in a non-governmental institution such as a bank. Under no circumstances, shall the funds of the Nebraska Branch be commingled with appropriated funds or the funds of any other entity including the Federal Practice Fund.

6. *Governance by Executive Committee.*

A. The Nebraska Branch shall be governed by an Executive Committee consisting of the officers appointed pursuant to the preceding paragraph and the chair person of the Federal Practice Committee. The Executive Committee shall set the policies and practices of the Nebraska Branch and the policies and practices of the Executive Committee. Except as otherwise provided herein, a majority vote of the members of the Executive Committee shall govern. In the case of a tie, the decision of the chair person of the Federal Practice Committee shall prevail.

B. The Executive Committee may invite judges and court employees to attend and participate in meetings of the Executive Committee as non-voting members.

7. *Selection of Directors for the Society.*

A. Each branch is entitled to two Society directors. Subject to the qualifications set by the Society in its Bylaws, the Executive Committee shall select the directors.

B. The Bylaws of the Society require that the president of the branch and a judge from the court associated with the branch serve as Society directors and the Nebraska Branch shall comply with these directions.

C. A judge who is selected as a director for the Society shall not be considered an officer of the Nebraska Branch. No judge shall be selected to serve as a Director of the Society without his or her consent.

D. Subject to their fiduciary duties to the Society, directors shall represent the interests of the Nebraska Branch in conformity with such directions as may be provided by the Executive Committee.

8. *Amendment of Regulations.*

A. These regulations may be amended in three ways.

B. The Society may amend these regulations as provided in its Bylaws.

C. At the request of any member of the Executive Committee, the Executive Committee may amend these regulations by unanimous vote.

D. Five or more regular members of the Nebraska Branch, who are not judges or court employees, may petition the Executive Committee to amend these regulations. If the Executive

Committee receives such a petition from five or more regular members of the Nebraska Branch, who are not judges or court employees, the Executive Committee shall consider the proposed amendment. Upon a unanimous vote of the Executive Committee, the regulations shall be amended as proposed in the petition.

E. Any amendment of these regulations must be approved by the Society.

Dated this ____ day of _____, 2007.

For the Nebraska Branch:

s/Mary J. Hewitt, President

s/Frank Mihulka, Treasurer

**U.S. DISTRICT COURT - DISTRICT OF NEBRASKA
FEDERAL PRACTICE FUND - SUMMARY
AS OF MARCH 31, 2007**

Attachment

Balance carryforward 12/31/06

\$164,684.92

MONTH	ATT FEE DEPOSITS	INTEREST	EXPENDITURES	BALANCE
JANUARY	\$ -	\$ 663.84	\$ 500.85	\$ 164,847.91
FEBRUARY	\$ 12,450.00	\$ 615.07	\$ 2,588.40	\$ 175,324.58
MARCH	\$ 14,500.00	\$ 675.36	\$ 3,055.38	\$ 187,444.56
APRIL	\$ -	\$ -	\$ -	\$ 187,444.56
MAY	\$ -	\$ -	\$ -	\$ 187,444.56
JUNE	\$ -	\$ -	\$ -	\$ 187,444.56
JULY	\$ -	\$ -	\$ -	\$ 187,444.56
AUGUST	\$ -	\$ -	\$ -	\$ 187,444.56
SEPTEMBER	\$ -	\$ -	\$ -	\$ 187,444.56
OCTOBER	\$ -	\$ -	\$ -	\$ 187,444.56
NOVEMBER	\$ -	\$ -	\$ -	\$ 187,444.56
DECEMBER	\$ -	\$ -	\$ -	\$ 187,444.56
TOTALS	\$ 26,950.00	\$ 1,954.27	\$ 6,144.63	\$ 187,444.56

PREPARED BY: Terry Brownfield, Budget Analyst

DATE: 04/17/2007

REVIEWED BY: Pat A. Williamson, Administrative Supervisor

DATE: 04/18/2007

CERTIFIED BY:


Denise M. Lucks, Clerk of Court

DATE: 04/18/2007