

***Minutes of the
Federal Practice Committee Meeting
Friday, August 15, 2008
The Chicago Marriot Downtown
Chicago, Illinois***

1. CALL TO ORDER

The Federal Practice Committee for the U.S. District Court for the District of Nebraska convened at 7:30 a.m. on Friday, August 15, 2008, at the Chicago Marriott Downtown Hotel in Chicago, Illinois, in conjunction with the 2008 Eighth Circuit Judicial Conference. Jeanette Stull, Chair, called the meeting to order.

2. INTRODUCTION OF ATTENDEES

In attendance were Jeanette Stull, Alan Stoler, John Sharp, Melanie Whittamore-Mantzios, Professor Michael Fenner (designated by Creighton University College of Law), Mick Mickle (designated by the Office of the U.S. Attorney), David Stickman (Federal Public Defender), Charles Lowe (designated by the Nebraska Attorney General), Denise Lucks (Clerk of the Court), James Rowoldt (Chief U.S. Probation Officer), Timothy Connor (Chief U.S. Pretrial Officer), Chief Judge Joseph Bataillon, Judge Richard Kopf, Judge Laurie Smith Camp, Senior Judge Warren Urbom, Magistrate Judge F.A. Gossett, and Bankruptcy Judge Timothy Mahoney. Judge William Jay Riley and Senior Judge Arlen Beam of the U.S. Court of Appeals for the Eighth Circuit also were present, and responded to questions concerning Eighth Circuit appellate practice following the meeting.

3. APPROVAL OF PREVIOUS COMMITTEE MINUTES

Judge Kopf moved approval of the minutes of the meeting of March 28, 2008, and Melanie Whittamore-Mantzios seconded the motion. The minutes were approved by unanimous vote.

4. FEDERAL PRACTICE COMMITTEE BUDGET

Denise Lucks summarized the Federal Practice Fund 2008 balance, transactions, outstanding authorizations, and historical income/expenditures reports. The committee approved the 2009 discretionary budget report. All members were provided copies of the reports in advance of the meeting.

5. REVIEW OF THE STATE OF THE BANKRUPTCY COURT

Bankruptcy Judge Timothy J. Mahoney informed the Committee that Judge Thomas Saladino became Chief Bankruptcy Judge on July 1, 2008, for a seven year term. Chief Judge Saladino was unable to attend the meeting because he and his family were attending his son's graduation ceremony from Army basic training at Fort Sill, Oklahoma. Judge Mahoney reported that bankruptcy filings had increased 27% on a year to year comparison and that it appeared there would be approximately 7000 cases filed in calendar year 2008. Finally, he reported that he had been elected by the bankruptcy judges of the circuit to be their representative on the 8th Circuit Judicial Council effective January 1, 2009.

6. APPOINTMENT OF NEW EX OFFICIO MEMBERS TO THE FEDERAL PRACTICE COMMITTEE

Jeanette Stull welcomed new ex officio members to the Committee, *i.e.*, Chief Rowoldt and Chief Connor.

7. UPDATE ON PROGRESS OF NEBRASKA BRANCH HISTORICAL SOCIETY ON HISTORY OF NEBRASKA FEDERAL DISTRICT COURTS

Jeanette Stull reported on the efforts of the Nebraska Branch of the Eighth Circuit Historical Society to compile and publish a history of the Nebraska federal district court. The effort will involve a transition to a new historian/author to complete the work, and the history is not expected to include the most recent decades.

8. REQUEST FOR FINANCIAL ASSISTANCE TO TECHNOLOGY WORKING GROUP

Jeanette Stull sought a motion for financial assistance to the Technology Working Group for light refreshments and copies of materials, as needed, for an upcoming technology training session in Lincoln. Melanie Whittamore-Mantzios moved for approval of such an expenditure in the range of \$300 to \$400, and Alan Stoler seconded the motion. The motion was approved by unanimous vote.

9. REPORT FROM THE CLERK OF COURT

CM/ECF Update

Denise Lucks informed the Committee that the next version of CM/ECF is expected to be released in December, and the that Clerk's office will hold attorney forums in Omaha,

Lincoln, and North Platte, if lawyers express an interest in such training. As in past years, such forums will include courtroom technology training. She noted that Judge Kopf and the magistrate judges are making digital audio files of court proceedings available to the public over the Internet through the PACER system. Since August 5, 2007, the Clerk's office staff has uploaded 1,901 audio files to CM/ECF. The public downloaded 790 of those files from PACER. She noted that the Court's technology strategic plan was approved by the Judicial Council on April 25 and is available on the Court's website under Strategic Planning. It sets forth the plans to upgrade and install courtroom technologies over the next five years. Ms. Lucks summarized the specific upgrades scheduled, which can be viewed on the website.

10. REPORT FROM THE JUDGES

Case Load Data and Continued use of the North Platte

Judge Bataillon summarized the Court's most recent caseload data. As of July 31, 1,189 cases were pending in the district court, 599 civil and 590 criminal. Of particular note is the declining number of civil filings (14%), consistent with national trends. Criminal cases have increased 4% for the 12-month period ending July 31, 2008, as compared to the same period ending in 2007. Of particular concern is the limited number of civil filings on the North Platte docket.

Progress on the Judgeship Bill

Judge Bataillon reported that the bill pending in Congress that would authorize (restore) a district court judgeship for Nebraska has diminished chances for passage in the current session, but another bill that would authorize a temporary district court judgeship has a greater likelihood of being enacted before the end of September, should Congress fail to enact the permanent judgeship bill.

Renewal of Judge Thalken's Term as Magistrate Judge and John Cleveland Acting as Interim U.S. Marshal

Judge Bataillon reported that Magistrate Judge Thalken's term is presently under consideration for renewal, and that John Cleveland is serving as interim Marshal following Marshal Ennis's recent transfer to Washington, D.C.

Appointment of Lawyers in Civil In Forma Pauperis Cases

Judge Smith Camp noted that Judge Thalken had inquired about the advisability of compiling a current list of lawyers who are willing to accept appointments in civil in forma pauperis cases. Denise Lucks stated that a "check off" could be included on the next Federal Practice Fund billing sent to lawyers in the federal bar, inquiring about whether

they are willing to accept such appointments. The judges requested that she do so, Judge Kopf noting that the lawyers should not hold out an expectation of entitlement to such appointments. Judges Bataillon and Smith Camp expressed doubt that there was any sense of competition within the bar for such appointments. It was agreed that attorneys appointed to represent in forma pauperis clients would be paid from the Federal Practice Fund in accordance with the provisions of the previous contract with Kellie Paris-Asaka.

New Schedule and Proposed Revisions to the Court's Local Rules/Administrative Procedures

Judge Smith Camp described the new schedule for revision of the Court's local rules, noting that proposed amendment should be sent to her on or before October 3, 2008, and that Docket and Local Rules Committee proposals would be submitted to the Judicial Council for consideration at its January 9, 2009, meeting. It was noted that the schedule for revision of the local rules was revised to accommodate the annual nation-wide changes in the federal rules.

Judge Smith Camp inquired about whether lawyers and judges, particularly magistrate judges, had an interest in modifying the Court's current practice concerning initial planning statements and Rule 26 disclosures, i.e., streamlining the pretrial procedures in selected cases. Judge Kopf noted that this had worked well in certain cases he was handling in which all magistrate judges were recused and he presided over pretrial matters. Judge Smith Camp noted that she had consulted with Judge Thalken to ascertain his position on the matter, and he suggested no changes. The matter, which was first addressed at the Federal Practice Committee's March 2008 meeting, was tabled.

10. ADJOURNMENT

Jeanette Stull thanked the Committee members for their work throughout the past year, and adjourned the meeting.