

## FEDERAL PRACTICE COMMITTEE MEETING MINUTES

October 21, 2016

Robert V. Denney Federal Building

Lincoln, Nebraska

Attendees included Chief District Judge Laurie Smith Camp, District Judge John Gerrard, District Judge Robert Rossiter, Jr., Judge Susan Bazis, Clerk of District Court Denise Lucks, Chief Probation and Pretrial Services Officer Mary Lee Ranheim, Clerk of Bankruptcy Court Diane Zech, Committee Chairperson Andre Barry, Stuart Dornan (participated by phone), Professor Eric Berger, Michelle Epstein, Jay Jolley, Rubina Khaleel, Kristina Murphree (participated by phone), and Daniel Placzek. Chief Deputy Clerk of District Court Gabriela Acosta, First Assistant United States Attorney Rob Stuart, Administrative Services Supervisor Pat Williamson, and Training and Automation Specialist Luta Pleiss also attended.

The following individuals were unable to attend: United States Attorney Deborah Gilg, Federal Public Defender David Stickman, Professor Michael Fenner, James Smith, Jeremy Fitzpatrick, and Matthew Munderloh.

Andy Barry called the meeting to order.

### 1. Approval of minutes

Committee members approved the [minutes](#) from the April 29, 2016, meeting.

### 2. Review of Federal Practice Fund

Pat Williamson reviewed the committee's financial reports for the 12-month period ending September 30. The fund balance is \$161,593.20. Some recent expenses included payment of registration fees for the Eighth Circuit Judicial Conference, payment for attorney Wi-Fi in the Lincoln and Omaha federal courthouses, and payment for light refreshments served at a brown bag lunch presentation about Judge Joseph Woodrough.

### 3. Review of the draft budget report for 2017

Pat Williamson reviewed the draft budget report for 2017. He projects \$51,500 will be collected in attorney assessment fees in 2017. In addition, he projects \$1,400 in interest will be accrued over the course of 2017.

**Action taken.** Pat requested, and the committee approved 1) adopting the draft budget, and 2) collecting a \$20 biennial attorney assessment fee in 2017. Post-meeting update: Judge Smith Camp formally approved the draft budget for 2017 on October 27.

#### **4. Report from the clerk of the district court**

Denise Lucks reported that the \$20 attorney assessment fees will be due in March. The clerk's office will work with the Nebraska State Bar Association to obtain contact information for attorneys who are not registered for CM/ECF. Denise also reported that, for the 12-month period ending September 30, civil cases increased by 18% over the same period last year, and the number of criminal felony defendants decreased by 5%.

Luta Pleiss explained she is the project manager for the district court's NextGen CM/ECF project. The district court will be an "early adopter" court for the NextGen CM/ECF program. Early next year, district court staff will install one of the first official releases of the program in the court's testing environment, and will then spend at least 6-9 months testing and configuring NextGen prior to "going live." Court staff will initially implement only the Central Sign-On functionality of NextGen. For attorneys, this means they will no longer need separate logins and passwords for PACER and CM/ECF. Rather, they can use the same credentials to log in to CM/ECF in any NextGen court where they are admitted to practice. The district court staff will offer training and support to assist with the transition to Central Sign-On.

#### **5. Report from Committee Chair Andy Barry**

##### Recruiting new members

Judge Smith Camp explained that, historically, membership consisted of three attorneys from Omaha, three from Lincoln, and three from greater Nebraska. Members from each of the three divisions would rotate off every three years, with whoever serving as chair, staying on a fourth or fifth year. In recent years, members have served longer, and committee chairs have served two-year terms. Other notes from the discussion:

- The membership list on the district court's website is not current and will be updated by the subcommittee formed to recruit new members.
- Michelle Epstein, Jeremy Fitzpatrick, and Matthew Munderloh's terms expire on December 31. Michelle stated she would like to serve an additional two years. Andy will ask Jeremy and Matthew whether they would also like to extend their terms for an additional two years.
- Jay Jolley stated he would like to remain a member of the committee.

Members of the subcommittee tasked with recruiting new members will meet separately to discuss potential new members and the appointment of a new chair. More focus will be given to recruiting members from Lincoln and greater Nebraska.

## 2017 CLE

Adjunct Professor Dan Klaus will lead a two-hour CLE at the University of Nebraska College of Law in the fall of 2017. Professor Eric Berger will help organize the event. The CLE's topic will be the rules governing discovery.

## Changes to the local rules and Rule 26(f) report

Andy explained that effective December 1, the district court's local rules will be amended to eliminate the three additional days to respond when service is by electronic means. The change was made to conform to changes to the Federal Rules of Civil and Criminal Procedure. Andy will send a message explaining the change to Nebraska's federal bar on behalf of the Federal Practice Committee.

Also effective December 1, the Form 35, or Rule 26(f) report, will be modified to eliminate the requirement under Section II (Claims and Defenses) that a party must state the facts a party claims make the claim or defense applicable or established in the case.

## Federal Prison Guidebook

**Action taken.** The Federal Practice Committee agreed to purchase a copy of the *Federal Prison Guidebook* by Allan Ellis, which will be maintained in the Probation and Pretrial Services Office. The book will be used as a resource by the Probation and Pretrial Services Office during its orientation sessions for defendants awaiting sentencing and their families.

## Federal Bar Association – Nebraska Chapter

Andy will attempt to gather more information about the newly-formed Nebraska Chapter of the Federal Bar Association.

## Computerized research

Andy suggested amending Attachment A of the Amended Plan for the Administration of the Federal Practice Fund and the Federal Practice Committee as follows:

The following expenses may be incurred and are eligible for reimbursement in accordance with these guidelines. The list is not exhaustive.

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d. Computerized Research. The **out-of-subscription** cost services such as Lexis or Westlaw is reimbursable.

## Eighth Circuit Judicial Conference

Andy stated the 2017 Eighth Circuit Judicial Conference will be a judges-only conference held in Fargo, North Dakota. The following year, the conference will be held in Des Moines, Iowa. Judge Smith Camp hopes the Federal Practice Committee and others encourage attendance at the Des Moines conference.

## Magistrate judge pairing

Andy explained that, beginning January 1, magistrate judges will be randomly assigned in civil cases. Judge Smith Camp added that the change was prompted by the AO Magistrate Judge Committee, which has urged districts to move away from magistrate judge pairing to a system of random assignment.

Andy also explained that the district court will enter a general order in all consent cases assigned to Judges Thalken and Gossett upon their retirements requiring the parties to re-consent to a trial by magistrate judge, or have the case reassigned to a district judge for trial.

## Judge Zwart's request for feedback

Judge Smith Camp explained Judge Zwart is seeking candid feedback from the bar concerning her case management practices and her form orders. Judge Zwart is an active case manager and, because she plans to share her case management practices with the incoming magistrate judges, she would like to know what is working and what needs improvement.