

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

April 28, 2017

Roman L. Hruska Courthouse

Omaha, Nebraska

Attendees included Chief District Judge Laurie Smith Camp, District Judge Robert Rossiter, Jr., Magistrate Judge Susan Bazis, Clerk of District Court Denise Lucks, Chief Probation and Pretrial Services Officer Mary Lee Ranheim, Federal Public Defender David Stickman, Acting United States Attorney Rob Stuart, Committee Chairperson Andre Barry, Professor Eric Berger (participated by phone), Stuart Dornan, Jay Elliott, Michelle Epstein, Jeremy Fitzpatrick, Jay Jolley, Rubina Khaleel, Dan Klaus, Matthew Munderloh, James Smith, and Chad Swantz. Administrative Services Supervisor Pat Williamson and Dave Lopez also attended.

The following individuals were unable to attend: Clerk of Bankruptcy Court Diane Zech, Michael Fenner, Kristina Murphree, and Daniel Placzek.

Andy Barry called the meeting to order.

1. Approval of Minutes

Committee members approved the [minutes](#) from the October 21, 2016, meeting.

2. Review of Federal Practice Fund

Pat Williamson reviewed the committee's financial reports for the 12-month period ending March 31. The reports reflect that, as of March 31, \$28,220 in attorney biennial assessments have been collected. An additional \$17,000 was collected since March 31. Pat is projecting approximately \$51,000 in biennial-assessment collections for the year. As of March 31, the fund's balance was \$188,239, with only \$1,087 having been charged to the account for the calendar year.

3. Report from Budget Committee

No report.

4. Report from Federal Practice Committee Chair Andy Barry

Pro Hac Vice Fee

Andy Barry asked Judge Smith Camp to discuss the Judicial Council's decision to begin charging a pro hac vice fee in the amount of \$100 beginning October 1. Judge Smith Camp explained that Nebraska is the only district in the Eighth Circuit that does not impose a pro hac vice fee. This means that lawyers from Nebraska practicing in other federal district courts in the Eighth Circuit must pay anywhere from \$50 to \$150 to appear pro hac vice in those courts, but lawyers from other federal districts are not required to pay a fee to practice in Nebraska. Judge Smith Camp added that, if the fee revenue from pro hac vice fees is sufficient to keep the Federal Practice Fund at an acceptable level, the court may cease collection of the \$20 biennial assessment fee. Judge Smith Camp stressed that it is important to keep a healthy fund balance so monies can continue to be used to pay for legal education programs, litigation costs for indigent pro se civil litigants, attorney fees for court-appointed counsel in such cases, and other expenses that benefit the bench and bar.

Representation of Pro Se Civil Litigants

Judge Smith Camp and members of the committee discussed the \$2,000 fee payable to attorneys out of the Federal Practice Fund when they are appointed to represent indigent civil litigants. Judge Smith Camp explained the \$2,000 fee is a token of appreciation to attorneys who agree to represent indigent civil litigants; the fee is not intended to be just compensation for the attorneys' time and effort. However, she and the other judges would consider increasing the fee if presented with a recommendation from the committee. Denise Lucks agreed to provide the committee a brief history of the fee amount and a history of how many payments have been made to attorneys from the fund based on representation of pro se civil litigants.

Post-meeting update: Denise Lucks and Pat Williamson found the following history behind the \$2,000 fee. In April 2003, the committee entered into a contract with Kellie Paris Asaka with the understanding that she would handle up to 15 appointments per year at \$1,400 per case. That amount increased to \$2,000 in 2004, and the contract was extended to December 2006. Between 2003 and 2006, Kellie was appointed in seven cases and paid \$12,800. Beginning in 2007, the court began appointing other attorneys to cases involving pro se civil litigants; specifically, the court has appointed attorneys in 25 cases since 2007, paying a total of \$50,000 from the Federal Practice Fund. A payment activity ledger is attached to the minutes.

Continuing Legal Education (CLE) Program

Andy asked Dan Klaus to update the committee about plans for a CLE program in the fall. Dan explained the program is scheduled for two hours, probably between 9 and 11 a.m., on September 27, 2017. The program's title will be "Plausibility, Proportionality, and Professionalism: Practice Requirements Under the Current Federal

Rules of Civil Procedure,” and it will be webcast to attorneys who cannot attend in person. In general, the program will cover recent changes to the Federal Rules of Civil Procedure and the developing case law that interprets them, particularly as they relate to pleading requirements, discovery obligations, and trials. Dan is still developing an outline for the presentation. He encouraged the judges and others to e-mail him proposed topics for discussion at dklaus@remboltlawfirm.com.

Judge Smith Camp shared it would be helpful to know what kind of role attorneys would like the judges to play in the application of these rules; whether it be active or more hands off. Andy stated he would be interested in knowing how attorneys feel about broad mandatory disclosure rules such as those followed in state court in Arizona. Such rules would require parties to produce all documents relevant to a dispute, regardless of whether the other side specifically asks for them.

5. For the Good of the Order

Judge Bazis stated the magistrate judges want to meet with attorneys in September or October to discuss case progression. There are some differences between Lincoln and Omaha and the magistrate judges will be interested in hearing what is or is not working so that they can develop some consistent practices.

Judge Smith Camp stated the 2017 Eighth Circuit Judicial Conference will be a judges-only conference held in Fargo. The 2018 conference will be open to attorneys and it will be held in Des Moines. She encouraged attendance and explained the Federal Practice Committee subsidizes the costs of attendance for its members.

**CONTRACT FOR PRISONER CIVIL RIGHTS CASES
FEDERAL PRACTICE FUND
KELLIE PARIS ASAKA**

Contract Period: 2/1/2003 - 1/31/2004							
Date Appointed	Case Number	Case Title	Initial Appearance	Closing Fee	Total Attorney Fees	Case-Related Expenses	Total Case Payments
06/26/2003	8:02CV-0356	Heard v. Unknown Omaha Police Officer	\$ 700.00	\$ 700.00	\$ 1,400.00	\$ 3,660.55	\$ 5,060.55
06/25/2003	4:02CV-3327	Johnson v. Department of Corrections	\$ 700.00	\$ 700.00	\$ 1,400.00	\$ 844.00	\$ 2,244.00
Totals			\$ 1,400.00	\$ 1,400.00	\$ 2,800.00	\$ 4,504.55	\$ 7,304.55

The contract specifies that no more than fifteen (15) cases may be appointed during the term of the contract (one year) at \$1,400 per case. Other case-related expenses are to be submitted for approval and reimbursement separately.

Contract Period: 2/1/2004 - 1/31/2005							
Date Appointed	Case Number	Case Title	Initial Appearance	Closing Fee	Total Attorney Fees	Case-Related Expenses	Total Case Payments
03/16/2004	4:03CV-3110	Troy Hess v. Harold W. Clarke, et al	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00		\$ 2,000.00
05/06/2004	4:02CV-3311	Frederick Patterson v Barry Dejong	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00		\$ 2,000.00
06/03/2004	4:01CV-3192	Beers v. Eagan	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 286.50	\$ 2,286.50
07/23/2004	8:04CV-0048	Blackbey v. Houston, et al	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00		\$ 2,000.00
Totals			\$ 4,000.00	\$ 4,000.00	\$ 8,000.00	\$ 286.50	\$ 8,286.50

The contract specifies that no more than fifteen (15) cases may be appointed during the term of the contract (one year) at \$2,000 per case. Other case-related expenses are to be submitted for approval and reimbursement separately.

Contract Period: 2/1/2005 - 12/31/2005							
Date Appointed	Case Number	Case Title	Initial Appearance	Closing Fee	Total Attorney Fees	Case-Related Expenses	Total Case Payments
03/18/2005	8:03CV-0070	Jamaine Wilson v. Douglas County	\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 3,731.24	\$ 5,731.24
					\$ -		\$ -
					\$ -		\$ -
					\$ -		\$ -
Totals			\$ 1,000.00	\$ 1,000.00	\$ 2,000.00	\$ 3,731.24	\$ 5,731.24

The contract specifies that no more than fifteen (15) cases may be appointed during the term of the contract (one year) at \$2,000 per case. Other case-related expenses are to be submitted for approval and reimbursement separately.

Contract Period: 1/1/2006 - 12/31/2006							
Date Appointed	Case Number	Case Title	Initial Appearance	Closing Fee	Total Attorney Fees	Case-Related Expenses	Total Case Payments
					\$ -		\$ -
					\$ -		\$ -
					\$ -		\$ -
Totals			\$ -	\$ -	\$ -	\$ -	\$ -

The contract specifies that no more than fifteen (15) cases may be appointed during the term of the contract (one year) at \$2,000 per case. Other case-related expenses are to be submitted for approval and reimbursement separately.

Payment Activity Ledger - Asaka					
Date Paid	Case #	Description	FPF Order #	Check #	Amount
07/17/2003	8:02CV-0356	Initial Appearance Fee (Heard v. Omaha Police Officer)	2003-12	1120	\$ 700.00
07/17/2003	4:02CV-3327	Initial Appearance Fee (Johnson v Dept Corrections)	2003-12	1120	\$ 700.00
12/04/2003	4:02CV-3327	Case-related Expenses - (Research - \$804/Copies - \$40)	2003-47	1154	\$ 844.00
01/27/2004	8:02CV-0356	Case-related Expenses - (Deposition)	2004-01	1159	\$ 230.00
03/02/2004	8:02CV-0356	Case-related Expenses - (Research - \$2,950.00/Copies - \$3.75)	2004-04	1162	\$ 2,953.75
03/23/2004	4:03CV-3110	Initial Appearance Fee (Hess v. Harold W. Clark)	2004-05	1163	\$ 1,000.00
05/18/2004	4:02CV-3311	Initial Appearance Fee (Patterson v. Dejong)	2004-10	1167	\$ 1,000.00
07/06/2004	4:01CV-3192	Initial Appearance Fee (Beers v. Eagan)	2004-12	1170	\$ 1,000.00
08/03/2004	8:04CV-0048	Initial Appearance Fee (Blackbey v. Houston)	2004-13	1171	\$ 1,000.00
09/16/2004	4:02CV-3327	Closing Fee - (Johnson v. Dept. of Corrections)	2004-15	1173	\$ 700.00
09/16/2004	4:01CV-3192	Closing Fee - (Beers v. Eagan)	2004-15	1173	\$ 1,000.00
09/28/2004	4:03CV-3110	Closing Fee - (Hess v. Clark)	2004-18	1176	\$ 1,000.00
09/28/2004	4:02CV-0356	Case-related Expenses (Law Clerk Expenses)	2004-19	1177	\$ 476.80
10/05/2004	4:01CV-3192	Case-related Expenses (Deposition)	2004-20	1178	\$ 286.50
10/07/2004	4:02CV-3311	Closing Fee - Patterson v. Dejong	2004-21	1179	\$ 1,000.00
05/05/2005	8:03CV-0070	Initial Appearance Fee (Wilson v Douglas County)	2005-06	1195	\$ 1,000.00
09/05/2005	8:03CV-0070	Depositions - (Wilson v. Douglas County)	2005-16	1205	\$ 465.00
01/05/2006	8:03CV-0070	Case-related Expenses - (Depositions - \$2,395.35/Copies - \$106.40/Travel - \$ 305.49)	2006-01	1218	\$ 2,807.24
02/28/2006	8:03CV-0070	Closing Fee - (Wilson V. Douglas County)	2006-05	1222	\$ 1,000.00
06/08/2006	8:03CV-0070	Witness Fees - (Wilson v. Douglas County)	2006-08	1226	\$ 459.00
10/23/2007	8:02CV-0356	Closing Fee	2007-20	1255	\$ 700.00
10/23/2007	8:04CV-0048	Closing Fee	2007-21	1256	\$ 1,000.00
02/23/2007	4:05CV-3208	Case-related mileage	2007-04	1239	\$ 55.38
Total					\$ 21,377.67

IFP Asaka Narrative

Oct 17, 2001 - Bataillon chaired a subcommittee discussing reimbursement of attorneys for indigent work. Kopf recommended RFP for competition.
Oct 16 2002 - Bataillon proposed contracting with a firm to handle 15 prisoner cases where plaintiff was indigent.
April 4, 2003 - Committee discussed that FPC enter into contract with Kellie Paris Asaka to handle up to 15 indigent cases per year at \$1,400 per case.
April 23, 2004 - Kopf stated that arrangement with Asaka has worked out well. Contract renewed Feb 1, 2004 - Jan 31, 2005, 15 cases max, \$2,000 per case.
April 15, 2005 - Contract renewed Feb 1, 2005 - Dec 31, 2005. Judge Smith Camp suggested that a subcommittee be formed to review the current contract with Ms. Asaka that will expire at the end of this year.
October 21, 2005 - This subcommittee is composed of Judge Smith Camp, Wendy Hahn, and Robert Kirby. Judge Smith Camp noted that the current attorney contract with Kellie Paris Asaka expires on December 31, 2005, and a copy is available on the Court's website. Judge Smith Camp also stated that Kellie Paris Asaka had expressed a desire to have the contract renewed, but Ms. Asaka also expressed some concern about the fact that she is generally appointed in cases after certain discovery has occurred and after there have been rulings on dispositive motions. Ms. Asaka expressed an interest in providing some training programs for inmates or inmate legal aides as a part of her duties under the contract. Judge Smith Camp also reminded the Committee that it approved an expenditure for training for Ms. Asaka in civil rights (42 U.S.C. section 1983) cases, that Ms. Asaka did complete with the assistance of the funding. Judge Gossett noted that there are certain limitations posed by Ms. Asaka's representation. For example, she is a solo practitioner and has no back-up assistance when she is on vacation or is sick; and it may not be practical to appoint her in cases west of Omaha. Judge Smith Camp questioned whether the contract should be exclusive, or whether judges should be authorized to use the Federal Practice Fund to pay a stipend to other appointed counsel, in addition to reimbursement for out-of-pocket expenses. Judge Kopf pointed out that the Federal Practice Fund Plan does authorize such expenditures at this time, and Judge Bataillon stated that the reason for the contract with Ms. Asaka was to promote the development of expertise in one lawyer (or firm) that would develop credibility with pro se plaintiffs, particularly those incarcerated, and be able to provide general advice to them as well as representation in court-appointed matters. Judge Bataillon suggested that the contract with Ms. Asaka should provide the "default" measure for judges to take when they believe that appointment of counsel is appropriate in pro se civil cases, although other options remain available. It was moved and seconded that the contract with Kellie Paris Asaka be renewed for one year, to December 31, 2006, and the motion was approved unanimously.
December 30, 2005 - Contract renewed Jan 1, 2006 - Dec 31, 2006.
November 2, 2006 - 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. (Note: contract was not renewed)
March 20, 2007 - FPF plan updated as follows: "The court has elected to no longer contract with a single attorney for prisoner civil litigation cases. Instead, attorneys may be appointed by the judges, as needed. Language addressing only paying attorney fees to counsel under contract was removed and replaced with language which addresses the fee structure (\$1,000 case opening and \$1,000 at judgment) and requirements for attorneys seeking payment."
October 23, 2007 - FPF plan updated as follows: "Added "or other closing documents" back to document to clarify that counsel representing indigent litigants are paid for the second half of their fee, even if there is not a judgment in the case. Similar language was in the original contract with Asaka. "Counsel will be paid the remainder of the fee after the court enters judgment or other closing documents in the case."
August 15, 2008 - 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. 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.
May 12, 2009 - A list of attorneys willing to accept IPF cases was presented and added to the minutes.

As of 5/19/2017