

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

April 27, 2018

Roman L. Hruska Courthouse

Omaha, Nebraska

Attendees included District Judge Robert Rossiter, Jr., Magistrate Judge Susan Bazis, Clerk of District Court Denise Lucks, Clerk of Bankruptcy Court Diane Zech, Chief Probation and Pretrial Services Officer Kit Lemon, Federal Public Defender David Stickman, Committee Chairperson Jeremy Fitzpatrick, James Smith, Rubina Khaleel (participated by phone), Dan Klaus, Matthew Munderloh, Joseph Howard, Kathryn Dittrick Heebner, Stephen Gealy, and Tanya Hansen (participated by phone). Administrative Services Supervisor Pat Williamson, Probation Officer Morisha Brown, and First Assistant United States Attorney Jan Sharp also attended. The following individuals were unable to attend: United States Attorney Joe Kelly, Michael Fenner, Eric Berger, Jay Elliott, Michelle Dreesen Epstein, Chad Swantz, and Kenneth Wentz.

Jeremy Fitzpatrick called the meeting to order.

1. Approval of Minutes

Committee members approved the [minutes](#) from the October 27, 2017, meeting.

2. Review of Federal Practice Fund Report

Pat Williamson reviewed the Federal Practice Committee's financial reports for the 12-month period ending March 31, 2018. The reports reflect that, as of March 31, the Federal Practice Fund balance is \$205,165.

Pat stated the court began charging a fee to attorneys admitted pro hac vice in October. As of March 31, income from the pro hac vice fees is \$10,100. It appears that the money being collected from these pro hac fees may allow the court to forego charging members of this court's bar a biennial assessment fee. He and court staff will continue to monitor the collection of fees.

3. Report from the Budget Committee

Jeremy reported the Federal Practice Committee sponsored a magistrate judges' best practices forum. Expenses totaled \$659.60.

Dave Stickman reported the court's Technology Working Group is exploring whether and how computers may be placed in detention facilities so defendants can review electronically stored discovery without their attorneys present. Two subgroups have been formed for this purpose. The first has been charged with researching hardware, software, and maintenance requirements and costs. The second has been charged with identifying policies and procedures that may be required. The working

group is not ready to move forward with a proposal, but it will likely seek funding from the Federal Practice Committee at its next meeting.

4. Report From the Federal Practice Committee Chair

Eighth Circuit Judicial Conference

Jeremy suggested that the Federal Practice Committee offer a rebate to federal bar members who attend this year's Eighth Circuit Judicial Conference in Des Moines.

Action taken. The Federal Practice Committee voted to offer a \$200 per-person rebate on the conference registration fee for the first 25 lawyers who register for the conference. The clerk's office will draft a message announcing the rebate and send it to Jeremy for approval.

Adding Additional Budget Committee Members

Jeremy asked committee members to consider joining the committee's budget subcommittee, as there are currently only two members. He asked those interested to send him an e-mail message notifying him of their interest.

CLE Planning

Jeremy reported that a book about the early years of the federal district court in Nebraska will be published in the fall of 2018. Judge Smith Camp and others have suggested that the Federal Practice Committee hold a CLE at the Grand Manse in connection with the book's release. Judge Rossiter added that holding the CLE at the Grand Manse will give the authors flexibility to sign and sell the book, something they would not be allowed to do if the event were held in a federal courthouse.

Action taken. The Federal Practice Committee voted to hold a CLE this fall in connection with the release of the book. Matthew Munderloh and Joseph Howard volunteered to assist with planning the CLE.

5. Request for Reimbursement for Juror's Truck Damage

Judge Rossiter, Denise Lucks, and Jeremy explained that a juror's vehicle was damaged in connection with Judge Bataillon's criminal trial. Judge Bataillon and the marshals believed there were security concerns for the jurors. As such, the jurors were asked to park together in a specific parking garage. The height clearing in the garage was not tall enough to accommodate a juror's truck, which resulted in damage. The AO's Court Services Office stated payment from the bench and bar fund could be used to reimburse the juror for damage to his truck. Accordingly, Judge Bataillon asked that the Federal Practice Committee reimburse the juror \$1,000, the cost of the juror's deductible.

Action taken. The committee approved reimbursement to the juror in the amount of \$500 upon receipt of proof from the juror that he paid the deductible.

6. Discussion of Historical Portraits

Judge Rossiter stated the court hopes to recover three historical paintings from the Nebraska State Historical Society. The paintings are of United States Supreme Court Justice Samuel Freeman Miller and Nebraska District Judges Elmer Dundy and Joseph Woodrough. The painting of Judge Woodrough may require restoration work for which the court may need to seek funding from the Federal Practice Committee. Denise added that the court may also need funding for assistance in hanging and protecting the portraits, as appropriated funds cannot be used for this purpose.

7. Donation to Step Up Omaha

Action taken. The Federal Practice Committee approved a request for \$1,451.50, subject to Judge Smith Camp's approval, for the purchase of 1000 pencils and 100 pens to be used in connection with the Step Up Omaha program.

8. Update on Magistrate Judges' Best Practices Forum

Judge Bazis thanked the Federal Practice Committee for funding the forum. She explained that, prior to the forum, the magistrate judges asked civil and criminal attorneys to respond to an anonymous survey, and the responses informed some of the discussions at the forum. Forty-five civil attorneys and twenty-eight criminal attorneys attended the forum. Judge Bazis summarized some of her observations from this process:

Civil Cases

- The attorneys overwhelmingly supported a uniform process in Lincoln and Omaha for progressing civil cases. Accordingly, the magistrate judges will develop one process for progressing civil cases, and seek the judges' review of a modified Rule 26(f) report. They will also seek feedback on the modified Rule 26(f) report from civil attorneys who practice in federal court.
- Feedback about how often status conferences should occur varied, with some attorneys wanting none and others wanting frequent conferences. The magistrate judges stressed they are available to assist in the progression of cases.
- Some attorneys asked to hold pretrial conferences with the district judges. The magistrate judges stated they would continue to hold pretrial conferences because they can discuss settlement in a way the district judges cannot. However, the district judges, like the magistrate judges, are willing to hold conferences to discuss specific pretrial issues.

Criminal Cases

- The Omaha prosecuting and defense attorneys at the forum felt strongly that trials should be scheduled after the expiration of the pretrial motion deadline, not at the time of the initial appearance as they are in Lincoln. As such, this will continue to be an inconsistent practice between Omaha and Lincoln.
- The magistrate judges stated attorneys may seek extensions of time longer than six to eight weeks when they know there are state charges that must be resolved before a supervised release violation can be decided.
- Attorneys asked that judges no longer use language about cooperation in their plea colloquies in drug cases. They stated it was sufficient that defendants and attorneys sign the motion to seal the supplemental plea agreement, which includes language that is currently read during the plea colloquy. Judges at the Judicial Council meeting agreed the language can be removed from the plea colloquy.
- Attorneys asked if the header on criminal docket sheets alluding to cooperation could be removed. The Judicial Council voted to remove the header from the criminal docket sheets.
- The magistrate judges emphasized they and the district judges are available for status conferences and pretrial conferences in criminal cases.

Judge Bazis stated the magistrate judges are willing to hold these best practices forums on an annual basis, and that the district judges may also participate in future forums.