

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

October 26, 2018

Robert V. Denney Federal Building

Lincoln, Nebraska

Attendees included Chief District Judge Laurie Smith Camp, District Judge John Gerrard, District Judge Robert Rossiter, Jr., Magistrate Judge Cheryl Zwart, Magistrate Judge Susan Bazis, Magistrate Judge Michael Nelson, Clerk of Bankruptcy Court Diane Zech, Chief Probation and Pretrial Services Officer Kit Lemon, Federal Public Defender David Stickman, Committee Chairperson Jeremy Fitzpatrick, Matthew Munderloh, Kenneth Wentz, Tanya Hansen, Joseph Howard, Michelle Dreesen Epstein (participated by phone), Kathryn Dittrick Heebner (participated by phone), Chad Swantz (participated by phone), Rubina Khaleel (participated by phone). Supervisor of Administrative Services Pat Williamson and Budget and Finance Administrator Jeremy Reece also attended.

The following individuals were unable to attend: Clerk of District Court Denise Lucks, United States Attorney Joe Kelly, James Smith, Dan Klaus, Jay Elliott, Stephen Gealy, Michael Fenner, and Eric Berger.

Jeremy Fitzpatrick called the meeting to order.

1. **Approval of Minutes**

Committee members approved the minutes from the April 27, 2018, meeting.

2. **Review of Federal Practice Fund**

Pat Williamson reviewed the Federal Practice Committee's financial reports for the 12-month period ending September 30, 2018. The reports reflect that, as of September 30, the Federal Practice Fund balance is \$202,307.

3. **Review of Draft Budget Report**

Pat Williamson reported the Federal Practice Fund's projected beginning balance for FY 2019 is \$200,949. There will be a biennial assessment in FY 2019, which is projected to collect \$52,000. Collections from pro hac vice fees for FY 2019 are projected to be \$32,500. Based on historical spending, expenses for FY 2019 are projected to be \$26,360.

The Fund's projected ending balance for FY 2019 is \$261,889. Pat noted that this should give us some additional flexibility to pay expenses, including speaker fees, for the Eighth Circuit Judicial Conference to be held in Omaha in 2020.

Action taken. Judge Smith Camp and the committee members approved the draft budget.

4. Report from the Budget Committee

Judge Zwart reported there are no new developments on the Technology Working Group's project to explore whether and how computers may be placed in detention facilities so defendants can review electronically stored discovery without their attorneys present. Judge Zwart's focus has been on the civil case management project.

5. Report from Federal Practice Committee Chair Jeremy Fitzpatrick

Membership

Jeremy reported that the terms of six committee members will expire on December 31. Among these, Matthew Munderloh, Jay Elliott, and Jeremy have chosen to rotate off the committee. A subcommittee composed of Judge Rossiter, Jeremy, Kate Dittrick, and Stephen Gealy met to discuss names for a new chair and new committee members. Judge Rossiter subsequently discussed the names with Judge Gerrard. Judge Rossiter stated that Dan Klaus was suggested as a candidate for chair and Dan has agreed to serve as chair if appointed. Hearing no further nominations, the committee voted to recommend Dan Klaus as the new chair.

In addition, the subcommittee identified Allison Balus of Baird Holm as a potential new member. Kate Dittrick confirmed that Allison agreed to serve if chosen. Judge Rossiter also sought additional names from Andy Barry, who suggested Austin McKillip of Cline Williams. Judge Rossiter added that attempts are being made to recruit new members from western Nebraska, but that it is often difficult to find people who are interested. Judge Rossiter spoke with Dan Lindstrom of Jacobsen Orr in Kearney. Dan will see if he can identify possible members. The subcommittee does not yet have a recommendation for a member from western Nebraska but hopes to have one soon.

CLE

Jeremy provided an update on the Federal Practice Committee's upcoming CLE program on November 30 at Hruska Courthouse. From 1:00 to 2:00, the authors of "Echo of Its Time" will discuss the history of the court from 1867 through 1933. The hour will conclude with Judge Smith Camp's unveiling of the historic portraits of Justice Samuel Freeman Miller and Judges Dundy and Woodrough. From 2:00 to 3:00, the NSBA's Appellate Practice Section and the Federal Bar Association will conduct a session on lessons learned from practicing before Judge Smith Camp. From 3:00 to 5:00, Judge Smith Camp will host a reception in the court's atrium, open to all members of the bar and court staff, as she completes her term as chief judge. Jeremy encouraged members of the committee to sign up for the CLE and to invite colleagues to do the same.

Historical Portrait Restoration

Judge Smith Camp provided an update on the restoration of the historical portraits of Justice Samuel Freeman Miller and Judges Dundy and Woodrough. The restoration was done by the Ford Conservation Center in Omaha. Judge Smith Camp explained that

the Federal Practice Plan authorizes the chief judge to make payments independently up to \$5,000. The cost of the restoration was below that amount. Given the time constraints involved to complete the restoration and get the portraits hung in Hruska Courthouse before the November 30 events, Judge Smith Camp approved the payment after consulting with the other judges. The bill has been paid and will appear in the next budget package. The portraits will be hung with separately framed text containing historic information about each judge.

Action taken. The committee voted to ratify payment of the expense for restoration of the three historical portraits.

2020 Eighth Circuit Judicial Conference

Judge Smith Camp provided an update on the Eighth Circuit Judicial Conference to be held at the Hilton Hotel in Omaha on August 5-7, 2020. Lawyers will be included on the program August 6 and 7. Supreme Court Justice Ruth Bader Ginsburg has agreed to participate, and the conference will include general and breakout sessions. Judge Bataillon has agreed to spearhead the CLE breakout sessions. Elaine Weiss, author of the recent bestseller, “The Women’s Hour,” is also expected to participate. Other sessions will cover native rights and LGBT issues. In addition, Judge Smith Camp noted that there will be many collateral events in the community celebrating the 100-year anniversary of ratification of the 19th Amendment.

In connection with the 2020 conference planning, Judge Smith Camp asked for a volunteer to serve on a lawyers’ planning committee. This committee will work closely with Judge Bataillon to recommend CLE programs of particular interest to lawyers. The committee will also assist in planning social activities for spouses and families of attendees. Joe Howard volunteered to serve on the committee. Judge Smith Camp will send a group e-mail to Joe and the other members of the lawyers’ committee before the end of the year so that planning and coordination with Judge Bataillon can begin.

6. Civil Case Management Practices

The magistrate judges plan to roll out their newly drafted uniform case management practices by December 1. They will also release new model forms for the following: Rule 26(f) report; progression schedule; and initial scheduling order. A new standard protective order will be coming soon. The new documents provide uniform processes that will be followed by all three magistrate judges. All of the documents were distributed for attorney comment and the magistrate judges incorporated attorney input as much as possible. Judge Zwart noted that comments from the bar were extremely helpful and greatly appreciated.

The clerk’s office will send out a notice when the new forms become available, and the magistrate judges will continue their educational outreach. Judge Zwart indicated that a similar project for criminal cases may be undertaken in the future.

7. “For the Good of the Order”

Judge Rossiter thanked Jeremy for serving as chair, and Matt Munderloh and Jay Elliott for their service on the committee. Anyone with ideas for improving recruitment of new members from western Nebraska should contact Judge Rossiter or Jeremy.

Judge Smith Camp noted that Brian Buescher has been nominated by President Trump to fill the judicial vacancy resulting from Judge Smith Camp’s move to senior status.

Judge Rossiter plans to maintain a list of potential committee members that would carry over names suggested in prior years, rather than creating a new list each year. Suggestions for possible members should be submitted to Judge Rossiter.