

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

April 26, 2019

Roman L. Hruska Courthouse

Omaha, Nebraska

Attendees included District Judge Robert Rossiter, Jr., Senior District Judge Laurie Smith Camp, Magistrate Judge Susan Bazis, Magistrate Judge Michael Nelson, Clerk of Bankruptcy Court Diane Zech, Chief Probation and Pretrial Services Officer Kit Lemon, Chief Deputy Clerk of District Court Gabriela Acosta, Federal Public Defender David Stickman, United States Attorney Joe Kelly, Committee Vice Chairperson Kenneth Wentz, III, Collin Mangrum, Joseph Howard, Michelle Dreesen Epstein, Kathryn Dittrick Heebner, Chad Swantz, Allison Balus, Daniel Lindstrom, Austin McKillip, Eric Berger (participated by phone), Tanya Hansen (participated by phone), and Gregory Frayser (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: Chief District Judge John Gerrard, Clerk of District Court Denise Lucks, Committee Chairperson Dan Klaus, Rubina Khaleel, James Smith, Stephen Gealy, and Michael Fenner.

Ken Wentz called the meeting to order.

1. **Approval of Minutes**

Committee members approved the [minutes](#) from the October 26, 2018, meeting.

2. **Review of Federal Practice Fund**

Pat Williamson reviewed the Federal Practice Committee's financial reports. The reports reflect that, as of March 31, 2019, the Federal Practice Fund balance is \$234,150. The balance at the beginning of 2019 was \$203,881. As of March 31, pro hac vice fee income is \$7,200, biennial assessment income is \$25,020, and interest income is \$593. Expenditures as of March 31 are \$2,545.

Pat stated that the budgeted amount for pro hac fees is \$32,500, and it appears we are trending slightly above that. The budgeted amount for biennial assessment fees is \$52,000. Expenditures are budgeted at \$26,000. If these projections come to fruition, Pat stated we should have \$260,000 or more available at the end of the year. This should provide sufficient funding for the 2020 Eighth Circuit Judicial Conference in Omaha.

3. **Report from Federal Practice Committee Chair**

CLE Programs in Omaha and Lincoln

Ken reported on the November 30, 2018, CLE in Omaha co-sponsored by the FPC and the Nebraska State Bar Association. The CLE included a one-hour presentation by the authors of "Echo of Its Time," a history of the court from 1867 through 1933. The book

was released in February. The second hour was a session on lessons learned from practicing before Judge Smith Camp. Judge Smith Camp hosted a reception in the court's atrium to close out the day. Ken stated the CLE went very well and attendance was excellent. The FPC is working on a similar CLE to be held in Lincoln in the fall of 2019. The authors of "Echo of Its Time" have agreed to participate.

Austin McKillip is helping to organize the Lincoln CLE. Austin reported that plans are being made to hold it at the Grand Manse, a former federal courthouse. The estimated cost to rent the courtroom space in the Grand Manse is \$1,000. The event is being planned for September or October. Regarding expenses, Ken added that the Nebraska State Bar Association charges a \$50 CLE fee. Ken also stated the format for the event will be changed around in order to attract attendees beyond those who attended the Omaha CLE. Suggestions and ideas regarding the Lincoln CLE should be sent to Austin.

Judge Smith Camp noted that her book review of "Echo of Its Time," published on February 11 in Law 360, is in the public domain as of May 11, 2019. She suggested that the book review could be attached to a notice of the CLE to help stimulate interest. Judge Smith Camp also stated that although Nick Batter is not recognized as an author on the front cover of "Echo of Its Time," he did a large amount of research on the chapters involving Judge Woodrough. Nick participated in the Omaha CLE, and Judge Smith Camp is hopeful that he can participate in the Lincoln CLE. Austin will reach out to Nick and ask if he is interested in participating.

Judge Smith Camp also expressed her appreciation to the FPC for its support, noting that seed money provided by the committee helped the authors do the research needed for the book. Finally, Judge Smith Camp suggested that the book could be included in gift bags distributed to speakers, planning committee members, and other volunteers for the 2020 Eighth Circuit Judicial Conference.

4. 2020 Eighth Circuit Judicial Conference

Judge Smith Camp provided the following planning updates for the Eighth Circuit Judicial Conference to be held at the Hilton Hotel in Omaha on August 5, 6, and 7, 2020:

- The portion open to lawyers and judges will start on Wednesday evening, August 5, with a reception at the Hilton.
- Justice Ginsburg is scheduled to do a fireside chat at the conference. Although Justice Ginsburg suffered recent health setbacks, Judge Smith Camp has heard nothing to the contrary regarding Justice Ginsburg's agreement to participate. Judge Smith Camp will contact Justice Ginsburg in the next few months.
- Erwin Chemerinsky, Dean of Berkeley School of Law, will give an update on the Supreme Court.
- Sherilyn Ifill, President and Director-Counsel for the NAACP Legal Defense and Educational Fund, will be a speaker.
- Kurt Andersen, journalist and host of NPR's radio program "Studio 360," will lead a panel discussion about men who have advocated for women's rights.

- The Chief Justice of the Iowa Supreme Court who authored the decision legalizing gay marriage in Iowa will participate in a panel discussion. The lawyer for the plaintiffs in that case will also participate.
- Joe Levin, co-founder of the Southern Poverty Law Center and attorney for the plaintiff in *Frontiero v. Richardson*, will participate in a panel discussion. Also participating in the panel will be the plaintiff in *Frontiero v. Richardson*.
- Presentations on Native American issues will be given by the first Native American female judge, and the Dean of the University of Iowa College of Law, who is also Native American.
- The lawyers' planning committee will discuss scheduling break-out sessions for Wednesday afternoon or early afternoon on Friday. Based on feedback from the 2018 Iowa Judicial Conference, attendees prefer that sessions not be scheduled late Friday afternoon.
- Lawyers will be recruited to do introductions of speakers and panelists.
- Volunteers will be sought to serve as host companions or "buddies" for people coming in from out of town. Such volunteers should be available to provide help and share information on local restaurants, attractions, and activities. Joe Howard will initiate outreach and communication for this purpose. Joe's wife is also helping to plan social activities for the conference.
- Judge Smith Camp and Ken have discussed the idea that conference speakers could also visit local schools. While many of the speakers would likely be very enthusiastic about such visits, Judge Smith Camp noted that some may require additional fees. The Eighth Circuit pays transportation, lodging, and per diem expenses for each speaker and his or her guest. However, expenses beyond that are the responsibility of the FPC. Judge Smith Camp is encouraging community representatives to plan collateral community events celebrating the 100-year anniversary of ratification of the 19th Amendment. Such events could generate supplemental fees for the speakers.
- Members are encouraged to reach out to other organizations as well, such as libraries or educational entities, who may be interested in inviting a speaker. Judge Smith Camp can provide members with contact information for the speakers.

Dave Stickman raised a question as to whether the FPC will pay mileage and a portion of the fees for members to attend the 2020 conference. Judge Smith Camp stated that in years past, the Federal Practice Fund has paid registration, transportation, and meal expenses. Judge Rossiter stated the committee has budgeted for up to 10 or 20 scholarships for non-FPC members to attend. Pat Williamson added that other districts within the circuit generally donate funds to subsidize the conference. Judge Rossiter suggested that questions about what expenses will be paid by the Federal Practice Fund can be discussed by the budget subcommittee. Judge Rossiter also encouraged members to do what they can to drum up interest in the conference and help ensure a good turnout. Judge Smith Camp added that efforts should be made to encourage law students and young people to attend.

5. Supplemental Plea Agreement Waiver

Judge Nelson explained the background for the proposed revisions to the supplemental plea agreement waiver. Several years ago, in response to concerns about cooperating defendants in criminal cases being identified as “snitches,” the court separated the cooperation provisions within plea agreements into a supplemental plea agreement that was filed under seal. As part of that process, the court developed a waiver form in which the defendant acknowledged that he or she understood certain considerations. The supplemental plea agreement waiver form included a section on plea colloquy dealing with cooperation considerations. In 2018, however, the Judicial Council voted to remove language about cooperation in plea colloquies because it was awkward and difficult to keep confidential. With the assistance of Judge Zwart and Judge Bazis, Judge Nelson revised the waiver form to clarify the considerations and understanding of defendants who enter into such agreements. The revised form is intended to incorporate language of the current waiver and the previously required plea colloquy language into a clear and readable form for cooperating defendants.

Judge Nelson stated that the proposed revisions were discussed at the Judicial Council meeting earlier in the day. He suggested that the U.S. Attorney’s Office and Federal Public Defender’s Office review the form first and provide their comments and suggestions. After that, the proposed form can be sent to the FPC, and then disseminated to the bar for additional comment before a decision is made on whether to start using it. Judge Nelson encouraged any members with comments or questions to contact him.

6. Upcoming meeting schedule

Judge Rossiter explained that the Judicial Council recently made a decision to meet every four months instead of quarterly. The next two meetings are scheduled for August 23, 2019, in Lincoln, and January 10, 2020, in Omaha. Judge Rossiter suggested that FPC meetings continue to be scheduled on the same day as Judicial Council meetings. Thus, the next FPC meeting would be held on August 23 in Lincoln. Judge Smith Camp offered another possible idea whereby the next meeting could be held in conjunction with the September CLE on “Echo of Its Time.” The date for the CLE, however, has not been determined. Judge Rossiter suggested staying with August 23, but added that the date could be changed once the Lincoln CLE date is finalized. Committee members voiced no objection to scheduling the next FPC meeting for August 23, 2019, in Lincoln.

7. “For the Good of the Order”

Judge Bazis reminded the committee of the magistrate judges’ upcoming Best Practices Forum scheduled for May 17. The forum will be similar to last year’s event. The morning session will cover criminal and the afternoon civil best practices. The forum will also serve as a check-in to discuss last year’s suggestions and input. The magistrate judges have made some substantial changes, and particularly in the civil area.

A survey was sent to attorneys to gauge interest in topics for discussion. Attorneys who have not yet returned the survey and have suggestions for the forum may e-mail Judge Bazis.

Judge Bazis also thanked the committee for its support and funding for the forum.