

## FEDERAL PRACTICE COMMITTEE MEETING MINUTES

August 23, 2019

Robert V. Denney Federal Building

Lincoln, Nebraska

Attendees included Chief District Judge John Gerrard, District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Magistrate Judge Cheryl Zwart, Magistrate Judge Susan Bazis, Magistrate Judge Michael Nelson, Clerk of District Court Denise Lucks, Clerk of Bankruptcy Court Diane Zech, Chief Probation and Pretrial Services Officer Kit Lemon, Chief Deputy Clerk of District Court Gabriela Acosta, Committee Chairperson Dan Klaus, Committee Vice Chairperson Kenneth Wentz, III, Tanya Hansen, Kathryn Dittrick Heebner (participated by phone), Chad Swantz (participated by phone), Allison Balus, Daniel Lindstrom, Austin McKillip, Eric Berger, and Rubina Khaleel (participated by phone). Supervisor of Administrative Services Pat Williamson also attended.

The following individuals were unable to attend: United States Attorney Joe Kelly, Federal Public Defender David Stickman, Joseph Howard, Michelle Dreesen Epstein, Gregory Frayser, James Smith, Stephen Gealy, and Michael Fenner.

Dan Klaus called the meeting to order.

### 1. **Approval of Minutes**

Committee members approved the [minutes](#) from the April 26, 2019, meeting.

### 2. **Review of Federal Practice Fund**

Pat Williamson reviewed the Federal Practice Committee's financial reports. The reports reflect that, as of July 31, 2019, the Federal Practice Fund balance is \$269,940. The balance at the beginning of 2019 was \$203,881. As of July 31, pro hac vice fee income is \$26,300, biennial assessment income is \$45,400, and interest income is \$1,252. Expenditures as of July 31 are \$6,934.

Pro hac vice fees are projected to total approximately \$45,000 by the end of the year. An additional \$5,000-6,000 in biennial assessment fees is expected. Pat stated the fund balance should be approximately \$295,000 by the end of the year, less any expenditures. This should provide ample funding for the 2020 Eighth Circuit Judicial Conference to be held in Omaha.

Denise stated that after the 2020 Eighth Circuit Judicial Conference, the clerk's office will likely request that the biennial assessment be discontinued. Processing these assessments creates a significant amount of work for the clerk's office. In addition, income from pro hac vice fees is helping to sustain the fund.

### **3. Open Discussion**

#### Scheduling of Trials

Judge Zwart reported that the judges met earlier in the day to discuss scheduling of trials. She explained that the court's practice for many years has been to set trial dates shortly after the case is filed. This practice is creating problems, primarily in North Platte. In some instances, our court has scheduled trials in North Platte, but the Lincoln County courthouse has not yet prepared its own calendar. Judge Zwart stated that the judges' discussion then expanded to trial scheduling practices in Lincoln and Omaha, and it became apparent that many trial dates were being placed on the calendar, only to be moved multiple times.

Judge Zwart stated that after further discussion, the judges agreed on the following revised trial scheduling procedures. Trial dates will no longer be set at the beginning of a case. The trial date will be set at a status conference or at the pretrial conference. Judge Gerrard emphasized, however, that the new procedures can be adjusted and the judges welcome feedback from the practicing attorneys.

Judge Gerrard stated that the trial should be scheduled within four to six weeks after the pretrial conference. Judge Nelson added that the idea is to hold the latest status conference for setting the trial date one month before the scheduled pretrial conference, which will be set in the original final case progression order. However, the trial setting could be done earlier in the case, such as after the close of discovery.

The committee discussed various details regarding the new procedures. One member noted that the new approach should result in more realistic assessments from attorneys on the likelihood of going to trial. Another cautioned that waiting longer to set the trial date may make it more difficult to find a date when all parties are available because calendars fill up. Judge Zwart added that the date for scheduling trial will also depend on the type of case. For example, in a case with little likelihood that a motion for summary judgment will be filed, the scheduling conference would be held earlier.

The group also discussed key events that affect whether a case will go to trial, including the deadline for dispositive motions; the settlement conference/ADR deadline; and the date a summary judgment motion is decided. Some of the members noted that the imposition of a deadline by the court often prompts clients to come to the table for settlement discussions. Judge Zwart acknowledged the comments and suggested that relevant changes could be considered for forms that are already in the queue for revision. Judge Zwart added that under the court's Case Management Practices, attorneys may schedule a conference call with the judge to provide any significant updates in the case.

Judge Zwart confirmed that the pretrial conference will continue to be held near the time of the trial and explained that the pretrial conference also serves as a placeholder in the court's system. Judge Zwart further confirmed that the court will continue its current practice of scheduling status conferences.

## Court Budget

Denise Lucks alerted the committee that the court's budget for 2020 and 2021 will be very tight.

### **4. Report from the Federal Practice Committee Chair Dan Klaus**

Dan Klaus provided an update from the Judicial Council meeting that was held earlier in the day. He stated it is very apparent that a significant budget crunch is coming. Denise added that the clerk's office and probation and pretrial services office are not hiring new staff at this time. In addition, positions are not being backfilled at this time. Denise stated the clerk's office may consider temporarily implementing nonpublic hours. For example, public hours could be cut back to 9:00 – 3:00, which would allow staff to complete other core duties during the remaining hours. Judge Zwart stated that attorneys may still contact magistrate judges' chambers during nonpublic hours, as chambers staff are willing and able to take care of many requests. Dan encouraged the committee members to be aware of the budget situation and, where possible, try to alleviate pressure on court staff.

Dan also reported that the Judicial Council discussed the possibility that Congress may eliminate court funds generated through PACER fees. Congress is considering making court data available free of charge. Fees from PACER amount to approximately \$145 million per year. Denise added that PACER funds can no longer be used for courtroom technology expenses. Thus, attorneys should be aware that court equipment may not function at optimal levels.

Dan next discussed the Eighth Circuit Judicial Conference to be held at the Hilton Hotel in Omaha on August 5, 6, and 7, 2020. The conference coincides with the 100-year anniversary of ratification of the 19<sup>th</sup> Amendment. Arrangements have been made for an excellent line-up of speakers, including Justice Ruth Bader Ginsburg. Dan encouraged committee members to attend, and to urge associates to attend as well.

Finally, Dan passed along an update from the Judicial Council meeting regarding the vacant bankruptcy judgeship. Applicants for the position have been screened, and six candidates will be interviewed in late August. Diane Zech confirmed that the new bankruptcy judge may choose either Lincoln or Omaha as a duty station.

### **5. September 20, 2019 CLE**

Dan discussed the upcoming CLE entitled "Echo of Its Time: A History of the Federal District Court of Nebraska." It will be held at 2:00 on September 20, 2019, in the old federal courtroom at the Grand Manse in Lincoln. This CLE will be very similar to what was done at the November 30, 2018, seminar in Omaha, except that it will not include a segment on practicing before Judge Smith Camp. Dan distributed a book review of "Echo of Its Time" that was written by Judge Smith Camp and published in Law 360. Committee members were encouraged to read the review and share it with associates. A social hour

with light hors d'oeuvres and drinks will immediately follow the CLE program. In addition, the authors of "Echo of Its Time" will be available afterward to sign copies of the book for purchase. Dan invited everyone to attend.

## **6. "For the Good of the Order"**

Dan provided the schedule for future Federal Practice Committee meetings, which will be held on the same dates as Judicial Council meetings. The 2020 meetings will be held on January 24 in Omaha, April 24 in Omaha, and August 28 in Lincoln.

Judge Gerrard stated that for those attorneys who try cases in North Platte, the Lincoln County courthouse will still be the place of trial in most cases. However, due to a recent increase in filings, the Dawson County courthouse will serve as a back-up location this fall and next spring. Dan noted that he had been under the impression that the federal court stopped having trials in North Platte, but he was unsure if that notion is widespread among the practicing bar.

Judge Zwart stated that if a case is filed in North Platte and the opposing party wants it moved to Omaha or Lincoln, there is a burden a proof for establishing that it should be moved. If a case is filed in Lincoln or Omaha but most of the witnesses and events surrounding the case are in western Nebraska, a motion to transfer the case to North Platte may be filed in accordance with the local rule. Judge Gerrard asked that the committee members dispel any rumors among fellow practitioners that trials are not being held in North Platte.

Judge Nelson announced that the following new forms for criminal practitioners are available on the court's website: Waiver of Preliminary Hearing and Order; Waiver of Personal Appearance at Arraignment and Order; and Submission of the Determination of Detention or Release and Order.