

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

August 28, 2020

Via videoconference

Attendees included District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Senior District Judge Laurie Smith Camp, Bankruptcy Judge Brian Kruse, 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, Chief Deputy Clerk of Bankruptcy Court Eva Roeber, Federal Public Defender David Stickman, Committee Chairperson Dan Klaus, Committee Vice Chairperson Kenneth Wentz, III, Kathryn Ditrack, Chad Swantz, Allison Balus, Austin McKillip, Rubina Khaleel, Joseph Howard, Michelle Epstein, Stephen Gealy, Eric Berger, and Joshua Fershée. Administrative Services Supervisor Pat Williamson and Budget and Finance Administrator Jeremy Reece also participated.

The following committee members were unable to attend: United States Attorney Joe Kelly, Tanya Hansen, Daniel Lindstrom, Gregory Frayser, and James Smith.

1. Introductions and Opening Comments

Judge Buescher opened the meeting and thanked the committee members for attending.

2. Roll Call and Attendance of FPC Members

Roll call was conducted via e-mail.

3. Federal Courts Reports

a. Magistrate Judge Reports

- Judge Zwart reported that civil cases are moving along well. This is likely because much of the work on the civil side was done remotely prior to the pandemic. Criminal cases are requiring more adaptation.
- All three magistrate judges have done settlement conferences by Zoom. In Judge Zwart's experience, these are just as successful as having people in chambers.
- Judge Bazis stated that with regard to civil cases in North Platte, there are issues with the Lincoln County courthouse and space. The courthouse is not holding jury trials because it cannot be done safely at this point. Our back-up is Dawson County, which has some big trials coming up and is being used by another county for a large criminal trial. It could be May of next year before we can conduct trials in North Platte. Judge Bazis stated that North Platte jurors can be brought to Omaha or Lincoln, and attorneys may want to consider this as an option to get the case tried.
- Judge Nelson concurred with the reports of Judge Zwart and Judge Bazis.

b. Federal Judge Comments

Judge Buescher provided the following updates:

- Jury trials and most in-person hearings were postponed for a few months due to the COVID-19 pandemic. However, the court continued to conduct many video hearings. Most were on the criminal side, but some were on the civil side.
- Jury trials resumed in July for criminal cases. An ad hoc committee appointed by Chief Judge Gerrard developed a protocol for jury trials, including the following:
 - The potential jury pool is split into two groups. In Omaha, one group is in the Special Proceedings courtroom, and the other is in another courtroom. A similar procedure is used in Lincoln.
 - Jury selection is done first in one courtroom, and then in the other. Selection is done in sequential order using the number assigned to each juror.
 - The trial is conducted in the courtroom, but the public is not allowed inside. A video viewing area is available in another room in the courthouse for the public to view the trial.
- On the civil side, trials are expected to resume in October. No more than two trials at a time can be conducted in Omaha.
- Motion practice was very active early in the early part of the pandemic.
- The April Federal Practice Committee meeting was opened up to the entire federal bar. This was well received, given the circumstances. However, because there were fewer items on the agenda for the August meeting, a decision was made to stay with the traditional format.
- The local rules committee recently met. The committee is working on a few minor changes to the local rules, but nothing earth-shattering.

Judge Rossiter provided the following information regarding jury trials:

- Judge Rossiter encouraged attorneys to review the ad hoc committee report. The report states that it is subject to adjustment, and a few changes have been made already. An initial concern about jurors opting out in large numbers was not borne out.
- Criminal trials take a bit longer than usual, but are manageable.
- Once civil trials resume, Judge Rossiter expects it will be possible to pick a jury in one courtroom in Omaha. For the time being, civil juries are being limited to eight. This allows the entire venire to be placed in one courtroom.
- Attorneys should make early contact with the courtroom deputy for an explanation of the changes that have been made in accordance with the ad hoc committee's recommendations. Although the process is a little "clunkier" than it was before, it has worked very well.

Judge Smith Camp provided the following information regarding the cancelled Eighth Circuit Judicial Conference that was scheduled to be held in Omaha in August:

- Judge Smith Camp thanked the members of the Federal Practice Committee for their support, including financial support through the Federal Practice Fund. She also thanked members for their efforts in preparation for the 2020 Eighth Circuit Judicial Conference and Celebration of the Centennial of the 19th Amendment.
- The agenda and speaker bios for the conference were provided with the meeting materials to show what the conference would have been like if it had occurred. Because of concerns about health risks, however, the conference could not go forward.
- The Federal Practice Fund now has some funds that had been set aside for the conference but have been returned from the Circuit.
- Judge Gerrard has expressed an interest in using some of those funds for CLE programs that might follow themes that were planned for the conference.
- Judge Smith Camp requested that members of the committee provide feedback regarding their preferences for CLE programs, particularly if the programs include recorded interviews and virtual presentations. Dave Sommers with the Omaha Bar Association is willing to assist with this project. Dave is skilled at interviewing and is technologically savvy. Members should send their feedback directly to Judge Smith Camp.
- Already underway is a program focusing on Native American issues, sovereignty issues, jurisdiction, and the POWER Act. The POWER Act is only a few years old and addresses issues including violence against women on reservations. Three speakers are lined up for this program. It will likely be 90 minutes long and include interaction with different tribal representatives from the Santee Sioux, Winnebago, Omaha, and Ponca tribes.
- In reviewing the speaker bios, readers can see Judge Bataillon lined up a fine group of speakers for the CLE program for lawyers that was scheduled to precede the general sessions at the conference.
- Prior to the pandemic, \$1,500 from the Federal Practice Fund had been committed to the American Bar Association for exhibits on the 19th Amendment. This amount was paid to the ABA and the exhibits were on display in the court's atrium during August. Judge Smith Camp thanked Pat Williamson for handling the logistics for the exhibits.
- Judge Smith Camp extended a special thanks to Joe Howard for all of his efforts on the social agenda for the conference.
- Next year the Eighth Circuit Conference will be in Colorado Springs at the Broadmoor and will include lawyers. Judge Rossiter confirmed that it is scheduled for the week of October 25th in 2021.

c. Bankruptcy Court Report and Comments

Judge Kruse provided the following updates:

- Things have been business as usual in the bankruptcy court. The court continues to conduct telephonic hearings and has held trials and hearings via Zoom. These have been very successful in both Lincoln and Omaha. Judge Kruse commended the staff of the bankruptcy court clerk's office for their efforts in this regard.

- Recent amendments to the bankruptcy court's local rules include changes to some appendices, particularly with regard to Chapter 12. Responses to objections to Chapter 12 plans are now required to be filed. In addition, redlines of amended plans are required to be filed to assist the Chapter 12 trustee in reviewing them.

d. Federal Public Defender Report

Dave Stickman reported on Panelpalooza, which is normally scheduled at the end of September for CJA panel attorneys. Because of the coronavirus, it will not be held in Nebraska City. Instead, a number of virtual CLEs will be hosted in order to ensure all panel attorneys get the CLE credits they need for the year.

e. U.S. Attorney Report

The U.S. Attorney was unable to attend the meeting.

f. Civil Practice Report

Dan Klaus provided the following updates and information:

- There have not been any civil trials since the court reopened, but it is anticipated they will resume in October. Dan encouraged anyone who is scheduled for a jury trial in federal court to take a look at the ad hoc committee report.
- The committee report addresses not only the jury selection process, but also a reconfiguration of seating for the jurors, which may or may not impact presentation of cases.
- The Federal Practice Committee typically prepares a CLE for members of the bar. However, this year a CLE was deferred because of the 2020 Eighth Circuit Conference and the need for the committee to provide support for it. Dan encouraged committee members to watch for upcoming CLEs that cover some of the topics that were on the agenda for the Eighth Circuit Conference.
- Dan and Judge Buescher discussed the possibility of scheduling a CLE in the months remaining in 2020. However, a decision was made to defer a CLE until next year because of the short time frame and a preference to avoid another Zoom meeting.
- Dan provided the following highlights from the Judicial Council meeting held earlier in the day:
 - For the 12-month period ending July 31, civil case filings were down approximately 6 percent. The number of criminal felony defendants decreased by about 9 percent. As of July 31, there were 665 pending civil cases and 586 pending criminal cases.
 - Filings for individual bankruptcies have been down, but filings for small businesses are up slightly.
 - There is likely to be a reduction in the court's budget in the coming year. Dan asked that committee members keep this in mind and be aware that court staff are doing their jobs with fewer funds.

Judge Buescher noted that a substantial portion of the work in the District of Nebraska is on civil cases. He encouraged committee members to communicate to the court any suggestions or concerns they have regarding the handling of civil cases.

4. Business Meeting

a. Approval of Minutes

Committee members approved the [minutes](#) from the April 24, 2020, meeting.

b. Review of Federal Practice Fund Report as of July 31, 2020

Pat Williamson reviewed the Federal Practice Committee's financial reports. The reports reflect that, as of July 31, 2020, the Federal Practice Fund balance is \$292,039. Pat expects the balance to be approximately \$300,000 by the end of the year. As of July 31, pro hac vice fee income is \$13,100 and biennial assessment income is \$840. Interest income is \$2,345. Expenditures year to date are \$3,127.

Based on these numbers, the committee will have more money available for projects in 2021. In November and December, Pat will be developing the 2021 budget based on any needs or requests the committee provides. Pat will work with Dave Stickman and others on the budget committee to come up with ideas.

c. Update on the Cancelled 2020 Eighth Circuit Judicial Conference

See Judge Smith Camp's report under section 3.b. above. In addition, Judge Smith Camp noted that in connection with the protests that took place over the summer, a potential topic for a CLE program is qualified immunity. This is a subject that has been in the news and about which there is some misunderstanding. Such a CLE program would likely involve a judge talking about the nuts and bolts of how qualified immunity is applied. The program could also include a plaintiff's lawyer and a defense lawyer discussing the differing views about qualified immunity.

Another potential topic for a CLE program relates to statutory and other public symbols. These may be things that some people view as historic, things that people might view as offensive, and the legal aspects of whether these stay or do not stay; and if they come down, how they come down. Judge Smith Camp requested that anyone who wishes to offer assistance or guidance on either of these topics keep them in mind when reviewing the speakers and bios for the cancelled Eighth Circuit Conference.