

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

January 29, 2021

Via videoconference and teleconference

Participants included Chief District Judge John Gerrard, District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Senior District Judge Joseph Bataillon, 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 Eva Roeber, Chief Deputy Clerk of District Court Gabriela Acosta, Federal Public Defender David Stickman, Committee Chairperson Dan Klaus, Committee Vice Chairperson Kenneth Wentz, III, Tanya Hansen, Kathryn Dittrick Heebner, Chad Swantz, Allison Balus, Rubina Khaleel, Austin McKillip, Michelle Epstein, Maren Chaloupka, Marcia Washkuhn, Stephen Gealy, Joseph Howard, Joshua Fershée, and James Smith. Supervisor of Administrative Services Pat Williamson also participated.

The following committee members were unable to participate: United States Attorney Joseph Kelly, Chief Probation and Pretrial Services Officer Kit Lemon, and Eric Berger.

1. Introductions and Opening Comments

Judge Buescher welcomed committee members and federal practice bar members who joined the meeting. He introduced two new members of the Federal Practice Committee: Maren Chaloupka of Chaloupka Law LLC, and Marcia Washkuhn of Kutak Rock. Judge Buescher took a moment to honor the late Judge Laurie Smith Camp, who passed away unexpectedly in September 2020.

2. Roll Call and Attendance of FPC Members

Roll call for committee members was conducted via e-mail.

3. Federal Courts Reports

a. State of the Court

Judge Gerrard thanked everyone, particularly from the civil practice bar, for their patience and flexibility over the last 10 to 11 months. Judge Gerrard provided the following updates:

- In the summer of 2020, the court adopted a plan to conduct jury trials. The plan worked well and a number of criminal cases were tried between August and mid-October. There were no COVID-19 infections, and very few jurors opted out because of COVID-19 concerns. As part of the plan for conducting jury trials, questionnaires were sent to jurors. Those who did not feel safe could opt out, at least for a period of time.
- By mid-October, cases were moving along well and civil jury trials were set to resume. However, a resurgence of COVID-19 in the fall put trials on hold

again. The result is another backlog of criminal cases. Those will take precedence over civil cases because of speedy trial requirements.

- Jury trials are scheduled to resume on February 16.
- Judge Gerrard anticipates that the backlog of criminal jury trials will be caught up by mid-May to early June, at which time civil cases should resume. He is hopeful that during June, July, and August, the backlog of civil cases that had been scheduled for jury trials can be cleared away.
- Civil trials will be tried to a jury panel of eight or nine for the duration of the pandemic. Between 20 and 21 prospective jurors will be called. Up to 23 prospective jurors can fit in a courtroom.
- Attorneys are encouraged to work with the magistrate judges and courtroom deputies on rescheduling.
- The court is making inquiries and communicating with state officials in an effort to get everyone in the court system vaccinated as soon as possible. A lack of vaccines in the state is causing delays.

Dan Klaus encouraged attorneys who have upcoming trials to review the jury trial protocols that were established by the court last year.

b. Magistrate Judge Reports

Judge Zwart stated the magistrate judges normally begin planning their best practices forum at this time of year. However, planning has not yet begun because of COVID-19 and uncertainties as to when the event can be held. The judges are hopeful the forum can be done later this year after people are immunized or the pandemic subsides. Regarding the docket, cases are going well, all things considered. Judge Zwart thanked the attorneys for their patience, candor, and help in keeping the docket moving. Judges Bazis and Nelson concurred with Judge Zwart's comments.

c. Federal Judge Comments

Judge Bataillon stated he has taken over Judge Smith Camp's cases, but he is not taking any new cases. Thus, he will probably start civil trials before the other judges.

d. Bankruptcy Court Report and Comments

Judge Kruse reported that filings are down significantly this year. In addition, the bankruptcy and district courts have begun a process of consolidating services for internal operations. This should not have any effect on attorneys.

e. Federal Public Defender Report

Dave Stickman reported that annual panel attorney training is normally done live in Nebraska City in the fall. However, that was not possible in 2020. Instead, a number of webinars were hosted and were well attended. There were approximately 105 attendees. The programs enabled panel attorneys to earn their required annual CLE hours.

Confirmation has been received that the Lied Center in Nebraska City is reserved for September 16th and 17th, with the assumption that an in-person Panelpalooza will be possible in 2021.

The public defender's office has been busy with compassionate release cases. The office has opened up more than 125 cases, and has reviewed a couple hundred cases altogether. Eleven people have been released from prison due to the extraordinary and compelling reasons in their cases.

Mary Gryva finished her temporary assignment with the office at the end of December. Yvonne Sosa started in August as an Assistant Federal Public Defender.

f. U.S. Attorney Report

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

g. Civil Practice Report

Committee Chairperson Dan Klaus provided the following highlights from the Judicial Council meeting held earlier in the day:

- For the 12-month period ending December 31, the court's civil caseload was down very slightly from the prior year. The criminal caseload was also down from the prior year. There are 661 pending civil cases and 588 pending criminal cases.
- The court is in sound fiscal shape for this year. However, there are upcoming budget pressures that will need to be addressed.

h. Judge Smith Camp Memorial Ceremony Update

Judge Gerrard stated he has been working closely with the family of Judge Smith Camp regarding a memorial ceremony. The family does not want to hold the memorial until everyone can attend in person. Judge Gerrard stated the earliest a formal event in the court could be held will likely be in the fall. Everyone will be notified well in advance when something is scheduled. Judge Gerrard also expressed his wholehearted support for establishing an annual CLE in honor of Judge Smith Camp.

i. Eighth Circuit Judicial Conference

Judge Buescher noted that the 2020 Eighth Circuit Judicial Conference that was scheduled to be held in Omaha was cancelled due to the pandemic. The 2021 meeting is scheduled to be held in Colorado Springs, Colorado, on October 27-29. Dan Klaus stated that historically, the FPC has provided subsidies to enable members of the bar to participate in the annual circuit conference. Dan deferred further discussion on providing subsidies until the business meeting.

4. Business Meeting

a. Approval of Minutes

Committee members approved the [minutes](#) from the August 28, 2020, meeting.

b. Review of Federal Practice Fund

Pat Williamson reviewed the Federal Practice Committee's financial reports. The reports reflect that, as of January 1, 2021, the Federal Practice Fund balance is \$299,287. Pro hac vice fee income for 2020 was \$22,000; biennial assessment income was \$840; interest earned was \$4,392; and expenditures totaled \$6,927. Pat stated \$85,000 from the fund was added to an 18-month certificate of deposit. All funds are kept at Cobalt Credit Union. The renewal rate dropped from 2.85% to .75%. Rates were checked at various banks and this rate was determined to be competitive. Dan Klaus explained that because of the pandemic, the FPC did not sponsor any CLEs in 2020. In addition, the FPC typically provides financial support for the magistrate judges' best practices forum, which did not occur in 2020. Finally, the FPC had committed significant funds for the Eighth Circuit Conference that was to be held in Omaha, which also did not occur. These circumstances led to unusually low expenditures in 2020.

Pat next reviewed the 2021 budget report. The report was reviewed in December by Dan Klaus and Dave Stickman, and approved by Judge Gerrard. Projected income includes approximately \$30,000 from pro hac vice fees and \$4,200 from interest, resulting in \$333,486 available. Projected expenses include \$8,000 to subsidize attendance at the Eighth Circuit Conference in Colorado Springs, and \$5,000 as a general contribution to the organizers of the conference. Such a general contribution is normally made when the circuit conference is held outside of Omaha. Additional budgeted expenses include \$7,000 for two CLE programs. The total budgeted expenses are \$34,475, which would leave a year-end balance of \$299,011. Pat explained that, historically, the balance of the fund has been maintained at approximately \$200,000. However, in anticipation of hosting the 2020 conference in Omaha, attorney biennial assessment fees and pro hac vice fees were collected in the same year, which allowed the balance to build up. Approximately \$64,000 in expenditures had been budgeted for the Omaha conference and those funds were not spent.

Dan suggested that a decision on providing subsidies for members of the bar to participate in the October Eighth Circuit Conference be deferred until the next FPC meeting on April 23.

c. CLE Opportunities for Federal Practice Committee

i. Mediation Training

Judge Bataillon explained that he has been working in cooperation with the Creighton University School of Law to organize a mediation training program. It has been many years since the court's last mediation training was offered,

and our mediation plan is in need of updating. The proposed training would be held at the courthouse and would include two eight-hour days for approximately 24 participants. There would be several trainers, including some of our magistrate judges. The training would also include an ethics component. Creighton Law School would handle the registration and CLE credit requests. The estimated fee per participant is approximately \$450. Some expenses would be incurred to sponsor the training, including payment to out-of-state presenters for travel costs; CLE fees payable to the Nebraska Supreme Court for certifying the training; and meals and other miscellaneous costs. The training would need to be held in person and would likely be scheduled for the fall of 2021.

Action taken. The Federal Practice Committee voted to sponsor federal mediation training.

The committee next discussed the financial contribution by the FPC to the mediation training. Dave Stickman proposed that the FPC sponsor the cost of the training. Judge Bataillon noted that only 24 slots are available. If the cost of the training is fully covered by the FPC, there may be more than 24 applicants.

Committee members discussed a suggestion that attorneys from rural areas of the state be encouraged to participate. The committee also discussed various ideas for narrowing down the number of applicants if more than 24 register. Suggestions included requiring a minimum number of years of membership in the bar; requiring applicants to submit a paragraph explaining why they are interested in the program; and charging tuition for the training but providing “scholarships” for a limited number of applicants.

Action taken. The Federal Practice Committee voted to sponsor the cost of mediation training for up to ten applicants, with preference given to attorneys in greater Nebraska. The remaining participants in the mediation training program will pay their own tuition of \$450.

Dan added that this topic will be discussed again during the April 23 FPC meeting.

ii. CLE Programs in Honor of Judge Smith Camp

Dan stated it was brought to his attention that Rob Stark, Judge Smith Camp’s career clerk, is interested in helping organize a CLE in honor of the judge. Judge Smith Camp was very committed to continuing education efforts and helped mentor new lawyers and judges. Dan stated that he and Rob also discussed the idea of creating an annual CLE event in honor of Judge Smith Camp. Rob has agreed to put together the first program if the committee decides to move forward with the idea. The first CLE would likely occur in the fall of 2021, and Rob would coordinate with the appropriate person(s) for the presentation.

Action taken. The Federal Practice Committee voted to adopt, as part of its commitment to annual programs, continuing legal education programs that would be in honor of and in memory of Judge Smith Camp. The committee also voted to approve Rob Stark as the head of the first such CLE.

d. Discussion of Future FPC Meetings

Dan stated that FPC meetings historically have been scheduled over the noon hour or shortly after noon on the same day the Judicial Council meets. Dan and Judge Buescher discussed the possibility of scheduling at least one FPC meeting per year later in the day, to be followed by a social event where members can get to know each other. The committee members voiced no objections to the suggestion. After the pandemic subsides, Dan will try to schedule an FPC meeting for a later time, such as 3:00 or 3:30, with the opportunity for socializing afterward. If this arrangement is well received, it will likely be done at least once a year.

e. “For the Good of the Order”

Judge Zwart stated it would be helpful if training were offered to attorneys on representing a client in mediation and settlement discussions. Several members of the committee agreed, and a suggestion was made that an ethics component could be included in such training.