

# **FEDERAL PRACTICE COMMITTEE MEETING MINUTES**

July 30, 2021

Roman L. Hruska Courthouse

Omaha, Nebraska

Attendees included Chief District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Bankruptcy Judge Brian Kruse, Magistrate Judge Susan Bazis, Clerk of District Court Denise Lucks, Chief Deputy Clerk of District Court Gabriela Acosta, Federal Public Defender David Stickman, Committee Chairperson Dan Klaus, Assistant United States Attorney Mike Norris, Allison Balus, Kathryn Dittrick Heebner, Joseph Howard, James Smith (by telephone), Marcia Washkuhn (by telephone), Austin McKillip (by telephone), and Eric Berger (by telephone). Also in attendance were Creighton Law School Professor Rachel Goedken, Supervisor of Administrative Services Pat Williamson, and Budget and Finance Administrator Jeremy Reece.

The following committee members were unable to attend: Clerk of Bankruptcy Court Eva Roeber, Acting United States Attorney Jan Sharp, Chief Probation and Pretrial Services Officer Kit Lemon, Committee Vice Chairperson Kenneth Wentz, III, Tanya Hansen, Stephen Gealy, Rubina Khaleel, Chad Swantz, Maren Chaloupka, Michelle Epstein, and Joshua Fershée.

## **1. Introductions and Opening Comments**

Judge Buescher welcomed the committee members. He noted that the past year has been challenging, but the District of Nebraska has done relatively well in managing pandemic-related issues. Judge Buescher emphasized that while criminal cases require a substantial amount of time due to speedy trial considerations, civil cases are moving along as well. A large part of a district judge's work is on the civil docket, and judges' staff work mostly on civil cases. Judge Buescher also noted that activity in civil cases has increased in recent weeks because of fluctuations related to the pandemic. As an example, Judge Buescher stated he normally receives seven to eight dispositive motions during a month. However, in July he received approximately 27 such motions.

## **2. Roll Call and Attendance of Federal Practice Committee (FPC) Members**

Roll call was taken.

## **3. Federal Courts Reports**

### **a. State of the Court**

Chief Judge Rossiter provided the following updates:

- Regarding caseload, civil filings for the 12-month period ending June 30 were up by 9%. Criminal felony filings were up by 6.12%. As of June 30, there were 631 pending civil cases and 654 pending criminal cases.
- The District of Nebraska is doing well compared to many other districts in terms of moving cases. We are caught up or close to being caught up since the last COVID-19 shutdown. The other side of the coin is that things have begun to open up and we will likely see an increase in the number of cases coming through.
- Hearings are being conducted in person and jury trials are going forward as scheduled.
- Juries for civil cases are composed of eight persons and all jurors are seated in the jury box.
- As a result of recent COVID-19 developments, the court will likely begin requiring that masks be worn in public areas of the courthouses. Each judge will determine whether masks are required for his or her in-person hearings.

The court will continue to seek input from national and local health organizations to guide decisions moving forward. Judge Rossiter encouraged anyone with suggestions, comments, or concerns to reach out to him.

#### **b. Magistrate Judge Reports**

Judge Bazis provided the following updates:

- Judge Bazis and Judge Nelson have returned to in-person hearings for criminal matters unless there is a request for a remote hearing.
- An attorney wishing to request a remote hearing should contact the judge's courtroom deputy. The defendant's attorney must consent to holding the hearing remotely.
- Parties may also request hybrid hearings in which some participants are in person and others are remote.
- Judge Zwart continues to conduct the majority of her hearings remotely.
- The magistrate judges are also busy with civil matters. The judges are seeing more discovery disputes.
- On the criminal side, a lot of motions are being filed. Communications between attorneys and clients have improved in some cases because in-person contact at some facilities has opened up.
- The magistrate judges are busy and cases are moving.

#### **c. Bankruptcy Court Report and Comments**

Judge Kruse reported that things are business as usual in the bankruptcy court. Although an increase in bankruptcy filings was anticipated, the numbers are still low. Judge Kruse is working on revising the local rules and updating some court forms. The court is continuing to study new Subchapter 5 under Chapter 11 of the bankruptcy code. In addition, the court is monitoring a number of bills in Congress that could make some significant changes in bankruptcy law.

#### **d. Federal Public Defender Report**

Dave Stickman reported that Federal Public Defender personnel have returned to working in the office. Efforts will be made to stay in the office to the extent possible.

The 14<sup>th</sup> annual Panelpalooza is scheduled for September 16-17 at Nebraska City. The program will provide attorneys all of the continuing legal education (CLE) credits needed for the year without cost.

#### **e. Acting United States Attorney Report**

Assistant United States Attorney Mike Norris provided the following updates on behalf of Acting United States Attorney Jan Sharp.

- Civil chief Bob Homan retired. Steve Russell is serving as civil chief.
- Most of the recent work in the civil division has been on immigration matters.
- Approximately 50% of the attorneys are working in the office. Most attorneys in the civil unit are working from home, while a larger proportion of attorneys in the criminal unit are back in the office.

#### **f. Civil Practice Report**

Committee Chairperson Dan Klaus reported that the FPC and Creighton University School of Law are co-sponsoring advanced mediation training at Hruska Courthouse on September 24-25. Dan introduced Rachel Goedken, Assistant Professor of Law at Creighton University School of Law and Director of the Werner Institute for Negotiation & Conflict Resolution.

Professor Goedken stated that plans are in place to conduct the training in person. The program is geared toward civil disputes and is designed for experienced lawyer mediators who are interested in being on the list of approved mediators for federal district court. The program has been approved for 16 CLE credits in Nebraska. Approval for CLE credits is pending in Iowa and Missouri. In addition to Professor Goedken, trainers will include attorney-mediator Mike Kinney and Laurel Stevenson, director of the mediation program for the U.S. District Court for the Western District of Missouri. Enrollment is capped at 24 to ensure that working groups are small enough to effectively practice skills.

Professor Goedken distributed copies of the agenda for the training program and encouraged committee members to spread the word to other attorneys who might be interested in attending. Professor Goedken also noted that the Werner Institute is sponsoring a diversity and inclusion scholarship for the program. The scholarship has been awarded already, but any committee members who know someone that might benefit from the training should contact Professor Goedken. She can reach out to the Institute regarding the possibility of offering additional scholarships.

Dan added that the FPC voted in its January meeting to provide funding to cover the attendance fee for up to ten persons, with preference given to attorneys in greater

Nebraska. Professor Goedken confirmed that the registration fee is \$400 if registration is completed before the end of August. After that, the fee increases to \$450.

#### **g. Judge Smith Camp Memorial**

Dan Klaus reported that at its January 2021 meeting, the FPC voted to hold an annual program of continuing legal education that will be in honor of and in memory of Judge Smith Camp. As part of the planning process for this year's CLE, it was decided that the program will be held jointly with the CLE sponsored by the Nebraska State Bar Association's (NSBA) Federal Practice Section at the NSBA's Annual Meeting. The Annual Meeting is scheduled for October 13-15. Judge Smith Camp's law clerk, Rob Stark, has taken the lead in organizing the program. It will be a half-day program aimed at helping educate lawyers who are relatively new to federal court and lawyers who have not previously practiced in federal court.

The program will include a session on discovery and pretrial litigation in federal court, with Judge Zwart as one of the presenters. Another session will provide a practitioner's perspective from "seasoned" federal court litigators. A third session will offer tips on making a record in federal court. Judge Smith Camp's court reporter, Brenda Fauber, and court interpreter Laura Garcia-Hein will be presenting. An additional session will provide a briefing on written motion practice. Presenters will include Rob Stark and Professor Rachel Timm of the University of Connecticut School of Law.

Dan further explained that a portion of the CLE will be a memorial for Judge Smith Camp. Details for the memorial segment are still under discussion. Dan encouraged all committee members to sign up for the CLE. Those who cannot attend the CLE are still encouraged to attend the memorial portion.

Post-meeting update: Since the FPC meeting, it was decided that any memorial ceremony for Judge Smith Camp will likely be held at the Hruska Courthouse on a date later than the NSBA Annual Meeting.

#### **h. Eighth Circuit Judicial Conference**

Judge Buescher reported on the Eighth Circuit Judicial Conference to be held at the Broadmoor in Colorado Springs, Colorado, on October 27-29. The court will distribute an e-mail to committee members that will include a link to register for the conference and details about reimbursement for expenses. Traditionally, the FPC has provided funding for committee members to attend and will do so again this year. In addition, the FPC has historically provided a subsidy for non-committee members of the bar who wish to attend. This year, the FPC will provide a subsidy of \$250 for up to 25 non-committee members of the bar. The subsidy will be available on a first-come, first-served basis.

Judge Buescher stated the agenda for the conference will be distributed soon. The conference will address a number of timely topics, including sessions on COVID-related litigation. The FPC breakfast is scheduled for Friday morning, October 29. Pat Williamson

confirmed that FPC members may claim reimbursement for the breakfast as part of their per diem allowance.

#### **4. Business Meeting**

##### **a. Approval of Minutes**

Committee members approved the [minutes](#) from the January 29, 2021, meeting.

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

Pat Williamson reviewed the Federal Practice Committee's financial reports as of June 30, 2021. The reports reflect that the beginning balance of the Federal Practice Fund on January 1, 2021, was \$299,287. As of June 30, pro hac vice fee deposits were \$9,540.00, interest earned was \$9.27, and expenditures totaled \$2,007, leaving a balance of \$307,747. A contribution in the amount of \$10,000 was made for the Eighth Circuit Conference in Colorado Springs, but the check has not yet been cashed. Once the check is cashed, the balance in the fund will be \$297,747.

##### **c. 2022 FPC Meeting Dates**

Dan stated that FPC meetings historically have been scheduled on the same date as the Judicial Council meetings. The Judicial Council meetings in 2022 will be held on January 28 and April 22 in Omaha, and on August 5 in Lincoln.

**Action taken:** The members of the FPC voted to approve 2022 meeting dates of January 28 and April 22 in Omaha, and August 5 in Lincoln.

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

Judge Buescher encouraged members of the committee to attend the Eighth Circuit Conference. It will be a very educational program and it would be good to see high attendance numbers for Nebraska.