

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

January 28, 2022
Via videoconference

Attendees included Chief District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Senior District Judge Joseph Bataillon, Magistrate Judge Cheryl Zwart, Magistrate Judge Susan Bazis, Magistrate Judge Michael Nelson, Bankruptcy Judge Brian Kruse, 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, Allison Balus, Eric Berger, Jim Campbell, Maren Chaloupka, Elizabeth Culhane, Mark Fahleson, Joshua Fershée, Torry Garland, Mallory Hughes, Gretchen McGill, Brian McKernan, Steve Russell, Marcia Washkuhn, and Joshua Weir. Also in attendance were Supervisor of Administrative Services Pat Williamson and Budget and Finance Administrator Jeremy Reece.

The following committee members were unable to attend: Acting United States Attorney Jan Sharp, Chief Probation and Pretrial Services Officer Kit Lemon, Austin McKillip, and Susan Sapp.

1. Introductions and Opening Comments

Judge Buescher welcomed the committee members and called the meeting to order.

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

Roll call was taken. Judge Buescher invited all current and new members to introduce themselves and share their backgrounds.

3. Federal Courts Reports

a. State of the Court

Chief Judge Rossiter thanked everyone for their continued cooperation and vigilance in addressing the pandemic. As a district, Nebraska is doing quite well.

Judge Rossiter provided the following additional updates on the state of the court:

- The court has informally paused jury trials for a few weeks. However, Judge Buescher has a jury trial scheduled for February 8, and more trials may be scheduled soon thereafter.
- The court has been conducting more remote hearings in recent weeks. Judge Rossiter thanked the magistrate judges for communicating with the holding facilities and helping to keep cases moving.

- [General Order 2021-07](#) is still in effect in terms of masking in public areas and related restrictions. However, each judge determines masking requirements for his or her in-person hearings and trials.
- Despite the added complications of the pandemic, the court conducted a total of 35 trials in 2021. There was only one case in which a juror was not able to serve for the duration of the case because of COVID. No trials were cancelled due to a lack of potential jurors.
- Judge Rossiter thanked everyone who was able to attend Judge Smith Camp's memorial on November 23. The service went very well and was a nice tribute to Judge Smith Camp.
- Dave Stickman has been reappointed for another four years as the Federal Public Defender for the District of Nebraska.
- Magistrate Judge Gossett's recall status was extended to July 2022.
- Judge Kopf will take inactive senior status effective January 3, 2023. Judge Kopf will no longer take cases after that.
- Judge Gerrard will take senior status effective February 6, 2023. He will notify the President next month, providing a full year for a new judge to be appointed. Judge Gerrard will continue to take cases as a senior judge.

Judge Buescher added that since the pandemic began in March 2020, 43 cases have been tried in the District of Nebraska.

b. Magistrate Judge Reports

Judge Bazis reported that the magistrate judges have returned to remote hearings for criminal matters because of the increase in COVID cases. In-person hearings will eventually resume, but there will likely be a hybrid of some remote and some in-person hearings. All of the magistrate judges are open to doing remote hearings even after resumption of in-person hearings. This is true for both criminal and civil matters.

c. Federal Judge Comments

Judge Bataillon, who serves on the Judicial Conference Committee on the Budget, reported that the federal government is operating under a Continuing Resolution for funding. The level of funding for next year remains uncertain. It is anticipated that there will be cuts in staffing levels of 12-15% from what the requirements are. This will mostly affect clerk of court and probation offices around the country. In addition, needed upgrades in security are being made to federal courthouses around the country, including in Nebraska.

d. Bankruptcy Court Report and Comments

Judge Kruse reported that filings continue to be low and have been down since the pandemic began. The bankruptcy court has continued to conduct trials in person, telephonically, and via Zoom.

The amended local rules have been finalized and are published on the website [here](#). The rules went into effect January 20, 2022.

Judge Kruse also reported that a change was made regarding joint preliminary pretrial statements for adversary proceedings. The bankruptcy court now requires that initial disclosures be made under Rule 26(a).

e. Federal Public Defender Report

Dave Stickman reported that Panelpalooza was held in Nebraska City in September. There were 115 panel attorneys in attendance and the training provided them with all of the continuing legal education (CLE) credits needed for the year.

A new training program is being added for attorneys who want to be on the CJA Panel. The training will consist of seven sessions to be held over the lunch hour. Seven attorneys will participate. Dave stated he plans to request CLE accreditation for the training and asked that the FPC consider funding the cost, which would be \$49.00. The training is not yet approved for CLE credit by the Nebraska State Bar Association. Judge Buescher suggested that the funding question be placed on the agenda for a future FPC meeting.

In other news, Dave stated that the public defender's office remains busy. Most of the staff returned to teleworking because of the recent increase in COVID cases.

f. Acting United States Attorney Report

Assistant United States Attorney and Acting Civil Chief Steve Russell reported that the U.S. Attorney's Office is busy trying cases. Office personnel are still semi-teleworking but it has been working out well.

4. Business Meeting

a. Nomination and election of new Chair and Vice Chair of the Federal Practice Committee

Judge Buescher described the responsibilities of the chair. These include running the meetings and helping to organize an annual CLE sponsored by the FPC. Judge Buescher also noted that in the upcoming year, the chair may be involved in discussions relating to possible changes in the court's local rules on summary judgment.

Allison Balus self-nominated to serve as chair of the FPC. No other nominations were received. The committee voted by acclamation to elect Allison Balus as the new chair.

Mark Fahleson self-nominated to serve as vice chair of the FPC. No other nominations were received. The committee voted by acclamation to elect Mark Fahleson as the new vice chair.

b. Appointment of Budget Subcommittee Member

Judge Buescher proposed that the appointment of a budget subcommittee member be deferred. Judge Buescher suggested that he and Judge Rossiter have an offline discussion to identify a suitable candidate, and Judge Rossiter will then appoint the new budget subcommittee member. Judge Rossiter agreed.

c. Approval of Minutes

The committee members approved the [minutes](#) from the July 30, 2021, meeting.

d. Review of Federal Practice Fund Reports

Pat Williamson reviewed the Federal Practice Committee's financial reports as of December 31, 2021. The reports reflect that the beginning balance of the Federal Practice Fund on January 1, 2021, was \$299,286. Pro hac vice fee deposits were \$19,700 and attorney assessments totaled \$40. Interest earned was \$1,818, and expenditures totaled \$16,774, leaving a balance of \$304,100.

Pat explained that in recent years, a balance of approximately \$200,000 was generally maintained, but efforts were made to increase the balance in anticipation of the 2020 Eighth Circuit Judicial Conference that was to be hosted by Nebraska in Omaha. The court began collecting pro hac vice fees in 2017 and continued collecting attorney assessment fees until 2020, which resulted in the collection of both fees for a period of time. The Eighth Circuit Conference was cancelled due to the pandemic, but additional funds had accumulated by the time it was cancelled.

Pat next reviewed the 2022 budget report. Judge Rossiter previously approved the budget report after review by Judge Buescher and FPC budget committee member Dave Stickman. Projected income includes approximately \$28,000 from pro hac vice fees and \$2,000 from interest, resulting in \$334,100 available. Projected expenses include \$2,500 for assistance to the Bar, societies, and training; \$4,920 to renew the attorney Wi-Fi service in Omaha and Lincoln; \$7,000 for two CLE programs; and \$2,500 for miscellaneous expenses. The total budgeted expenses are \$22,645, which would leave a year-end balance of \$311,455.

Judge Bataillon noted that a mediation training program jointly organized by the court and Creighton Law School was scheduled to occur in 2021, but was cancelled due to the pandemic. He expects the training to occur in the late summer or early fall of 2022. Judge Bataillon stated the second CLE program listed in the 2022 budget report is likely the mediation training program.

e. Civil Practice Report

Judge Buescher stated the civil practice report is normally provided by the chair of the committee. For this meeting, however, Judge Buescher asked various members of the committee to share their perspectives on the practice of law given the challenges facing the world, and offer any comments on how things are going in Nebraska.