

# FEDERAL PRACTICE COMMITTEE MEETING MINUTES

June 3, 2022

Roman L. Hruska Courthouse  
Omaha, Nebraska

Attendees included Chief District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Magistrate Judge Cheryl Zwart, Magistrate Judge Susan Bazis, Magistrate Judge Michael Nelson, Bankruptcy Judge Brian Kruse, Chief Deputy Clerk of District Court Gabriela Acosta, Federal Public Defender David Stickman, Assistant United States Attorney Tim Hook, Committee Chairperson Allison Balus, Committee Vice Chairperson Mark Fahleson, Susan Sapp, Eric Berger (by telephone), Jim Campbell, Elizabeth Culhane, Torry Garland (by telephone), Mallory Hughes, Gretchen McGill, Brian McKernan, 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: Clerk of District Court Denise Lucks, Clerk of Bankruptcy Court Eva Roeber, Chief Probation and Pretrial Services Officer Kit Lemon, Acting United States Attorney Steve Russell, Austin McKillip, Maren Chaloupka, and Joshua Fershée.

## 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 Members

Roll call was taken.

## 3. Federal Courts Reports

### a. State of the Court

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

- COVID-19 news:
  - General Order [2021-07](#) regarding masks and courthouse entry was extended with General Order [2022-02](#) on March 4. The numbers in Douglas County and Lancaster County have remained in the low levels. We will continue to be vigilant.
  - General Order [2022-05](#) was entered on June 2. The order extends the authority to conduct remote proceedings through August 31.
- Chief Probation and Pretrial Services Officer Kit Lemon will retire on June 30. Judge Rossiter thanked Kit for her dedication and years of service. Deputy Chief

Probation and Pretrial Services Officer Doug Steensma was chosen as Kit's replacement.

- Assistant Deputy Chief Probation and Pretrial Services Officer Troy Greve will retire in February 2023.
- U.S. Attorney Jan Sharp retired at the end of May. Steve Russell, who was acting as First Assistant U.S. Attorney, is now serving as Acting U.S. Attorney until a nominee is named or Steve retires, whichever occurs first.
- Judge Kopf will retire at the end of this year and he will be missed. Along with Judge Zwart, Judge Kopf has been handling and overseeing the court's pro se docket for many years. In accordance with General Order [2022-04](#), Judge Kopf will continue handling his existing cases and Judge Bataillon will take new cases filed on the pro se docket as of June 1. Judge Gerrard plans to begin overseeing the pro se docket once a new Article III judge is named.
- Judge Gerrard is taking senior status effective February 6, 2023.

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

Judge Bazis reported that initial appearances in Omaha have returned to all in-person hearings. However, the magistrate judges can still do remote hearings in criminal matters if the parties wish. Parties only need to ask for a remote hearing and the judges can accommodate it. Judge Zwart noted that in Lincoln, nearly all hearings are done remotely.

#### **c. Federal Judge Comments**

There were no district judge comments beyond Judge Rossiter's report.

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

Judge Kruse reported that the bankruptcy court recently amended its local rules. In addition, the court revised a number of trial orders and pretrial orders regarding disclosures. The revised orders also facilitate the increased number of video trials being conducted and clarify how they work.

Judge Kruse further reported that a continuing legal education (CLE) program will be held in North Platte during the week of June 6. The training will largely focus on Subchapter 5. The new Chapter 13 Trustee, Erin McCartney, and Judge Kruse will be presenting.

#### **e. Federal Public Defender Report**

Dave Stickman reported that Panelpalooza, the annual training event for the CJA panel attorneys, will be held on September 29-30. The location has been changed to Mahoney State Park this year.

Dave also reported that a training program was recently completed for new panel attorneys. The training consisted of seven sessions held over the lunch hour and included

topics such as the Bail Reform Act, motions, sentencings, and appeals. The Federal Practice Fund paid for the training, which cost a total of \$37.

In other news, Dave stated the Public Defender's Office has submitted a request to hire a new attorney. The attorney would likely work in the Lincoln office.

**f. Acting United States Attorney Report**

Assistant United States Attorney Tim Hook reported that Steve Russell is the new Acting U.S. Attorney. Jan Sharp retired in May. Tim was promoted to civil chief in March. Danielle Rowley has been hired to join the civil division. Danielle previously worked for the Lincoln City Attorney's Office and her duty station will be Omaha.

**g. Federal Advanced Mediation Seminar Update**

Judge Buescher reported that the federal mediation seminar was originally scheduled to occur in the fall of 2021. However, it was postponed due to COVID-19 and is now set for July 22-23. The cost of the training is \$400 per person. Judge Buescher noted that the committee previously approved funding to reimburse 50% of the attendance fee for up to twenty participants. Twenty-six people have now registered. Judge Buescher suggested that the Federal Practice Fund cover the fee for the remaining six registrants, which would be an additional \$1,200. Pat Williamson supported the additional expenditure based on the large balance in the fund. The cost for reimbursing 50% of the fee for all 26 attendees will total \$5,200. Pat added that the only expenses we will incur will be food costs, and it is likely the Federal Practice Fund will receive a refund of most or all of the \$5,200 when Creighton finalizes everything.

Mark Fahleson noted that an attorney reached out to tell him that the mediation training conflicts with the Nebraska Association of Trial Attorneys (NATA) seminar on June 23. The attorney requested that events such as the NATA conference be considered when future seminars are planned.

**4. Business Meeting**

**a. Approval of Minutes**

The committee members approved the [minutes](#) from the January 28, 2022, meeting.

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

Pat Williamson reviewed the Federal Practice Committee's financial reports as of April 30, 2022. The reports reflect that the beginning balance of the Federal Practice Fund on January 1, 2022, was \$304,100. Pro hac vice fee deposits were \$6,900, interest earned was \$433, and expenditures totaled \$3,965, leaving a balance of \$307,468.

Regarding the 2022 budget report, Pat stated the court is in the process of updating the Attorney Wi-Fi in Omaha and Lincoln. The total cost will be approximately \$9,000. The contract for Lincoln is for five years and the Omaha contract is for two years. These amounts are prepaid.

Regarding the upcoming federal mediation seminar, a total of \$4,000 was previously approved to reimburse 20 participants. As discussed earlier in the meeting, an additional \$1,200 will be paid from the Federal Practice Fund to reimburse the remaining participants, for a total of \$5,200.

### **c. Civil Practice Report**

Ally Balus reported that the Federal Practice Committee is discussing ways to be more active than it has been in recent years. The committee is working in cooperation with the Nebraska State Bar Association (NSBA) to sponsor a CLE program that will include a panel of all the federal judges. The program will be held at the NSBA's annual meeting and is scheduled for Friday, October 14, from 1:00 to 3:00. A separate fee will not be charged for attorneys to attend this program. Any committee members interested in helping to plan the CLE should contact Ally.

The members of the committee considered various options for how the panel discussions should be structured. Suggestions included:

- Splitting up the judges so that the Article III judges take one hour and the magistrate judges take the other hour. Both civil and criminal matters could be considered in each hour. A suggestion was made that if this option is chosen, additional time may be needed and the program could be expanded from two hours to three hours.
- Keeping all of the judges on one panel for the full two hours, with one hour devoted to civil matters and one hour to criminal matters. Ally suggested that a civil practitioner could moderate the civil portion and a criminal practitioner could moderate the criminal portion. Questions could be provided to the judges in advance.
- Devoting the entire two hours to civil issues.

Judge Rossiter noted that including an ethics component would help draw attendees.

Ally stated that the program is still in the planning phase and members are encouraged to reach out to her with ideas and input.

In other news, Ally reported that a subcommittee has been formed to consider amendments to the local rules regarding summary judgment. The subcommittee's recommendations are expected to be finalized by the end of June. Any members with suggestions or comments may send them to Ally and she will forward them to the subcommittee. Judge Buescher added that the NSBA contacted him and requested additional time to submit suggestions for local rule amendments. The original deadline for

submissions had been set for June 3, but Judge Buescher stated it has been extended to the end of June.

Regarding the rulemaking process, Judge Buescher explained that if the subcommittee reaches a consensus for its recommendations, those proposals will go to the court's local rules committee. The local rules committee then forwards its recommendations to the judges. Judge Rossiter stated that the judges technically approve the proposed rules, and the rules are subsequently published for public comment. The time frame for public comment is in November. After the public comment period, the judges consider public input and make a final determination on whether to approve the amendments.

Finally, Ally stated that a dinner for the committee members and judges is being organized to help foster communication and involvement. One option under consideration is to schedule the dinner after the next Federal Practice Committee meeting, which will be in Lincoln on September 23. Ally explained that the committee meeting would likely be held in the afternoon so that the dinner could immediately follow. Another option is to schedule the dinner to coincide with the NSBA annual meeting, e.g., after the October 14 CLE discussed above. Ally will follow up with the NSBA to confirm details of the annual meeting agenda that may affect scheduling of the dinner.