

## **FEDERAL PRACTICE COMMITTEE MEETING MINUTES**

September 23, 2022

Lincoln, Nebraska

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

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

Judge Buescher welcomed the committee members and called the meeting to order. He thanked everyone for keeping the wheels of justice turning throughout the COVID-19 pandemic.

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

Roll call was taken.

### **3. Federal Courts Reports**

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

Judge Rossiter thanked everyone for their efforts during the pandemic. Relative to other districts, our district did quite well in terms of keeping cases moving – particularly on the criminal side.

Judge Kopf will take inactive senior status at the end of this year. He was recognized at the Judicial Council meeting earlier in the day for his many years of service. Judge Kopf was appointed as a magistrate judge in 1987 and became a district judge in 1992.

Judge Gerrard will take active senior status at the beginning of 2023. Senator Fischer has indicated that the application process for a new judge will begin soon.

Judge Rossiter thanked the Local Rules Committee, Judge Buescher, and members of the Federal Practice Committee who served on the subcommittee that reviewed the rules, especially the rules on summary judgment. Some good changes have been proposed. The judges voted at the Judicial Council meeting held earlier in the day to advance the proposed amendments to the public comment phase. A final vote will occur when that process has been completed.

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

Judge Zwart stated that most of the criminal hearings in Lincoln continue to be conducted by videoconference. Judge Bazis stated that in Omaha, criminal proceedings are held in person the majority of the time unless the defendant requests a remote hearing.

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

Judge Gerrard thanked everyone for their continued efforts, noting that there has not been a slowdown in trials.

The judges next discussed some of their current trial practices.

- Regarding Judge Gerrard's trials:
  - Persons who wish to wear a mask may do so.
  - Jury selection is done in one courtroom.
  - An eight/nine-person jury is selected for civil cases, depending on the circumstances.
- Judge Gerrard added that when [COVID Community Levels](#) are medium or low, masks are not mandatory in the federal building or the courthouse. The court continues to monitor COVID numbers week by week.
- Judge Rossiter and Judge Buescher use eight-person juries for civil trials.
- If a criminal trial is expected to last more than two or three days, Judge Gerrard uses two alternate jurors. Judge Buescher also uses two alternate jurors in criminal trials.

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

Judge Kruse had no news to report from the bankruptcy court.

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

David Stickman reported that the Criminal Justice Act (CJA) Panel is continuing to seek new members. The current rate of pay is \$158 per hour.

Panelpalooza is scheduled for September 29 and 30. Attendance is expected to be one of the largest on record. This training is free of charge and provides attorneys with all the Continuing Legal Education (CLE) hours they need for the year. The event will be held at Mahoney State Park.

For new attorneys on the panel, a seven-week training program is offered to give them an introduction to public defense. The sessions are conducted once a week over the lunch hour. Credit for CLE hours is available.

Any committee members who have an interest in serving on the CJA Panel or know someone who may be interested should contact David.

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

Assistant United States Attorney Tim Hook reported that Assistant U.S. Attorney Lynnett Wagner will begin a yearlong detail in Washington, D.C., beginning on November 6. The assignment has the potential to last two years. The U.S. Attorney's Office hopes to backfill that position soon. In the meantime, other attorneys from the civil division will be stepping in to handle social security and immigration cases.

A new Assistant U.S. Attorney for the criminal division will be starting in Lincoln sometime within the next two months.

Assistant U.S. Attorney Danielle Rowley is returning from parental leave at the end of September.

#### **g. Discussion Regarding Proposed Changes to Local Rules**

Judge Buescher introduced the proposed changes to the local rules. A summary of the amendments was attached to the meeting agenda. The proposals are generally straightforward and self-explanatory. However, there are some fairly significant changes to the summary judgment procedures.

Judge Buescher explained that several changes to the summary judgment procedures were proposed last year. Rather than moving forward with the proposals at that time, Judge Buescher appointed a subcommittee to study the court's procedures and consider changes. The current proposals are the result of the subcommittee's work. Law clerk David Dirgo served as chair. Other members included the following: law clerks Roger Mastalir and Jeff Mindrup; and attorneys Allison Balus, Sheila Bentzen, Marcia Washkuhn, Aaron Clark, Robert Futhey, and Kathleen Neary. Judge Buescher thanked everyone who served on the subcommittee.

The main change to the summary judgment procedures allows the filing of a separate statement of undisputed material facts and the opportunity to respond to it. The statement of material facts would not be included in the word limits that are currently in the rules.

The judges voted at the Judicial Council meeting held earlier in the day to publish for public comment all of the [proposed amendments](#). Judge Buescher added that the proposals are not a "done deal," and anyone who has concerns or sees problems should contact Judge Buescher or Allison.

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

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

The committee members approved the [minutes](#) from the June 3, 2022, meeting.

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

Pat Williamson reviewed the Federal Practice Committee's financial reports as of August 31, 2022. The beginning balance of the fund on January 1, 2022, was \$304,100. Pro hac vice fee deposits were \$14,000, interest earned was \$872, and expenditures totaled \$14,347, leaving a balance of \$304,625.

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

Allison Balus reported that the committee started the year with three goals. The first was reviewing and proposing changes to the local rules. That task has been completed.

The second goal was to organize a CLE program to include panels of all the federal judges. The program will be held at the annual meeting of the Nebraska State Bar Association (NSBA) in October. The first hour will be a panel of the magistrate judges and the next hour will be a panel of the Article III judges. Allison will be the moderator for the Article III panel, and Gretchen McGill will moderate the magistrate judge panel. Anyone who would like to ask a question of the judges during the panel discussions should send it to Allison.

The third goal was to plan a dinner for the committee members and judges to allow time to socialize and network. One option is to schedule the dinner to coincide with the NSBA annual meeting on either Thursday, October 13, or Friday, October 14. However, the NSBA's Presidents' Reception is scheduled for Thursday evening. Another option is to schedule the dinner after the next Federal Practice Committee meeting, which will be in Omaha on January 27. The committee meeting would likely be held in the afternoon so that the dinner could immediately follow.

At the conclusion of the discussion, a tentative date for the dinner was set for January 27 following the Federal Practice Committee meeting.