

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

January 27, 2023

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, Federal Public Defender David Stickman, Assistant United States Attorney Tim Hook, Committee Chairperson Allison Balus, Torry Garland, Elizabeth Culhane, Gretchen McGill, Jennifer Huxoll, Brian McKernan, Joshua Weir, and Marcia Washkuhn. 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 Doug Steensma, Interim United States Attorney Steve Russell, Committee Vice Chairperson Mark Fahleson, Susan Sapp, Mallory Hughes, Austin McKillip, Maren Chaloupka, Joshua Fershée, Eric Berger, and Jim Campbell.

1. Introductions and Opening Comments

Judge Buescher welcomed the Federal Practice Committee (FPC) members and called the meeting to order. He thanked everyone for keeping things moving as the COVID-19 pandemic winds down.

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 provided the following updates:

- Judge Kopf took inactive senior status at the end of 2022 and is now fully retired. The court will miss Judge Kopf and all the contributions he made.
- Judge Riley is seriously ill with cancer. Thoughts and prayers for Judge Riley are appreciated.
- Judge Gerrard will take senior status on February 6. On behalf of everyone in the court, Judge Rossiter thanked Judge Gerrard for his service. Judge Gerrard will continue working in a full-time capacity after taking senior status.
- The process for selecting Judge Gerrard's replacement has begun. Senator Deb Fischer issued an announcement for the vacancy and applications were due in December.

- Magistrate Judge Zwart will retire on January 15, 2024. The process for naming her successor has begun. Judge Rossiter is finalizing the selection panel, and a press release will announce the vacancy on or around February 1. The selection panel will perform the initial screening of applicants and present a list of five candidates to the Article III judges in June or July. The Article III judges will conduct interviews and select the new magistrate judge from those five candidates.
- The court reached out to Nebraska's new federal officeholders, Congressman Flood and Senator Ricketts, to offer our courthouse for a ceremonial swearing-in for local family and friends. The Judicial Conference and the Administrative Office of the U.S. Courts encourage such outreach. Assistance from the FPC may be requested if any ceremonies are held.
- Judge Rossiter congratulated Judge Buescher on his recent appointment to the Judicial Conference Committee on Information Technology. Judge Rossiter also noted that Judge Bataillon has served on the Judicial Conference Committee on the Budget since 2009. The court continues to be very well represented nationally.
- The court is requesting that Judge Gossett's recall status be extended for another year. Judge Gossett provides back-up for the magistrate judges and performs work in other districts.

b. Magistrate Judge Reports

The magistrate judges had no news to report.

c. Federal Judge Comments

Judge Buescher noted that since the COVID-19 pandemic is coming to an end and the economy is facing some challenges, disputes may trend upward.

d. Bankruptcy Court Report and Comments

There were no reports from the bankruptcy court.

e. Federal Public Defender Report

Dave Stickman reported that Panelpalooza was held at Mahoney State Park in September 2022. Training was provided for 117 criminal defense attorneys. The program provided the attorneys with all of the continuing legal education (CLE) hours needed for the year for a cost of around \$40.

Dave also reported that the Criminal Justice Act Plan is being reviewed and updated this year. Proposed amendments will likely be presented in the fall of 2023.

A new attorney was hired for the Federal Public Defender's Office in Lincoln. Korey Reiman started in December.

f. Interim United States Attorney Report

Assistant United States Attorney Tim Hook reported that Eric Synowicki from the civil division of the Lancaster County Attorney's Office has been hired as a term replacement for Lynnett Wagner. Lynnett began a detail in November involving prosecutions of January 6 defendants. Eric will be personally introduced to each judge in the near future.

g. Request for FPC-funded Magistrate Judge Civil and Criminal Forums

Judge Zwart introduced the discussion on scheduling a magistrate judges' civil and criminal forum in 2023. Judge Zwart explained that the Federal Practice Fund has provided funding for past forums and funding will again be requested for the proposed 2023 event.

Judge Zwart stated that in preliminary discussions, the magistrate judges considered the idea of scheduling a half day for a basic session and a half day for an advanced session. The basic session could be targeted to recent graduates and associates who do not have much experience in federal court. The advanced session could include topics such as litigation strategies. In addition, another half day or more could be dedicated to the Bail Reform Act. On the criminal side, a likely topic for discussion would be scheduling, since scheduling in Omaha is done differently than it is in Lincoln.

The magistrate judges emphasized that they are seeking input from civil and criminal practitioners regarding which topics should be covered and how much time should be set aside for each session. The sessions should incorporate training along with opportunities for participant feedback on what is working and what is not working with respect to court practices and procedures.

The committee next discussed possible locations for the event. The forum has been held at Quarry Oaks in previous years, but Judge Zwart stated that Quarry Oaks may not be big enough if there is a large turnout. Other suggested locations were Mahoney State Park and Embassy Suites in LaVista. As for determining how many people should be invited, the committee agreed that an unrestricted general invitation should be issued. Those who wish to attend would be required to register, and registration could be closed when the number reaches a level that is appropriate for the event and location. Judge Zwart stated the forum has been held in late March or early April in past years. This would be the likely time frame for a 2023 forum.

Regarding the cost, Supervisor of Administrative Services Pat Williamson stated the FPC has spent approximately \$2,500 for past magistrate judges' forums. However, these were one-day events. If the 2023 forum extends to a day and a half, Pat stated the cost would likely be double because event locations typically do not allow reservations for half-day events. Dave Stickman noted that since Panelpalooza was held at Mahoney

State Park only a few months ago, he is familiar with their accommodations and can share details regarding the facility.

At the conclusion of the discussion, the members of the FPC agreed that a magistrate judges' forum should be held in 2023. Torry Garland and Marcia Washkuhn volunteered to serve on a subcommittee to help plan the forum. Judge Nelson suggested that Dave Stickman and Peder Bartling also serve on the subcommittee as representatives of the Federal Public Defender's Office and the Criminal Justice Act panel. Allie Balus added that if there are more volunteers for the subcommittee, their names can be added later. Judge Zwart also noted that the forum does not need to be limited to magistrate judges. The Article III judges could be part of the program as well, subject to their availability.

Action taken. The Federal Practice Committee voted to approve funding of up to \$7,500 from the Federal Practice Fund for a magistrate judges' forum in 2023.

4. Business Meeting

a. Approval of Minutes

The committee members approved the [minutes](#) from the September 23, 2022, meeting.

b. Review of Federal Practice Fund Reports

Pat Williamson reviewed the Federal Practice Committee's financial reports as of December 31, 2022. The beginning balance of the fund on January 1, 2022, was \$304,100. Pro hac vice fee deposits were \$25,000, interest earned was \$2,129, and expenditures totaled \$17,503, leaving a balance of \$313,727.

Pat next reviewed the 2023 budget report. Judge Rossiter previously approved the budget report after review by Judge Buescher and FPC budget committee member Dave Stickman. Projected income includes \$25,000 from pro hac vice fees and \$10,360 from interest. Pat noted that the certificate of deposit (CD) was renewed in December with an interest rate of 3.89%. Funds in the amount of \$30,000 were moved from savings to the CD, which will result in increased interest earnings.

Projected expenses include \$2,500 for case-related expenses and \$2,000 for prisoner civil rights cases. Pat stated the Federal Practice Fund normally sets aside \$2,500 for assistance to the Bar, societies, and training. However, this amount can be increased to provide funds for the 2023 magistrate judges' forum. In addition, a subsidy check for \$5,000 has been sent to the Eighth Circuit to help fund the 2023 Eighth Circuit Conference, which will be held in Bloomington, Minnesota, on July 12, 13, and 14. Other budgeted expenses include \$6,000 for six FPC members (\$1,000 each) and \$2,500 for 10 non-FPC members (\$250 each) to attend the Eighth Circuit Conference. The resulting year-end balance for the 2023 Federal Practice Fund budget is \$317,343.

The committee discussed the possibility of covering the full registration fee for up to 10 non-FPC member attendees at the Eighth Circuit Conference, rather than \$250 per person as budgeted. Judge Rossiter will check on the registration fee for this year's conference. Pat stated that the budget can be updated as needed to reflect an increased allowance for the subsidy. The revised budget would need to be approved by Judge Rossiter.

c. Civil Practice Report

Chairperson Allie Balus reported that the FPC met its goals for 2022. In early 2022, an FPC subcommittee was formed to consider changes to the local rules on summary judgment. The subcommittee submitted its recommendations to the court's Local Rules Committee. In addition, a panel of the Article III judges and a panel of the magistrate judges presented at the annual meeting of the Nebraska State Bar Association (NSBA) in October. Allie thanked Gretchen McGill for serving as a moderator on one of the panels. Attendance was good, and Allie stated that a similar program may be organized for the 2023 annual meeting. However, the committee will request that the panels be scheduled in a better time slot. At the 2022 annual meeting, the magistrate judges' panel was scheduled at the same time as a panel of state court judges.

New FPC member Jennifer Huxoll stated she is the chair of the NSBA's Federal Law Section. The Federal Law Section met on January 25 and is interested in partnering with the FPC to sponsor another CLE session at the 2023 annual meeting. The NSBA requires that requests to present at the annual meeting be submitted by January 27. Jennifer will ask the NSBA to reserve a time slot for a joint FPC and Federal Law Section presentation. She will also request that it not be scheduled for a Friday, nor at the same time as the Appellate Practice Section or a state judge panel. Moving forward, Allie and Jennifer will continue coordinating plans for the CLE at the 2023 annual meeting. They will also discuss other ways the FPC and Federal Law Section can collaborate on educational opportunities.

Allie stated the committee's third goal for 2022 was to organize a gathering for the committee members and judges to help foster communication and involvement. That reception was set for January 27 immediately following the FPC meeting.