

## **FEDERAL PRACTICE COMMITTEE MEETING MINUTES**

September 29, 2023

Lincoln, 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, Clerk of District Court Denise Lucks, Clerk of Bankruptcy Court Eva Roeber, Federal Public Defender David Stickman, Assistant United States Attorney Tim Hook, Committee Chairperson Allison Balus, Mallory Hughes, Jennifer Huxoll, Elizabeth Culhane (by telephone), Joshua Weir, Marcia Washkuhn, Susan Sapp (by telephone), and Gretchen McGill (by telephone). Also in attendance were Law Clerk Jacqueline DeLuca (will take the bench as a magistrate judge on January 16, 2024), Supervisor of Administrative Services Pat Williamson, and Budget and Finance Administrator Jeremy Reece.

The following committee members were unable to attend: Chief Probation and Pretrial Services Officer Doug Steensma, Acting United States Attorney Susan Lehr, Committee Vice Chairperson Mark Fahleson, Torry Garland, Austin McKillip, Maren Chaloupka, Brian McKernan, 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. Judge Buescher noted that this is Allie Balus's last FPC meeting in her capacity as Chair. Allie's term expires in December, along with the terms of several other FPC members. Plans are underway to appoint new members to the committee. Judge Buescher thanked Allie for her outstanding work as Chair, which included efforts to make the committee more active, planning successful continuing legal education events, and contributing to revisions of the local rules on summary judgment. The members of the FPC gave a round of applause to Allie.

### **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 Rossiter introduced Jacquie DeLuca, the court's new magistrate judge. Jacquie will take the bench on January 16, 2024, but has already begun working as a law clerk in Judge Zwart's chambers.

- This is Judge Zwart's last FPC meeting. Judge Rossiter thanked Judge Zwart for her years of service to the court. She has made great contributions, both locally and nationally, and she will be greatly missed.
- Judge Rossiter recognized Dave Stickman, who was awarded the Richard S. Arnold Award for Distinguished Service at the Eighth Circuit Judicial Conference in July.
- Susan Lehr has been appointed Acting United States Attorney. Judge Rossiter expects to appoint Susan as U.S. Attorney soon.
- Several amendments to the local rules have been proposed. The judges voted at the Judicial Council meeting held earlier in the day to publish the proposed amendments for public comment. Anyone who has suggested rule changes for next year's cycle should send their ideas to the local rules committee.
- Planning is underway among the court, the U.S. Attorney's Office, and the Federal Public Defender's Office to develop processes for handling upcoming changes to the sentencing guidelines in accordance with Guideline Amendment 821. Judge Rossiter stated he received a list from the Sentencing Commission that identifies individuals who may qualify for sentence reduction based on the Commission's records. The list is not exhaustive and there may be more cases.
- Judge Duane Dougherty of the Douglas County District Court will be using the Omaha Special Proceedings Courtroom in February 2024 for a multi-defendant trial. Jury selection will take place at the Douglas County Courthouse due to the larger amount of space available there. Judge Rossiter noted that the Nebraska federal and state courts work cooperatively as much as possible when opportunities arise.
- Judge Rossiter has been in discussions with Nebraska Supreme Court Counsel for Discipline Mark Weber on possible changes to the federal court's attorney discipline process. Currently, ethical complaints are handled internally and Judge Zwart has done the investigations for many years. However, in light of Judge Zwart's upcoming retirement, the court undertook a review of the current procedures. Under the proposed amendments to our local rules, most of the ethical complaints would go to Mark Weber and the State of Nebraska because the violations involve the Nebraska Rules of Professional Conduct. However, our court would still have the option to take on the investigation of an ethical complaint. Rule changes would likely be needed at the state level as well.

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

Magistrate Judge Zwart reported that she and Jacquie DeLuca have been working together in chambers and things are going very well. Jacquie has been attending all of Judge Zwart's hearings.

Judge Bazis thanked the FPC for funding the magistrate judges' forum that was held in May. Turnout was very good and attendees provided a lot of good feedback. Judge Bazis noted that if a forum will be held in 2024, planning should begin soon. Quarry Oaks is undergoing a renovation and a different location may need to be reserved. Judge Bazis added that she would like to send out a survey to get attorney feedback on topics to be

covered. The 2023 magistrate judges' forum lasted a day and a half because a session was added for new lawyers. Committee members agreed that the 2024 forum could be done in one day, with a half-day for criminal topics and a half-day for civil topics. Jennifer Huxoll noted that the annual meeting of the Nebraska State Bar Association in October will be a good opportunity to seek input from attorneys on topics that would be beneficial.

Judge Zwart suggested that sessions for new lawyers could be done annually as Zoom webinars, possibly in September or October when new attorneys are starting in law firms. Marcia Washkuhn added that the Zoom sessions could be recorded and available on demand. Separate modules could be recorded with one speaker or topic per module.

**Action taken.** The Federal Practice Committee voted to approve funding of up to \$6,000 from the Federal Practice Fund for a magistrate judges' forum in 2024.

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

Judge Buescher reported that the judges voted at the Judicial Council meeting held earlier in the day to advance several proposed local rule amendments to the public comment phase. Among the proposals are several suggested changes from the clerk's office for the General Rules. In addition, Judge Buescher proposed an amendment to the civil rules to provide more guidance on the factors an assigned judge should consider when deciding the appropriate place for trial. Included is language that would authorize an assigned judge to raise concerns with an existing designation of the place for trial on the judge's own initiative. Other rule changes include a few revisions to the criminal rules as proposed by the magistrate judges.

The proposed amendments will be posted to the court's website and committee members are encouraged to submit any comments they may have. Judge Buescher also stated that if FPC members have suggestions for future rule changes, they should submit their ideas no later than June 1.

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

Judge Kruse reported that he is working on updates to the local bankruptcy rules.

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

Dave Stickman reported that Panelpalooza was held in Nebraska City on September 21 and 22 and was very well received. Training was provided for 114 attendees. The program provided the attorneys with all of the continuing legal education hours needed for the year, including two hours of ethics credit, for a cost of around \$71. A banquet was also held, with 69 people in attendance.

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

Assistant United States Attorney Tim Hook reported that Susan Lehr was appointed Acting U.S. Attorney effective July 1. Don Kleine has been named Chief of the General Crimes Unit. Matt Lierman has been named Chief of the Drug Enforcement Unit.

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

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

The committee members approved the [minutes](#) from the January 27, 2023, meeting.

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

Pat Williamson reviewed the Federal Practice Committee's financial reports as of August 31, 2023. The ending balance of the fund on December 31, 2022, was \$313,727. Pro hac vice fee deposits were \$15,600, interest earned was \$5,425, and expenditures totaled \$18,167, leaving a balance of \$316,585. Pat noted that \$284,000 is deposited in a CD earning 3.89%.

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

Chairperson Allie Balus reported that the Federal Practice Committee and the Federal Law Section of the Nebraska State Bar Association (NSBA) have organized a panel of the Article III judges and a panel of the magistrate judges to present at the 2023 annual meeting of the NSBA. The presentations are scheduled for Thursday, October 19. The magistrate judge panel will be moderated by Mark Fahleson and begins at 8:00 a.m. The Article III judge panel will be moderated by Torry Garland and begins at 9:00 a.m. Allie encouraged everyone to attend and to spread the word to other attorneys who may be interested in attending.

Jennifer Huxoll stated that the Federal Law Section has modeled its questions for the judges on those that were used last year. If any FPC members would like particular topics addressed, they should send them to Allie. Jennifer and Allie will coordinate with Mark Fahleson and Torry Garland.

Mallory Hughes noted that former Acting Solicitor General of the United States Neal Katyal will be the keynote speaker for the Nebraska Criminal Defense Attorneys Association seminar at the NSBA annual meeting. He will be speaking on October 18 at 8:30 a.m. Members should contact Mallory with any questions.

As mentioned by Judge Buescher, Allie noted this is her last FPC meeting in her capacity as Chair. Allie expressed her appreciation for the opportunity to serve and work with committee members.

#### **d. Civil Jury Instruction Committee**

At Judge Gerrard's request, Allie Balus shared that a civil subcommittee on Eighth Circuit jury instructions is being formed. The subcommittee has several vacant positions and is seeking members. Plaintiff's attorneys and defense attorneys from various areas of practice and geographical locations are being sought. Participants are needed in the following areas: plaintiff's attorneys for prisoner civil rights; a plaintiff's attorney and a defense attorney for Section 1983 claims; a plaintiff's attorney for general employment law, including ADA and harassment matters; a plaintiff's attorney for equal pay and FLSA claims; and a plaintiff's attorney for FMLA. Jurisdictions that need additional representation include Iowa, Minnesota, Nebraska, and North Dakota.

Members who know any practitioners that might be interested in volunteering should reach out to Allie or Judge Gerrard's chambers.

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

Judge Zwart offered farewell comments to the committee and said she has enjoyed working with everyone.