

# **FEDERAL PRACTICE COMMITTEE MEETING MINUTES**

January 26, 2024  
Omaha, Nebraska

Attendees included Chief District Judge Robert Rossiter, Jr., District Judge Brian Buescher, Magistrate Judge Michael Nelson, Bankruptcy Judge Brian Kruse, Magistrate Judge Jacqueline DeLuca, Clerk of Bankruptcy Court Eva Roeber, Chief Deputy Clerk of District Court Gabriela Acosta, Federal Public Defender David Stickman, Assistant United States Attorney Tim Hook (by telephone), Committee Chairperson Mark Fahleson, Elizabeth Culhane, Gretchen McGill, Brian McKernan, Isaiah Frohling, and Andrew Schlosser. 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: Magistrate Judge Susan Bazis, Clerk of District Court Denise Lucks, Chief Probation and Pretrial Services Officer Doug Steensma, United States Attorney Susan Lehr, Torry Garland, Marcia Washkuhn, Jennifer Huxoll, Joshua Weir, George Martin, 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 announced that Mark Fahleson is the new chair of the committee. Mark has served as vice chair for the past two years.

## **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 thanked Mark Fahleson for serving as the new chair of the FPC. He also thanked the outgoing members as well as reappointed and newly appointed committee members for their service.
- Judge Rossiter welcomed Magistrate Judge DeLuca. Judge DeLuca was sworn in on January 16, 2024, and her ceremonial investiture will be held on January 29. Judge DeLuca fills the vacancy created by the retirement of Magistrate Judge Zwart. During the last four months, Judge DeLuca worked with Judge Zwart as a law clerk and benefitted from valuable training during that period.
- Magistrate Judge Bazis appeared before the Senate Judiciary Committee on January 24 for her nomination hearing to be the next district judge. Once she is

appointed, the process will begin to select another magistrate judge to fill her position in Omaha.

- Acting United States Attorney Susan Lehr will be appointed United States Attorney effective January 28, 2024.
- Work continues on revisions to the attorney discipline and ethics rules. Under the proposed changes, most of the ethical complaints would go to the State of Nebraska Judicial Branch. However, our court would still have the option to investigate a complaint. Judge Rossiter is working on the proposed rules with Mark Weber, Counsel for Discipline for the Nebraska Supreme Court. The amendments will also be reviewed by Nebraska Supreme Court Chief Justice Heavican.
- The Eighth Circuit Judicial Council approved the court's request to recall Judge Gossett for an additional year. In addition, Judge Zwart has indicated she would be willing, if needed, to serve a recall term.
- Consistent with the court's past practice when a new district judge is appointed, there will be a redistribution of cases once Judge Bazis receives her commission. Judge Bazis will be given a full civil docket pulled from all of the other active judges' and Judge Gerrard's dockets. Judge Gerrard will no longer draw criminal cases beginning 60 days after Judge Bazis receives her commission. Those cases will go to Judge Bazis. Judge Gerrard will continue to handle his post-conviction cases as Judge Bataillon does. Finally, Judge Gerrard will take over the pro se docket from Judge Bataillon on October 1. This is all contingent on Senate confirmation of Judge Bazis and receipt of her commission.

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

Judge Nelson stated that the 2024 magistrate judges' civil and criminal forum is approaching and further planning is needed. The forum will be held at Mahoney State Park on May 17. Pat Williamson verified that the FPC approved funding for the event during the September 2023 meeting. A total of \$6,000 was budgeted and the Federal Practice Fund prepaid \$3,009 to the Mahoney facility in November 2023.

The committee next discussed the agenda for the forum. Judge Nelson suggested three possibilities for determining the topics: 1) a survey of civil and criminal practitioners could be done to solicit ideas; 2) a committee could be created to identify topics; or 3) the magistrate judges could work directly with Mark as chair of the FPC to develop the program. Judge Nelson also noted that steps have been taken in prior years to ensure that attendees have some level of experience in federal court.

After discussing various considerations, the group agreed that a subcommittee should prepare a survey of practitioners to gather ideas on topics for the May forum. Judge Nelson, Judge DeLuca, and Liz Culhane volunteered to serve on the subcommittee. Judge Nelson suggested CJA Representative Peder Bartling as another possible member. Anyone else wishing to volunteer should send Mark an email. The group also agreed that a "save the date" email will be sent to practitioners notifying them that the forum has been scheduled for May 17. Judge Nelson will coordinate with Gabriela

Acosta to draft and distribute the email. Dave Stickman added that the Public Defender's Office can provide email addresses for the criminal defense attorneys who practice in federal court.

**c. Federal Judge Comments**

There were no updates from the federal judges.

**d. Bankruptcy Court Report and Comments**

Judge Kruse reported that filings are up and "folks are fighting" in the bankruptcy court.

**e. Federal Public Defender Report**

Dave Stickman shared the following updates:

- Panelpalooza will be held in Nebraska City on September 12 and 13, 2024.
- A five-session training program for new panel attorneys began on January 25. Sessions are held over the lunch hour. The attorneys are also required to shadow an Assistant Federal Public Defender before they are eligible to serve on the regular panel.
- A hiring freeze is in place for Public Defender offices nationwide.
- The Public Defender's Office is busy working on Amendment 821 cases. These are cases arising out of recent amendments to the Sentencing Guidelines that allow a reduction in the sentence for certain incarcerated people. Dave's office has between 170 and 250 of these cases.

**f. United States Attorney Report**

Assistant United States Attorney Tim Hook reported that Acting United States Attorney Susan Lehr will be appointed United States Attorney on January 28.

Tim also stated that among the attorneys recently hired is an Assistant U.S. Attorney who will do only civil COVID fraud cases. An increase in civil fraud filings is expected in the next few months.

**4. Business Meeting**

**a. Approval of Minutes**

The committee members approved the [minutes](#) from the September 29, 2023, meeting.

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

Pat Williamson reviewed the Federal Practice Fund's financial reports as of December 31, 2023. The beginning balance of the fund on January 1, 2023, was \$313,727. Pro hac vice fee deposits were \$24,000, interest earned was \$11,235, and expenditures totaled \$23,386, leaving a balance of \$325,576. The Federal Practice Fund spent \$9,301 in 2023 for Continuing Legal Education expenses. Of this amount, \$3,009 was prepaid to Mahoney State Park for the May 2024 magistrate judges' civil and criminal forum.

Pat next reviewed the 2024 budget report. Judge Rossiter previously approved the budget after review and endorsement by Chair Fahleson and FPC budget subcommittee member Dave Stickman. The beginning balance is \$325,575. Projected income includes \$25,000 from pro hac vice fees and \$17,000 from interest. Pat noted that \$303,000 was placed into a certificate of deposit with an interest rate of 5.3%.

Projected expenditures include \$1,250 for case-related expenses and \$2,500 for prisoner civil rights cases. The budget also includes \$2,500 for assistance to the Bar, societies, and training. However, this amount can be increased if needed. The Eighth Circuit Conference will be a bench-only conference this year and no funds have been budgeted for it. The total budgeted expenses are \$15,365, resulting in a projected year-end balance of \$352,210.

Judge Rossiter inquired about funding for judges' oil portraits in Lincoln. Pat reported that nothing has been budgeted in 2024. Judge Rossiter explained that the cost for oil portraits has become prohibitively expensive. Pat confirmed that a court staff member is exploring new technology in which a photograph of the subject is used to generate a portrait that resembles an oil painting.

Judge Buescher inquired about payment for the attorney wi-fi service in the courthouse. Pat stated that the Federal Practice Fund pays for this expense in both the Omaha and Lincoln courthouses. Judge Buescher explained that this free wi-fi network is available for the convenience of attorneys who are doing business in the courthouse. Judge Nelson noted that he has heard many complaints from practitioners about the wi-fi connection because it frequently cuts out and is not consistently reliable. Eva Roeber stated that bankruptcy trustees use this network when conducting meetings in Hruska courthouse. Eva has received reports from these users that the wi-fi connection regularly drops. Judge Buescher stated that improvement of the attorney wi-fi network in the courthouses would be an excellent use of FPC funds. The members of the committee agreed. Pat will ask court IT staff to test the attorney wi-fi networks in Lincoln and Omaha and determine what upgrades could be made. If expenditures from the Federal Practice Fund are needed, an interim budget request can be made and Chief Judge Rossiter can approve it.

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

Judge Nelson stated that resolving discovery disputes is an ongoing topic of interest. This subject will likely be on the agenda for the 2024 magistrate judges' forum.

Mark reported that the Nebraska State Bar Association (NSBA) contacted him regarding FPC participation in the October 2024 annual meeting. The NSBA has proposed a session similar to the 2023 event in which a panel of Article III judges and a panel of the magistrate judges discussed various topics. Mark and Judge Rossiter noted that the session should be scheduled for a favorable time slot. Judge Rossiter confirmed that he will also do a short presentation on attorney ethics. The members of the committee agreed that the panel discussions in the past have been very popular. Mark will notify the NSBA that the FPC and the judges are interested in participating in the 2024 annual meeting, provided the time slot is acceptable.

The next FPC meeting is scheduled for June 7. Judge Buescher suggested holding a reception in his chambers for committee members after the meeting, similar to the gathering held in 2023. The committee members supported Judge Buescher's idea.

Judge Nelson asked whether any other committee members will be absent for the June 7 FPC meeting. Judge Nelson will not be able to attend. If others will be absent, he suggested that perhaps the meeting could be rescheduled. Committee members who will not be able to attend the June 7 meeting should contact Judge Buescher and Judge Rossiter.

Judge Rossiter noted that the FPC meetings are traditionally scheduled on the same day as Judicial Council meetings. Earlier in the day, the Judicial Council agreed to move the meetings normally scheduled for the last Friday in January to early February. The NSBA's House of Delegates meeting occurs at the end of January and this presents a scheduling conflict for some of our judges. Therefore, in the future the first FPC meeting of the year will be scheduled for early February instead of January.