

FEDERAL PRACTICE COMMITTEE MEETING MINUTES

September 20, 2024

Lincoln, Nebraska

Attendees included District Judge Brian Buescher, District Judge Susan Bazis, Senior Judge John Gerrard, Magistrate Judge Michael Nelson, Magistrate Judge Jacqueline DeLuca, Clerk of District Court Denise Lucks, Clerk of Bankruptcy Court Eva Roeber, Chief Probation and Pretrial Services Officer Doug Steensma, Chief Deputy Clerk of District Court Gabriela Acosta, Deputy Chief Probation and Pretrial Services Officer Kimi Camacho, Assistant Deputy Chief Probation and Pretrial Services Officer Aaron Kurtenbach, Federal Public Defender David Stickman, Assistant United States Attorney Tim Hook, Committee Chairperson Mark Fahleson, Marcia Washkuhn, Torry Garland (by telephone), George Martin, Elizabeth Culhane (by telephone), Gretchen McGill, Brian McKernan, Isaiah Frohling, and Andrew Schlosser. Also in attendance were Judge Ryan Carson, Supervisor of Administrative Services Pat Williamson, and Financial Supervisor Jeremy Reece.

The following committee members were unable to attend: Chief District Judge Robert Rossiter, Jr., United States Attorney Susan Lehr, Jennifer Huxoll, Joshua Weir, Joshua Fershée, and Eric Berger.

1. Introductions and Opening Comments

Judge Buescher welcomed the Federal Practice Committee (FPC) 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

Judge Buescher reported that criminal filings are down while civil filings are up slightly. The judges are busy with trials. Renovations are underway in various judges' chambers in Lincoln.

b. Magistrate Judge Reports

Judge Nelson reported that Magistrate Judge Gossett has returned after a short absence. Judge Gossett is handling initial appearances in Courtroom 7 on Tuesdays, Thursdays, and Fridays. If there are hearings that have been scheduled already or there is a need to have an initial appearance on Mondays or Wednesdays, Judge Nelson has been taking those. Once Judge Carson begins, the schedule will be reevaluated.

c. Federal Judge Comments

Judge Bazis reported that she is temporarily working in the visiting judge's chambers in Lincoln while her permanent chambers is under construction. Judge Gerrard is scheduled to begin using Courtroom 3 beginning the week of September 23.

Regarding case distribution, Judge Bazis reported that all new Lincoln criminal cases are being assigned to her. Judge Gerrard is no longer taking any new criminal cases. Judge Bazis's civil cases are reassignments from the other judges. Judge Gerrard will continue to handle supervised release for his assigned cases and will finish out the sentencings for defendants who have pled before him.

Judge Bazis also reported that one of her term law clerks will be leaving to work for Judge Carson.

Judge Gerrard stated that Scott Moore is serving on the Eighth Circuit's Civil Jury Instructions Committee. A plaintiff's attorney is being sought for one portion of the committee.

d. Bankruptcy Court Report and Comments

There was no report from the bankruptcy court.

e. Federal Public Defender Report

Dave Stickman shared the following updates:

- Dave will retire on November 30 after 31 years with the Public Defender's Office. He added that he was the first Public Defender for Nebraska. Previously, Nebraska relied on panel attorneys to represent defendants. In addition, Dave noted that he has appeared before all of Nebraska's district judges going back to Judge Robinson, and all of the magistrate judges starting with Judge Peck.
- The Eighth Circuit is in the process of selecting a replacement for Dave. If a replacement has not been chosen by November 30, First Assistant Federal Public Defender Jeff Thomas will serve as acting public defender.
- Panelpalooza was held in Nebraska City on September 12 and 13. This was the 17th year for the event and a total of 115 persons attended. Ninety-six of these were panel attorneys. The program provided attorneys with all the Continuing Legal Education hours they need for the year.
- A retirement reception will be held for Dave in Hruska courthouse on November 14. In addition, a retirement party is scheduled for November 22 at the Public Defender's Office.

f. United States Attorney Report

Assistant United States Attorney Tim Hook reported that Dara Delehant was recently hired as a new Assistant U.S. Attorney. Dara comes from the Douglas County Attorney's Office and will work in the General Crimes Unit supervised by Don Kleine.

4. Business Meeting

a. Approval of Minutes

The committee members approved the [minutes](#) from the January 26, 2024, meeting.

b. Review of Federal Practice Fund Reports

Pat Williamson reviewed the Federal Practice Committee's financial reports as of August 31, 2024. The beginning balance of the fund on January 1, 2024, was \$325,575. Pro hac vice fee deposits to date are \$17,400, interest earned to date is \$7,903, and expenditures total \$9,876, leaving a balance of \$341,005.

Pat next discussed the project to upgrade the attorney wi-fi systems in the Omaha and Lincoln courthouses. After the Federal Practice Committee agreed in January 2024 that an upgrade to the wi-fi networks should be funded by the Federal Practice Fund (Fund), court staff determined that an upgrade to the court's wi-fi network should be done as well.

Pat explained that the FPC's Budget Subcommittee approved funds to hire a courtroom technology design consultant. The consultant developed heat maps of the buildings and provided cost estimates. Pat calculated the percentage of square footage for the court at 63% and the percentage for attorney wi-fi at 37%. Task orders for the consultant were prepared. The first was for discovery and draft design. The second task order was for the final design, and the third was for installation support. The Fund's share of the cost for these services was \$19,695 and the Budget Subcommittee approved payment of this expense.

As for equipment costs, the court's share will be \$79,991 and the Fund's share will be \$79,187. Pat stated that the FPC's approval for this expenditure will be needed in order to proceed with ordering the equipment.

In Fiscal Year 2025, the court will procure cabling and installation services. These expenses will need to be put out to bid. The consultant's estimate for these items is \$126,000. Once everything is installed, there will be maintenance expenses. The cost for five-year maintenance is \$36,420.

Pat stated the total projected cost to the Fund for upgrading the attorney wi-fi systems in the Omaha and Lincoln courthouses is \$182,000. With a current balance of \$341,000, the Fund would still have approximately \$160,000 in the account after payment

for the wi-fi upgrade. The balance can be built back up through collection of pro hac vice fees and interest payments. The court would pay approximately \$228,000 for its share of the upgrade.

The committee discussed the cost of the upgrade. Several members commented that the cost is higher than they expected. In response to Judge Buescher's inquiry, Pat stated the wi-fi system was last updated in 2013. Pat also confirmed that the court's wi-fi system is separate from the attorney wi-fi network.

Action taken. The Federal Practice Committee voted to approve an expenditure of approximately \$80,000 from the Federal Practice Fund for the equipment to replace the attorney wi-fi systems in the Omaha and Lincoln courthouses.

c. Civil Practice Report

Chairperson Fahleson 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. Two of the proposals in the civil rules will likely generate some discussion. One of them is an amendment to NECivR 33.1 relating to separate definitions for interrogatories. This topic was discussed with the Nebraska bar members who attended the 2024 Magistrate Judges' Forum in May.

Judge Buescher explained that there is currently a civil rule that prohibits separate definitions for interrogatories, but there is no such prohibition for requests for production and requests for admissions. Participants at the Magistrate Judges' Forum noted the inconsistency in the rules. Judge Buescher stated that he originally proposed adding a prohibition on separate definitions to NECivR 34.1 and NECivR 36.1 to conform those rules to NECivR 33.1. However, in discussions with the local rules committee, it was noted that the definitions in discovery requests were often helpful to the court upon review of such requests during motion practice. Consequently, Judge Buescher revised his proposal to remove the prohibition on separate definitions in NECivR 33.1 to conform it to NECivR 34.1 and NECivR 36.1. Marcia Washkuhn asked whether consideration was given to relating the subpart limit to the definition.

Judge Buescher emphasized that the court is open to either of the above proposals. Members of the bar are strongly encouraged to submit input and suggestions.

Mark next addressed the second rule change that may generate discussion. An amendment to NECivR 54.3(b) would prohibit "block billing" in attorney fee applications. Judge Buescher explained that he suggested this change because attorney billings often lack detail showing a breakdown of the hours by task. Judge Buescher again emphasized that the court welcomes comments and suggestions on the proposed rule changes.

After a brief discussion, the group agreed that a subcommittee should be formed to identify any concerns with the proposed rules and submit comments to the court. Marcia Washkuhn will chair the subcommittee. Judge Nelson, Liz Culhane, and George Martin will also serve on it.

Judge Buescher next proposed that the subcommittee's assignment be expanded beyond providing comments for the current rule amendments. He suggested that a formal subcommittee be formed to review the civil discovery rules as a whole, including the subpart rule. Additional members should be added to the subcommittee to ensure a broad perspective from the civil bar. Anyone wishing to volunteer for this subcommittee should contact Marcia. The subcommittee's conclusions, including recommendations for future rule changes, should be submitted to the court by June 2025.

Mark noted that changes are also being proposed to the criminal rules. If there is an interest in submitting comments on the criminal rule amendments, Mark stated a subcommittee could be set up for that purpose as well.

Finally, Mark reported that a panel of the Article III judges and a panel of the magistrate judges will present at the 2024 annual meeting of the Nebraska State Bar Association in LaVista. The presentations are scheduled for Thursday, October 10. The magistrate judge panel will be moderated by Jennifer Huxoll and begins at 8:00 a.m. Mark will moderate the Article III judge panel, which begins at 9:00 a.m. Anyone who would like a specific topic addressed should contact Mark or Jennifer.

d. "For the Good of the Order"

Judge Buescher stated that if anyone ever has questions or concerns, they should feel free to reach out to the court or Chairperson Fahleson.