

*Minutes of the
Federal Practice Committee Meeting
Thursday, October 21, 2004
Hilton Omaha/Quest Center, Cozzens Room*

Chief District Judge Richard G. Kopf called the meeting to order at 2:00 p.m.

Federal Practice Committee members in attendance were Denise M. Lucks, Michael G. Heavican, David R. Stickman, Thomas H. Dahlk, Mary C. Gryva, Wendy Engman Hahn, Robert J. Kirby, Roger Kirst, Charles E. Lowe, Todd R. McWha, Howard P. Olsen, Jr., Michael L. Schleich, Alan G. Stoler, and Jeanette Stull. Members unable to attend were Patrick J. Borchers, Brenda Council, Stuart Jay Dornan, and Lisa D. Stava. Also in attendance were District Judge Joseph F. Bataillon, District Judge Laurie Smith Camp, Magistrate Judge F.A. Gossett, III, Deputy Clerk of Court Therese Bollerup, and Sally Johnson.

1. WELCOME

Chief Judge Kopf welcomed the members and judges to the meeting, as well as Wendy Hahn who is a new member of the Committee.

2. THANKS

Chief Judge Kopf thanked Todd R. McWha, the outgoing chairperson, and recognized Charles E. Lowe, the FPC chairperson for 2005.

3. FINANCIAL REPORT FOR FEDERAL PRACTICE FUND

As of October 6, 2004, the Federal Practice Fund had a balance of \$167,555.56.

Five thousand dollars had been set aside to help pay for the Hruska Institute and Chief Justice Rehnquist's travel expenses, but it will not be expended after all. The October 29, 2004 Hruska Institute seminar has been cancelled because the Chief Justice has come down with an illness that impacts his ability to speak to large groups. The Chief Justice has told us that he would like to come next year, and we will do all we can to bring him back.

4. NEW CHIEF DEPUTY CLERK OF COURT THERESE BOLLERUP

Denise Lucks introduced our new Chief Deputy Clerk of Court, Therese Bollerup. Prior to starting this job on October 4, 2004, Therese was a senior career law clerk for Judge Bataillon. Before that, Therese had been editor of NCLE publications, taught at the University of Nebraska School of Law for 14 years, taught at Nebraska Wesleyan University, wrote regulations, and she owned a business on the side. She graduated from law school in 1981.

Therese has demonstrated top level management skills. She was primarily responsible for the implementation of the CM/ECF operational procedures, and ensured that the procedures conformed to the law and are understandable to our staff and lawyers.

The District Court is very fortunate to have Therese as part of our strong management team.

5. STATUS REPORT ON CLERK'S OFFICE ACTIVITIES

Denise Lucks gave a status report on Clerk's office activities, including an update on CM/ECF at the Circuit level.

Denise Lucks has been working very hard for the past year and a half as part of a working group to convince the Circuit that it could implement CM/ECF with a minimal amount of trouble.

On September 29, 2004, Denise Lucks, Judge Kopf and Judge Bataillon traveled to St. Louis to give the Eighth Circuit judges a demonstration on CM/ECF. At the beginning of the day (and prior to this meeting), the circuit judges were resistant, but by the end of the day they thought CM/ECF might be possible at the circuit level. The seminar was an enormous success. We will keep pushing this issue.

In 2006, the AO will have the CM/ECF software ready for attorneys to file electronically to the Court of Appeals. When it becomes available, we hope the Circuit will mirror the District Court's practice.

At Dave Stickman's prompting, discussion ensued concerning criminal cases as public records on CM/ECF. Because of the E-Government Act of 2000, a criminal defendant's personal information will be limited as follows: minor children's full names will not be used, only initials; only the month and year of birth dates; only the last four numbers of social security numbers; and only the city and state for home addresses. Therese Bollerup stated that the criminal procedures will be revised shortly. Changes will depend upon software changes and other instructions that we receive from the AO.

Judge Bataillon's courtroom jury box has been equipped with 15" LCD monitors. Acoustical panels are being installed in the Magistrate Judge, Special Proceedings and Bankruptcy courtrooms in Omaha to help with sound quality.

New ceilings will be installed in Judges Kopf and Piester's courtrooms. Judges Urbom and Piester's courtrooms will have new sound systems installed to support digital sound recording and bench conferences.

6. REVIEW OF THE STATE OF THE DISTRICT COURT, AND FOURTH JUDGESHIP STATUS

Chief Judge Kopf reported that the judges are at a point where they always wanted to be as far as management is concerned. The management of the District Court is now in good shape and, in general, we have excellent employees.

Judge Bataillon has worked very hard to help us consolidate certain internal administrative functions. This was driven largely by budget pressures. Denise Lucks is the line supervisor for the new management team which consists of budget, IT, finance, procurement and human resources staff.

We continue to be an efficiently managed court. That said, we are under significant budgetary pressure.

Judge Bataillon reported on our fourth judgeship. For the past five years, we have warned Congress of the need to make the fourth judgeship permanent.

However, Judge Bataillon said that the District of Nebraska will not receive authorization for a permanent fourth judgeship this year, and if we get a judge, it may be two years or more down the road.

Chief Judge Kopf stated that the practical implications are two fold. Civil cases are going to get short shrift. And we are likely to dismiss criminal cases due to the Speedy Trial Act.

Judge Smith Camp said that this discussion is a good lead-in to issues of consents to magistrate judges and visiting judges from other jurisdictions for trial.

7. STATUS OF CIVIL CONSENTS FOR MAGISTRATE JUDGES

Magistrate Judge Gossett distributed a summary of civil consent cases as of September 30, 2004 and October 21, 2004.

Magistrate Judge	# of Civil Cases Assigned	Actual Consents as of 9/30/04	Cases Awaiting Opt in/Opt Out	Actual Consents as of 10/21/04
Gossett	24	11	13	13
Piester	18	5	13	5
Thalken	36	23	13	22

The magistrate judges' target number for civil consent cases is 25.

We are not generating many consent cases at the opt in/opt out phase. If the parties do nothing, the case is reassigned to an Article III judge. Perhaps if we educate people on this option, we will get consents earlier. Attorneys are encouraged to consider consenting to a magistrate judge early in the progression of a civil case.

A discussion ensued regarding how to increase consents. Everyone seemed to agree that the consent procedure should be promoted, and efforts should be made to educate the bar regarding the benefits of consenting.

8. REVIEW OF THE STATE OF THE BANKRUPTCY COURT

Chief Judge Mahoney and Bankruptcy Clerk Diane Zech were unable to attend this meeting and provide a status report.

9. JUDGE BATAILLON BECOMES CHIEF JUDGE ON DECEMBER 1, 2004. HE GAVE AN OVERVIEW OF WHAT HE HOPES TO ACCOMPLISH.

Judge Bataillon's primary goal will be to obtain authorization for our fourth judgeship. After that, we will decide whether we need another magistrate judgeship and a fifth district judgeship.

Judge Bataillon reported that GSA has informed us that they plan to renovate the Robert V. Denney Federal Building in Lincoln beginning in 2009 or 2010, and thus the chief judge will be involved in the management of that project. The court needs to decide whether we can stay in the Denney building while it is being renovated.

Judge Bataillon reported that we will continue to streamline operations, and he will be very involved in managing that process. We anticipate further budget reductions for the next two to four years, so we need to position ourselves to provide the required services but not layoff staff.

Judge Bataillon said that Judge Kopf "showed him the way" as to strategic planning. Judge Bataillon will continue to engage in strategic planning, but place more of an emphasis on finding out what the bar wants the court to be doing.

10. "FOR THE GOOD OF THE ORDER"

There being no other matters raised by the members, Judge Bataillon moved to adjourn. Hearing no objections, the meeting adjourned at 3:05 p.m.