

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF NOVEMBER 10, 2020, 2:00 P.M.

ZOOM Meeting

IN ATTENDANCE:

HONORABLE ERIC F. MELGREN, JUDGE, CHAIR  
HONORABLE JULIE A. ROBINSON, CHIEF JUDGE, *Ex Officio*  
HONORABLE DANIEL D. CRABTREE, JUDGE  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE DALE SOMERS, CHIEF BANKRUPTCY JUDGE  
STEPHEN R. MCALLISTER, U.S. ATTORNEY  
KIRK REDMOND, ASSISTANT FEDERAL PUBLIC DEFENDER  
ERIN THOMPSON, ADMINISTRATIVE OFFICER, FEDERAL PUBLIC DEFENDER  
JOHN W. SHAW, ESQ.  
STEPHEN H. NETHERTON, ESQ.  
PATRICIA E. HAMILTON, ESQ.  
BRYAN C. CLARK, ESQ.  
RYAN KEITH MEYER, ESQ.  
DAVID PRELLE ERON, ESQ.  
BRADLEY T. WILDERS, ESQ.  
CORLISS SCROGGINS LAWSON, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
KIM LEININGER, CHIEF DEPUTY  
SKYLER B. O'HARA, DIRECTOR OF COURT ADMINISTRATION

NOT PRESENT:

MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
HONORABLE MARLA J. LUCKERT, CHAIR, KANSAS BENCH BAR

1) APPROVAL OF MINUTES

Judge Melgren asked the committee if they noted any errors or changes to the 2019 minutes.

Hearing no changes, he asked if there were objections to approving the minutes as written. Hearing none they were approved unanimously.

2) PROPOSED RULE AMENDMENTS

a. Local Rule 83.5.2.1, Admission to the Bar

Erin Thompson introduced the proposed rule on behalf of Melody Brannon, who was unable to be at the meeting. Proposed L.R. 83.5.2.1 would allow government attorneys employed by the Federal Public Defender and the United States Attorney to appear in the District of Kansas as long they are

admitted and in good standing in another jurisdiction. Ms. Thompson explained that this rule would allow their agencies to attract and recruit more diverse attorneys from across the country. She said that such exceptions are common throughout the country and in the Tenth Circuit, except for Utah and Kansas. Ms. Thompson suggested that the proposed rule would bring the District of Kansas more in line with its counterparts in the Tenth Circuit.

Judge O'Hara stated that while the rule sounds logical, he wonders why Utah does not offer the same exception. Tim O'Brien offered to follow-up on this issue with the Clerk of Court in Utah, Mark Jones. Mr. O'Brien noted that if the exception was approved, the Court would need to investigate disciplinary matters in the first instance rather than wait for the State of Kansas to do so. Judge Melgren also explained that both the FPD and USA have their own national offices to investigate disciplinary matters.

Following the discussion, Judge Crabtree moved, and Judge O'Hara seconded the motion to recommend adoption of Rule 80.3.5.2.1 as proposed. The motion carried unanimously.

**b. Update re Rule 5.4.7, Retention Requirements**

Judge Melgren stated that upon reviewing the minutes from the last meeting, the status of 5.4.7 Retention Requirements is unclear. Judge O'Hara recalled that it was decided at the fall 2019 judges' meeting to abolish the existing requirement, however, it was not captured in the minutes of that meeting. Judge O'Hara will once again review the status and suggested it could come back to the bench-bar committee for consideration.

**c. Update re Rule 38.1, Random Selection of Grand & Petit Jurors**

Mr. O'Brien reported that he had been looking at the potential rule change and had sought advice from David Sellers from the Public Affairs office and Ed Juel from the Jury Office to see if any other courts had promulgated a similar policy. He had not received a response back and would follow up with them or propose new language to report back to the Bench Bar Committee. Mr. O'Brien reminded the committee that any change in rule 38.1 would require Circuit approval.

3. BENCH-BAR FINANCIAL STATEMENT & FY 2021 BUDGET PROPOSAL

Skyler O'Hara reported on the FY 2020 budget. All expenses fell within the approved budget. Corliss Scroggins Lawson moved, and Judge O'Hara seconded the motion to approve the FY 2021 budget as proposed. The motion passed unanimously.

4. SELECTION OF NEW MEMBERS

Judge Melgren explained that the Bench-Bar was seeking a new member to replace the departure of Kellie Hogan who was appointed to the Sedgwick County Court. He noted that while we attempt to have three members from each city, there are currently four members from Wichita, three from Kansas City and two from Topeka. Judge Melgren said we have ten outstanding applicants and asked for comments. Following discussion, Judge Melgren asked if there were any objections to recommending to the judges that Branden Smith be selected to serve on the Committee. Hearing no objections, the committee unanimously agreed to recommend Branden Smith.

5. OTHER BUSINESS

Judge Melgren stated that Mr. O'Brien would like to bring up a couple of issues that are not on the agenda only to get the committee's input on the issues. For the first issue, Mr. O'Brien explained that recently two attorneys, in separate cases, motioned the Court to participate pro hac vice. One attorney's status was listed as "inactive" in the Kansas and Missouri bars and is currently an active member of the Texas bar. The other was a Missouri lawyer who was admitted to the Kansas bar based on reciprocal status but was on our terminated list and was not considered to be in good standing. Both attorneys were granted pro hac vice status and paid the \$50 fee instead of being required to be reinstated which would have required the attorney to pay the required \$100 re-registration fee in addition to the \$25 fee for admission. Mr. O'Brien questioned if our local rules should be modified to address attorneys who are seeking pro hac vice admission but are not in good standing with our Court.

After some discussion, Mr. O'Brien said that although there was no a clear consensus, the feedback received will allow him to go to the Court to determine whether we want to tweak our rule to clarify the issue of granting pro hac vice status to an attorney who is not in good standing with the Court.

Regarding the second issue, Kim Leininger explained that it recently came her attention that the clerk's office is not consistently handling requests from attorneys to replace pleadings. In some instances, the clerk's office will accept the corrected pleading, link it to the docket entry, and restrict the original entry from the public view. In other instances, the clerk's office will instruct the attorney to file a motion to replace the document, putting the responsibility on the attorney to seek the Court's permission. After some discussion, it was agreed that the clerk's office should be consistent in requiring attorneys to file a motion to substitute a document, no matter how small the change and even if there is no objection from the opposing party.

6. NEW BUSINESS AND NEXT MEETING

Judge Melgren asked if there were any additional matters to be discussed. Ms. Scroggins Lawson asked if it would be possible to publicly post the minutes of the bench-bar meetings. After discussion, this was unanimously approved by members. Mr. O'Brien said that he will make sure the minutes are posted on the Court's website.

The next meeting will be announced at a later date.

The meeting, having convened at 2:00 p.m., adjourned at 3:25 p.m.

Respectfully submitted,

s/

Kim Leininger