

UNITED STATES DISTRICT COURT
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF MARCH 7, 2018, 9:00 A.M.

COTTONWOOD FALLS, KANSAS

IN ATTENDANCE:

HONORABLE ERIC F. MELGREN, JUDGE, CHAIR
HONORABLE DANIEL D. CRABTREE, JUDGE
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE
HONORABLE JANICE MILLER KARLIN, CHIEF BANKRUPTCY JUDGE
MELODY BRANNON, FEDERAL PUBLIC DEFENDER
STEPHEN R. MCALLISTER, U.S. ATTORNEY
WILLIAM L. TOWNSLEY, CHAIR KANSAS BENCH-BAR
TARA EBERLINE, ESQ.
JEFFREY A. CHANAY, ESQ.
BLAKE A. SHUART, ESQ.
RYAN C. HUDSON, ESQ.
LARKIN E. WALSH, ESQ.
JOHN W. SHAW, ESQ.
STEPHEN H. NETHERTON, ESQ.
PATRICIA E. HAMILTON, ESQ.
TIMOTHY M. O'BRIEN, CLERK OF COURT
INGRID A. CAMPBELL, CHIEF DEPUTY
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE JULIE A. ROBINSON, CHIEF JUDGE
DIANE H. SORENSEN, ESQ.

1. APPROVAL OF MINUTES

Blake Shuart moved and Melody Brannon seconded the motion to approve the minutes. The motion carried unanimously.

2. PRO BONO APPOINTMENTS

Judge O'Hara said that this topic has been reoccurring for many years and was discussed at length at the November 2017 judges meeting. The ultimate question is whether this committee wishes to recommend or to express any views about amending LR 83.5.3(b) to add that lawyers are willing to provide as a condition of admission a reasonable level of civil pro bono work when requested to do so by the court. This recommendation stems from the judges' meeting discussion. Judge Lungstrum suggested the proposal which was endorsed by Chief Judge Robinson. Judge O'Hara said that this district currently

does not have a problem. He feels the need for appointment of counsel and how to make sure we have authority to do it and get it done quickly is manageable.

Complicating this is the fact that there is a variety of different thoughts among the court as to when appointment of counsel is appropriate. Because of the issue of just getting past summary judgment, there are some judges who think that if we're going to appoint counsel, we should make it a fair fight and do it when the person has a chance to get to a trial as opposed to waiting for the cases where the district judge has denied summary judgment and green-lighted the case for trial.

Independent of the rule is the idea of having some of the judges engage with the managing partners of firms in each location of holding court and seek their support. That approach has worked in some other courts but it doesn't address the issue of whether the court has the power to do this.

At the request of Judge O'Hara, Tim O'Brien surveyed the other courts in the Circuit (see attached memo). Judge O'Hara commented that he thinks the District of Utah is the most progressive. But he said the ultimate issue is whether the committee wants to recommend that the court adopt this rule change.

Judge Melgren added that all three court locations do appointments a little differently. Sending a request out to a group asking for volunteers isn't really effective. He has drafted lawyers directly which is awkward but effective.

Judge O'Hara said the court has also explored limited representation, which would allow a lawyer to conduct a discreet part of the case and then be allowed to withdraw, but he has not seen it used. Ryan Hudson said he feels the attorney has to be appointed early, otherwise they miss discovery. He also suggested tapping into the Ross Roberts Trial Academy in Missouri which is a prime time group of associates wanting experience.

Judge James is not opposed to changing the rule but doesn't think it's going to do much good unless the judges do more such as meeting with the managing partners at firms. Judge Crabtree does not like the idea of directly drafting attorneys but is okay with the proposed rule.

Judge Melgren asked the committee members if they feel they can say no when it is a judge

making the request. Tara Eberline said she would feel compelled to say yes. She agrees with the approach of working with senior leaders in large firms to try to get some buy in there. Patricia Hamilton said she thinks drafting lawyers with 7-10 years of experience is a better fit for the benefit of the client, court, and counsel. Her experience is that it is a real commitment and the lawyer has to really want to do it.

John Shaw said he is in favor of taking advantage of every opportunity - Ross Roberts, judges meeting with firms, and approaching the FBA.

Judge Melgren stated that he is not hearing any objection to pursuing the rule change. Larkin Walsh said she would suggest changing section 4 of the proposed Rule 83.5.2 from “is willing” to “consents.” Ms. Eberline said she would also suggest removing the “as a condition of admission” language because it all falls under requirements of admission. The committee members agreed and expressed that they think a change will also need to be made to Rule 83.5.3, *Registration of Attorneys*.

Judge Melgren asked if the committee thinks judges should make the call or whether the court should take a different approach? Or is there a sense someone else should make the call and if so, who? Blake Stuart responded that he thinks having the judge call is fine. In sum, the committee is comfortable with the judges making an uncomfortable call.

3. WBA KLRC CLE REIMBURSEMENT REQUEST

Judge Melgren summarized the letter from the WBA requesting \$22,000 to cover lost CLE revenue due to the KLRC. Judge O’Hara inquired about other organizations. Tim O’Brien clarified that a request was not solicited from all area bar associations and stemmed from a discussion held during a KLRC planning meeting. Judge Melgren responded that a universal offer would need to be made.

Steve McCallister objected to the reimbursement request stating that he believes it opens a can of worms. Judge Crabtree said he also thinks it is a problem. Judge Melgren agreed but said that it is an awkward situation because an offer may have been made to the WBA. Judge James also agreed but thinks the WBA should be given something this one time if an offer or promise had been extended to them.

Judge O'Hara proposed not endorsing the request and sending it to the judges' for consideration. Judge Crabtree agreed noting it is an issue for the court to handle. A suggestion was made to establish a policy that Bench-Bar funds will not be used to pay for CLEs. Judge O'Hara moved and Blake Shuart seconded the motion to decline the WBA's request to be reimbursed for lost CLE revenue. The motion passed unanimously.

4. PROPOSED COOPERATOR RULE

Judge Melgren summarized the history and proposal for handling cooperator information. Melody Brannon expressed her strong opposition to the proposal. She feels it is the responsibility of the BOP to keep prisoners safe; thinks it will be harder to obtain documents; does not think it's effective; and, said that counsel have their own ways to protect their clients. Judge Crabtree noted that the defender community is generally not in favor of the sealed document approach.

Mr. McAllister said that he does not oppose the rule. Following additional discussion, Judge Melgren said that it was his sense that there is not overwhelming enthusiasm for the rule. Ms. Brannon moved and Mr. Hudson seconded the motion to recommend against the adoption of a cooperator rule. The motion carried unanimously.

5. BAR FUND UPDATE

Jeff Breon provided the Committee with a bar fund update (see attached). He explained that although the expenses incurred to date are well within their budgeted amounts, he is proposing an increase to two budget line items for additional costs that may be incurred during the year. The first is a request to increase to the Attorney Wireless Access Expansion line item from \$10,500 to \$15,000 to cover the costs of additional access points and/or network switches in all three courthouses. The second is a request to increase the Reception/Ceremonies/Misc. line item from \$30,000 to \$35,000 to ensure adequate funds are available to host receptions that will be held in conjunction with the impending confirmation of two new district court judges.

Mr. Breon also requested adding a budgetary line item to the 2018 budget in the amount of

\$4,000 to hold the attorney swearing in ceremony at the Topeka Fine Arts Center. Given the previous discussion, Mr. Breon withdrew the request to add a budgetary line item in the amount of \$23,000 to reimburse the WBA for lost revenue from the KLRC.

Jeff Chanay moved and Mr. Blake seconded the motion to approve Mr. Breon's requests as proposed. The motion carried unanimously.

6. ENCOURAGE THE FEDERAL BAR TO APPLY TO SERVE ON THE COMMITTEE

Judge Melgren said that when the time comes to solicit applications, he would like the members to encourage the federal bar to apply to serve on the committee.

7. NEW BUSINESS AND NEXT MEETING

Mr. Shuart said the more we go on with fewer civil cases being tried each year the less information is available and data is what settles cases. He said the Bar-O-Meter reports on the outcome of civil trials in Sedgewick County. Mr. Shuart proposed the district court adopt some sort of verdict reporting mechanism which informs the bar of the results of federal civil trials in all three locations. He believes doing so would be tremendously helpful, not only to litigating federal cases but state cases as well. Mr. Shuart asked whether some brief information could be made available on the court's website.

Judge Melgren asked Mr. O'Brien to put on the judges' meeting agenda a recommendation that all judges have their law clerks prepare a brief summary of jury trials which could be sent to the clerk's office for posting on the website.

The meeting, having convened at 9:00 a.m., adjourned at 12:20 p.m.

Respectfully submitted,

s/

Ingrid A. Campbell