

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

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF SEPTEMBER 19, 2019, 10:00 A.M.

TOPEKA, KANSAS

IN ATTENDANCE:

HONORABLE JULIE A. ROBINSON, CHIEF JUDGE  
HONORABLE ERIC F. MELGREN, JUDGE, CHAIR  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE DALE SOMERS, CHIEF BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
STEPHEN R. MCALLISTER, U.S. ATTORNEY  
WILLIAM L. TOWNSLEY, CHAIR KANSAS BENCH-BAR  
BLAKE A. SHUART, ESQ.  
LARKIN E. WALSH, ESQ.  
JOHN W. SHAW, ESQ.  
STEPHEN H. NETHERTON, ESQ.  
PATRICIA E. HAMILTON, ESQ.  
RYAN KEITH MEYER, ESQ.  
BRYAN C. CLARK, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
SKYLER B. O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE DANIEL D. CRABTREE, JUDGE  
RYAN C. HUDSON, ESQ.  
KELLIE E. HOGAN, ESQ.

1. APPROVAL OF MINUTES

Judge James moved and Bill Townsley seconded the motion to approve the April 4, 2019, minutes with the correction of John Shaw and Tim O'Brien being added to the "not present" category. The motion carried unanimously.

2. ADDICTION & RECOVERY CONFERENCE UPDATE

Tim O'Brien provided a draft brochure for the Addiction and Recovery Conference being held in October in Wichita at the Drury Inn. There are approximately sixty speakers scheduled, mostly national experts on various topics. Mr. O'Brien reported that 368 people had signed up so far and that there is a maximum capacity of 450 participants. Judge Melgren added that this conference is not just for attorneys

and that Judge Marten is the genius behind it.

### 3. PROPOSED RULE AMENDMENTS

#### a. Update re Rule 5.4.7, Retention Requirements

Judge O'Hara said we ought to provide whatever relief we can to the bankruptcy practitioners but until the dust settles at the national level, thinks we should leave the district court rule as is. He said he had not heard any complaints or concerns expressed from the civil bar in terms of the burden of retaining documents with wet signatures. But at the same time he has no concerns with the bankruptcy court changing or doing away with a retention requirement.

To further explain, he said that his law clerk researched the history of this rule which was originally part of the CM/ECF model rules but which did not state then, nor now, a specific period of time for retention. He said that there are retention requirements throughout the country which range from 35 days to the upper end of 6 years, but that the range in the Tenth Circuit courts runs between 2-6 years.

Requests have been made at the national level to adopt a standard retention time but as of yet that has not happened. Judge O'Hara referred to an August 20, 2012, memo from Chief Judge Robinson as Chair of the Judicial Conference Committee on Court Administration and Case Management (CACM), which presented some possible options. He said that while we could do away with the rule, we would be the first court in the country to have no retention requirement. Judge O'Hara said he feels that if we do not have a big problem in the district court, then until the national committee sorts it out and provides some guidance, there is not much to be gained by further confounding the lawyers as to our procedures. Chief Judge Robinson responded that she does not have a problem waiting but does not believe we will ever get a national policy.

Judge O'Hara asked the lawyers for their input. The general consensus was that it is not really an issue for the attorneys. Most have their own in-house rules for retaining documents which they follow. Larkin Walsh said she does not think the rule is necessary. Mr. Shaw interjected that maybe we ought to be a pioneer and do away with the rule.

Judge Melgren said that he is disinclined to wait on a national policy. He proposes some relief

but is not sure whether to abolish the rule altogether or truncate the time limit. However he is not hearing any rationale for keeping wet signature documents for 6 years. He likes CACM's first recommendation which states: "First (and our preferred approach) is a national rule specifying that an electronic signature in the CM/ECF system is *prima facie* evidence of a valid signature. Under this proposal, the burden would be placed on persons opposing the validity of the signature to prove with appropriate evidence that an electronic signature was valid."

Chief Judge Somers moved and Judge James seconded the motion to abolish the rule and adopt the first recommendation in CACM's memo. The motion carried unanimously. Judge O'Hara will draft a new rule and present it at the next Bench-Bar Committee meeting.

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

Mr. O'Brien provided an update referring to Bob Lowney's memo wherein it is recommended that jury plans address the release of information to the media because case law has recognized that the press has a qualified right to obtain juror information. Mr. O'Brien said he believes the court's jury plan contained in D.Kan.Rule 38.1 could use additional clarification and will draft a proposed amendment for consideration at the next meeting.

c. New Rule 80.1, Use of Transcripts

Judge Melgren reminded the Committee that this rule had been referred to Blake Shuart, Ms. Walsh, and his court reporter Jo Wilkinson for additional revisions following the previous meeting. Ms. Walsh said their proposed revisions attempt to strike a balance between protecting the integrity of the record while allowing lawyers to be able to use realtime transcripts as needed.

Judge Melgren said at the spring meeting, Mr. Shuart had expressed concerns about being able to read from a realtime but unedited transcript during closing arguments or otherwise, and asked if those concerns had been addressed. Mr. Shuart said Ms. Wilkinson was able to answer his questions and address the concerns he had. Specifically, Ms. Wilkinson reported that only a small percentage of litigants actually request unedited realtime transcripts during trial. Also, for those who want a certified realtime transcript "on the fly" there are 2 hour and one day delivery rates so a party is able to obtain a

segment of a trial transcript quickly as needed.

Melody Brannon said she thinks realtime transcripts are invaluable and likes the rule but questioned the usefulness of the word “unedited” in the proposed rule, as transcripts are either certified or realtime. Chief Judge Robinson agreed that it would be good to remove the modifier “unedited” to avoid any confusion. Mr. Shuart agreed.

Bryan Clark inquired whether “summarily stricken” should remain in the rule. Chief Judge Robinson and Judge Melgren agreed that while they might strike an attachment they would not foresee ever striking an entire pleading. Following discussion it was agreed that the last line of the rule should be simplified to read, “Material filed in violation of this rule may be disregarded by the court.” It was further agreed that “unedited” should be removed from the first line of the proposed rule.

Mr. Clark moved and Ms. Brannon seconded the motion to adopt Rule 80.1 with the proposed revisions. The motion carried unanimously.

d. Proposed Amendments to D. Kan. Local Rules

Judge O’Hara provided a recap of the rules discussion from the April 4, 2019, Bench-Bar Committee meeting and reported that the court had approved the proposed changes to rules 67.1; 79.3; and 83.5.5. The next step will be to publish the rules for comment.

He also gave a recap of the handout titled *Proposed Amendments to D. Kan. Local Rules* provided by Ryan Hudson at the April 4, 2019, meeting. In brief, Judge O’Hara stated that while Mr. Hudson works on large class action cases, he is not sure if class action suits reflect the district court’s docket as a whole. Judge O’Hara said that he believes it implies big cases but much of the district court’s docket consists of small cases and very few class action suits. He suggested that members of the class action bar meet and see if they can reach some agreement on the issues outlined in Mr. Hudson’s memo.

Judge O’Hara added, though, that many other things brought up by Mr. Hudson warrant further discussion and suggested pressing this out to an appointed committee. Mr. Shaw agreed. Judge Melgren proposed convening a broader group of practitioners and judges, to be appointed by Chief Judge



Robinson, who would consider a scope of civil rule changes not limited to Mr. Hudson's suggestions.

Mr. Shaw and Ms. Walsh volunteered to serve on the working group. Chief Judge Robinson thanked Mr. Shaw and Ms. Walsh for volunteering and said she would be in touch.

4. FEDERAL BAR ASSOCIATION NATIONAL CONVENTION IN 2023

Judge Melgren shared that the Federal Bar Association National Convention will be held in the Kansas City area in 2023. He remarked that Kate Simpson who has been involved with and is currently the president, circulated the idea of hosting a national conference to the FBA a few months ago. She worked hard on it and won the bid.

5. BENCH-BAR FINANCIAL STATEMENT & FY 2020 BUDGET PROPOSAL

Jeff Breon reported on the FY 2019 budget, noting that the only line item which exceeded the amount originally budgeted was in the category of Receptions/Ceremonies/Miscellaneous by \$1,525. Because additional expenses may be incurred until the close of FY 2019, he is seeking to increase this category by \$5,000. Mr. Shuart moved and Ms. Walsh seconded the motion to increase the amount budgeted for the category Receptions/Ceremonies/Miscellaneous by \$5,000. The motion passed unanimously.

Mr. Breon presented the proposed FY 2020 budget. Judge O'Hara moved and Mr. Townsley seconded the motion to approve the FY 2020 budget as proposed. The motion passed unanimously.

6. SELECTION OF NEW MEMBERS

Following discussion, Mr. Shuart moved and Stephen Netherton seconded the motion to recommend to the judges that David Eron, Kate Simpson, and Bradley Wilders be selected to serve on the Committee. The motion passed unanimously.

7. OUTGOING MEMBERS

Judge Melgren presented certificates to outgoing members Mr. Hudson (absent), Ms. Walsh, and Mr. Shuart with the thanks of the court and Committee.

8. NEW BUSINESS AND NEXT MEETING

The next meeting will be announced at a later date.

The meeting, having convened at 10:00 a.m., adjourned at 12:10 p.m.

Respectfully submitted,

s/

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF APRIL 4, 2019, 9:00 A.M.

COTTONWOOD FALLS, KANSAS

IN ATTENDANCE:

HONORABLE ERIC F. MELGREN, JUDGE, CHAIR  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE DALE SOMERS, CHIEF BANKRUPTCY JUDGE  
KIRK REDMOND, ASSISTANT FEDERAL PUBLIC DEFENDER  
STEPHEN R. MCALLISTER, U.S. ATTORNEY  
WILLIAM L. TOWNSLEY, CHAIR KANSAS BENCH-BAR  
BLAKE A. SHUART, ESQ.  
RYAN C. HUDSON, ESQ.  
LARKIN E. WALSH, ESQ.  
STEPHEN H. NETHERTON, ESQ.  
PATRICIA E. HAMILTON, ESQ.  
KELLIE E. HOGAN, ESQ.  
RYAN KEITH MEYER, ESQ.  
BRYAN C. CLARK, ESQ.  
INGRID A. CAMPBELL, CHIEF DEPUTY  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE JULIE A. ROBINSON, CHIEF JUDGE  
HONORABLE DANIEL D. CRABTREE, JUDGE  
JOHN W. SHAW, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT

1. APPROVAL OF MINUTES

Blake Shuart moved and Judge O'Hara seconded the motion to approve the October 25, 2018, minutes. The motion carried unanimously.

2. DISCLOSURE OF JUROR NAMES

Judge Melgren shared that following a criminal trial of his, the press had contacted Tim O'Brien about releasing juror names and that D.Kan.Rule 38.1, *Random Selection of Grand and Petit Jurors*, raises two possible issues. One is that the rule allows that:

“the names of petit jurors drawn from the qualified jury wheel may be disclosed to the parties, the public, or the media on the day following the drawing upon leave of the court and the request of any party, member of the public, or the media. But the court in which any of the prospective jurors concerned are expected to serve may, by special order, require that the clerk keep these names confidential where the interests of justice so require.”

Judge Melgren said that an inquiry was made to the Administrative Office about the policy and that essentially it is in part up to the local governance or rules of each district court. Steve McAllister expressed concern about releasing juror names in advance of trial noting the possibility of pretrial juror contact or potential harassment. Mr. McAllister said that it is his preference that juror names not be disclosed to the media.

Mr. Shuart stated that he believes the interests of the jurors strongly outweigh any media requests. He also pointed out that the media is always able to acquire names by attending voir dire. Judge Melgren said he could not think of any good reason why the press needed the juror names in his case and following discussion said that it was his sense that the committee does not think it is a good idea to release juror names to the press. Mr. McAllister agreed stating that he is not as concerned post trial but releasing juror names to the media pretrial presents problems in communities where people know one another. Kirk Redmond agreed saying he did not think the position of the Federal Defender's Office would be any different.

Judge Melgren suggested revising the local rule and posed the question of whether there should be a provision which allows names to be released post trial only upon application to the judge? Or should the rule simply just be that the court will not release juror names? Mr. Shuart said he is in favor of the latter. Mr. McAllister suggested operating similar to the grand jury rule where the names of petit jurors drawn from the qualified jury wheel must not be disclosed to the public except upon order by the judge in charge of the case - or something similar. Judge Melgren asked that a revised rule be drafted along the lines of what had been suggested, that is, that names of jurors will not be released pretrial and post trial only upon order of the court for good cause shown or in the interest of justice.

The second issue is the timing of when juror names are provided to the parties. Judge O'Hara interjected that it is his sense that the judges all have different views and practices about how far in advance of jury selection to release juror names to counsel. Judge Melgren reported that it is done differently across the district. He said that it appears some judges in Kansas City automatically provide the names of jurors to the attorneys in advance of trial. In Wichita, however, the judges only provide

names in advance of trial when requested and he reported that Wichita seldom receives requests. Judge Teeter in Topeka is just getting started and has not yet established a procedure. Judge Melgren said that the court will want to keep in the rule that the parties will be provided the names in advance, upon request, but maintain a very different procedure for the public and the media.

3. ADDICTION AND RECOVERY CONFERENCE UPDATE

Judge Melgren reported that Judge Marten had intended to provide an update but got tied up trying a case for Judge Teeter in Topeka. He referred the committee to Tab 3 of the agenda book which provides some general information about the Addiction and Recovery Conference (ARC). Judge Melgren said that Judge Marten is concerned that depending on the speakers he ends up with, it is possible there will be a need to supplement the budget somewhat. Jeff Breon added that \$187,000 was originally approved for the ARC.

It will be held in October 2019 and as a result most of the expenses will be incurred in fiscal year 2020. \$20,000 was budgeted for any hotel deposits, speaker fees and/or travel costs incurred during 2019. However, during subsequent planning meetings it was determined that several speakers will seek reimbursement for their airfare prior to the close of FY 2019, and the \$20,000 currently budgeted may be insufficient. Therefore, Judge Marten is requesting that the FY 2019 line item budget of \$20,000 for ARC be increased an additional \$25,000 for a total of \$45,000. Mr. Breon stated that the modification is reflected on the enclosed FY 2019 Budget to Actual Report (see Tab 6). See agenda item #6 for further discussion.

4. PROPOSED RULE AMENDMENTS

a. Local Rule 5.4.7, Retention Requirements (Bankruptcy)

Chief Judge Somers explained that the current rule requires filing users to maintain in paper form all electronically-filed documents that require original signatures of non-filing users until six years following all time period for appeals expire. He said there are a number of bankruptcy lawyers who by following the rule are ending up with voluminous files. They are asking if the retention period can be reduced to three years but Judge Somers suggests reducing it to one year or eliminate the rule completely.

He feels that with 15 years of electronic filing experience, everyone now keeps their documents electronically.

Judge Somers moved to eliminate the rule. Judge Melgren said the question is - does the court have an interest in wanting any retention requirements? Judge O'Hara suggested that before abandoning the rule altogether, he would be interested in reviewing the history and purpose of the rule.

Judge James moved and Patricia Hamilton seconded the motion to recommend to the judges to do away with the district court and corresponding bankruptcy rule, pending additional research and recommendation to the contrary by Judge O'Hara. The motion passed unanimously.

b. Local Rule 83.5.5, Withdrawal of Appearance

Mr. McAllister noted that the requirement for substitution of counsel when withdrawing from a case makes sense in a lot of contexts but can be a problem for the U.S. Attorney's Office and Federal Defender's Office, who has joined in this proposal. The problem arises when there is a sudden departure of one of their lawyers and they have to go chasing someone to try to get their signatures on dozens and sometimes even hundreds of cases. He proposes adding an exception to the rule which applies to the U.S. Attorney and Federal Defender Offices (see proposed amendment 83.5.5(d) under Tab 4(b) in agenda book).

Judge O'Hara moved and Mr. Redmond seconded the motion to amend the rule as proposed. The motion carried unanimously.

c. Local Rule 83.7.1, Social Security Appeals

Mr. McCallister, carrying the water for the Social Security Administration (SSA), explained that an answer is supposed to be submitted when a Social Security appeal is filed in district court but that the SSA is proposing to submit a certified copy of the relevant administrative record in lieu of filing a separate answer. Judge Melgren said he had two comments which come from the Administrative Office. One is that there is some concern that the Federal Rules of Civil Procedure themselves require an answer and the local rules are supposed to supplement, not replace, the federal rules. The issue is whether district

courts can adopt a local rule contrary to the federal rules. Secondly, the Administrative Office is working on some fix to the rules which would treat Social Security cases more like habeas cases. He is not sure what the effect would be but believes the idea would be to try to create a different process to address the issues which have been identified.

Ingrid Campbell said that she and Tim O'Brien had spoken to an individual at the Administrative Office who reported that this is a national issue which their office is in the process of trying to resolve. Judge Melgren suggested it would be appropriate to hold this issue in abeyance until the Administrative Office can make a determination. Mr. McAllister and the committee agreed.

d. Local Rule 79.3, Trial Exhibits, Sealed Documents

Ms. Campbell reported that the proposed amendments to Local Rule 79.3 are needed in order for the rule to reflect the court's current practice regarding the custody and disposition of trial exhibits. She explained that it used to be the court's practice to keep exhibits through trial until after the time for appeal had run but had not been the case for many years. The current practice is for the parties, rather than the court, to maintain custody of trial exhibits through the time for appeal.

Judge O'Hara moved and Stephen Netherton seconded the motion to amend D.Kan.Rule 79.3 as proposed. The motion carried unanimously.

e. New Rule 80.1, Use of Transcripts

Judge Melgren explained that during his terrorism trial both parties were frequently citing to realtime records, provided by but not certified by the court reporter. The court reporters became concerned by this practice because the parties are citing to the record of which the court reporters have not reviewed and verified the accuracy. Judge Melgren said that several other courts have rules which limit or restrict the use of non-certified records and the court reporters felt it would be wise for this court to adopt such a rule.

Mr. Shuart asked whether this rule - specifically the language "only certified transcripts may be quoted from" - would be interpreted as prohibiting him from quoting from the record during closing

argument? Judge Melgren responded that Mr. Shuart had a valid concern. Judge James questioned whether the first sentence was overbroad and if Mr. Shuart's concern could be addressed by simply eliminating the first sentence of the rule. Larkin Walsh suggested restating the rule more positively to read, "Absent prior court authorization, only certified transcripts may be quoted from or filed with the court. Any transcripts quoted from or used in any pleading must contain the title page . . . ." Mr. McAllister noted, though, that by deleting the first sentence no explicit mention is ever made of realtime transcripts. Following further discussion, Judge James suggested, and Judge Melgren and the committee agreed to refer the rule to a subcommittee made up of Ms. Walsh, Mr. Shuart, and Judge Melgren's court reporter.

f. Local Rule 67.1, Registry of Funds

Judge Melgren said this arose from an inquiry he had made to Mr. O'Brien some time ago about Local Rule 67.1 which, absent a court order, directs the clerk to deposit registry funds in a non-income bearing account. An attorney had raised the question and Judge Melgren was surprised to learn that money was being held in a non-interest bearing account. Jeff Breon researched the issue and learned that Federal Rule of Civil Procedure 67(b) states that money must be deposited in an interest-bearing account. As a result, Mr. Breon is proposing an amendment to D.Kan.Rule 67.1 which is modeled after other Tenth Circuit court rules.

Judge Somers' moved and Judge O'Hara seconded the motion to amend Local Rule 67.1 as proposed. The motion carried unanimously.

5. BENCH-BAR SCHOLARSHIP REIMBURSEMENTS

Mr. Breon presented a proposal (see Tab 5 of agenda book) to increase the maximum mileage rate an intern can claim from \$600 per fiscal year to \$2,500 in Kansas City and Topeka, and \$4,000 in Wichita. He explained that there is a line-item in the bar fund budget to sponsor interns in all three cities and reimburse them for mileage.

Mr. Shuart moved and Ms. Hamilton seconded the motion to increase mileage rate for interns as



proposed. The motion carried unanimously.

6. BAR FUND UPDATE

Mr. Breon reported that all expenses are within their budgeting categories and the only request is to increase the ARC line item by \$25,000. Judge O'Hara moved and Mr. Shuart seconded the motion to increase the FY 2019 line item budget of \$20,000 for the ARC by an additional \$25,000 for a total of \$45,000. The motion carried unanimously.

7. SOLICITATION OF NEW MEMBERS

Judge Melgren said that when the time comes to solicit applications, which takes place in middle to late July, he would like current members to encourage members of the federal bar to apply to serve on the committee.

8. NEW BUSINESS AND NEXT MEETING

Mr. Shuart provided a brief update on the Teachers' Institute. He reported that Judge Melgren, Judge Gale, Judge Birzer, Whitney Novak, and he had met a couple of times and they have had good feedback from their local school district that they should be able to reach their target of 30-35 teachers. They are looking at a half day program probably sometime in October and similar to what has been done in Kansas City.

Ryan Hudson distributed a summary of *Proposed Amendments to D. Kan. Local Rules* which came out of a November 11, 2018, Federal Courts Advocates Section of the KCMBA CLE at the Kansas City, Kansas, courthouse on the Local Rules and Bench Bar Committees for both the District of Kansas and the Western District of Missouri. He reported that a lot of the focus was on the fact that civil discovery consumes the vast majority of time and resources. Mr. Ryan said he had spoken to Judge Melgren about the possible need for a subcommittee to take up some of the proposals for discussion.

Judge Melgren responded that this reminded him of the Rule 1 Project the court undertook 6-8 years ago and that it was a good opportunity to build from that and take another comprehensive pass through the rules. He said he was inclined to appoint a committee of both plaintiff and defense

practitioners, as well as judges to take a look and work on the project. Judge Melgren said he would consult with Chief Judge Robinson and Mr. O'Brien to put together a committee or possibly refer the matter to the Civil Rules and Case Management Committee chaired by Judge O'Hara.

The meeting, having convened at 9:00 a.m., adjourned at 11:30 a.m.

Respectfully submitted,

s/ Ingrid A. Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF OCTOBER 25, 2018, 10:00 A.M.

TOPEKA, 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 DALE L. SOMERS, CHIEF BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
STEPHEN R. MCALLISTER, U.S. ATTORNEY  
TARA EBERLINE, ESQ.  
DIANE H. SORENSEN, ESQ.  
BLAKE A. SHUART, 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  
WILLIAM L. TOWNSLEY, CHAIR KANSAS BENCH-BAR  
JEFFREY A. CHANAY, ESQ.  
RYAN C. HUDSON, ESQ.

1. APPROVAL OF MINUTES

Magistrate Judge O'Hara moved and Blake Shuart seconded the motion to approve the March 7, 2018, minutes with corrections. The motion carried unanimously.

2. COOPERATOR RULE

Judge Melgren notified the Committee that the court had provisionally approved the new cooperator rule pending the closing of the comment period, and will consider any remaining matters at their November meeting. Melody Brannon mentioned that the plea petition and plea agreement forms may need to be revised. Ingrid Campbell stated that an implementation

timeline had not yet been set and that the bar will be notified prior to the rule taking effect.

3. FEEDBACK ON PRO BONO RULE CHANGES

Tim O'Brien reported that the court had received many comments regarding the proposed amendments to the pro bono rules, the majority of which are not in favor of the change to the rule as proposed. As a result, he conferred with Judge Broomes and drafted a revision to the proposed changes which will be presented to the judges at their upcoming meeting.

4. ADDICTION AND RECOVERY CONFERENCE

Judge Melgren conveyed Judge Marten's desire to hold an Addiction and Recovery Conference in Wichita in October of 2019. He reported that the judges had approved the plan in concept and asked Judge Marten to draft a proposal (see included material). Judge Melgren said the Committee is now being asked to approve the expenditure of funds needed for the conference.

Blake Shuart stated that he thinks this is an outstanding idea. Larkin Walsh agreed. Regarding the types of drugs this conference may address, Judge Melgren said that while the courts focus on the supply side, he thinks this conference will focus on the demand. Ms. Brannon added that she believes the emphasis will be on the addiction itself, rather than any specific drug or alcohol. Diane Sorensen added that the concept is thinking outside the box which is an exciting proposition.

Ms. Sorensen moved and Judge O'Hara seconded the motion to approve Judge Marten's budget proposal for the Addiction and Recovery Conference. The motion carried unanimously.

5. BUST OF JUDGE O'CONNOR

Mr. O'Brien explained that the judges wanted to recognize Judge O'Connor's work on the Kansas City courthouse and had approved commissioning a bust of him. The Bench-Bar Committee also approved of the expenditure of funds for a bust of Judge O'Connor. With the passing of time and new membership, Mr. O'Brien wanted to mention the bust as a reminder to the Committee and inform them that he is moving forward.

6. TEACHERS INSTITUTE

Mr. O'Brien explained that the Administrative Office is pushing the idea of courts holding

teachers institutes. He conveyed that Chief Judge Robinson thinks it's a great idea and that the judges had approved it at their last meeting. Mr. O'Brien said that the idea is for the court to host an open house for teachers in Wichita during the summer of 2019. John Shaw said he was involved with the FBA effort in Kansas City and thought it was well done. Steve McAllister thinks attendance would improve if the teachers can be paid mileage and other expenses since they have limited resources. Mr. Shuart is on the planning committee and will bring that idea up at their next meeting.

7. PROPOSED SCENARIOS TO REDUCE BAR FUND BALANCE

Mr. O'Brien shared the results of four different registration fee scenarios should the Committee wish to reduce the bar fund balance. Following discussion, the Committee concluded that the bar fund balance may naturally reduce over time with additional expenditures including the Addiction and Recovery Conference. Patricia Hamilton said she prefers to maintain continuity of registration fees. John Shaw said he would prefer not having to go to the bar for additional monies should funds run low.

Ms. Hamilton moved and Mr. Shuart seconded the motion to forgo making any changes to the registration fees or collection years. The motion passed unanimously.

8. BENCH-BAR FINANCIAL STATEMENT AND FY 2019 BUDGET PROPOSAL

Jeff Breon provided a report on the FY 2018 budget, noting that the only line item which exceeded the amount originally approved was Court Appointed Attorneys. \$25,000 is customarily budgeted for this category but during FY 2018 the court had approved expenses in the amount of \$74,563 for court appointed attorneys. Tara Eberline moved and Mr. Shuart seconded the motion to increase the amount budgeted for Court Appointed Attorneys to \$74,563. The motion passed unanimously.

Mr. Breon presented the proposed FY 2019 budget. Judge O'Hara moved and Ms. Sorensen seconded the motion to approve the FY 2019 budget as proposed.

9. SELECTION OF NEW MEMBERS

Following discussion Judge Somers moved and Judge Melgren seconded the motion to recommend to the judges that Kellie Hogan be selected to serve on the Committee. Judge Somers moved and Ms. Eberline seconded the motion to recommend to the court that Bryan Clark be selected to

serve on the Committee. Ms. Brannon moved and Mr. Shuart seconded the motion to recommend to the judges that Ryan Meyer be selected to serve on the Committee. The motions passed unanimously.

10. OUTGOING MEMBERS

Judge Melgren presented certificates to outgoing members Jeff Chanay (absent), Tara Eberline, and Diane Sorensen with the thanks of the court and Committee.

11. NEW BUSINESS AND NEXT MEETING

The next meeting will be set in the spring in Cottonwood Falls.

The meeting, having convened at 10:00 a.m., adjourned at 12:30 p.m.

Respectfully submitted,

s/

Ingrid A. Campbell

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

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF OCTOBER 3, 2017, 11:30 A.M.

TOPEKA, KANSAS

IN ATTENDANCE:

HONORABLE JULIE A. ROBINSON, CHIEF JUDGE  
HONORABLE ERIC F. MELGREN, JUDGE, CHAIR  
HONORABLE DANIEL D. CRABTREE, JUDGE  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE JANICE MILLER KARLIN, CHIEF BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
TOM BEALL, ACTING U.S. ATTORNEY  
SCOTT A. WISSEL, ESQ.  
SHAZZIE NASEEM, ESQ.  
TARA EBERLINE, ESQ.  
JEFFREY A. CHANAY, ESQ.  
BLAKE A. SHUART, ESQ.  
RYAN C. HUDSON, ESQ.  
LARKIN E. WALSH, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE  
CHARLES BRANSON, CHAIR KANSAS BENCH-BAR  
JEFF C. SPAHN, ESQ.  
DIANE H. SORENSEN, ESQ.

1. APPROVAL OF MINUTES

The Committee unanimously approved the May 12, 2017, meeting minutes.

2. EXPANSION OF CITELINK AS A FILING PREVIEW OPTION

In following up on an email previously sent to the Committee, Tim O'Brien asked if the members had had a chance to view or had any experience with CiteLink as a filing preview option. Following a brief discussion, the general consensus was in favor of the court rolling out CiteLink so that lawyers know how to link their own citations such that the court can get more out of their briefs. Tara Eberline said she thinks it's a nice feature. No concerns were expressed about having to upload a brief, just long enough to preview it, in advance of filing. Shazzie Naseem suggested a 2-minute tutorial be created and included in the rollout.

### 3. PRO BONO APPOINTMENTS IN CIVIL CASES

Judge James proposed that a letter drafted by Laura Shaneyfelt be sent to Second-Chair graduates to encourage their participation in civil pro bono appointments. A question arose as to who would send the letter out. Chief Judge Robinson said that approval of the letter and the matter of where or who it should originate from would be referred to the judges.

Melody Brannon stated that a lot of people are afraid to take on a case for fear of what it might turn into. Tom Beall added that attorneys getting sued for malpractice can also be a deterrent. Judge Melgren said that the Federal Bar Association has considered managing the recruitment process and he could take the topic back to them to revisit.

Chief Judge Robinson suggested the possibility of limited or staged representation. Ms. Brannon put forth the idea of appointing counsel on a consultation limitation. Chief Judge Robinson said that research as to whether and how limited representation is utilized in other districts would be helpful.

Scott Wissel suggested using bar funds to pay for attorneys fees. Judge Melgren responded that the court has generally frowned upon paying for attorney fees. Tim O'Brien said he believes there are some courts where use of bar funds to pay for attorneys fee is permitted but he will do some research and report back to the court and Committee.

### 4. BENCH-BAR FINANCIAL STATEMENT & FY 2018 BUDGET PROPOSAL

Jeff Breon provided the Committee with the status of the FY 2017 Bench-Bar budget. He noted that all categories in the FY 2017 budget were within their budgeted amounts with the exception of the Utilities line item. Mr. Breon explained that the overages for utilities were the result of additional costs associated with upgrading the attorney wireless internet speeds in the courthouses. Because the overage of \$1,764 exceeds the amount budgeted by 10%, additional approval by the Committee and court are required. Therefore, approval to increase the budgeted amount for utilities to \$10,000 is needed. Mr. Wissel moved and Blake Shuart seconded the motion to increase the Utilities line item to \$10,000. The motion passed unanimously.

Mr. Breon presented the FY 2018 budget proposal. Two new line items include \$10,500 to

expand the attorney wireless access and \$10,000 to co-host the U.S. Sentencing Commission conference with the Western District of Missouri. In addition to the proposed budget as summarized, Chief Judge Karlin requested that \$1,000 be allotted to fund a luncheon connected with a January 2018 CLE in the Kansas City courthouse, where all of the bankruptcy judges will be speaking. Judge Melgren asked that Chief Judge Karlin's request be substituted for the WEB Inn of Court line item, the subject of which will be taken up at the November judges' meeting. Following discussion, it was additionally requested that the \$25,000 Court Appointed Attorneys and/or Mediators line item be broken out to distinguish between district court (\$15,000) and bankruptcy court (\$10,000). Mr. Wissel moved and Ryan Hudson seconded the motion to approve the FY 2018 budget with the proposed modifications. The motion carried unanimously.

5. RECOMMENDATION REGARDING APPROPRIATE USE OF BAR FUNDS

Judge Melgren noted that the Bench-Bar fund is receiving more requests for non-federal bar expenses. For example, the Wichita WEB Inn of Court has requested up to \$1,000 to fund their program of offering reduced membership dues to those who need financial assistance. Mr. Wissel said that he's not sure how this request involves federal practitioners.

Ms. Brannon suggested posing the questions of who the request excludes, the need for it, as well as the federal component. Judge Crabtree said that he's uncomfortable with the Committee being a charitable organization which he feels is not the purpose of the fund. Following further discussion, Judge Melgren said that he would recommend to the court that funds be used only for items relating directly to federal court practice and not as a general "foundation-type" fund.

6. CJA PLAN

Judge Melgren provided a brief history of the CJA Plan. Ms. Brannon said that there are not many proposed changes - mostly what is already done in practice - and that the proposal brings the plan in line with the federal plan and Guide to Judiciary Policy. Mr. Naseem moved and Ms. Eberline seconded the motion to adopt the revisions to the CJA Plan as presented. The motion carried unanimously.

7. SELECTION OF NEW MEMBERS

Judge Melgren noted the low number of geographic applicants and suggested the Committee not limit itself to those who had applied. Prior to the time when the court began soliciting applications, the Bench-Bar Committee would on its own initiative proffer replacement members for recommendation to the court. Judge Melgren suggested that in this instance the Committee mix the two approaches.

Mr. Naseem recommended John Shaw who he holds in high esteem. Ryan Hudson agreed. Judge Melgren recommended Stephen Netherton. Ms. Branson added that she is in favor of Mr. Netherton who does some criminal work.

Judge Melgren asked the Committee if they wanted to find a Topeka lawyer even though there is no such applicant. Following discussion the Committee agreed to forward suggestions over the next two weeks to Judge Melgren who will create a list of names for consideration.

8. OUTGOING MEMBERS

Judge Melgren presented certificates to outgoing members Scott Wissel, Shazzie Naseem, and Jeff Spahn (not present) with the thanks of the court and Committee.

The meeting, having convened at 11:30 a.m., adjourned at 2:00 p.m.

Respectfully submitted,

s/

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, OCTOBER 7, 2016, 10:00 A.M.

Topeka, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, CHIEF JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE, CHAIR  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE (by telephone)  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE JANICE MILLER KARLIN, CHIEF BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
DEB BARNETT, ASSISTANT U.S. ATTORNEY  
DUSTIN SLINKARD, ASSISTANT U.S. ATTORNEY  
CHARLES BRANSON, CHAIR KANSAS BENCH-BAR  
MOLLY MCMURRAY GORDON, ESQ.  
DAVID J. REBEIN, ESQ.  
STEPHEN J. TORLINE, ESQ.  
SCOTT A. WISSEL, ESQ.  
SHAZZIE NASEEM, ESQ.  
TARA EBERLINE, ESQ.  
DIANE H. SORENSON, ESQ.  
JEFFREY A. CHANAY, ESQ.  
CASEY TOURTILLOTT, LAW CLERK TO JUDGE MURGUIA  
INGRID A. CAMPBELL, CHIEF DEPUTY  
JEFFERY L. BREON, FINANCIAL MANAGER

GUESTS: HONORABLE JULIE A. ROBINSON  
HOLLY TEETER, ESQ.

NOT PRESENT:

HONORABLE ERIC F. MELGREN, JUDGE  
JEFF C. SPAHN, JR., ESQ

1. APPROVAL OF MINUTES

Chief Judge Marten moved and Melody Brannon seconded the motion to approve the September 25, 2015 meeting minutes. The motion carried unanimously.

2. PROPOSED MODIFICATIONS TO CRIMINAL PRETRIAL ORDER

Judge Robinson provided some background and an explanation of what has brought things to this point. She highlighted the proposed modifications noting that most of the judges are using PTO1, while PTO2 is geared more for trials. PTO 1 is used in Kansas City and Topeka but not by Wichita who has not encountered the same issues. The committee that was formed more than a year ago to work on the



pretrial order had many factors to weigh. While she can't say they have a full consensus, Judge Robinson is here today to take the input of the Bench-Bar Committee to the judges and then publish for further comment. The goal is to speed up the discovery process. Judge O'Hara commended Judge Robinson for what he views as marked improvements over the current pretrial order.

Dustin Slinkard said that philosophically he agrees that more full discovery needs to take place in routine cases. However he does have some concerns regarding specific exceptions which is the reason the U.S. Attorney's Office doesn't fully endorse the proposed changes. Deb Barnett added that some cases may involve interests that need to be protected, such as sexual assault or child pornography, which this pretrial order does not address. She is concerned that defense counsel will take the position that the pretrial order binds the U.S. Attorney's Office in all cases with no exceptions.

Chief Judge Marten posed the question of whether the pretrial order includes something which provides for exceptions. Judge Robinson responded that the spirit of the order is that these situations can be addressed at conferences. Shazzie Naseem added that he thinks everyone understands there will be exceptions but that there are trust issues with clients. The more you can show them why they are there, the more it increases trust. Plus, they need to have information in order to make an informed decision.

Ms. Brannon offered that the first full paragraph on page three allows for discretion but that the order is meant for the bulk of cases because she does not think you can build a discovery order on every conceivable situation. It takes an inordinate amount of time to move things along in Kansas City and she thinks this will make the process more efficient.

Judge O'Hara said that he is sensitive to the USA's concerns but that he doesn't see anything in the order which says you cannot tailor rules to a specific case. Judge Murguia added that he thinks the order is sufficiently flexible and does not prohibit anyone from bringing up concerns in situations which need tailoring.

David Rebein moved and Mr. Naseem seconded the motion to recommend to the court the adoption of the modified pretrial order as proposed. The motion carried unanimously.

3. PATENT LAW COMMITTEE UPDATE

Holly Teeter presented the proposed patent rules and scheduling order. She reported that the Patent Law Committee overwhelmingly liked the rules formulated by the Northern District of California, which they used as a baseline. Judge O'Hara noted that these rules focus on the front end of patent cases and have a consensus among the Committee. Judge James added that having these rules are helpful to a new judge unfamiliar with patent cases and thinks they will also benefit the patent bar.

Chief Judge Marten said that he thinks Ms. Teeter did an extraordinary job on these rules. Stephen Torline moved and Chief Judge Karlin seconded the motion to recommend to the court the adoption of the patent rules as proposed. The motion passed unanimously.

4. D.KAN.RULE 79.3, CUSTODY AND DISPOSITION OF TRIAL EXHIBITS

Ingrid Campbell explained that this rule is in need of updating. It states that the court will maintain trial exhibits until the appeal time has run, however; in practice, exhibits are returned to counsel at the conclusion of trial. A question remains as to whether counsel should be obligated to retain exhibits for a specific period of time and if it should be included in the rule. Ms. Campbell reported that Tim O'Brien would like to defer this rule change until additional research can be completed.

5. KANSAS LEGAL REVITALIZATION CONFERENCE

Chief Judge Marten shared his vision of gathering people together for a three-day conference with the idea of getting re-energized. He shared the names of those who had been invited to speak, reported that a save-the-date email blast had been sent to the federal bar, and that a web site had been created. He is budgeting \$500,000 for the event but believes the actual cost will be closer to \$400,000. The consensus was that the bar fund balance has become too high and that this is a great way to spend some of the money. Molly McMurray Gordon moved and Scott Wissel seconded the motion to approve up to \$500,000 of Bench-Bar funds for the Kansas Legal Revitalization Conference. The motion carried unanimously.

6. REQUESTS FOR USE OF BAR FUNDS

a) Wichita Bar Association - Expungements

Chief Judge Marten reported that the Wichita Bar Association and the Wichita Federal Bar were requesting \$5,000 to be used for court filing fees to assist low-income individuals in securing expungements. Mr. Wissel said that he would not be in favor of any domestic violence expungements. Charles Branson explained that certain crimes would not qualify for expungement. (See attached brochure). Following a brief discussion, Mr. Rebein moved and Diane Sorenson seconded the motion to approve up to \$5,000 to be used to assist low-income individuals in securing expungements. The motion carried unanimously.

b) Co-Hosting Civil Trial Innovation CLE With WDMO

Chief Judge Marten said that Judge Bough from the WDMO had contacted him about co-hosting the Civil Trial Innovations Conference and sharing the travel costs of some of the speakers. Chief Judge Marten moved and Jeff Chanay seconded the motion to approve up to \$2,000 for the Civil Trial Innovation CLE. The motion carried unanimously.

c) Wesley E. Brown Inn of Court - Reduced Membership Dues

Chief Judge Marten shared a request from the WEB Inn of Court asking for up to \$1,000 for the 2016/2017 Inn year to fund their program, offering reduced membership dues to those who need financial aid assistance to participate in the Inn. Mr. Wissel moved and Judge James seconded the motion to allot up to \$1,000 to fund the WEB Inn's financial aid assistance. The motion carried unanimously.

d) District of Kansas Historical Society - Incorporation Fee

Ingrid Campbell, on behalf of Tim O'Brien, reported that the Court History Committee is exploring the formation of a District of Kansas Historical Society and have two options. One is to create the society under the umbrella of the Tenth Circuit and the other is to create a stand alone society. The Court History Committee is leaning toward creating a stand alone society which would require an incorporation fee of \$20.

Mr. Wissel moved and Mr. Torline seconded the motion to approve \$20 for an incorporation fee should the Court History Committee decide to create a stand alone society. The motion passed unanimously.

7. BAR FUND UPDATE AND FY 2017 BUDGET PROPOSAL

Jeff Breon provided the Committee with the status of the FY 2016 Bench-Bar budget and presented the FY 2017 budget proposal. Tara Eberline moved and Mr. Chanay seconded the motion to approve the FY 2017 budget as proposed. The motion carried unanimously.

8. SECOND CHAIR PROGRAM AND POVERTY SIMULATION KIT UPDATE

Ms. Brannon explained to the new members that the Second Chair Program is a mentoring program designed for attorneys wanting to be on the CJA Panel or do federal criminal work. It is a year long program but Ms. Brannon said she is considering extending it to 18 months. The program is in its third year and currently has ten participants. Approximately one-third of the participants have applied to be on the CJA Panel. Mr. Slinkard said that from his perspective the program is providing the participants with LLM level of exposure and has been very successful. He said that he enjoys the opportunity to participate and that it has been nice to get to know the participants before they actually start practicing.

Ms. Brannon explained that the Poverty Simulation Kit is a role-playing program intended to enlighten others to what their clients face and how quickly things can spiral downward when they encounter an obstacle. It has been presented to the court and CJA attorneys and has been well-received. A presentation will be made to the Kansas Women's Association next year in Lindsborg.

9. PRO BONO APPOINTMENTS IN CIVIL CASES

Judge Murguia said that Judge Gale had recently encountered some difficulty finding counsel to appoint in a pro se civil case and asked that the Bench-Bar Committee look at the issue. Judge Murguia noted that the shortage of lawyers volunteering to be appointed in pro se civil cases has been a long-time concern with no easy solution. A discussion ensued including having judges personally request the

assistance of counsel and the possibility of referring these cases to mediation. Chief Judge Marten suggested creating a committee to look at the issue and come up with a proposal for how to manage appointments of counsel in civil cases. Judge James, Ms. Sorenson, Ms. McMurray Gordon, Mr. Wissel and Ms. Eberline volunteered to serve on the committee with Chief Judge Marten.

10. SELECTION OF NEW MEMBERS

Following discussion, Ms. McMurray Gordon moved and Mr. Rebein seconded the motion to recommend to the court the appointment of Blake Shuart to the Committee. Mr. Naseem moved and Mr. Rebein seconded the motion to recommend to the appointment of Ryan Hudson to the Committee. Ms. Eberline moved and Ms. Sorenson seconded the motion to recommend to the court the appointment of Larkin Walsh to the Committee. The motions carried unanimously.

11. OUTGOING MEMBERS

Judge Murguia presented certificates to outgoing members Molly McMurray Gordon, David Rebein, and Stephen Torline with the thanks of the court and Committee.

12. NEW BUSINESS

Chief Judge Marten mentioned that Ms. McMurray Gordon had submitted a late request asking that Bench-Bar funds be used to help secure Anita Hill as a speaker for WSU's first Empowerment Summit to be held in April 2017. Ms. McMurray Gordon explained that WSU is trying to bring awareness to Title IX issues and April is Sexual Assault Awareness month.

Chief Judge Karlin said that she likes the idea of putting money where Wichita and further west-located attorneys could more easily attend but wonders whether the Bench-Bar should fund this at 100% given that the need is there for many universities. Mr. Chanay responded that he thinks the Bench-Bar Committee will receive negative feedback from other universities and because some view Ms. Hill as controversial.

Mr. Torline said he thinks it is a noble cause but that it does not quite fit what the Bench-Bar does and suggested Ms. McMurray Gordon find employment and Title IX firms to help pay to secure a

speaker. Mr. Naseem agreed that this request does not exactly fit the bill but feels that they should try new things.

Chief Judge Marten moved and Ms. Sorenson seconded the motion to fund WSU's Empowerment Summit up to \$25,000 in addition to Ms. McMurray Gordon soliciting funds from other sources. The motion carried with one dissent.

Chief Judge Marten thanked Judge Murguia for his years of service as chair of the Bench-Bar Committee noting that Judge Melgren will take over as chair in 2017.

The meeting, having convened at 10:00 a.m., adjourned at 2:30 p.m.

Respectfully submitted,

s/ Ingrid Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 25, 2015, 10:00 A.M.

Kansas City, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, CHIEF JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE (by telephone)  
HONORABLE ROBERT D. BERGER, BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
HONORABLE TERESA L. WATSON, CHAIR KANSAS BENCH-BAR  
JOHN T. BULLOCK, ESQ.  
SEAN MCGIVERN, ESQ.  
RACHEL E. SCHWARTZ, ESQ.  
JEFF C. SPAHN, ESQ.  
TIM M. O'BRIEN, CLERK OF THE COURT  
CASEY TOURTILLOTT, LAW CLERK TO JUDGE MURGUIA  
INGRID A. CAMPBELL, CHIEF DEPUTY  
RAY WATERS, ADMINISTRATIVE MANAGER  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
BARRY R. GRISSOM, U.S. ATTORNEY  
MOLLY MCMURRAY GORDON, ESQ.  
DAVID J. REBEIN, ESQ.  
STEPHEN J. TORLINE, ESQ.  
SCOTT A. WISSEL, ESQ.  
SHAZZIE NASEEM, ESQ.

1. APPROVAL OF MINUTES

Judge Melgren moved and Rachel Schwartz seconded the motion to approve the September 12, 2014, meeting minutes. The motion carried unanimously.

2. PROPOSED MODIFICATIONS TO CRIMINAL PRETRIAL ORDER 1

Judge Robinson stated that she, Judge James, Melody Brannon, Shazzie Naseem, and Jared Maag are working on modifications to Criminal Pretrial Order 1. She explained that an issue is coming up in multi-defendant drug cases and emanates from how and when discovery is produced. Defendants often find it difficult to believe that their attorneys are not in possession of discovery material. Sometimes the

problem is inaccessibility because the electronic discovery comes in varying forms from the investigating agency.

Judge Robinson said that she wants to fashion a pretrial order which ameliorates the practice of protected discovery. Pretrial Order 1 was adopted in Kansas City and Topeka but not Wichita. She and those she is working with would like to see a new pretrial order adopted district-wide. Judge Melgren added that he is in favor of having the pretrial order apply district-wide. Judge Robinson said that she plans to send out a proposed modified order for input.

3. D. Kan. Patent Law Committee

Judge Murguia explained that he had invited Holly Teeter to address whether it would be helpful to establish specific local patent rules in the District of Kansas. He stated that a number of patent cases had been filed in Kansas City and thinks it might be helpful for the judges to have established rules.

Ms. Teeter advised that the question of what law should govern procedural practices always arises in patent cases and that some districts have established their own local rules to fill the void and reduce inconsistencies among cases. She asserted that patent filings are expected to increase in upcoming years and believes it would be helpful for the lawyers and the court to have local rules specific to patent cases.

Chief Judge Marten moved and Judge Melgren seconded the motion to form a D. Kan. Patent Law Committee to come up with proposed local rules specific to patent cases. Chief Judge Marten asked Judge O'Hara and Ms. Teeter to serve on the committee. Judge Melgren offered his services to the committee noting that he has a law clerk that enjoys working on patent cases. Ms. Teeter stated that she believes a proposal could be ready as early as next spring.

4. POVERTY SIMULATION KIT

Tim Burdick described the Poverty Simulation Kit as a two and one-half hour interactive simulation which provides a better understanding of people living in poverty. He explained that the Kit can be purchased once at a cost of \$2,150 but used repeatedly. The application of the Kit is quite broad and the Federal Public Defender's Office would like to make it available to anyone in the district and



other agencies in the community who may be interested in using it. Sean McGivern moved and John Bullock seconded the motion to use Bar funds to purchase a Poverty Simulation Kit for the Federal Public Defender to administer. The motion passed unanimously.

5. REQUESTS FOR USE OF BAR FUNDS

a. INTERPRETERS IN BANKRUPTCY PROCEEDINGS

Tim O'Brien shared an August 1, 2014, memo from General Counsel which concludes that bar funds may be used for interpreter services in civil matters not instituted by the United States and suggested \$10,000 be budgeted for that purpose. Judge O'Hara moved and Rachel Schwartz seconded the motion to create a Court Interpreter budget line item in the amount of \$10,000. The motion carried unanimously.

b. LAWYERS WITHOUT RIGHTS

Mr. O'Brien proposed that bar funds be used to host the "Lawyers without Rights: Jewish Lawyers in Germany under the Third Reich" exhibit (see memo). Chief Judge Marten moved and Mr. McGivern seconded the motion that \$5,000 be allotted to host Lawyers Without Rights. The motion carried unanimously.

c. JUDGES BIOGRAPHY PANEL UPDATE

Mr. O'Brien requested that funds be allotted to update the judges' biography panels. Mr. McGivern moved and Ms. Schwartz seconded the motion to update the judges' biography panels. The motion carried unanimously.

d. THE TENTH CIRCUIT HISTORY PROJECT UPDATE

Mr. O'Brien requested that funds be allotted to support the Tenth Circuit History Project Update (see memo). Mr. McGivern moved and Ms. Schwartz seconded the motion that \$60,000 be allotted to the Court History budget line item to cover the costs associated with both the Tenth Circuit History Project update and the judges' biography panel update. The motion carried unanimously.

e. SECOND CHAIR PROGRAM

Melody Brannon provided an update on the continued success of the Second Chair Program

requesting that the number of participants be expanded to ten. Judge Melgren questioned expanding the program because we may end up with more trained attorneys than we can use. He is concerned about creating expectations that the court cannot fulfill.

Chief Judge Marten expressed his belief that expectations can be managed by making it clear to the participants that there are no guarantees that they will serve on the CJA Panel, noting the benefit alone of training defense lawyers. He suggested that rotating members on the Panel could be considered. Chief Judge Marten moved and Judge Melgren seconded the motion that \$63,000 be allotted to the Second Chair Program. The motion carried unanimously.

Judge Melgren thanked Ms. Brannon stating that she has done a phenomenal job as an innovative leader.

f. SENTENCING COMMISSION CLE

Mr. O'Brien informed the Committee that the District of Kansas and the Western District of Missouri are working with the U.S. Sentencing Commission to present a CLE at the Whitaker Courthouse on February 24, 2016.

g. COMPUTER UPGRADE FOR THE ATTORNEY WORKROOMS

Ray Waters explained the need to replace the computers and printers in the attorney workrooms at each courthouse. He anticipates the cost will be approximately \$10,000. Chief Judge Marten moved and Mr. McGivern seconded the motion to upgrade the computers and printers in the attorney workrooms. The motion carried unanimously.

h. REPLACEMENT OF THE ATTORNEY WIRELESS SYSTEM

Mr. Waters explained the need to upgrade the attorney wireless system which he anticipates will cost approximately \$75,000. Chief Judge Marten moved and Ms. Schwartz seconded the motion to upgrade the attorney wireless systems in all three courthouses. The motion carried unanimously.

6. BAR FUND UPDATE AND FY 2016 BUDGET PROPOSAL

Jeff Breon provided the Committee with the status of the FY 2015 Bench-Bar budget. He

reported that all line items were within their budgeted amounts with the exception of the Panel Attorney Training category which had exceeded the approved \$11,000 budget by \$1,582 to date. Judge Murguia moved and Ms. Brannon seconded the motion to increase the Panel Attorney Training category to \$15,000. The motion carried unanimously.

Mr. Breon also presented the proposed budget for FY 2016. Chief Judge Marten moved and John Bullock seconded the motion to approve the FY 2016 budget as proposed. The motion carried unanimously.

7. PROPOSED LOCAL RULE CHANGES

a. D. KAN. RULE 83.5.3, ATTORNEY REGISTRATION, ANNUAL FEES

Mr. O'Brien proposed amending Rule 83.5.3 so that the registration deadline for the District of Kansas is consistent with the State of Kansas' July 31 deadline. Judge Berger moved and Jeff Spahn seconded the motion to amend Rule 83.5.3 as proposed. The motion carried unanimously.

b. D. KAN. RULE 38.1, RANDOM SELECTION OF JURORS

Mr. O'Brien proposed amending Rule 38.1 to more closely reflect 28 U.S.C. § 1863(b) which specifically bars certain categories of individuals from jury service. He noted that the clerk's office is in the process of reviewing the jury plan and may have additional changes to recommend. Mr. McGivern moved and Judge Melgren seconded the motion to amend Rule 38.1 as proposed. The motion carried unanimously.

Ingrid Campbell advised that this particular rule change may not be reflected in the 2016 publication of the local rules because the jury plan is still under review and must be approved by the Tenth Circuit.

c. NEW RULE: NOTICE OF RELATED CASE TO MDL LITIGATION

Mr. O'Brien proposed a new rule suggested by Judge Lungstrum which requires counsel to file a Notice of Related Case where a party to an MDL is named in a civil action pending in the district which concerns the same subject matter as the cases in the MDL. A discussion ensued as to where the new rule

should be placed within the local rules. A suggestion was made that the rule be numbered D. Kan. Rule 23.2 and follow Rule 23.1, Class Actions. Mr. O'Brien said that he would consult with members of the former local rules committee for a recommendation on where best to place the rule. Judge Melgren moved and Judge Murguia seconded the motion to create a new rule related to MDL litigation. The motion carried unanimously.

d. D. KAN.RULE 72.1.4 , OBJECTIONS; APPEALS; STAY OF MAGISTRATE ORDERS

Mr. O'Brien withdrew the rule as currently proposed and will consult with members of the former local rules committee on possible revisions.

e. D. KAN.RULE 77.1, FILINGS OF PLEADINGS AND PAPERS

Mr. O'Brien proposed amending Rule 77.1 to expressly permit e-mail filings by pro se filers. Chief Judge Marten moved and Ms. Schwartz seconded the motion to amend Rule 77.1 as proposed. The motion carried unanimously.

8. GUIDELINES FOR CASES INVOLVING ELECTRONICALLY STORED INFORMATION

Following a briefing, Amii Castle offered to review and propose revisions to ESI guidelines affected by the December amendments to the Federal Rules of Civil Procedure. Judge Murguia suggested that Chief Magistrate Judge O'Hara take the lead with Judge Waxse, Angel Mitchell, Ms. Schwartz and any other volunteers to assist Ms. Castle with this endeavor.

9. SELECTION OF NEW MEMBERS

Following discussion, Judge Melgren moved and Judge Murguia seconded the motion to recommend to the court the appointment of Diane Worth to the Committee. Mr. McGivern moved and Ms. Schwartz seconded the motion to recommend to the court the appointment of Tara Eberline to the Committee. Teresa Watson moved and Judge Melgren seconded the motion to recommend to the court the appointment of Jeff Chanay to the Committee. The motions carried unanimously.

10. OUTGOING MEMBERS

Judge Murguia presented certificates to outgoing members John Bullock, Rachel Schwartz, and

Sean McGivern with the thanks of the court and Committee.

11. NEW BUSINESS

Chief Judge Marten noted the large balance in the Bar fund and asked the members to be thinking about good ways to use the attorney registration fees.

The meeting, having convened at 10:00 a.m., adjourned at 2:00 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 12, 2014, 12:00 P.M. VIDEO CONFERENCE

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, CHIEF JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
MELODY EVANS, FEDERAL PUBLIC DEFENDER  
MELISSA A. MOODIE, ESQ.  
MICHAEL SHULTZ, ESQ.  
SCOTT A. WISSEL, ESQ.  
CASEY TOURTILLOTT, LAW CLERK  
JOHN T. BULLOCK, ESQ.  
SEAN MCGIVERN, ESQ.  
RACHEL E. SCHWARTZ  
MOLLY MCMURRAY GORDON, ESQ.  
STEPHEN J. TORLINE, ESQ.  
TIM M. O'BRIEN, CLERK OF THE COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
BARRY R. GRISSOM, U.S. ATTORNEY  
TERESA L. WATSON, CHAIR KANSAS BENCH-BAR  
DAVID J. REBEIN, ESQ.

1. APPROVAL OF MINUTES

Chief Magistrate Judge O'Hara moved and Scott Wissel seconded the motion to approve the May 16, 2014, meeting minutes. The motion carried unanimously.

2. USING BAR FUNDS FOR BANKRUPTCY JUDGE PORTRAITS

Chief Judge Marten confirmed that bar monies have been used in the past to fund bankruptcy judge portraits, a practice which will continue in the future upon the retirement of a bankruptcy judge.

### 3. BAR FUND UPDATE AND FY 2015 BUDGET PROPOSAL

Jeff Breon provided the Committee with an update of the budget status for FY 2014. He stated that all budgetary line items were within their budgeted amounts with the exception of the Reception/Ceremonies/Miscellaneous line item. To date, the actual expenses for this line item exceeded the approved budget by \$5,450. Chief Judge Marten moved and Judge O'Hara seconded the motion to increase the budgeted amount for the Reception/Ceremonies/Miscellaneous category for FY 2014 to \$40,000. The motion carried unanimously.

Mr. Breon presented the proposed budget for FY 2015 noting that one budgetary line item had been added to allow for maintenance to be performed on the access points for the attorney wireless system. He explained that the current system is no longer under warranty and it is anticipated that some access points may begin to fail. Additionally, since the technology for the current attorney wireless system is aging, some consideration is being given to replacing the system. Rachel Schwartz moved and Casey Tourtillott seconded the motion to approve the FY 2015 budget as proposed. The motion passed unanimously.

Chief Judge Marten mentioned that there were likely going to be a couple of requests to increase certain budget categories in order to fund the speakers he hopes to bring in over the next year as well as the FCCA Conference.

### 4. SELECTION OF NEW MEMBERS

Following discussion, Judge Murguia moved and Judge Melgren seconded the motion to recommend to the court the appointment of Scott Wissel, Shazzie Naseem, and Jeff Spahn to the Bench-Bar Committee. The motion carried unanimously. Judge Murguia said that he would like the decision about filling the law clerk position to go

directly to the judges as he does not want to put lawyers in the position of having to say anything about chambers staff.

5. OUTGOING MEMBERS

Judge Murguia presented certificates and court pictures to outgoing members Melissa Moodie and Michael Shultz with the thanks of the court and Committee.

6. NEW BUSINESS AND NEXT MEETING

Melody Evans provided an update stating that the CJA luncheons held every other month have been well attended. Five people are currently participating in the Second Chair Program. She said that the attorneys have been reluctant to bill for their time although they are encouraged to do so. Judge Murguia thanked Ms. Evans for taking the initiative to establish such programs, noting how fortunate the district is to have her as our Federal Public Defender. Ms. Evans thanked the court for its continuing support.

Chief Judge Marten added that in considering what kinds of programs to present at the FCCA Conference, he thinks it might be useful to have a panel of lawyers speak about what the bar expects from the Clerk's Office and the courts and vice versa. He asked the Committee to let himself or Tim O'Brien know if they have any other ideas.

Judge Murguia concluded by stating that the next meeting of the Bench-Bar Committee would likely take place sometime in the spring. The meeting, having convened at 12:00 p.m., adjourned at 1:20 p.m.

Respectfully submitted,

Ingrid A. Campbell



UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, MAY 16, 2014, 10:00 A.M.

KANSAS CITY, KANSAS

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, CHIEF JUDGE\*  
HONORABLE CARLOS MURGUIA, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE\*  
HONORABLE ROBERT D. BERGER, BANKRUPTCY JUDGE  
MELODY BRANNON EVANS, FEDERAL PUBLIC DEFENDER  
TERESA L. WATSON, CHAIR KANSAS BENCH-BAR  
MELISSA A. MOODIE, ESQ.  
MICHAEL SHULTZ, ESQ.  
SCOTT A. WISSEL, ESQ.  
CASEY TOURTILLOTT, LAW CLERK  
JOHN T. BULLOCK, ESQ.  
SEAN MCGIVERN, ESQ.  
RACHEL E. SCHWARTZ  
MOLLY MCMURRAY GORDON, ESQ.  
DAVID J. REBEIN, ESQ.  
TIM M. O'BRIEN, CLERK OF THE COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY

NOT PRESENT:

HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
BARRY R. GRISSOM, U.S. ATTORNEY  
STEPHEN J. TORLINE, ESQ.

\*indicates participation by telephone

1. APPROVAL OF MINUTES

Rachel Schwartz moved and Sean McGivern seconded the motion to approve the September 27, 2013, minutes. The motion carried unanimously.

2. FUNDING REQUESTS

a. 2015 FEDERAL COURT CLERKS ASSOCIATION (FCCA) CONFERENCE

Tim O'Brien informed the Committee that Kansas will host the FCCA conference

in 2015. Mr. O'Brien said that he would like "insurance" money to cover a bar/clerk reception as well as any shortages that may arise. He explained that he hopes not to have to use the money, but if so, it would likely be used for a reception and only if necessary. Judge Murguia added that it is a nice recognition to have the conference here. John Bullock moved and Scott Wissel seconded the motion to allot \$10,000 for the FCCA conference. The motion carried unanimously.

b. SPEAKERS

Chief Judge Marten would like the District to host a series of seminars over the next several years. He would like to know if the Committee thinks there is any value in doing this. David Rebein responded that he is excited about such a proposal. He thinks something like this would work towards improving morale for the bar, judges, and staff - something uplifting after coming off of a hard period of time. Ms. Schwartz added that she thinks it's a great idea. She appreciated seeing other attorneys at the Bryan Garner seminar. Mr. McGivern said that this is just the sort of thing to spend bar funds on.

Judge Murguia concluded that he thinks the Committee is generally in favor of exploring possible speakers and their availability. A suggestion was made to contact the Federal Court Advocates about possible speakers. Judge Melgren moved and Melissa Moodie seconded the motion to support pursuing opportunities to host speakers in the District of Kansas. The motion passed unanimously.

c. PRISON EDUCATION PROGRAM

Chief Judge Marten said that he's seeing more prisoner petitions all of the time. He noted that the judges see defendants for the last time at sentencing and feels the

court should do something to let prisoners know that they have not been forgotten. Chief Judge Marten would like to take a group possibly made up of a couple of judges, pro se clerks, lawyers who have done this kind of work, and probation staff to visit prisoners about the various court procedures and claims that can and can't be made. He thinks this might improve the quality of petitions that are filed and lessen the overall number of petitions the court receives. Chief Judge Marten would like to know if the Committee thinks this would be a good idea to pursue. He did note that he has not yet checked with general counsel to see if any cannons would be violated.

Judge Melgren said that the challenge he sees with this proposal is that most prisoners who file petitions with the court are housed elsewhere other than Kansas and are a transient population. He wonders if it might be more helpful to create an educational packet. Casey Tourtillott suggested creating a prisoner packet similar to the pro se guide. Chief Judge Marten responded that he agrees but that part of the message is to let prisoners know they have not been forgotten. Judge Melgren added that he does think it might be helpful to have face-to-face time with prisoners and get their feedback. Chief Judge Marten said that he would like to try it once and see how it goes. Judge Murguia said that he sees no downside to at least pursuing the idea of prison visits and/or creating a prisoner packet.

d. MDL PANEL VISIT

Mr. O'Brien told everyone that the MDL Panel will be in Kansas City in July in conjunction with Judge Vratil's portrait ceremony. The MDL Panel brings together judges from all across the nation. The Panel traditionally meets for dinner and the bar fund of the court the judges are visiting typically pays for the dinner of the spouses and

any guests. Mr. Rebien moved and Mr. McGivern seconded the motion to approve up to \$3,000 for this event. The motion carried unanimously.

3. BUDGETING FOR DISCIPLINARY INVESTIGATIONS

Mr. O'Brien requested a funding category for attorney disciplinary investigations. Because the State of Kansas only investigates matters involving members of the Kansas Bar, he explained that a situation might arise where an investigation would be needed regarding the conduct of a member of the district court bar who is not a member of the state bar. Judge Melgren asked whether this was more than hypothetical. Mr. O'Brien responded that there had been a situation in the bankruptcy court. Judge Melgren moved and Mr. McGivern seconded the motion to approve that \$25,000 be designated to cover disciplinary investigations. The motion passed unanimously.

4. REIMBURSABLE TRAVEL

Mr. O'Brien proposed that with regard to judges being reimbursed for travel to bar meetings, "local" travel be defined as anywhere within the state of Kansas or those states adjacent to Kansas, with the caveat that the chief judge may define "local" more broadly in circumstances where attendance by a judge is deemed of significant benefit to the Kansas bench and bar. Mr. Wissel moved and Melody Evans seconded the motion as proposed. The motion carried unanimously.

5. PROPOSED REVISION TO CJA PLAN

Ms. Evans provided a background of the CJA Plan and requested that it be amended to more specifically define the makeup of the CJA Panel selection committees. She went on to explain that some of the language was too restrictive and would like to broaden the panel selection committees to include more than one district

judge and more than one magistrate judge. Mr. McGivern moved and Casey Tourtillott seconded the motion to amend the CJA plan as proposed. The motion carried unanimously. Judge Murguia thanked Ms. Evans for all of the work she's done.

6. SECOND CHAIR PROGRAM UPDATE

Ms. Evans provided an update on the Second Chair Program which began on March 1, 2014 with six participants. Unexpectedly, the first five were fairly established attorneys who had state but not federal court experience. The sixth participant is very young. She reported that all had been going well.

7. TIMING OF MAKING JURY LISTS AVAILABLE TO COUNSEL

Judge Murguia reported that the topic of when juror names should be made available to counsel was discussed at a judges' meeting and he would like to know whether Committee members are generally happy with the current practice which varies some by location. Ms. Schwartz responded that the earlier counsel can receive juror names, the better. Ms. Moodie agreed and said 3-5 days prior to trial would be nice. Mr. Wissel said that it should be part of the pretrial order and Judge Murguia added that perhaps it should also be included in the scheduling order. Judge Melgren moved and Mr. Wissel seconded the motion to recommend to the judges to establish a rule that upon request of counsel, jury lists be made available to counsel five business days prior to trial and that such a rule should be included in pretrial and scheduling orders. The motion carried unanimously.

8. NEW BUSINESS

Chief Judge Marten stated that the court will be moving from a district-wide to more of a local draw. He believes that the district has attained its goal of equalizing the

number of civil cases assigned to each judge and will be looking more at case weights.

Ms. Schwartz asked whether proposed orders are useful to the judges? She said that receiving text entries are great but begs the question of whether lawyers should continue to prepare proposed orders to change the schedule. Judge Melgren said the proposed criminal orders are helpful because they address speedy trial. Judge Murguia said he would like to bring this up to the judges.

The meeting, having convened at 10:00 a.m., adjourned at noon.

Respectfully submitted,

s/Ingrid A. Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 25, 2015, 10:00 A.M.

Kansas City, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, CHIEF JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE JAMES P. O'HARA, CHIEF MAGISTRATE JUDGE (by telephone)  
HONORABLE ROBERT D. BERGER, BANKRUPTCY JUDGE  
MELODY BRANNON, FEDERAL PUBLIC DEFENDER  
HONORABLE TERESA L. WATSON, CHAIR KANSAS BENCH-BAR  
JOHN T. BULLOCK, ESQ.  
SEAN MCGIVERN, ESQ.  
RACHEL E. SCHWARTZ, ESQ.  
JEFF C. SPAHN, ESQ.  
TIM M. O'BRIEN, CLERK OF THE COURT  
CASEY TOURTILLOTT, LAW CLERK TO JUDGE MURGUIA  
INGRID A. CAMPBELL, CHIEF DEPUTY  
RAY WATERS, ADMINISTRATIVE MANAGER  
JEFFERY L. BREON, FINANCIAL MANAGER

NOT PRESENT:

HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
BARRY R. GRISSOM, U.S. ATTORNEY  
MOLLY MCMURRAY GORDON, ESQ.  
DAVID J. REBEIN, ESQ.  
STEPHEN J. TORLINE, ESQ.  
SCOTT A. WISSEL, ESQ.  
SHAZZIE NASEEM, ESQ.

1. APPROVAL OF MINUTES

Judge Melgren moved and Rachel Schwartz seconded the motion to approve the September 12, 2014, meeting minutes. The motion carried unanimously.

2. PROPOSED MODIFICATIONS TO CRIMINAL PRETRIAL ORDER 1

Judge Robinson stated that she, Judge James, Melody Brannon, Shazzie Naseem, and Jared Maag are working on modifications to Criminal Pretrial Order 1. She explained that an issue is coming up in multi-defendant drug cases and emanates from how and when discovery is produced. Defendants often find it difficult to believe that their attorneys are not in possession of discovery material. Sometimes the

problem is inaccessibility because the electronic discovery comes in varying forms from the investigating agency.

Judge Robinson said that she wants to fashion a pretrial order which ameliorates the practice of protected discovery. Pretrial Order 1 was adopted in Kansas City and Topeka but not Wichita. She and those she is working with would like to see a new pretrial order adopted district-wide. Judge Melgren added that he is in favor of having the pretrial order apply district-wide. Judge Robinson said that she plans to send out a proposed modified order for input.

3. D. Kan. Patent Law Committee

Judge Murguia explained that he had invited Holly Teeter to address whether it would be helpful to establish specific local patent rules in the District of Kansas. He stated that a number of patent cases had been filed in Kansas City and thinks it might be helpful for the judges to have established rules.

Ms. Teeter advised that the question of what law should govern procedural practices always arises in patent cases and that some districts have established their own local rules to fill the void and reduce inconsistencies among cases. She asserted that patent filings are expected to increase in upcoming years and believes it would be helpful for the lawyers and the court to have local rules specific to patent cases.

Chief Judge Marten moved and Judge Melgren seconded the motion to form a D. Kan. Patent Law Committee to come up with proposed local rules specific to patent cases. Chief Judge Marten asked Judge O'Hara and Ms. Teeter to serve on the committee. Judge Melgren offered his services to the committee noting that he has a law clerk that enjoys working on patent cases. Ms. Teeter stated that she believes a proposal could be ready as early as next spring.

4. POVERTY SIMULATION KIT

Tim Burdick described the Poverty Simulation Kit as a two and one-half hour interactive simulation which provides a better understanding of people living in poverty. He explained that the Kit can be purchased once at a cost of \$2,150 but used repeatedly. The application of the Kit is quite broad and the Federal Public Defender's Office would like to make it available to anyone in the district and



other agencies in the community who may be interested in using it. Sean McGivern moved and John Bullock seconded the motion to use Bar funds to purchase a Poverty Simulation Kit for the Federal Public Defender to administer. The motion passed unanimously.

5. REQUESTS FOR USE OF BAR FUNDS

a. INTERPRETERS IN BANKRUPTCY PROCEEDINGS

Tim O'Brien shared an August 1, 2014, memo from General Counsel which concludes that bar funds may be used for interpreter services in civil matters not instituted by the United States and suggested \$10,000 be budgeted for that purpose. Judge O'Hara moved and Rachel Schwartz seconded the motion to create a Court Interpreter budget line item in the amount of \$10,000. The motion carried unanimously.

b. LAWYERS WITHOUT RIGHTS

Mr. O'Brien proposed that bar funds be used to host the "Lawyers without Rights: Jewish Lawyers in Germany under the Third Reich" exhibit (see memo). Chief Judge Marten moved and Mr. McGivern seconded the motion that \$5,000 be allotted to host Lawyers Without Rights. The motion carried unanimously.

c. JUDGES BIOGRAPHY PANEL UPDATE

Mr. O'Brien requested that funds be allotted to update the judges' biography panels. Mr. McGivern moved and Ms. Schwartz seconded the motion to update the judges' biography panels. The motion carried unanimously.

d. THE TENTH CIRCUIT HISTORY PROJECT UPDATE

Mr. O'Brien requested that funds be allotted to support the Tenth Circuit History Project Update (see memo). Mr. McGivern moved and Ms. Schwartz seconded the motion that \$60,000 be allotted to the Court History budget line item to cover the costs associated with both the Tenth Circuit History Project update and the judges' biography panel update. The motion carried unanimously.

e. SECOND CHAIR PROGRAM

Melody Brannon provided an update on the continued success of the Second Chair Program

requesting that the number of participants be expanded to ten. Judge Melgren questioned expanding the program because we may end up with more trained attorneys than we can use. He is concerned about creating expectations that the court cannot fulfill.

Chief Judge Marten expressed his belief that expectations can be managed by making it clear to the participants that there are no guarantees that they will serve on the CJA Panel, noting the benefit alone of training defense lawyers. He suggested that rotating members on the Panel could be considered. Chief Judge Marten moved and Judge Melgren seconded the motion that \$63,000 be allotted to the Second Chair Program. The motion carried unanimously.

Judge Melgren thanked Ms. Brannon stating that she has done a phenomenal job as an innovative leader.

f. SENTENCING COMMISSION CLE

Mr. O'Brien informed the Committee that the District of Kansas and the Western District of Missouri are working with the U.S. Sentencing Commission to present a CLE at the Whitaker Courthouse on February 24, 2016.

g. COMPUTER UPGRADE FOR THE ATTORNEY WORKROOMS

Ray Waters explained the need to replace the computers and printers in the attorney workrooms at each courthouse. He anticipates the cost will be approximately \$10,000. Chief Judge Marten moved and Mr. McGivern seconded the motion to upgrade the computers and printers in the attorney workrooms. The motion carried unanimously.

h. REPLACEMENT OF THE ATTORNEY WIRELESS SYSTEM

Mr. Waters explained the need to upgrade the attorney wireless system which he anticipates will cost approximately \$75,000. Chief Judge Marten moved and Ms. Schwartz seconded the motion to upgrade the attorney wireless systems in all three courthouses. The motion carried unanimously.

6. BAR FUND UPDATE AND FY 2016 BUDGET PROPOSAL

Jeff Breon provided the Committee with the status of the FY 2015 Bench-Bar budget. He

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, APRIL 26, 2013, 8:30 A.M.

Wichita, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD K. GILMAN, FEDERAL PUBLIC DEFENDER  
BARRY R. GRISSOM, U.S. ATTORNEY  
TONY L. ATTERBURY, ESQ.  
DAN CRABTREE, ESQ.  
ANGEL D. MITCHELL, ESQ.  
MICHAEL SHULTZ, ESQ.  
CASEY TOURTILLOTT, LAW CLERK  
JOHN T. BULLOCK, ESQ.  
SEAN MCGIVERN, ESQ.  
RACHEL E. SCHWARTZ  
TIM M. O'BRIEN, CLERK OF THE COURT  
JAMIE HAIG, DIVISION MANAGER  
JEFF BREON, FINANCIAL MANAGER

NOT PRESENT:

ALAN E. STREIT, CHAIR, KANSAS BENCH-BAR COMMITTEE  
TERESA J. JAMES, ESQ.  
MELISSA A. MOODIE, ESQ.

1. APPROVAL OF MINUTES

Cyd Gilmann moved and Dan Crabtree seconded the motion to approve the September 21, 2012, minutes. The motion carried unanimously.

2. RULE 1 STATUS REPORT

Judge Marten said that the working groups have done an extraordinary job and that their recommendations have been enthusiastically received by the court. The judges will vote at their upcoming meeting to approve the proposed form changes.

Judge O'Hara reported that this has been a very productive process and one of

the best projects he has worked on. He informed the Committee that Working Group 1 had been updating forms to incorporate the recommendations of the five other working groups. Following court approval, Judge O'Hara recommends that the proposed forms be launched as a whole to the bar.

a. Working Group 3 Guideline

Angel Mitchell reported that the guidelines are not a hardline stance on what is right or wrong, but offers a framework on how to get dialogue started and make the process efficient. She also recommended an e-discovery liaison. Judge Marten added that Kansas was one of the first courts to adopt e-discovery guidelines, even before they were mandated. Ms. Gilman interjected that the group did a masterful job of putting this together. Judge O'Hara agreed and said that it is very user friendly.

Judge O'Hara, referencing page 2, paragraph 6, line 6, posed the question of whether this works for institutional litigants. Is it realistic for these parties to anticipate the litigation and preserve evidence? Should the language be softened to "consider" instead of "should"? Ms. Mitchell responded that it isn't clear for those situations and there isn't any direction. She believes it's a good issue to address on a national level. That is, it's such a huge job for big business and how are they to retain such large volumes of information.

Judge O'Hara also suggested moving paragraphs 7, 8, and 9 on page 3, to page 4 following #10. Ms. Mitchell will take Judge O'Hara's suggestions to the working group and report back.

3. CRIMINAL PRACTICE REPORT

Judge O'Hara explained that the criminal practice review is not as

comprehensive as the civil undertaking and has no separate working groups. He relayed that Kansas City and Topeka are experiencing increased criminal filings with a declining number of judges. This is problematic because of speedy trial constraints and processing cases in a timely manner.

He added that the group has discussed how cases should be managed keeping Tombs in mind. The lawyers and their clients should have enough information early on to determine whether or not a case will go to trial and how quickly it will get there. A practice now taking place in Kansas City is lawyer driven cases which require a meeting between the first appearance and the first hearing with a district judge. Also, setting a firm trial date will force the parties to enter a plea or be ready for trial. In Topeka the relationship between prosecutors and defense counsel is more cordial such that a formalized meeting is not required.

Ms. Gilman reported that she is working with Barry Grissom to develop agreements between the U.S. Attorney's Office and the Federal Public Defenders that will speed up the discovery process. Judge O'Hara said he uses "searchability" of discovery as an example, which makes it less expensive if there are multiple defense attorneys.

#### 4. SEQUESTRATION UPDATE

Judge Marten reported that the Wichita judges have gone to "criminal less" Thursdays and the courthouse opening time has been delayed to 8:00 a.m. as a result of U.S. Marshal and Court Security Officer budget cuts. Ms. Gilman said that the Federal Defenders are not fully staffed but won't have to furlough staff either. Mr. O'Brien reported that the clerk's office would not need to lay off anyone this year either

although training and travel has been significantly reduced. If the budget incurs additional cuts, the clerk's office won't be able to sustain current staffing levels.

5. BAR FUND UPDATE

Jeff Breon provided a mid-term budget report noting that revenues exceed expenses.

6. LOCAL RULES

a. 26.1 Completion of Time for Discovery

Judge O'Hara reported that this rule is an outgrowth of Working Group #1 whose members think that any rule which imposes a specific month value is inconsistent with encouraging judges and attorneys to be creative. Judge O'Hara recommends doing away with the rule. Judge O'Hara moved and Mr. Crabtree seconded the motion to abolish Rule 26.1. The motion carried unanimously.

b. 83.1.1 Amendment of Rules

Mr. O'Brien proposed amending Rule 83.1.1 to require notice of rule changes be made on the court's web site in lieu of publication in the Kansas Bar Journal. Judge Melgren moved and Ms. Mitchell seconded the motion to amend Rule 83.1.1 as proposed. The motion carried unanimously.

c. 83.5.8 Limited Scope

Mr. O'Brien referenced the proposed rule recommended by the Pro Se Task Force. He noted that the additional modification had been before the judges and kicked back to the Pro Se Task Force and Bench-Bar Committee for approval. Judge Marten added that this used to be done by Judge Kelly. Judge O'Hara said that a program in Illinois allows a pro se person to meet with an attorney. He said he would support some

kind of limited representation which should be in writing. Judge Melgren expressed his discomfort with Exhibit B, subsection c, stating that ghostwriters need to be identified. Judge Marten said that the Bench-Bar Committee does not oppose limited scope representation in general, but that the rule should be sent back to the drafting group for modifications to require the signature of a lawyer who prepared a document.

d. 2013 Supplement

No complaints about the supplement to the 2013 local rules were received. Mr. Breon reported that creating a supplement, in lieu of printing the whole book, saved the court approximately \$15,000.

7. VIDEO INITIATIVES

Mr. O'Brien reported that the court has been working on two kinds of video initiatives for about a year. Kansas City currently has the capability for counsel to video conference with clients at CCA. This has limited use in Topeka and is not at all useful in Wichita because of the multiple jails where defendants are housed. Video conferencing does not replace all face to face visits but can help in certain situations and saves on CJA travel costs. Counsel still have to travel to the courthouse but the feedback has been positive.

Another initiative is establishing the capability of allowing counsel to video conference with their clients from their computer. A few trial runs have gone well. The plan is to experiment with a handful of attorneys for a few months and then roll out to others who are interested.

Finally, Mr. O'Brien reported that he has looked into in-court video appearances of defendants but that it includes several limitations. For one, it wouldn't be useful for

first appearances since the defendants are not yet in the custody of the U.S. Marshal. Also, in-court video appearances do not appear to be as much of a money saving opportunity as attorney/client consultations.

8. HYPERLINKING

Mr. O'Brien noted that hyperlinking cuts down on time for judges and law clerks and that attorneys have more control in directing the attention of a judge. The hyperlinking proposal is before CACM for approval and adoption. Also, the federal circuit is contemplating requiring hyperlinking in all briefs filed with the court.

9. NEW BUSINESS

Judge Marten informed the Committee that Judge Humphreys has handed off the "chief magistrate" position to Judge O'Hara; that Judge Waxse is considering retirement from his full-time magistrate judge position; and, that Judge Rushfelt's recall status is pending. Chief Judge Vratil will step down as chief and take senior status next spring. Finally, Judge Marten reported that this would be his last meeting as chair. Judge Murguia will be the new chair and Judge Melgren will join the Committee.

Judge Melgren concluded the meeting by presenting a certificate of appreciation to Judge Marten for his work, enthusiasm, and dedication chairing the Bench-Bar Committee.

The meeting, having convened at 9:00 a.m., adjourned at 2:00 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

Ingrid A. Campbell



BENCH-BAR

JUDGES' MEETING: January 11, 2013 at 9:00 AM, Kansas City Rm. 659

KHV, JW, JAR, Dan Crabtree, JPO, KGS, GLR, CM, TMO, IAC, SBO, EFM, DJW, Steve Gensler, KGG, Gaye Tibbets, JTM, one more member of BB Committee (??)

9:10: KHV welcomes guests. Judge Gensler joins by conference call.

Owe a huge debt of gratitude to JTM for taking this process to the place where we are at now.

JTM: the BB Committee has been wonderful to take an aggressive role in looking at practice issues that the court is very much a part of. The judges who have taken lead roles also deserve thanks: JPO, JW, KMH, DJW.

1. Judge O'Hara: the working group was very comfortable. Won't read the report, instead discusses. Some districts are very good about designating cases as certain categories. JPO initially thought that would have some merit, but has since concluded that every single case should be tailored specifically as it should be on its own merit. If you can get attorneys to agree that it is a simple straight forward case to get the case fast tracked--limited discovery, quick 1 day trial, etc.... (such as is done in N. California).

Secondly, JTM initially suggested, but the question is whether we should use Sussman agreements. They are trial lawyer friendly. They are used to get people focused on the trial of the case, not just discovery. Group 1 decided that whether the exact forms are used (probably room to update some), the goal is to get the senior attorneys involved in using the agreements. JPO has gotten some positive feedback from attorneys who like this and think it makes life easier and less expensive.

Third: MOWD where mag judges are handling more civil cases on consent. Group 1 said that if it ain't broke, don't fix it. So, our current system in Kansas where there is a mag judge and a district judge assigned to each age is working. Group 1 isn't pushing to change it.

Fourth: how do we get more creativity and practicality by attorneys when they meet under 26f and then again when they meet for the scheduling conference with the mag judge? Familiarity has bred, if not contempt, then laziness. Attorneys just aren't reading them. JPO says that nobody is reading the scheduling office any longer. JPO thinks that we need to, at a minimum, change the forms and publicize to get attention of the practicing bar to get lawyers to actually meet. Need more critical thought up front about the case. The bar believes that they need more time to learn their case if they need to do more work up front. Right now we are fairly aggressive with the time frames. JPO hopes that more time would result in better work product. If we have lawyers serve 26a disclosures to the court.... JPO thinks that if the attorneys are located in the same city, they should actually meet as a default for 26f meetings. Also should be much more encouraging that scheduling conferences happen face to face, or with technology such as Skype. JPO says that one

of the issues is that meeting in person requires a lot more time up front by judges and attorneys.

Need to find an effective effort to make examples of attorneys (good and bad) in order to get the word out that the federal court has changed the type of ship that it's running.

Group decided that court should either adopt a LR or by scheduling order the practice in WDMO...something about pretrial conferences (? check the written report)

Seventh: how much time should be allowed by decisions on dispositive motions. Practicing bar is unanimous that 30 days is not enough time because attorneys spend too much time that turns out to be needless if the case is decided by dispositive motion. Group is recommending 60 days. The bar would actually prefer 90-120 days. JWL asks if it would make more sense to make up for the time difference up front. JWL says we can always tailor "the big case" to have a longer time frame, but for the rank and file case, would we have to expand the time frame from 4 to 5 or 6 months. JPO says yes, they would come out of the back end.

Eighth: Should we change our pretrial order process? The plaintiff's bar thinks our procedure in employment, PI cases sucks. They hate it and think it is defendant heavy. The defendant's bar thinks it is great and very effective. Among KS chambers, almost all find it useful. JPO says the ultimate conclusion is that the pretrial order should be pared down to take out the non-essential parts and turn them into a second pretrial order AFTER summary judgment happens. In practice, it would probably be done by the district judge, perhaps as part of the limine conference. JWL says that Group 1 should reconsider the inclusion of detailed discussion of the elements (useful for attorneys but not the judges) and also the timeline that will immediately be set aside by the district judge because it is not a practical timeline. JPO agrees that the timeline in the pretrial order is a false representation of what we are actually doing. JWL doesn't want to bend on forcing a statement of the issues as part of the PTO even though, as KGG points out, we are one of the only districts doing that. The mag judge can force the discussion of elements if he/she finds it helpful for a particular case, but as a default leave it out. The plaintiff can have a bullet list of COA's and the defendant can have bullet list of defenses.

EFM says the goal is to enact rules to help the less seasoned attorneys without encumbering the seasoned attorneys. (The C attorneys)

JTM asks Judge Gensler if she sees Sussmen agreements and how she likes them. LG says there aren't too many attorneys who have the ability to make them beneficial because they lack experience/ability. LG gives kudos to KS judges for being willing to undertake self-evaluation. LG: 1) difficult to figure out when the 26f conference should be held to be most effective. Rules were set up with the idea that it would happen AFTER initial disclosures. But that hasn't happened, so attorneys are coming to R 16 conference without any meaningful participation. SG says the one difference is a "balance issue". To the plaintiff, a lot of the claims are untenable and the defendant shouldn't be required to brief those claims. Also, SG says that there isn't another district thinking about these issues as deeply.

DJW points out that it is very important to get the client representative involved. Also, the lawyers make money by filing SJ motions and a lot of times the client hasn't done a cost benefit analysis of filing an SJ motion. DJW has brought up a couple of times that there ought to be a budget done of the potential SJ. In a couple of instances, the client has declined to proceed.

EFM: says that Emily Metzger has pointed out that it feels that it would be easier to try a case, but the expectation in the bar is that it is expected that it could be resolved on SJ.

Dan Crabtree points out that having an in-person conference is very useful to promote hygiene among the attorneys.

2. Non-ESI Discovery chaired by Gaye Tibbets. Remembers being told that R 26 disclosures could never be done due to ethics concerns. Gaye has since found that change is hard for attorneys and judges (by definition). GT says the biggest problem in discovery is motions to compel. Concluded that attorneys who respect each other and want to get things done will be able to agree. However, that isn't always the case. Group agreed that they would welcome more intense involvement from mag judges but that it was unlikely the mag judges have the extra time and attention to give to the cases. Conclusion is that we don't need more rules, can do what we need within the current rules. Also need to create incentive to behave nicely.

Group recommended two things: 1) revised protective order, 2) proposed local rule for supplementation of authorities.

Just need to do things differently, don't need new rules. It will require a culture change by the bar.

JTM asks what kind of discovery disputes GT finds difficult.

Hobson's Choice

JTM asks what the difficulties are with interrogatories. GT says that she and Paul McCausland are strong proponents of trying to use them to narrow the issues. GT says she doesn't think defendants are trying to "play the game" rather it is done by an associate who just pulls the last file and regurgitates them. That ends up wasting time. JWL says that a lot of these issues should be dealt with hawkishly by the magistrate judge at the R. 16 hearings.

KGG says the Wichita bar thinks it takes MUCH too much time to resolve discovery disputes. KGG tries to get them done in 30-60 days. KGG says that he would be happy to have the parties come in the way that it happens in SG County. At SG County the motion is heard every second Friday by a judge who isn't familiar with the case. KGG only wants to do that if they agree not to appeal to the district judge. JWL says that KGG shouldn't require a waiver of appeal because the D. judges are also happy to hear an appeal and won't be put out by it. JAR jokes that they can hold their own motion hearings every 2d Friday. The judges seem to concur that the magistrates should go ahead and make rulings on discovery disputes and let the

parties appeal if they want to. GT notes that she is very unlikely to appeal a ruling like that because she has to appear before the mag judge again. :)

SG and JPO agree that if you ask good lawyers hard questions, that you get great information. SG says don't fully brief F 16 conferences. Follow it up with a 5-10 minute hearing. This is due to the timing issue. Need to keep the timing reasonable. Briefing causes delay and expense. 90% of discovery disputes are reasonableness calls, not legal calls. LR agrees with everything SG says. In discovery disputes, often just adult supervision and just need a ruling, even when unbriefed. There are issues that require research, brief, opinion, but the pretrial conference will allow judge to narrow the specific issue that needs to be dealt with.

LR would add a Rule 502d statement to Group #2 revised protective order that says production does not waive protective status. LR is happy to provide a sample order--JTM asks that she go ahead and do this. LR talks about expected national rules changes...John Cottum (name??) in SDNY should be able to give the court a summary in advance of published proposed rules in August. He has particular information about complex cases. The spring advisory committee will be in Norman, OK.

Jim Armstrong says that the nice thing about the Friday morning docket in state court is that case can be better planned. Says the way to get a shorter motion is to give them a chance to speak. If an attorney knows they will have 10 minutes to tell the judge their full side. Works for both sides. KGG points out that it could be difficult with DWD because for ex most of his cases are KC cases with KC lawyers so he would have to travel to KC. JA and JWJ think that it could be done effectively by phone.

Group #3: they are surveying other districts' rules in order to revamp our rules. They are coming out so quickly, that it is still ongoing. Hope to have a new set of proposed guidelines within the next couple of months. DJW says prevailing consensus is that there should not be any numerical limitations on custodians. There are some ideas about what could result in cost savings--such as increased specificity.

Computer Assisted Review: the issue is how to deal with it. It's more effective than human review. Judge Nolan in Chicago had three days of hrs about the type of review that should be used in a certain case. DJW thinks they will be complete with their recommendations before the BB Meeting in April.

SG notes that this is the only area where judges are starting to get involved in process control. Example. Ordering a defendant to search their records a certain way. Well, can get 60% accuracy with ESI for 2x. Another expert says you can get 72% accuracy on ESI for 3x.

DJW says that not even all attorneys accept that human review isn't the most accurate way to search ESI. There is a huge cost involved (sometimes millions).

EFM asks about how this relates to a 702 inquiry. DJW says there isn't an answer about it yet.

Group #4; Chaired by Jim Armstrong. Group started out with the lament of KHV and JAR about how much time they take. JA says that legislating for the masses is very difficult. Usually he gets to work with very competent attorneys. The statistics show that the system is working somewhat. What the stats don't show is that SJ often gets a case settled regardless of outcome of SJ.

EFM agrees with laments of KHV and JAR because it seems that so many briefs are long and disorganized. Quote: "sorry to write you such a long letter, I didn't have enough time to write a shorter one." EFM is starting to find MLB's rule of a 30 page limit on SJ as attractive. Normally the arguments are 30 pages. The Circuit has a 50 page limit. JWL suggested that we amend our rule to say that the 30 page limit is a cumulative total of all dispositive motions, regardless of how many are filed.

Jim Armstrong notes that a strongly worded opinion has a deterrent effect within the Wichita bar to prevent future misdeeds by attorneys. However, it was pointed out by JWL and Dan Crabtree that the Wichita bar is unique and that the KC metro bar is not as close and that it will do nothing to dissuade an out of state PHV attorney who will never appear in the DKAN again.

KHV asks if there as any benefit to the bar to have a plenary decision for an SJ that is denied in its entirety. JA says that usually you learn something. It is also helpful to helpful to have reasons to proceed to settlement. DC suggests that such comprehensive opinions are not necessary. There are a few times when it would be necessary on a point or two, but that's it. JWL and EFM say they just can't help themselves. :) JWL also points out that because of the volume of SJ's, the best way to start off is to have a law clerk put together a draft, talking to the judge all along. By the time you get to the end, you practically have the whole opinion completed. IT would actually take additional time to make a shorter opinion.

Group #5: Trial Scheduling: DC is chair. The group decided this is an area where the court is getting it mostly right. Six recommendations:

1. Move target date for SJ.
2. Standard PTO with some diff's between judges.
3. The requirement in paragraph 14a in existing PTO. It is busy work that should have been taken care of by 26 disclosures. Take it out. JWL agrees.
4. The current one size fits all method of deposition designations is bulkier than it needs to be and that it could be handled the old fashioned way--tell the parties to work it out and only seek judicial intervention at least one day before trial. JWL agrees that it isn't a one size fits all. The court agreed.
5. Advancing the deadline for motions regarding expert testimony. DC is lone dissenter. JWL and court agree not to adopt.
6. Timing Changes: see handout. Court adopts.

JTM asks SG and LR if they have anything to add. Neither does. Writ Large.

Group #6: Professionalism and Sanctions. Theresa James did most of the work but she isn't here. Will defer to Tim O'Brien to talk about the Pillars.

JWL said that there are times that sanctions need to be used and the court shouldn't back away from them. However, lawyers aren't really looking for it to happen a lot more. Usually happens in the context of discovery which he no longer handles due to mag judges.

Tim discusses the Pillars. Says that KADC, KS Assoc for Justice and JOCO Bar have adopted now. It is easy to write the pillars but harder to get people to follow them. Theresa James really did a lot of work and JWL helped to manage the group.

JTM asks SG and LR about national feedback regarding sanctions. LR says there have been two aspects on national committees:

1) e-discovery. A disturbing tendency to see attorneys with preservation failures even if they weren't accompanied by bad faith to turn the entire process into a sanctions dispute rather than focusing on the merits.

2. The appropriate Rule 11 weapon: some think they aren't used enough, others think they are relatively ineffective and we shouldn't be relying on sanctions as an effective way to improve civil litigation. LR agrees with the latter. SG says there has been a beltway discussion about Rule 11 mostly because only the people who are lobbying congress want sanctions. The national discussion on sanctions has been exfoliation. Expect to see draft rules about exfoliation soon.

#### SURVEY:

Tim: met Emery Lee, law clerk to a 6th Cir judge, Sup Ct fellow, taught at case Western. Prof Gensler was involved in formation of survey questions. SG: the survey largely replicates questions from former national surveys. There is corresponding national data for everything except for summary judgment questions. SG has compared DKan to national data with respect to R16 only. Kansas has more live rule 16 conferences than nation. Everyone wishes they were more effective, but the path to that is to press the lawyers and ask them the hard questions.

Tim: thought the data was unremarkable. Thought that we could have come up with the percentages if we had just sat down and thought about it. It is a small sample: survey sent to 1,600 or so and received responses from under 400. Tim does note that a low percentage of attorneys note that ESI is discussed at scheduling conference. JPO and DJW say that regardless, the level of discussion is not meaningful in more than 10% of the cases.

Tim also notes that only 32% said KS lawyers were very high. Adding in the "high" category gets us up to 90%, but it is surprising that we are only at 32%. SG suggests that Emery Lee compare this to national data.

#### CLOSING:

CM asks where we go from here on the various proposals.

KHV says that she would like to put together a package of proposals that are ready to go to the court at the next judges meeting.

JPO suggests that he put together a package with the attorneys present today, including Casey Tourtillot, and present it to the court at least 45 days in advance of

the next Circle S meeting. JTM asks if we could also insert a period for Comment by the bar and then discuss those comments at the next judges' meeting.

KHV suggests that we send out an email with a highly summarized view of the proposals.

JWL says that we should go ahead and change to a 5 month deadline. All the judges present are on board with that. Trial dates come from district judges.

KHV says there are some things that are uncontroverted that can be adopted immediately such as the 5 month target date. Others can be put in a pile for further study.

JTM thanks LR and SG for their help over the last couple of weeks. DJW says that he is conducting a program on ESI education in Dallas for anyone wanting more info about it. :)

KHV: Judge Sebelius' 10 year anniversary. KHV presents a pin. Round of applause.

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 21, 2012, 9:00 A.M. Kansas City, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE JULIE A. ROBINSON, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CH. BANKRUPTCY JUDGE (by tel)  
CYD K. GILMAN, FEDERAL PUBLIC DEFENDER  
JEFFREY D. MORRIS, ESQ.  
TONY L. ATTERBURY, ESQ.  
DAN CRABTREE, ESQ.  
ANGEL D. MITCHELL, ESQ.  
MELISSA A. MOODIE, ESQ.  
TERESA J. JAMES, ESQ.  
MICHAEL SHULTZ, ESQ.  
CASEY TOURTILLOTT, LAW CLERK  
TIM M. O'BRIEN, CLERK OF THE COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY CLERK

NOT PRESENT:

BARRY R. GRISSOM, U.S. ATTORNEY  
ALAN E. STREIT, CHAIR, KANSAS BENCH-BAR COMMITTEE  
JOHN W. JOHNSON, ESQ  
MICHAEL K. SECK, ESQ.

1. APPROVAL OF MINUTES

Judge O'Hara moved and Teresa James seconded the motion to approve the April 20, 2012, minutes. The motion carried unanimously.

2. LOCAL RULES

a. Proposed Amendments

D.Kan.Rule 83.6.8, Reinstatement After Discipline

Tim O'Brien proposed amendments to D.Kan.Rule 83.6.8, Reinstatement After Discipline (see redline version). Following a brief discussion and additional revisions,



Cyd Gilman moved and Judge O'Hara seconded the motion to amend the rule as proposed. The motion carried unanimously.

Proposed New Rule 83.5.8, Limited Scope Representation

Mr. O'Brien informed the Committee that the Pro Se Task Force had recently met to discuss a proposed new Rule 83.5.8, Limited Scope Representation (see attached). Chief Judge Nugent said he can see where this rule could be helpful in Bankruptcy Court but that his one concern is situations where limited scope representation would not be appropriate. He requested that the Bankruptcy Court be permitted to draft their own rule. Chief Judge Nugent added that he thinks identifying the ghost writer is a very good idea. Mr. O'Brien responded that he does not believe identification of the ghost writer is required but rather just the fact that a ghost writer is being used.

Judge Marten suggested that more time is needed to review the proposed rule and that a subgroup to study it would be helpful. Mr. O'Brien agreed. The following volunteered or were appointed to serve on the subgroup to study limited scope representation: Judge Waxse, Judge Berger<sup>1</sup>, David Eron, Cyd Gilman, Jeff Morris and Casey Tourtillott. Judge Marten asked that a report be prepared and submitted in time for discussion at the October 19, Circle S judges' meeting.

Proposed New Rule 47.2, Juror Litigation History (and Social Media)

Mr. O'Brien explained Chief Judge Vratil's interest in exploring the need for a rule which addresses juror litigation history. Ms. Gilman expressed her concerns about such

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<sup>1</sup>Judge Berger and David Eron were added following the meeting at the direction of Chief Judge Nugent.

a rule applying to criminal cases. Judge Marten asked whether such a rule is necessary? Judge O'Hara responded that he likes the rule and thinks it should be expanded. He suggested that it is a big enough issue to require more study. Judge Robinson agreed. Judge Marten proposed putting together another subgroup to study and come up with a proposal for the Committee. A subgroup to study juror litigation history and social media was formed to include: Teresa James as chair, Jeff Morris, Angel Mitchell, Michael Shultz, and a prosecutor to be determined.

#### D.Kan.Rule 37.1 b, Motions Relating to Discovery

Ms. Mitchell said she gets a lot of questions about whether it is necessary to file an extension of time under D.Kan.Rule 37.1 b, Motions Relating to Discovery, noting that she believes every judge does something a little different. She would like some clarification. Judge O'Hara stated that he believes Judge Rushfelt has published an opinion which addresses this topic. Ms. Mitchell said she would take a look at that opinion. Judge Marten added that he does not know that there is much that can be done other than to note there is a difference in opinion among the judges as to whether a motion for extension of time must be filed under such circumstances.

#### b. Printing Cycle

Mr. O'Brien suggested switching from a yearly to every other year printing cycle for the local rules noting the continued tightening of the court's budget. Judge Marten proposed the possibility of going to a replaceable looseleaf binder. Judge Robinson suggested that the rules be made available as an application. Judge Marten moved and Judge Robinson seconded the motion that the local rules be printed every other year, and that no rules be printed for 2013. The motion carried unanimously.

3. RULE 1 WORKING GROUP REPORTS

The chair or representative of each of the working groups provided a brief update on their topic of study (see reports). Judge Marten thanked everyone for all of their hard work. He noted that although only a few recommendations are coming out as a result of the working group studies, he feels just going through the process has been beneficial. Judge Marten said he thinks the court is getting a pretty good report card on the rules that are in place. Just to get that message is evidence of a healthy working relationship between the bench and bar.

4. RULE 1 SURVEY RESULTS

Judge Marten directed the Committee to the attached Rule 1 Survey Results. The group reviewed the material, including the Pillars of Professionalism, and urged the court to continue on towards a recommendation.

5. BAR FUND UPDATE AND FY 2013 BUDGET PROPOSAL

Jeff Breon provided an overview of expenditures for FY 2012. Mr. Breon presented the proposed budget for FY 2013 noting a projected end-of-the-fiscal-year balance of \$544,000 and the addition of a Women's History Program as a line item. Judge O'Hara moved and Ms. James seconded the motion to approve the FY 2013 bar fund budget as proposed. The motion carried unanimously.

6. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Following discussion Dan Crabtree moved and Judge O'Hara seconded the motion to recommend to the court the appointment of Sean McGivern from Wichita, John Bullock from Lawrence, and Rachel Schwartz from Kansas City to the Committee. The motion carried unanimously.

7. OUTGOING MEMBERS

Judge Marten presented certificates and court pictures to outgoing members Jeff Morris, John Johnson (not present), and Mike Seck (not present) with the thanks of the court and the Committee.

8. NEXT MEETING

Judge Marten stated that the next Bench-Bar meeting will probably be held in February or early March of 2013.

The meeting, having convened at 9:00 a.m., adjourned at 1:00 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, APRIL 20, 2012, 9:00 A.M.

Fall River, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD K. GILMAN, FEDERAL PUBLIC DEFENDER  
JOHN W. JOHNSON, ESQ.  
TONY L. ATTERBURY, ESQ.  
DAN CRABTREE, ESQ.  
ANGEL D. MITCHELL, ESQ.  
MELISSA A. MOODIE, ESQ.  
TERESA J. JAMES, ESQ.  
MICHAEL SHULTZ, ESQ.  
CASEY TOURTILLOTT, LAW CLERK  
TIM M. O'BRIEN, CLERK OF THE COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY CLERK  
RAY WATERS, ADMINISTRATIVE MANAGER

NOT PRESENT:

HONORABLE JULIE A. ROBINSON, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
BARRY R. GRISSOM, U.S. ATTORNEY  
ALAN E. STREIT, CHAIR, KANSAS BENCH-BAR COMMITTEE  
MICHAEL K. SECK, ESQ.  
JEFFREY D. MORRIS, ESQ.

1. APPROVAL OF MINUTES

Dan Crabtree moved and Chief Judge Nugent seconded the motion to approve the October 7, 2011, minutes. The motion carried unanimously.

2. UPDATE ON RULE 1 WORKING GROUPS

a. Group 1 - Initial Scheduling and Case Management

Casey Tourtillot provided the following status report: Group #1 was asked to find ways to improve overall civil case management in the District of Kansas, from the filing of the complaint (or removal) through the lawyers' pre-discovery planning meeting, the

court's scheduling order, and the final pretrial conference. The group has met by telephone on three occasions, each time for about 90 minutes. Although the group agreed that there's no "one size fits all" approach to cases, the group has discussed the following eight questions:

(1) Like a few other federal courts recently have done, should we categorize (or track) cases in some manner, e.g., a 4-6 month discovery track for employment cases, a 10-12 month discovery track for complex business litigation, etc.?

(2) Should the parties be required to consider some form of "Susman Agreements" at the outset and, if so, what form should they take?

(3) Is it preferable to have one judge handle a case from beginning to end? If so, should we try to increase magistrate judge consents, and how should that be accomplished?

(4) What should we do to eliminate (or at least dramatically curtail) the ubiquitous "drive by" Rule 26(f) planning conference between counsel? Specifically, what can we do to ensure that discovery in every case is planned and conducted in a way that's not unduly burdensome and so it's truly proportionate to the amount in controversy, consistent with the clear mandate of Rule 26(b)(2)(c)?

(5) In a related vein, what should we do to make Rule 16(b) scheduling conferences with the court more than just a perfunctory exercise? For example, realizing that the recently adopted district-wide draw system might need to be revisited, should all (or most) scheduling conferences be conducted in person, to improve the quality of the discussion? And should we require Rule 26(a)(1) initial disclosures to be served before the scheduling conference, so everyone really has a clear idea of what

“proportionate” means in that particular case?

(6) Should we adopt a rule or practice similar to W.D. Mo. requiring (or at least strongly encouraging) counsel to schedule an informal conference with the assigned judge before discovery-related motions are filed? Should the same apply to dispositive motion practice?

(7) Should scheduling orders routinely allow more than the existing one-month gap between the target date for deciding dispositive motions and trial?

(8) Should we continue our practice of conducting the intensive (and expensive) final pretrial conference before dispositive motions are filed? That is, is there a better way to make sure the claims and issues in the case are “set” for purposes of dispositive motion briefing?

While Group #1 has developed tentative recommendations on some of the questions, they will continue to discuss and evaluate options.

b. Group 2 - Non-ESI Discovery

Michael Shultz provided the following status report: Working Group 2 has had two productive phone conferences where we focused largely on identifying some regularly-occurring issues in discovery and brainstorming some possible solutions. The ideas proposed that received the most discussion were:

- (1) pre-motion to compel conferences similar to the Western District of Missouri;
- (2) drafting a form protective order for use in such case along with proposed revision to protective order guidelines;
- (3) attempting to change litigation culture, possible through client costs-focused CLE;

- (4) creating a local rule for simplifying submission of supplemental authorities;
- (5) drafting a form privilege log; and
- (6) considering whether some cases can be "fast-tracked" to trial.

We have another conference call scheduled for Friday, May 4, 2012, to attempt to crystallize some of these ideas and proposals.

c. Group 3 - ESI and Preservation

Angel Mitchell provided the following report: Judge Humphreys is chairing the "Rule 1" Working Group No. 3, which is tasked with examining the Court's ESI Rules, Guidelines, and practices. In addition to Judge Humphreys, the committee also includes Judge Waxse, Angel Mitchell, George Hanson, and Mike Jones. Following are the main topics that have been discussed by the committee:

- (1) D.Kan. ESI Guidelines currently being revised and committee will provide comment;
- (2) The extent to which ESI Guidelines could or should be elevated to Local Rules - probably not, but need to get practitioners more focused on the guidelines at the outset, which may take more judicial insistence;
- (3) Need for cooperation among counsel;
- (4) Mechanisms for revising ESI post-Rule 26(f) conferences;
- (5) Federal Circuit Model Order on ESI for patent cases - may have utility but will not work for all cases;
- (6) No "one size fits all" for handling ESI;
- (7) Disconnect between ESI capability and counsel knowledge;
- (8) Need for ongoing judicial management in appropriate cases due



difficulties in resolving ESI disputes - e.g., proportionality is subjective assessment;

(9) Options for preemptively addressing ESI issues early, such as (1) focusing on issues actually in dispute, (2) front-loading preliminary ESI discovery such as early corporate rep disposition, informal ESI client liaisons.

The Group 3 main tasks and goals at this point are to: (1) refine the D.Kan. ESI guidelines, (2) refine case management orders and forms to properly focus attention

d. Group 4 - Dispositive Motions

Since a representative from Group 4 was not present to provide an oral report, Judge Marten referred the Committee to Group 4's April 18, 2012 written report.

e. Group 5- Trial Scheduling

Mr. Crabtree provided the following status report: Dan Crabtree reported for the Working Group that is reviewing trial scheduling and trial filings made after the pretrial conference and before the first day of trial. He reported that the members of the group had engaged in a fulsome discussion about the what and when of preparing a typical civil case for trial. He advised that the group, in general, thought most (but not all) of the D. Kan. trial filings made sense and existed for good reason. The group has resolved not to break a system that doesn't need fixing. The group raised questions, however, whether the Court could dispense of some tasks -- and thus reduce the cost of trying a civil case. In particular, the group's members wondered whether it was necessary for parties to write synopses of witness testimony as part of the final exhibit and witness list.

In contrast, the members of this Working Group raised several questions about when we do things. Principally, they noted the following: (1) It would promote greater

efficiency for parties if Court would lengthen the target date for issuing its ruling on summary judgment orders, e.g., from the current target of 30 days before trial to 60 days before trial. This would enable parties to know -- before they started preparing their trial filings -- whether a case was going to trial and if so, which claims and defenses would be at issue in the trial (2) If the Court were to adjust the schedule for issuing summary judgment orders, it would be helpful for the trial filings to conclude seven to 10 days before the trial starts. This would leave that last week before trial 'quiet' and thus give trial counsel greater opportunity to prepare their courtroom presentations. (3) Several members of the group believe that Daubert motions and rulings should come a little earlier in the process than they do currently.

Based on feedback received during the Bench/Bar Committee meeting, this group will continue to explore alternatives and seek to refine its ideas so that it can present one coherent set of proposals to the committee.

f. Group 6 - Professionalism and Sanctions

Teresa James provided the following: Judge Nugent, Tim O'Brien and Teresa James were present at the meeting and reported on the work to date of Group 6 (Professionalism and Sanctions). Briefly summarized, with regard to Professionalism, Group 6 strongly recommended that the federal courts and the bankruptcy court in Kansas adopt the Pillars of Professionalism, verbatim, and continue to encourage and promote cooperation among counsel (for example, as discussed in Judge Waxse's recent article on this topic). With regard to sanctions, the Group feels that the current Rules are adequate and that judges should be encouraged to enforce them, when appropriate, and tailored to address the particular situation. The Group noted that

sanctions should only be awarded as a last resort and that the "threat" of sanctions may actually be greater than the reality of imposing sanctions. As Judge Nugent noted, the judge's demeanor may, perhaps, affect or influence attorney conduct. The Group will continue its work on these topics and issues.

3. RULE 7.2 ORAL ARGUMENTS ON MOTIONS

Judge Marten reported that the court had approved removing the first line of Rule 7.2 Oral Arguments on Motions, "The court ordinarily will resolve motions on the parties' written briefs or memoranda," to now read, "The court may set any motion for oral argument or hearing at the request of a party or on its own initiative."

4. COMMUNICATING WITH JURORS

Judge Marten reported that some of the judges routinely permit lawyers to speak to jurors following a trial. His only limitation is that a lawyer cannot ask jurors about other juror's thoughts or group decision. Judge Marten noted that upon request, most of the judges will permit the opportunity for lawyers to visit with jurors.

5. LIFTING SEAL

Ingrid Campbell reported that the judges had agreed to adopt Judge Crow's procedure for unsealing documents or cases in criminal cases (see attachment 5). Following some expression of concern that documents would unknowingly be unsealed, Ms. Campbell reinforced her belief that all counsel will be provided with a list of sealed documents at the time of sentencing, that each document would be addressed, and that no pleading would be scheduled to be unsealed without the consent of counsel.

6. REDUCTION OF REGISTRATION FEE

Judge Marten reported to the Committee that the court had approved the

reduction of the annual attorney registration fee from \$50 to \$25, as a result of the completion of the projects undertaken during 2011 for the court's 150<sup>th</sup> celebration.

7. FINANCIAL UPDATE/REQUESTS

Ray Waters reported that annual expenses are in line with the budgeted amounts, with the exception of the Court History Project. To date, \$129,637 had been expended on the Court History Project, \$14,367 over of the budgeted amount of \$115,000. Cyd Gilman moved and the Dan Crabtree seconded the motion to increase the Court History budget by an additional \$20,000. The motion carried unanimously.

Mr. Waters went on to explain the court's desire to install in the Kansas City Courthouse a video box with connection to CCA for use by the criminal bar, at an outside cost of approximately \$6,000. Tim O'Brien added that the intent is to pilot the project in Kansas City and then determine its feasibility for the Topeka and Wichita courthouses, although the Wichita location may be more problematic as a result of prisoners being spread out there. Ms. Gilman moved and Ms. James seconded the motion to approve \$6,000 on the expenditure of a video box installation in the Kansas City Courthouse.

8. ABRAHAM LINCOLN EXHIBIT

Judge Marten passed along information regarding an Abraham Lincoln Exhibit opening in some federal courthouses. Following a brief discussion, Ms. Gilman moved and John Johnson seconded the motion to decline to bring the Abraham Lincoln Exhibit to Kansas. The motion carried unanimously.

9. BENCH-BAR COMMITTEE OVERVIEW

Judge Marten posed to the Committee whether there are things in need of review

or if the court should be doing more to educate the bar and the public about what goes on in federal court. Mr. Johnson said he thought more could be done to educate the bar. Melissa Moodie suggested a judges' road show to visit groups such as the rotary. Ms. Gilman proposed sending out an email to the federal bar suggesting that they contact Bench-Bar Committee members with topics of interest. Ms. Tourtillott mentioned the possibility of half-day CLEs which include the federal judges.

10. NEXT MEETING

Judge Marten stated that the Rule 1 Working Groups will present their final reports at the next Bench-Bar Committee meeting in preparation for the fall judges' meeting at Circle S. Judge Marten set the next meeting for the evening of Thursday, September 20 and Friday, September 21, 2012, at a location to be determined.

The meeting, having convened at 9:00 a.m., adjourned at 1:30 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, OCTOBER 7, 2011, 8:30 a.m. DODGE CITY, KANSAS

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE JAMES P. O'HARA, JUDGE  
BARRY GRISSOM, UNITED STATES ATTORNEY  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
GAYE TIBBETS, ESQ.  
AARON KITE, ESQ.  
JEFF MORRIS, ESQ.  
JOHN JOHNSON, ESQ.  
ANGEL MITCHELL, ESQ.  
DAN CRABTREE, ESQ.  
TONY ATTERBURY, ESQ.  
ALAN STREIT, CHAIR KANSAS BENCH-BAR  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
LEIGH KINZER, OPERATIONS ANALYST  
JEFF BREON, FINANCE MANAGER

BY TELEPHONE:

HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE

NOT PRESENT:

SUSAN BERSON, ESQ.  
MICHAEL SECK, ESQ.

1. APPROVAL OF MINUTES

Judge Marten moved and Magistrate Judge O'Hara seconded the motion to approve the December 10, 2010 minutes. The motion carried unanimously.

2. CREATION OF RULE 1 TASK FORCES

Judge Marten stated that he wants to set up a series of task forces to review

and recommend what Rule 1 improvements can be made. Judge Marten envisions that the task forces will be chaired by Bench-Bar Committee members who will solicit 4-5 of their colleagues to participate in the review. Judge Marten asked the members to give the topics he mentioned some thought and stated that he will be individually contacting committee members to determine which topic they are interested in reviewing.

### 3. LOCAL RULES

#### a. Modification of D.Kan.Rule 7.2: *Oral Arguments on Motions*

Judge O'Hara provided an overview noting that the Bench-Bar Committee had previously agreed to recommend to the judges that D.Kan.Rule 7.2 be modified and that the matter is slated to go before the court for their consideration at the October 2011 judges' meeting. Judge O'Hara reported that there had been some push-back from previous discussions with the judges. However, Committee members reiterated the value of clients having their day in court, providing young lawyers the opportunity to appear in court, and giving those lawyers who are more skilled at oral argument then writing an opportunity to better frame the issues.

#### b. Draft Rule Regarding Lawyer-Juror Communications

Judge O'Hara stated that while a revision of D.Kan.Rule 47.1, *Communication With Jurors After Trial*, had not been drafted he thinks the current rule may be satisfactory as it is and that the issue of lawyers meeting with jurors after a trial may be a matter of educating the judges. Cyd Gilman stated that she thinks the "no one [. . . is permitted to examine or interview any juror . . .]" in the first line of the rule is difficult to overcome. Gaye Tibbets observed that the rule as read to the jury could confuse jurors in that it says that the lawyers cannot talk to them but goes on to indicate "it is okay."

Judge O'Hara stated that he would like to put the topic before the judges to determine their individual practices. Judge Marten directed the topic be put on the next judges' meeting agenda for their feedback.

c. Proposed Elimination of SO 88-8; Discipline Reinstatement Fee

Tim O'Brien provided a summary of some of the problems of D.Kan.Rule 83.6.8, *Reinstatement After Discipline* and said that he would draft a proposed revision for review at the next Bench-Bar Committee meeting.

4. PRESS USING ATTORNEY WORKROOMS

Mr. O'Brien suggested that the press be permitted to use the attorney workrooms in order to allow for easier communication from the courthouses to their offices. Several members of the Committee expressed their concerns with mixing the press and lawyers in the same room. Following discussion it was concluded that the press should not be permitted to use the attorney workrooms and that if necessary, other accommodations for the press may be more appropriate.

5. BRYAN GARNER WORKSHOP DATES

Judge Marten noted the overwhelmingly positive response by the bar to the Bryan Garner workshops as well as the upcoming workshop locations and dates:

November 2: Advanced Judicial Writing - Topeka Ramada Inn  
November 3: Advanced Legal Writing & Editing - KCK Hilton  
November 4: Advanced Legal Writing & Editing - Wichita Hyatt

6. IS THE COURT'S ADR PROGRAM WORKING?

Judge O'Hara posed the question of whether the court's ADR program is working. Following discussion, it was concluded that the court's ADR Program is working just fine and that no adjustments are necessary at this time.



7. ADDING A LAW CLERK POSITION TO THE COMMITTEE?

Judge Marten moved and Judge O'Hara seconded the motion to recommend to the court that a law clerk position be added to the Bench-Bar Committee and to fill that position with Judge Murguia's law clerk Casey Tourillott. The motion carried unanimously.

8. BAR FUND UPDATE AND FY 2012 BUDGET PROPOSAL

Jeff Breon provided an overview of expenditures for FY 2011. He then presented the proposed budget for FY 2012 including a proposal to reduce the annual attorney renewal fee from \$50 to \$25. John Johnson moved and Gay Tibbetts seconded the motion to approve the FY 2012 bar fund budget as proposed. The motion carried unanimously.

9. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Following discussion, Mr. Johnson moved and Aaron Kite seconded the motion to recommend to the court the appointment of Melissa Moodie from Hutchinson to the Committee. Ms. Tibbets moved and Judge O'Hara seconded the motion to recommend to the court the appointment of Teresa James from Overland Park to the Committee. Judge O'Hara moved and Mr. Johnson seconded the motion to recommend to the court the appointment of Wichita's Michael Schultz to the Committee. The motions carried unanimously.

10. OUTGOING MEMBERS

Judge Marten presented certificates and court pictures to outgoing members Mr. Kite, Ms. Tibbets, Susan Berson (not present), and Toby Crouse (not present) with the thanks of the court and the Committee.

11. NEXT MEETING

Judge Marten set the next Bench-Bar Committee meeting for April 19 & 20, 2012 at a location to be determined.

12. LIMITED SCOPE REPRESENTATION AND MISCELLANEOUS MATTERS

Mr. O'Brien explained what he knew of the limited scope representation issue referred to the Committee by the court's Pro Se Task Force. Judge O'Hara stated that he would like to know more. Chief Judge Nugent added that he would like an opportunity to consider the issues and present it to the Bankruptcy's Bench-Bar Committee. Mr. Kite agreed to serve as a resource having been involved with a state court committee on the subject. Judge O'Hara suggested waiting to proceed until the state acts upon this matter first.

Judge Marten directed that the Pro Se Task Force be expanded to include Mr. Kite on this issue. Judge Marten also directed the Task Force to join with the Bankruptcy Bench-Bar Committee to evaluate the issues and submit a report for consideration at the next Bench-Bar Committee meeting.

Mr. O'Brien provided brief updates on the court history book and the Tenth Circuit visit in November.

The meeting, having convened at 8:30 a.m., adjourned at 12:20 p.m. for lunch.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, DECEMBER 10, 2010, 9:00 a.m.          LAWRENCE, KANSAS

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE JAMES P. O'HARA, JUDGE  
BARRY R. GRISSOM, UNITED STATES ATTORNEY  
GAYE TIBBETS, ESQ.  
TERRY CAMPBELL, ESQ.  
CHRIS JOSEPH, ESQ.  
AARON KITE, ESQ  
JEFF MORRIS, ESQ.  
JOHN JOHNSON, ESQ.  
MICHAEL SECK, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
LEIGH KINZER, OPERATIONS ANALYST

GUESTS:

HONORABLE LEE H. ROSENTHAL, JUDGE, SOUTHERN DISTRICT OF TEXAS  
HONORABLE DAVID J. WAXSE, JUDGE  
STAN DAVIS, ESQ.

NOT PRESENT:

HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
TOBY CROUSE, ESQ.  
JACQUELYN ROKUSEK, ESQ.  
SUSAN BERSON, ESQ.

1.    APPROVAL OF MINUTES

John Johnson moved and Magistrate Judge O'Hara seconded the motion to approve the June 25, 2010, minutes. The motion carried unanimously.

2. INTERVENE EARLY AND OFTEN?

Judge Marten introduced and welcomed Judge Lee Rosenthal and Stan Davis.

A presentation and discussion ensued (see DVD).

3. FOLLOW-UP ON THE NUMBER OF MOTIONS SET FOR ORAL ARGUMENT

Judge O'Hara moved and Gaye Tibbets seconded the motion to recommend to the court that the first sentence of D.Kan.Rule 7.2, *Oral Arguments on Motions*, be deleted. The motion carried unanimously.

4. FOLLOW-UP ON LAWYER-JUROR COMMUNICATIONS

Speaking on behalf of the subcommittee<sup>1</sup>, Chris Joseph recommended adoption of the District of Utah's Rule 47-2 *Communication with Jurors* (see handout) or some similar version to supersede D.Kan.Rule 47.1 *Communication with Jurors After Trial*. The subcommittee also requested that the judges consider facilitating communication between the lawyers and jurors.

Judge O'Hara noted that while he is uncertain about the District of Utah's rule he thinks D.Kan.Rule 47.1 could be revised to be more open to juror/lawyer communication. Judge Marten requested that Judge O'Hara draft a proposed rule for further consideration.

5. BRYAN GARNER WORKSHOP

Judge Marten revisited the proposal that the Bench-Bar Committee (the Committee) use bar funds to sponsor Bryan Garner workshops in Wichita, Topeka and Kansas City for the federal bar. The Committee agreed that Judge Marten should

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<sup>1</sup>The subcommittee is comprised of Chris Joseph, Terry Campbell, Cyd Gilman and Toby Crouse.

move forward and look into Mr. Garner's availability.

6. EQUIPPING VISITING JUDGES' CHAMBERS

Discussion of this topic was postponed to a later date.

7. PRESS USING THE ATTORNEY WORKROOMS

Discussion of this topic was postponed to a later date.

8. DRAFT BENCH-BAR FUND AUDIT

Mr. O'Brien presented the Bench-Bar Fund Audit for informational purposes.

9. CLE IN CONJUNCTION WITH 150<sup>TH</sup> ANNIVERSARY

Mr. O'Brien withdrew this topic.

10. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Terry Campbell moved and Mike Seck seconded the motion to recommend to the court the appointment of Dan Crabtree and Angel Mitchell to the Committee. Ms. Tibbets moved and Judge O'Hara seconded the motion to recommend to the court the appointment of Tony Atterbury to the Committee. Both motions passed unanimously.

11. OUTGOING MEMBERS

Judge Marten presented certificates and court pictures to outgoing members Mr. Joseph, Mr. Campbell, and Jacquelyn Rokusek (not present) with the thanks of the court and the Committee.

The meeting, having convened at 9:00 a.m., adjourned at 2:00 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, JUNE 25, 2010, 9:00 a.m. LAWRENCE, KANSAS

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE JAMES P. O'HARA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
GAYE TIBBETS, ESQ.  
TERRY CAMPBELL, ESQ.  
KATHRYN BUSSING, ESQ.  
TOBY CROUSE, ESQ.  
CHRIS JOSEPH, ESQ.  
AARON KITE, ESQ  
JACQUELYN ROKUSEK, ESQ..  
JEFF MORRIS, ESQ.  
JOHN JOHNSON, ESQ.  
SUSAN BERSON, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY  
LEIGH KINZER, OPERATIONS ANALYST  
JEFF BREON, FINANCE MANAGER

1. APPROVAL OF MINUTES

Cyd Gilman moved and Magistrate Judge O'Hara seconded the motion to approve the December 7, 2009, minutes. The motion carried unanimously.

2. PROPOSED LOCAL RULE AMENDMENTS

a) New Rule 30.4 Deposition Notice Pursuant to Fed.R.Civ.P.30(b)(6)

Judge O'Hara presented a new proposed rule, 30.4 Deposition Notice Pursuant to Fed.R.Civ.P. 30(b)(6), drafted by Matt Miller. Toby Crouse commented that he understands Mr. Miller's perspective on this proposed rule which occurs mostly in

antitrust and ERISA cases. John Johnson said that he is not in favor of adopting the rule as it adds burden upon burden. Susan Berson agreed. Judge Marten added that he would generally prefer to cut down on the number of rules promulgated by the court. Judge O'Hara moved and Terry Campbell seconded the motion to recommend to the court that it decline to adopt Rule 30.4 as proposed. The motion carried unanimously.

b) Rule 83.5.3 Registration of Attorneys

Judge Marten explained that the chief judge can approve bar fund expenditures up to \$300 and proposed that the amount be raised to \$1,000. Judge Marten moved and Judge O'Hara seconded the motion to recommend to the court that amount for which a chief judge can approve bar fund expenditures be increased from \$300 to \$1,000. The motion passed unanimously.

c) Rule 54.1 Taxation and Payment of Costs

Tim O'Brien explained that the proposed revisions to Rule 54.1, Taxation and Payment of Costs, shifts the burden from the clerk's office to the attorney and brings it in line with how other courts handle bills of costs. Judge Marten moved and Judge O'Hara seconded the motion to recommend to the court that it adopt the revisions to Rule 54.1 as proposed, adding "factual basis" to section (a)(2)(B) and renumbering section (a)(3) as (a)(4) and (a)(4) as (a)(3). The motion passed unanimously.

3. PUTTING SOME MEANING IN RULE 1, FRCP: CIVIL JUSTICE REFORM

Judge Marten asked what each member sees as the biggest impediment to the "just, speedy and inexpensive determination of every action" in civil cases. Gaye Tibbets said she does not like the last few weeks of pretrial requirements in federal court. Chief Judge Nugent said he does not like the one-size fits all forms in

Bankruptcy Court. Aaron Kite added that cases take too long in federal court noting that a case goes to trial in state court within 8-14 months. Mr. Crouse thinks that lawyers misuse the discovery process for negotiation purposes. Mr. Johnson said that he does not see much difference between the state and federal court systems. What he does not like about either is that even though a case could go to trial in 6-12 months, the lawyers are not available for 18 months. He also said he does not like that federal court does not set a trial date up front. Mr. O'Brien stated that the magistrate judges are in the best position to ensure that the parties in a civil case are not out of control. Following further discussion, Judge Marten said he would distribute additional material prior to the next meeting.

4. NUMBER OF MOTIONS SET FOR ORAL ARGUMENT

Judge Marten posed the question of whether the court needs to increase the frequency with which oral argument on motions is permitted. Judge O'Hara commented that he is surprised by how few lawyers ask for oral argument noting that D.Kan.Rule 7.2 calls for parties to make a request. Mr. Kite added that none of his requests for oral argument have been granted. Ms. Gilman suggested that the bar include in a pleading why oral argument would be useful.

Judge Marten stated that the judges have found oral argument on motions of limited value and in order to have requests for oral argument granted, the lawyers will have to make good arguments. Jeff Morris suggested that the Bench-Bar Committee may need to educate the bar of the need to make better oral arguments so that the judges find it useful.

Judge Murguia added that the local bar is experienced and makes good



arguments, however he has found that there is nothing to be gained from holding oral argument. Ms. Berson explained that clients like to have their day in court. Chief Judge Nugent stated that he encourages oral argument because he believes there is some value in clients coming to court.

Judge Marten concluded that although he does not think the court will ever reach a consensus on this topic, he feels it is important to take the thoughts of the lawyer members back to the judges. Judge Marten then appointed a subcommittee made up of Judge O'Hara as chair, Mr. Johnson, Ms. Berson and Mr. Kite to draft any proposed rule revisions and report back by mid-September in time to be presented to the court at its fall meeting.

5. FOLLOW-UP OF DISTRICT-WIDE JUDGE DRAW IN CIVIL CASES

No one had any problems to report with the civil case district-wide judge draw.

6. BAR FUND UPDATE & FY 2011 BUDGET PROPOSAL

Jeff Breon provided a bar fund update and a FY 2011 budget proposal. Judge Murguia moved and Chris Joseph seconded the motion to recommend approval by the court of the FY 2011 bar fund budget as proposed. The motion passed unanimously.

7. PURCHASE OF COURT/BAR GIFTS

Judge Marten reported that while traveling in Ireland he had received many nice gifts from the courts he visited. He proposed that bar funds be used to purchase gifts for visiting dignitaries. There being no objection to the idea, Judge Marten said he would look into possible gift options.

8. LAWYER-JUROR COMMUNICATIONS

Mr. Joseph stated that he would like to have more contact with jurors in federal

court. Following discussion, Judge Marten established a subcommittee made up of Mr. Joseph, Mr. Campbell, Ms. Gilman and Mr. Crouse to prepare a report and recommendation to be presented at the next meeting.

9. MEETING SUNDAY EVENING & MONDAY MORNING/  
FUTURE MEETING DATES

Following a brief discussion, the Committee agreed that they prefer holding meetings on Thursday/Friday dates as opposed to Sunday/Monday dates. Judge Marten set the next meeting for the evening of December 9 and the day of December

10. Location to be announced.

The meeting, having convened at 9:00 a.m., adjourned at 1:45 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF MONDAY, December 7, 2009, 10:00 a.m. Kansas City, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
LANNY WELCH, U.S. ATTORNEY  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
GAYE TIBBETS, ESQ.  
TERRY CAMPBELL, ESQ.  
KATHRYN BUSSING, ESQ.  
TOBY CROUSE, ESQ.  
CHRIS JOSEPH, ESQ.  
AARON KITE, ESQ.  
MICHAEL SECK, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
SKYLER O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION  
LEIGH KINZER, OPERATIONS ANALYST  
CASEY TOURTILLOT, LAW CLERK TO HON. CARLOS MURGUIA  
MATT MILLER, ESQ. (GUEST)

NOT IN ATTENDANCE:

HONORABLE JAMES P. O'HARA, JUDGE  
JACQUELYN ROKUSEK, ESQ.

1. APPROVAL OF MINUTES

Cyd Gilman moved and Kathryn Bussing seconded the motion to approve the September 18, 2009, minutes. The motion carried unanimously.

2. DISTRICT-WIDE JUDGE DRAW FOR CIVIL CASES

Judge Marten reported that the court had provisionally approved of a plan to adopt a district-wide judge draw for civil cases (with the exception of prisoner cases)

pending input from the Bench-Bar Committee. Tim O'Brien explained that a district-wide civil draw would benefit the court by creating a unified district where all judges have an equal opportunity to be designated on all civil cases filed in the district. Judge Marten stated that it would also eliminate any possibility of judge shopping and decrease the amount of time that it takes for attorneys to receive rulings on dispositive motions in complex commercial litigation cases. Additionally, Judge Marten said that the presumption is that the judges would travel, not the parties.

The Committee members expressed serious concern about a district-wide draw. Gaye Tibbets reported that she solicited input from Wichita attorneys and received almost 30 negative responses summarized as follows: 1) the attorneys don't believe that Kansas City judges will travel to Wichita based upon past experience; 2) if judges will not travel to Wichita, then litigation costs will increase due to increased travel; 3) state agencies already operate on tight budgets without increased travel costs; 4) there is no perception amongst Wichita attorneys that judge shopping is a problem; 5) western Kansas attorneys are concerned about losing business to Kansas City attorneys if western Kansas clients opt to hire counsel in Kansas City for cases that otherwise would have been designated for trial in Wichita. Terry Campbell reported that he received similar negative responses from the plaintiff's bar and added that practitioners appreciate the expertise that judges acquire when their caseload focuses on particular subject matters. Mike Seck also reported similar visceral gut reactions opposing the district-wide draw and said that a major concern is the impact on lay witnesses who may now be required to travel greater distances when they do not even

want to be testifying to begin with. Aaron Kite suggested that it would be very difficult to recommend federal court to western Kansas clients if he could not guarantee that the cases would be tried in Wichita due to the high costs of travel. Mr. Seck also expressed concern about losing connection to local magistrate judges. In general, the Committee agreed that a district-wide draw presents a big public relations hurdle for the court.

Ms. Gilman asked if a district-wide civil draw would impact the criminal docket. Judge Murguia responded in the negative stating that criminal cases always have and always will take precedence over civil matters and that the judges will work with one another to see that the dockets are covered.

Judge Marten explained to the Committee that an additional reason the court must consider a district-wide draw is that our judicial resources are expected to decline significantly over the next few years with the potential loss of three senior judges and one temporary judgeship when Judge Lungstrum takes senior status. Leigh Kinzer pointed out that the number of civil cases going to trial is 1.2%.

Judge Marten asked the Committee members for their personal opinions on a district-wide draw, as opposed to the opinions of those attorneys whose views they represented. Their responses were positive: 1) it increases the likelihood of appearing before more judges; 2) it may result in more timely rulings on dispositive motions; and 3) it will solve the court's administrative obstacles.

After much discussion, the Committee agreed that the district-wide civil draw would be worth a try so long as the judges will be the ones to travel, not the litigants,

and assuming that a strong public relations campaign is undertaken to convince the bar that the district-wide approach will not negatively impact them. Judge Marten said that he plans to work with Mr. O'Brien to draft an article for publication in the Kansas Bar Journal and that he would report the Committee's feedback to the court's strategic planning committee.

3. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Judge Marten reported that the court had approved the addition of three members to the Bench Bar Committee, bringing the total number of bar members to nine. The Committee voted to recommend John Johnson (Wichita), Susan Berson (Topeka/at large) and Jeff Morris (Kansas City) to the now-expanded committee.

4. ORAL ARGUMENT FOR YOUNG LAWYERS

Mr. O'Brien reported that other federal courts are undertaking various measures to give young lawyers opportunities to appear in court more often than what has been the practice in recent years. He explained two examples: 1) setting motions for oral argument when an attorney with four or fewer years out of law school will conduct at least the lion's share of the argument; and 2) appointing attorneys to represent pro se litigants, pro bono, following the denial of summary judgment in important cases.

Judge Marten recognized that such a program is a balancing act between the benefits to young lawyers and resource constraints facing the court. He stated he will start setting motions for oral argument if an attorney with less than four years of experience makes the request. An attorney of record may also allow a new associate to argue the motion on his or her behalf under this policy. Judge Marten will get the word out to the

court and so that each judge may adopt his or her own policy on the issue. Ms. Kinzer will find out how many motions are currently set for oral argument and report back to the Committee.

5. ATTORNEY REGISTRATION FEES

Mr. O'Brien reported that although there was a very slight increase in the number of attorneys who failed to re-register with the District of Kansas in 2009 when the attorney registration fees were raised from \$20 to \$50, there has actually been a steady decrease in attorney registration numbers since 2004. Mr. O'Brien also shared a survey of attorney registration fees and pro hoc vice fees in all federal courts. Kansas is on the high side, but not out of the ballpark. Judge Marten explained to the committee that it is possible to revisit the fee amount at any time if it is determined that either the account balance is too high or that the amount of spending will decrease.

6. SWEARING-IN PROCEDURES FOR INDIVIDUAL ATTORNEYS

Mr. O'Brien explained the current procedure that an attorney who wishes to be admitted to the District of Kansas at a time other than the semi-annual swearing-in ceremony in Topeka, must have a sponsoring attorney accompany him or her to the clerk's office to be sworn-in by a deputy clerk. Mr. O'Brien suggested that absent any objections by the committee, that the requirement to have a sponsoring attorney be eliminated. There were no objections. Judge Marten also informed the committee that attorneys may request to be sworn-in by a judge instead of a deputy clerk.

7. OBJECTIONS TO RULE 30(B)(6)

Matt Miller explained to the committee that the current procedure to object to a

deposition notice pursuant to Rule 30(b)(6) is to move for a protective order from the court even if some or most of the notice is not objectionable. Additionally, the recipients of a 30(b)(6) deposition notice are not required to provide the identity of the witnesses that will be appearing at the deposition. Mr. Miller suggested that the District of Kansas consider a local rule that requires a written response to a 30(b)(6) deposition notice akin to a response to interrogatories or requests for production of documents. The Bench-Bar Committee agreed that it was a good idea. Judge Marten asked Casey Tourtillot to work with Mr. Miller to draft a proposed rule for the Committee's consideration.

8. DEADLINE CHANGES IN THE RULES

Judge Marten and Ms. Tourtillot explained that the new Federal Rules of Civil Procedure reply deadlines that went into effect on December 1, 2009, created a group of "stradler cases" where it is not clear if they are bound to the old rule or the new rule. Ms. Tourtillot suggested, and the Committee agreed, that the parties in these cases should either comply with the new rule (shorter reply time) or file a motion with the judge requesting additional time. Judge Marten told the Committee that it was acceptable to let other attorneys know about this procedure. Ms. Kinzer will find out if it is possible to send an email to all parties involved in the affected cases to alert them to the filing procedures.

9. MISCELLANEOUS

Judge Marten and Mr. O'Brien presented a District of Kansas mug to outgoing member Kathryn Bussing to thank her for her service to the Committee.



The meeting, having convened at 10:00 a.m., adjourned at 12:30 p.m.

Respectfully submitted,

s/ Skyler O'Hara

Skyler O'Hara

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF MONDAY, December 7, 2009, 10:00 a.m. Kansas City, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
LANNY WELCH, U.S. ATTORNEY  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
GAYE TIBBETS, ESQ.  
TERRY CAMPBELL, ESQ.  
KATHRYN BUSSING, ESQ.  
TOBY CROUSE, ESQ.  
CHRIS JOSEPH, ESQ.  
AARON KITE, ESQ.  
MICHAEL SECK, ESQ.  
TIMOTHY M. O'BRIEN, CLERK OF COURT  
SKYLER O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION  
LEIGH KINZER, OPERATIONS ANALYST  
CASEY TOURTILLOT, LAW CLERK TO HON. CARLOS MURGUIA  
MATT MILLER, ESQ. (GUEST)

NOT IN ATTENDANCE:

HONORABLE JAMES P. O'HARA, JUDGE  
JACQUELYN ROKUSEK, ESQ.

1. APPROVAL OF MINUTES

Cyd Gilman moved and Kathryn Bussing seconded the motion to approve the September 18, 2009, minutes. The motion carried unanimously.

2. DISTRICT-WIDE JUDGE DRAW FOR CIVIL CASES

Judge Marten reported that the court had provisionally approved of a plan to adopt a district-wide judge draw for civil cases (with the exception of prisoner cases)

pending input from the Bench-Bar Committee. Tim O'Brien explained that a district-wide civil draw would benefit the court by creating a unified district where all judges have an equal opportunity to be designated on all civil cases filed in the district. Judge Marten stated that it would also eliminate any possibility of judge shopping and decrease the amount of time that it takes for attorneys to receive rulings on dispositive motions in complex commercial litigation cases. Additionally, Judge Marten said that the presumption is that the judges would travel, not the parties.

The Committee members expressed serious concern about a district-wide draw. Gaye Tibbets reported that she solicited input from Wichita attorneys and received almost 30 negative responses summarized as follows: 1) the attorneys don't believe that Kansas City judges will travel to Wichita based upon past experience; 2) if judges will not travel to Wichita, then litigation costs will increase due to increased travel; 3) state agencies already operate on tight budgets without increased travel costs; 4) there is no perception amongst Wichita attorneys that judge shopping is a problem; 5) western Kansas attorneys are concerned about losing business to Kansas City attorneys if western Kansas clients opt to hire counsel in Kansas City for cases that otherwise would have been designated for trial in Wichita. Terry Campbell reported that he received similar negative responses from the plaintiff's bar and added that practitioners appreciate the expertise that judges acquire when their caseload focuses on particular subject matters. Mike Seck also reported similar visceral gut reactions opposing the district-wide draw and said that a major concern is the impact on lay witnesses who may now be required to travel greater distances when they do not even

want to be testifying to begin with. Aaron Kite suggested that it would be very difficult to recommend federal court to western Kansas clients if he could not guarantee that the cases would be tried in Wichita due to the high costs of travel. Mr. Seck also expressed concern about losing connection to local magistrate judges. In general, the Committee agreed that a district-wide draw presents a big public relations hurdle for the court.

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Judge Marten explained to the Committee that an additional reason the court must consider a district-wide draw is that our judicial resources are expected to decline significantly over the next few years with the potential loss of three senior judges and one temporary judgeship when Judge Lungstrum takes senior status. Leigh Kinzer pointed out that the number of civil cases going to trial is 1.2%.

Judge Marten asked the Committee members for their personal opinions on a district-wide draw, as opposed to the opinions of those attorneys whose views they represented. Their responses were positive: 1) it increases the likelihood of appearing before more judges; 2) it may result in more timely rulings on dispositive motions; and 3) it will solve the court's administrative obstacles.

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and assuming that a strong public relations campaign is undertaken to convince the bar that the district-wide approach will not negatively impact them. Judge Marten said that he plans to work with Mr. O'Brien to draft an article for publication in the Kansas Bar Journal and that he would report the Committee's feedback to the court's strategic planning committee.

3. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Judge Marten reported that the court had approved the addition of three members to the Bench Bar Committee, bringing the total number of bar members to nine. The Committee voted to recommend John Johnson (Wichita), Susan Berson (Topeka/at large) and Jeff Morris (Kansas City) to the now-expanded committee.

4. ORAL ARGUMENT FOR YOUNG LAWYERS

Mr. O'Brien reported that other federal courts are undertaking various measures to give young lawyers opportunities to appear in court more often than what has been the practice in recent years. He explained two examples: 1) setting motions for oral argument when an attorney with four or fewer years out of law school will conduct at least the lion's share of the argument; and 2) appointing attorneys to represent pro se litigants, pro bono, following the denial of summary judgment in important cases.

Judge Marten recognized that such a program is a balancing act between the benefits to young lawyers and resource constraints facing the court. He stated he will start setting motions for oral argument if an attorney with less than four years of experience makes the request. An attorney of record may also allow a new associate to argue the motion on his or her behalf under this policy. Judge Marten will get the word out to the

court and so that each judge may adopt his or her own policy on the issue. Ms. Kinzer will find out how many motions are currently set for oral argument and report back to the Committee.

5. ATTORNEY REGISTRATION FEES

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Mr. O'Brien explained the current procedure that an attorney who wishes to be admitted to the District of Kansas at a time other than the semi-annual swearing-in ceremony in Topeka, must have a sponsoring attorney accompany him or her to the clerk's office to be sworn-in by a deputy clerk. Mr. O'Brien suggested that absent any objections by the committee, that the requirement to have a sponsoring attorney be eliminated. There were no objections. Judge Marten also informed the committee that attorneys may request to be sworn-in by a judge instead of a deputy clerk.

7. OBJECTIONS TO RULE 30(B)(6)

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deposition notice pursuant to Rule 30(b)(6) is to move for a protective order from the court even if some or most of the notice is not objectionable. Additionally, the recipients of a 30(b)(6) deposition notice are not required to provide the identity of the witnesses that will be appearing at the deposition. Mr. Miller suggested that the District of Kansas consider a local rule that requires a written response to a 30(b)(6) deposition notice akin to a response to interrogatories or requests for production of documents. The Bench-Bar Committee agreed that it was a good idea. Judge Marten asked Casey Tourtillot to work with Mr. Miller to draft a proposed rule for the Committee's consideration.

8. DEADLINE CHANGES IN THE RULES

Judge Marten and Ms. Tourtillot explained that the new Federal Rules of Civil Procedure reply deadlines that went into effect on December 1, 2009, created a group of "stradler cases" where it is not clear if they are bound to the old rule or the new rule. Ms. Tourtillot suggested, and the Committee agreed, that the parties in these cases should either comply with the new rule (shorter reply time) or file a motion with the judge requesting additional time. Judge Marten told the Committee that it was acceptable to let other attorneys know about this procedure. Ms. Kinzer will find out if it is possible to send an email to all parties involved in the affected cases to alert them to the filing procedures.

9. MISCELLANEOUS

Judge Marten and Mr. O'Brien presented a District of Kansas mug to outgoing member Kathryn Bussing to thank her for her service to the Committee.

The meeting, having convened at 10:00 a.m., adjourned at 12:30 p.m.

Respectfully submitted,

s/ Skyler O'Hara

Skyler O'Hara



UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 18, 2009, 9:00 A.M. Cottonwood Falls, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
LANNY D. WELCH, ACTING U.S. ATTORNEY  
TERRENCE J. CAMPBELL, ESQ.  
CHRISTOPHER M. JOSEPH, ESQ.  
KATHRYN BUSSING, ESQ.  
GAYE E. TIBBETS, ESQ.  
AARON L. KITE, ESQ.  
TOBY CROUSE, CHAIR, KANSAS BENCH-BAR COMMITTEE  
TIM M. O'BRIEN, CLERK OF THE COURT  
INGRID A. CAMPBELL, CHIEF DEPUTY CLERK  
LEIGH KINZER, OPERATIONS ANALYST  
JEFF BREON, FINANCIAL MANAGER  
CASEY TOURTILLOTT, LAW CLERK

NOT PRESENT:

HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE  
JACQUELYN E. ROKUSEK, ESQ.

1. APPROVAL OF MINUTES

Kathryn Bussing moved and Chief Judge Nugent seconded the motion to approve the April 2, 2009, minutes. The motion carried unanimously.

2. RULE 1, F.R.CIV.P

Judge Marten asked Committee members to think about ways in which the court could expedite cases and cut down on costs. He also asked the Committee to look at the processes to figure out how to remove the hoops lawyers must jump through and make federal court an easier place to practice. Judge Marten then asked the Committee what they would like to see the Committee do.

Chief Judge Nugent asked the private lawyers present what they think of deconstructing the civil process to make it easier. Terry Campbell responded that he thinks the bar would share this desire from an aspirational viewpoint but does not know how feasible it is from a pragmatic standpoint.

Chief Judge Nugent asked if there are things in federal court that can be changed. Gaye Tibbets stated that the six weeks prior to going to trial in federal court is burdensome for some things which are not necessarily useful. Ms. Bussing added that the judge really sets the tone and that she would not mind the judges denying motions for extension of time. Chris Joseph said that he would like to see more dialogue between the bar and the bench in an effort improve efficiency. Judge Marten responded that what he is hearing is that everyone wants to make the system better.

Tim O'Brien interjected that an e-mail soliciting agenda items can be sent to Committee members in advance of meetings. He also reminded everyone of the attorney-judge luncheons held twice a year at each location which provides a forum for dialogue between the bench and bar and that members of the committee can always attend, even if they are purportedly full.

Following a discussion on the length of time it takes to receive a ruling on summary judgment motions, Judge Marten stated that he is comfortable taking this matter up with his fellow judges. He also reminded the Committee that a telephone conference can be set anytime during the year if issues come up.

Cyd Gilman thanked the Bench-Bar Committee for funding her installation ceremony.

3. SELECTION OF NEW MEMBERS TO RECOMMEND TO THE COURT

Following discussion regarding the make-up of the Bench-Bar Committee (see section 6. *Make-Up of Bench-Bar Committee* below), Ms. Bussing moved and Ms. Gilman seconded the motion to recommend to the court that Terry Campbell, whose term expires on December 31, 2009, serve a second term on the Committee for a period of one year. The motion carried unanimously. The Committee tabled a recommendation for the second position which will become vacant as of January 1, 2010.

4. PROTECTING PRIVACY INTERESTS

Judge Marten brought the issues of protecting privacy interests in voir dire transcripts and personal data identifiers (see Tabs 4a & b) to the attention of the Committee. Leigh Kinzer informed the members that a new screen had recently been added to CM/ECF which contains a notice of redaction responsibility and requires filers to check off a box wherein they agree to comply with the redaction rules. Mr. Joseph suggested that an article on this topic be included in the KBA Journal. Judge Marten asked members to let him know if they have any other ideas for getting the word out about protecting privacy interests.

5. BAR FUND FINANCIAL REPORT/FY2010 BUDGET

Jeff Breon presented the Bar Fund Financial Report (see Tab 5). Judge Marten mentioned that Judges Belot and Melgren had expressed concern about the impact on the number of attorneys who become members of the federal bar due to the increased attorney registration fee. Following discussion, it was agreed that it was too soon to ascertain whether the increased attorney registration fee had impacted the number of attorneys registered with the court and that further discussion would be deferred until

the February 2010 meeting. Chief Judge Nugent moved and Ms. Gilman seconded the motion to approve the FY 2010 bar fund budget as proposed. The motion carried unanimously.

6. MAKEUP OF BENCH-BAR COMMITTEE

Mr. O'Brien proposed expanding the Bench-Bar Committee by adding three lawyer members and adjusting the terms of service (see Tab 6). Lanny Welch commented that he believes this is a good idea. Chief Judge Nugent suggested amending the rule to always have someone from a location other than one of the divisional offices on the Committee. Mr. O'Brien added that selections could be made according to the grand jury rule. A suggestion was made that Judge O'Hara could draft an amended rule should the judges decide to change the composition of the Committee.

Ms. Bussing moved and Ms. Gilman seconded the motion to increase the number of lawyer members on the Bench-Bar Committee to three with each position representing one of three geographic areas of Kansas and to stagger the terms of service so that one position per geographic areas becomes vacant annually. The motion carried unanimously.

7. HYPERLINKS IN BRIEFS

Mr. O'Brien stated that as long as no one opposes, he would like to pursue the possibility of including hyperlinks in briefs. No opposition was received.

8. COURT HISTORY COMMITTEE REPORT

Mr. O'Brien provided the Committee with a court history report stating that the portrait project in Topeka was underway and that he had determined that it was best to use bar monies to fund this project. He mentioned that the web site is on hold until early

2010, that a naturalization ceremony had been held in Dodge City the previous week, and that Professor Hoeflich was continuing to write the history of the federal court. Mr. O'Brien stated that he is hoping to invite Justice Sotomayor to one of the court's signature events and that the Tenth Circuit Historical Society was holding a "fireside chat" with Judge Brown on October 9. He concluded by noting that exhibit panels in all three courthouse locations were currently being updated and that Judge Marten would be interviewing Judge Crow in October.

9. ONLINE ATTORNEY REGISTRATION UPDATE

Leigh Kinzer explained that a contract programmer had been hired to design an online attorney registration system slated to be available to the bar by late spring/early summer in time for the 2010 annual registration period. Following discussion, the Committee recommended that users be permitted to pay their annual registration fees either by check or online.

10. PRO HAC ADMITTANCE

Mr. O'Brien explained that an attorney had recently inquired about the court's policy which does not give pro hac vice attorneys filing privileges in CM/ECF. Following discussion, the Committee declined to recommend that the court change its policy regarding pro hac admittance.

11. LOCAL RULES

Ms. Casey Tourtillott provided members with a summary of the 2010 Civil Rules Restyling Project (see Tab 11a) stating that 19 rules would be rolled out as of December 1. Judge Marten and the Committee thanked Ms. Tourtillott for the extensive work she has done to complete this project. Mr. Campbell moved and Mr. Joseph seconded the

motion to recommend to the court that the local rule modifications be adopted as proposed. The motion passed unanimously.

12. FEDERAL COURTS ADVOCATES

Ms. Jennifer Bacon, president of the Federal Courts Advocates and vice president Greg Goheen explained that Chief Judges Gaitan and SepVratil came up with the idea of creating a federal courts advocates group which is a hybrid organization including the federal bars in the Western District of Missouri and Kansas as well as the Kansas City Metropolitan Bar Association. The Federal Courts Advocates has 250 members made up almost entirely of federal court practitioners and boasts committees involving education, membership, planning and social events. Ms Bacon and Mr. Goheen further explained that the principal focus of the group is bringing the courts to the people through outreach and providing more interaction between the bar and the courts.

13. NEXT MEETING

Judge Marten stated that the next meeting would be held in early or late February, 2010.

The meeting, having convened at 9:00 a.m., adjourned at 12:40 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF THURSDAY, APRIL 2, 2009, 2:00 P.M.

Wichita, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE ERIC F. MELGREN, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
CYD GILMAN, FEDERAL PUBLIC DEFENDER  
TERRENCE J. CAMPBELL, ESQ.  
CHRISTOPHER M. JOSEPH, ESQ.  
JACQUELYN E. ROKUSEK, ESQ.  
KATHRYN BUSSING, ESQ. (via telephone)  
GAYE E. TIBBETS, ESQ.  
AARON L. KITE, ESQ.  
TIM M. O'BRIEN, CLERK OF THE COURT (via telephone)  
INGRID A. CAMPBELL, CHIEF DEPUTY CLERK  
LEIGH KINZER, OPERATIONS ANALYST  
BEN KREHBIEL, IT SUPPORT MANAGER

NOT PRESENT:

HONORABLE CARLOS MURGUIA, JUDGE  
MARIETTA PARKER, ACTING U.S. ATTORNEY  
JUSTICE B. KING, CHAIR, KANSAS BENCH-BAR COMMITTEE

1. APPROVAL OF MINUTES

Judge Marten moved and Magistrate Judge O'Hara seconded the motion to approve the November 6, 2008, minutes. The motion carried unanimously.

2. STATUS OF DISTRICT POLICY REGARDING ELECTRONIC COMMUNICATION DEVICES AND WICHITA BUILDING UPDATE

Craig Beam explained that permitting electronic communication devices in the courthouses has been an ongoing issue with the Court Security Committee and building security committees. In 2007, the Court Security Committee asked the U.S. Marshal's Office to consider allowing the public to check cell phones with court security

at the courthouse entrances. A survey conducted at all three courthouses between November 2007 through February 2008 found that of the 10,394 visitors to the Wichita courthouse, 4,330 were carrying cell phones; of the 3,709 visitors to the Topeka courthouse, 364 had cell phones; and, of the 9,070 visitors to the Kansas City courthouse, 1,142 had cells phones.

A second survey was conducted at the Wichita courthouse from May through July of 2008 which found that of roughly 8,000 visitors, approximately 3,000 were carrying cell phones. As a result of the large number of cell phones being brought to the Wichita courthouse, it was determined that it would be burdensome for the Wichita court security officers to check and hold cell phones, while the Topeka and Kansas City courthouses implemented the policy of checking the public's cell phones at the courthouse entrances.

Judge Marten expressed that he wanted to make everyone aware of the difference in policy between Wichita and the other two courthouse locations. He further stated that the court would like the policy to be consistent throughout the district and suggested that this topic be taken up at a future meeting, after committee members had an opportunity to give some thought as to what could be done.

As to the Wichita building update, Mr. Beam advised that new court security officer screening stations had been installed at the public entrances and that his office is working to obtain funding to install a fence to encompass the employee parking lot.

### 3. CJRA REPORTS

For informational purposes, Judge Marten shared the court's CJRA report explaining that the judges are required to report three year old cases to the



Administrative Office as an oversight measure instituted by Congress. Leigh Kinzer further expanded on the codes and numbers contained in the handouts and suggested that an attorney check with chambers should they ever believe a motion has been pending for an unusually long time.

4. COURT HISTORY COMMITTEE UPDATE

Jean Svaldenak provided a Court History Committee update (see Tab 4 of the agenda book) noting that Judge Melgren took over as chair in December of 2008. Judge Melgren spoke briefly to some of the issues associated with distribution of a court history book. He added that the Committee had decided that it would be more beneficial to focus on outreach in lieu of the video component and that they would turn their attention to hosting ceremonial events such as naturalization hearings in outlying areas instead of trying to overcome the difficulties involved in attempting to hold court in places like Dodge City, Ft. Scott and Salina. Judge Melgren concluded by stating that he may bring a revised budget to the Committee within the next six months or so.

Judge Marten stated that he does not think the immigration exhibit needs to be the same at all three locations. For one thing, he noted that Topeka does not have space for an immigration exhibit and may only be able to display a plaque. Cyd Gilman said that she believes the role of the court in citizenship is so important that she would like to see at least some mention at each courthouse. All agreed that it is not necessary for an immigration exhibit to be the same in all three cities and that something smaller than a full-fledged exhibit may actually be more desirable.

5. TELEPHONE INTERPRETING DEMONSTRATION

Following a demonstration of the telephone interpreting system, Ms. Gilman

shared her reservations with regularly using a telephone interpreter in lieu of an onsite interpreter. She stated that because many defendants are uneducated, they may not cope well with the technology and often need to have things repeated to them several times. Ms. Gilman further said that she feels defendants benefit from the ability to have some personal interaction with an interpreter.

Jackie Rokusek added that she thinks telephone interpreting is a great idea but likes to be able to interview a client first. Chris Joseph stated that he thought that the use of telephone interpreting may be appropriate in an emergency but not on a regular basis. The general consensus of the Committee was that there is not a great deal of benefit in making the telephone interpreting system a priority at this time.

6. PROGRESS REPORT ON COMPREHENSIVE OVERHAUL OF THE LOCAL RULES

Judge O'Hara reported on the comprehensive restyling of the local rules that he has undertaken with the assistance of Casey Tourtillott. Judge O'Hara suggested a timeline for review and comment be set. Having received no objections, Judge O'Hara set May 1, 2009, as the deadline for Committee members to submit comments regarding the local rule modifications.

7. JUDICIAL PORTRAITS

Tim O'Brien reported that he and Jean Svaldenak had looked at the approximately eleven judges' portraits in Topeka to determine whether any of the portraits are in need of restoration. Mr. O'Brien explained that if the portraits are considered court property, the government can pay for restoration. If, however, the portraits are owned by the Bench-Bar Committee, it would be necessary to use Bench-

Bar Funds to pay for any work. Mr. O'Brien added that the Bench-Bar Committee can donate the portraits to the government. Several members commented that they liked the idea of the portraits being donated to the government. Mr. O'Brien said that he would keep the Committee up to date as things develop.

8. BAR FUND AUDIT

Mr. O'Brien distributed the bar fund audit report noting that no exceptions had been found.

9. CM/ECF UPDATE

Ms. Kinzer reported that CM/ECF Version 4.0 would soon be released, provided an overview of the upcoming changes, and stated that she expected that the District of Kansas would go live sometime in late summer or early fall.

10. COURTROOM PROJECTS UPDATE

Ben Krehbiel informed the Committee that the court's Information Technology Department was in the process of updating the sound systems in the courtrooms. He added that there are also plans to update the electronic document system over the next 3-4 years and welcomes additional suggestions from the bar.

11. NEXT MEETING

Judge Marten stated that the next meeting would be held in August or September of 2009.

The meeting, having convened at 2:00 p.m., adjourned at 4:40 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF THURSDAY, November 6, 2008, 9:00 A.M. Lawrence, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
MARILYN M. TRUBEY, ASSISTANT FEDERAL PUBLIC DEFENDER  
KARI S. SCHMIDT, ESQ.  
PAUL S. MCCAUSLAND, ESQ.  
TERRENCE J. CAMPBELL, ESQ.  
CHRISTOPHER M. JOSEPH, ESQ.  
TIM O'BRIEN, CLERK OF THE COURT  
INGRID CAMPBELL, CHIEF DEPUTY CLERK

NOT PRESENT:

MARIETTA PARKER, ACTING, U.S. ATTORNEY  
J.B. KING, CHAIR, KANSAS BENCH-BAR COMMITTEE  
KATHRYN BUSSING, ESQ.  
JACQUELYN ROKUSEK, ESQ.

1. APPROVAL OF MINUTES

Kari Schmidt moved and Magistrate Judge O'Hara seconded the motion to approve the August 29, 2008, minutes. The motion carried unanimously.

2. COURT HISTORY COMMITTEE UPDATE

Judge Robinson provided the Committee with a court history update (see Tab 2 of the agenda book).

3. LOCAL RULES

a. Progress Report on Comprehensive Overhaul

Magistrate Judge O'Hara stated that there had been no substantial

change to the comprehensive review of the rules to report because the court was not meeting until the following Friday. However, Judge O'Hara stated that he anticipates that the judges will agree to an overhaul of the local rules.

b. Proposed Revisions

Judge O'Hara made the Committee aware of the proposed 2009 local rule changes (see Tab 3b of agenda book). In reference to D.Kan.Rule 83.5.5, *Withdrawal of Appearance*, Judge O'Hara expressed his concern about an attorney withdrawing from a case without consent of the client. Kari Schmidt asked whether the proposed rule change also applies to criminal cases. Judge Marten clarified that this rule would also govern criminal cases and directed that it be cross-referenced in the criminal rules. Judge O'Hara moved and Terry Campbell seconded the motion to recommend to the court that D.Kan.Rule 83.5.5 be adopted as proposed and that it be cross-referenced in the criminal section of the local rules. The motion carried unanimously.

c. Printing

Chief Judge Nugent stated that he had written a letter on behalf of the bankruptcy judges requesting continuation of the practice of providing lawyers with printed copies of the local rules of both the district and bankruptcy courts. Following discussion, the Committee agreed that it would recommend to the court that the local rules continue to be printed but at a reduced number.

4. CURRENT PROCEDURE FOR OBTAINING PERMISSION TO FILE DOCUMENTS UNDER SEAL

Paul McCausland stated that he finds burdensome the procedure for obtaining permission to file documents under seal. He asked whether the procedure could be streamlined. Judge O'Hara responded that an advantage of the current procedure is that it makes the record clean and avoids challenges. Following discussion, the Committee agreed to refer the matter to the court for its review.

5. TELEPHONE INTERPRETING

Judge Murguia explained that Kansas has just one federally certified Spanish interpreter and that the court has no means to determine whether the remaining Spanish interpreters used by the court are providing quality interpreting services to defendants in criminal cases. Judge Marten added that while he believes the interpreters currently used by the court are qualified, he recognizes that they can be stretched thin at times. Consequently, the court is exploring the possibility of equipping additional courtrooms so that it can more frequently employ the use of the Judiciary's Telephone Interpreter Program (TIP). The Administrative Office of the United States Courts established TIP to provide remote interpretation for short court proceedings such as pretrial hearings, initial appearances, and arraignments. One major benefit is that all TIP services for events requiring Spanish are provided by federally certified court interpreters.

Chris Joseph and Marilyn Trubey expressed concern that they would not be able to speak privately with a defendant prior to or after a court hearing. Following

discussion, Judge Marten suggested that a demonstration of TIP be provided at the next Committee meeting

6. PROPOSED STANDING ORDER NO. 08-1

Tim O'Brien explained that Standing Order No. 08-1 (Tab 7) had been created to address conflicts involving spouses and children of judges. The Committee recommended section (d) be modified to read, "a person with an ownership interest in a firm" in place of "an equity partner in a law firm." Mr. O'Brien stated that he would make that recommendation to the judges and suggest the standing order be rolled into a local rule.

7. DATES, TIMES, AND LOCATIONS FOR FUTURE MEETINGS

Judge Marten stated that he would notify the Committee of the next meeting date. The meeting, having convened at 9:00 a.m., adjourned at 11:45 a.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, August 29, 2008, 9:30 A.M.

Topeka, Kansas

IN ATTENDANCE:

HONORABLE J. THOMAS MARTEN, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
DAVID J. PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC F. MELGREN, U.S. ATTORNEY  
J.B. KING, CHAIR, KANSAS BENCH-BAR COMMITTEE  
KARI S. SCHMIDT, ESQ.  
PAUL S. MCCAUSLAND, ESQ.  
TERRENCE J. CAMPBELL, ESQ.  
CHRISTOPHER M. JOSEPH, ESQ.  
TIM O'BRIEN, CLERK OF THE COURT  
INGRID CAMPBELL, CHIEF DEPUTY CLERK  
SKYLER O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION  
JEFF BREON, FINANCIAL MANAGER  
KIM LEININGER, DIVISION MANAGER FOR KANSAS CITY  
NEELY FEDDE, PUBLIC OUTREACH COORDINATOR  
JEAN SVADLENAK, COURT HISTORY CONSULTANT

NOT PRESENT:

KATHRYN BUSSING, ESQ.  
JACQUELYN ROKUSEK, ESQ.

1. APPROVAL OF MINUTES

Kari Schmidt moved and Magistrate Judge O'Hara seconded the motion to approve the December 20, 2007, minutes. The motion carried unanimously.

2. COURT HISTORY COMMITTEE UPDATE

Judge Marten welcomed Tim O'Brien and introduced Neely Fedde to the Bench-Bar Committee. Jean Svaldenak provided an update of the court history project



including the following highlights:

- the Court History Committee will oversee eight advisory groups (see handout);
- the Kansas Bar Foundation (KBF) has agreed to provide fund-raising help through their 501(c)(3) status;
- the Kansas Historical Society is archiving Judge Rogers' papers;
- the showing of an excerpt of Judge Lungstrum's interview with Judge Rogers

Tim O'Brien stated that the number of attorney registrants had decreased by 600-700 under the increased \$50 fee structure. Ms. Schmidt inquired as to the number of actively practicing attorneys in federal court. *Note that following the meeting it was determined that of the 6,000 - 6,500 attorneys registered, approximately 3,000 - 3,500 are actively practicing in federal court.*

Chief Judge Nugent asked if there will be funding sources for the court history project other than attorney registration fees. Mr. O'Brien replied that there would be other funding sources. Mr. O'Brien added that he and Magistrate Judge Waxse had made a presentation to the Kansas Bar Association and that they would be returning with a request for funds. Chief Judge Nugent asked if it was expected that the history project would decrease the balance of the bar fund. Mr. O'Brien responded that it would. Judge Marten added that the court has been advised by auditors to keep a "reasonable" balance in the bar fund and that decreasing the amount of money in the fund would be a positive step toward maintaining a reasonable balance.

Judge Marten explained that new draft guidelines proposed by the Administrative Office of the U.S. Court's would not permit the use of bar funds to print local rules. However, Judge Marten said he believes that the draft guidelines do permit

the use of bar funds for court history which he feels is a worthwhile project.

Chris Joseph inquired whether he, as a member of the Bench-Bar Committee, can raise funds for the court history project. Skyler O'Hara stated that based on her previous research, she did not believe that it would be ethically permissible for someone associated with a court committee, such as Mr. Joseph, to raise funds. Judge Marten said that he would continue to explore the fund-raising issue.

3. BAR FUND FINANCIAL REPORT

Mr. O'Brien and Jeff Breon presented the Bar Fund Financial Report (see Tab 3 of the agenda book) and explained that providing Wi-Fi in the courtrooms will require an additional \$10,000 over the \$60,000 previously approved by the Committee. Magistrate Judge O'Hara moved and Chief Judge Nugent seconded the motion to increase the courtroom Wi-Fi allotment by an additional \$10,000. Terry Campbell moved and Kari Schmidt seconded the motion to approve the FY 2009 Bar Fund as submitted. Both motions carried unanimously.

4. LOCAL RULES

Judge O'Hara explained that in working with Casey Tourtillott on some revisions to the local rules, she had suggested making a much more comprehensive revision of the rules including getting rid of the antiquated language and making them more concise. Judge O'Hara asked the Committee whether they would prefer that the rules be updated gradually or completely revamped at once. Judge Murguia said that he is in favor of the rules being completely revamped at one time so that one package can be presented to the Committee and the court. Judge Marten added that he prefers to

let Ms. Tourtillott loose to begin working on the rules as a first step. Judge O'Hara stated that while the rules could not be completely revamped in time for the March 2009 publication, he believes a draft revision could be completed by February of 2009. Following discussion, the Committee agreed to recommend to the court that Ms. Tourtillot have first shot at revamping the rules, create a small task force made up of Mr. McCausland, Mr. Campbell and a bankruptcy representative to review the draft rules, and submit to the Bench-Bar Committee for additional review in advance of the next meeting in February.

Given the recommendation to eventually completely revamp the rules, Judge Marten wondered whether it was necessary to publish a 2009 rules book. Chief Judge Nugent stated that he prefers to publish the rules because the bankruptcy practitioners use the books frequently. Following additional discussion, it was the consensus of the Committee to recommend to the court that in lieu of printing a 2009 rules book, that any rules already drafted for revision in the 2009 publication be made available through a supplemental pocket part distributed to the bar for inclusion in their 2008 rules book.

#### 5. REIMBURSEMENT OF COURT-APPOINTED ATTORNEYS IN CIVIL CASES

Mr. McCausland presented his research and proposals regarding reimbursement of court-appointed attorneys in civil cases (see Tab 5 of the agenda book). In sum, he recommended that D.Kan.Rule 83.5.3(f) be amended to include a preauthorized amount for investigation costs in the \$300 to \$500 range; in most cases, attorneys should be asked to accept appointments on a provisional basis; appointments should be made by an e-mail solicitation to the attorneys on the local appointment list; where

an attorney accepts a case on a contingent fee basis, the attorney or client should bear the burden of litigation expenses and court costs; if an attorney accepts a case on a pro bono basis, the attorney may seek reimbursement of litigation costs from the bar registration fund; attorneys on the list should accept at least one appointment each year to assist a pro se plaintiff in mediation; and, appointment of an attorney to act as trial or standby counsel should be handled on a case by case basis.

Chris Joseph asked whether the e-mail solicitations should go out to all lawyers rather than just those on the panel. Mr. O'Brien wondered whether an assessment could be made of who practices in the needed areas and contact made with those lawyers. Judge O'Hara stated that he believes the fundamental problem is getting the word out to lawyers that they have an ethical responsibility to participate in pro bono cases and that it is a good training opportunity.

Following further discussion, Judge Marten stated that he is in favor of Mr. McCausland's first recommendation. Judge O'Hara said that he would address the local rule impact. Ms. Schmidt moved and Judge O'Hara seconded the motion to recommend to the judges that D.Kan.Rule 83.5.3(f) be amended to include a preauthorized amount for investigation costs in the \$300 to \$500 range. The motion passed unanimously.

Judge Marten noted that the real issue is how to get the case to the lawyers and said that he would recommend to the court that they do away with the practice of a judge calling an attorney directly and try putting together a pro bono list of attorneys who are contacted by e-mail. He added that it may be worth exploring what other

courts do. Mr. O'Brien stated that he will look to the AO for ideas and Illinois Northern for mediation options.

6. SELECTION OF REPLACEMENT MEMBERS

Judge Marten noted that Ms. Schmidt and Mr. McCausland would complete their three-year term of Bench-Bar Committee service at the end of December and asked for recommendations of possible replacement members. Judge Murguia suggested keeping in mind that the court strives for diversity in terms of the kind of practice, geographic location, gender, race, etc. Following discussion, the Committee agreed to recommend to the court the selection of Wichita lawyer Gaye Tibbetts and Dodge City lawyer Aaron Kite. Judge Marten thanked Ms. Schmidt and Mr. McCausland for their service on the Committee.

7. DATE AND LOCATION OF NEXT MEETING

Judge Marten stated that with all that is going on he would like for the Committee to meet twice a year, possibly in February and August. He added that he would get back with the Committee in the near future about possible meeting dates in February of 2009.

8. NEW BUSINESS

Ms. Schmidt suggested offering free continuing legal education (CLE) to members of the federal bar. Mr. O'Brien said he would be willing to provide ERISA training. Judge O'Hara suggested offering the successful pro se program presented by the Earl O'Conner Inns of Court. Judge Murguia proposed that one CLE be offered in each location. Judge Marten asked Ms. Schmidt and Mr. O'Brien to put their heads

together to come up with a proposal. Ms. Schmidt moved and Mr. McCausland seconded the motion that she and Mr. O'Brien establish a proposed plan for offering free continuing legal education to members of the federal bar.

Judge Marten thanked David Phillips, who is retiring in October, for his many contributions and years of service on the Bench-Bar Committee.

The meeting, having convened at 9:30 a.m., adjourned at 1:30 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF THURSDAY, December 20, 2007, 10:00 a.m. Topeka, Kansas

IN ATTENDANCE:

HONORABLE MONTI L. BELOT, JUDGE, CHAIR  
HONORABLE KATHRYN H. VRATIL, JUDGE  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC MELGREN, U.S. ATTORNEY  
JOHN JOHNSON, ESQ.  
KARI S. SCHMIDT, ESQ.  
PAUL S. MCCAUSLAND, ESQ.  
LARRY G. MICHEL, ESQ.  
CHRISTOPHER M. JOSEPH, ESQ.  
INGRID A. CAMPBELL, ACTING CLERK OF COURT  
KIM LEININGER, ACTING CHIEF DEPUTY CLERK  
SKYLER O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION  
JEAN SVADLENAK, COURT HISTORY CONSULTANT

NOT IN ATTENDANCE:

HONORABLE JOHN W. LUNGSTRUM, CHIEF JUDGE  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
JOAN K. ARCHER, ESQ.  
JACQUELINE ROKUSEK, ESQ.  
TERRENCE (TERRY) CAMPBELL, ESQ.  
KATHRYN BUSSING, ESQ.

1. WELCOME

Judge Monti Belot welcomed everyone to the special meeting of the Bench-Bar Committee to discuss the Court History Committee's proposed projects. Judge Belot introduced new member Christopher (Chris) Joseph and explained that new member Jacquelyn (Jackie) Rokusek was unable to attend due to a conflicting court hearing in

Missouri.

2. APPROVAL OF MINUTES

Kari Schmidt moved and Judge O'Hara seconded the motion to approve the August 24, 2007 minutes. The motion carried unanimously.

3. REPORT OF THE OCTOBER 2007 JUDGES' MEETING

Skyler O'Hara provided a report of the 2007 Judges' Meeting Topics that relate to Bench-Bar activities. After giving everyone an opportunity to review the report, Judge Belot asked if there were any comments. No comments were offered.

4. INPUT FROM COMMITTEE MEMBERS UNABLE TO ATTEND

Judge Belot explained that although Judge Carlos Murguia and Chief Bankruptcy Judge Robert Nugent were unable to attend the meeting, both judges had sent emails with their views regarding the Court History Project. Judge Belot read both emails to the group and requested that they be made part of the record.

5. PROPOSED CONSOLIDATION OF THE BENCH-BAR AND COURT HISTORY COMMITTEES

Judge Belot asked Judge J. Thomas Marten to discuss the proposed consolidation of the Bench-Bar and Court History Committees. Judge Marten began by giving the group a synopsis of the Court History Committee's goals to preserve court history and participate in public outreach and educational activities leading up to the Court's 150<sup>th</sup> Anniversary in 2011. Judge Marten went on to explain that the Court History Committee's vision would require a high level of Bench-Bar funding and participation from members of the bar. In light of those two things, Judge Marten suggested that the Court History Committee could be consolidated into the Bench-Bar



Committee to streamline the two committees' functions to the extent that they overlap with one another.

After a discussion of the pros and cons of consolidation, the Committee declined to consolidate the two committees, preferring instead that the Court History Committee work closely with the Bench-Bar Committee.

#### 6. PROPOSED COURT HISTORY PROJECTS

Judge Marten thanked Jean Svadlenak, Ingrid Campbell and Kim Leininger for the time and effort that they have put into the court history projects. Judge Marten went on to say that all Committee members should feel free to express likes and dislikes throughout the presentation of proposed court history projects. He stated that if the projects are pursued, then they should be undertaken in the most time and cost-effective way possible without sacrificing quality.

Judge Marten explained that the Court History Committee envisions a year long celebration of the 150<sup>th</sup> anniversary of the court comprised of, but not limited to, the following activities: 1) oral histories of the judges and federal court practitioners; 2) continue to build a court history archive collection/database; 3) publish a book on the history of the Kansas Federal Court; 4) create a "Riding the Circuit Program" whereby court would be held in the historic places of holding court, such as Dodge City and Fort Scott; 5) produce a one-hour documentary for distribution in schools and public television stations; 6) create a court history section on the court's website; 7) hold events with high profile speakers to commemorate the kick-off and culmination of the 150<sup>th</sup> anniversary celebration; 8) provide CLE's to the bar; and 9) hold a court family reunion. Judge Marten stated that if the Bench-Bar and Court History Committees do

not consolidate, he envisions adding members of the bar to the Court History Committee and creating task forces that would be in charge of individual projects so that no one group would be overwhelmed.

Following Judge Marten's presentation, Kari Schmidt noted that offering one CLE course per year free of charge would be seen as a great benefit to members of the bar. Ms. Schmidt also suggested that the Court History Committee consider contacting Bill Curtis to assist with the documentary. Larry Michel suggested that creating an essay contest for students may increase interest from schools. Mr. Michel offered to help with an essay contest and suggested that law firms may be interested in sponsoring a monetary award for contest winners.

After discussion of the proposed court history projects, Judge Belot took a vote of the Committee as to whether or not the Court History Committee's proposed projects should be pursued. The Committee voted 8-1 in favor of the court history projects.

#### 7. FUNDING SOURCE FOR THE PROPOSED COURT HISTORY PROJECTS

Judge Marten provided an estimated itemized cost of the proposed court history activities, for a total of approximately \$745,000. Ms. O'Hara reported that attorney registration fees would need to be increased from \$20 to \$50 per year in order to fund the project solely from the Bar Fund. Ms. Schmidt asked about the original purpose of the Bench-Bar Fund. Judge Kathryn Vratil responded that the fund was originally created to pay for Attorney Disciplinary Cases, the fees associated with publication of the Local Rules, and the administrative costs of managing the Bar Fund. Judge Marten explained to the Committee that the Court has an obligation to keep a reasonable balance in the Bar Fund and that the amount of the registration fee would be

reconsidered every year to ensure that it is not too high. Mr. Michel stated that one concern of raising the attorney registration fee to \$50 is that a majority of attorneys paying annual registration fees do not actually practice in the court and that raising the fees too much may cause those attorneys to allow their memberships to lapse.

8. INCREASE IN ATTORNEY REGISTRATION FEES

Judge Belot took a vote of the Committee as to whether or not the Attorney Registration Fee should be raised in order to fund the court history projects. The Committee voted 6-3 in favor of raising the fee from \$20 to \$50. The Committee agreed that an effort should also be made to pursue alternative funding sources for the projects.

9. REIMBURSEMENT OF COURT-APPOINTED ATTORNEYS IN CIVIL CASES

The Committee agreed that the idea of reimbursing of court-appointed attorneys in civil cases is worth pursuing. Judge Belot appointed Paul McCausland to look into the appointment and compensation procedures surrounding the reimbursement of court-appointed attorneys in civil cases.

The meeting, having convened at 10:00 a.m., adjourned at 1:30 p.m.

Respectfully submitted,

s/ Skyler B. O'Hara

Skyler B. O'Hara

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, August 24, 2007, 10:00 a.m.

Topeka, Kansas

IN ATTENDANCE:

HONORABLE MONTI L. BELOT, JUDGE, CHAIR  
HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
ERIC MELGREN, U.S. ATTORNEY  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
JOHN JOHNSON, ESQ.  
TERRY CAMPBELL, ESQ.  
KATHRYN BUSSING, ESQ.  
KARI S. SCHMIDT, ESQ.  
PAUL S. MCCAUSLAND, ESQ.  
LARRY G. MICHEL, ESQ.  
JOAN K. ARCHER, ESQ.  
INGRID A. CAMPBELL, ACTING CLERK OF COURT  
SKYLER O'HARA, DEPUTY DIRECTOR OF COURT ADMINISTRATION

1. BANKRUPTCY UPDATE

Chief Judge Nugent provided a memorandum on current events in the Bankruptcy Court which detailed their staffing situation following the 2005 Bankruptcy Reform Act. He reported that case filings have decreased which will cause staffing to decrease even though the current cases are more difficult and paper-intensive for both judges and staff.

2. FEDERAL PUBLIC DEFENDER UPDATE

David Phillips reported that one of the assistant federal public defenders (FPD) in the Kansas City office was struck by lightning and is out of the office on recovery. As a result, several FPD's from Topeka have been assisting with the Kansas City caseload.

3. U.S. ATTORNEY'S OFFICE UPDATE

Eric Melgren reported that his caseload has been slightly lower this year, but that his office has seen an increase in drug and gang cases that involved large numbers of multiple defendants.

Mr. Melgren reported that there are currently two full-time positions in his office that he is unable to fill due to budgetary constraints. He is also in the process of expanding office space in Kansas City and Topeka.

4. COUNSEL APPOINTED PURSUANT TO THE CRIMINAL JUSTICE ACT (CJA)

Judge Belot expressed concern that there may not be a sufficient number of attorneys on the CJA panel in Wichita to accommodate large multiple-defendant cases. Judge Belot stated that it is possible that the court could be forced to utilize CJA counsel in Topeka and Kansas City, or utilize local counsel in Wichita that may not be well-versed in federal criminal law. Magistrate Judge O'Hara commented that the Kansas City courthouse has the advantage of utilizing CJA counsel from the Western District of Missouri.

Paul McCausland stated that many attorneys are not comfortable serving as CJA counsel due to a fear of malpractice. Mr. McCausland suggested holding an open meeting to invite attorneys to learn about the CJA system and the rules of practice and

procedure in federal court. He also stated that the FPD is a great resource for CJA attorneys. Mr. Phillips stated that the FPD has several free national training events every year that CJA members can attend. Mr. Melgren suggested that the Bar Fund be used to pay for training on sentencing guideline issues, which is the most difficult part of CJA work. Kari Schmidt suggested the formation of a CJA mentoring program to help young attorneys gain confidence and learn the ropes of CJA work. Ms. Schmidt also asked about the requirement that attorneys have five years of experience before becoming eligible to serve on the CJA panel. Judge Belot and Judge O'Hara both agreed that the five year rule is not enforced and that applicants are reviewed on an individual basis.

The committee discussed the possibility of approaching large law firms about putting their young associates on the CJA panel. Judge O'Hara pointed out that large law firms have billable hour requirements that may make CJA appointments difficult. Kathryn Bussing told the committee that the Western District of Missouri has started utilizing large law firms with success because young associates are very interested in pro bono cases and getting courtroom experience early in their careers. Ms. Bussing recommended that a personal call from a judge to a senior partner would be an effective means to attract young associates to the CJA panel. Judge O'Hara cautioned that such an approach could be viewed as coercive.

Larry Michel asked the committee if it would be feasible for an attorney practicing in a rural Kansas town such as Salina to participate on the CJA panel. The group consensus was that it would be difficult for a CJA attorney to be geographically

distanced from a client because of time-constraints related to the client's confinement.

On a related note, Ms. Schmidt stated that Wichita has difficulty obtaining adequate translation services because the translators are extremely overworked. Judge Belot and Mr. Melgren agreed that finding available translators in Wichita is problematic due to the large number of immigration cases.

Judge Belot requested that Judge Murguia and Judge O'Hara look further into the need for additional CJA panel members and report back to the committee.

5. APPROVAL OF MINUTES

Judge Belot asked the committee how the Court Security Officers (CSO's) are treating court patrons. Judge Murguia responded that, at least in Kansas City, the CSO's are showing some improvement over last year. He attributed the improvement in part to the court holding a CSO Appreciation Luncheon and the fact that CSO Roger McClenny received a national award for his actions in Judge Murguia's courtroom.

Judge Murguia moved and Mr. Michel seconded the motion to approve the August 4, 2006 minutes. The motion carried unanimously.

6. PROTECTIVE ORDERS IN SEALED CASES

Judge Belot stated that he has not had a problem with protective orders in sealed cases, but would be interested in hearing comments from the committee. Ms. Bussing said that in general she prefers open access and few rules. Ms. Bussing then asked the judges to what extent they feel that they have discretion to file or not file documents under seal. Judge Murguia stated that motions to file documents under seal are reviewed on a case by case basis and that he has authority to review each

one. Judge Belot asked John Johnson for his opinion in the matter as a plaintiff's attorney. Mr. Johnson said that he had never had a problem with protective orders because the parties have always agreed on them. He went on to explain that protective orders are expected in all medical malpractice and products liability cases.

Judge O'Hara stated that the Tenth Circuit has mandated that a particular analysis be used in granting protective orders because of First Amendment and Open Records Act concerns, and that two parties can make a settlement agreement without the court's blessing. He went on to explain that although he doesn't necessarily advocate the adoption of a local rule, he did want to point out that certain judges are becoming more hesitant to approve protective orders. Judge O'Hara said that to the extent that practitioners are bothered by disparate results, they may want to consider a local rule on the matter.

Mr. Johnson stated that he does not want a local rule and believes parties would adapt to disparate results. Ms. Schmidt agreed, stating her preference that individual judges manage protective orders on a case by case basis. Mr. Melgren stated that the U.S. Attorney's Office does not enter into confidentiality agreements because it is their position that the cases in their office ought to be public knowledge. Chief Judge Nugent also stated that he does not want a local rule about protective orders and expressed his concern that enacting such a rule would greatly affect the bankruptcy court. He requested that bankruptcy be included in the drafting process if a local rule is enacted.

Without any objections, Judge Belot stated that he would advise the court that



the Bench Bar Committee recommends not enacting a local rule on protective orders.

7. REIMBURSEMENT FOR COURT-APPOINTED ATTORNEYS IN CIVIL CASES

For the benefit of new committee members, Judge Belot explained the procedures for reimbursement of out-of-pocket expenses for court-appointed attorneys in civil cases. The committee agreed that they would like to see a plan developed to reimburse court-appointed attorneys at an hourly rate similar to the CJA panel attorneys. Mr. Michel expressed concern that implementation of a reimbursement policy could deplete the Bar Fund. Mr. Melgren expressed concern that without limitations to the reimbursements, the number of frivolous lawsuits could rise. Several reimbursement strategies were discussed: setting rate caps, imposing limitations on hours, and creating a sliding scale for the type of work being done (i.e. lower fees reimbursed for case evaluation versus a trial). Judge O'Hara suggested a scenario where an attorney could be reimbursed only for case evaluation and settlement, and that if the attorney felt the case were meritorious and warranted a trial, he or she could then enter into a contingency fee arrangement with the client. Judge Murguia pointed out that attorneys have an obligation to do pro bono work. Judge Belot stated that he would report to the court that the committee feels that the reimbursement of court-appointed attorneys is worth pursuing. Judge Murguia asked the committee to brainstorm on reimbursement strategies and send any ideas to Skyler O'Hara, Judge Belot, or to himself.

8. REIMBURSABLE TRAVEL EXPENSES

Skyler O'Hara explained the following proposed travel policy:

*The Bench-Bar Fund can be used to reimburse Judges and/or the Clerk of Court for travel and subsistence expenses which are otherwise not reimbursable and are incurred in connection with their attendance at any meetings of attorneys within the Tenth Circuit or in those states adjacent to the state of Kansas. The travel and relocation regulations for United States Justices and Judges, which are contained in Volume III-A, Section C, Chapter V of the Guide to Judiciary Policies and Procedures, should be utilized as the guidelines for reimbursement. Reimbursement will cover all actual direct expenses that are reasonably incurred and are approved by the Clerk of Court. The Clerk of Court will be tasked with the payment of expenses submitted after travel has been completed.*

Joan Archer stated that it is a benefit to practicing attorneys to have judges in attendance at meetings of professional associations. Ms. Bussing agreed with Ms. Archer and suggested that the travel policy be implemented with the same per diem restrictions as regular federal travel. Ms. Bussing asked if travel expenditures would adversely affect the Bar Fund balance. Judge Belot pointed out that historically, travel is a de minimis expense for the Bar Fund. Mr. Melgren and Mr. McCausland agreed that the proposed travel policy would benefit practicing attorneys. Ms. Archer moved and Mr. McCausland seconded the motion to approve the proposed travel policy. The motion carried unanimously.

9. BENCH BAR FELLOWSHIP PROGRAM

Ms. O'Hara reported that a Bench Bar Fellowship Program had been instituted with the University of Kansas School of Law and the Washburn School of Law. The

Fellowship, funded by the District Court's Bar Fund, reimburses student interns for their out-of-pocket expenses incurred during their internships in the federal courts. Interns in Kansas City and Topeka are eligible to receive a maximum of \$1,000 and interns in Wichita are eligible to receive a maximum of \$2,000.

The Bench Bar Fellowship was offered to interns during the 2007 summer session for the first time. The interns' reaction was very positive and they were pleased to have some relief from commuting expenses. Judge Belot asked the attorneys on the committee if their respective law firms would place any value on a judicial internship experience during the hiring process. Ms. Bussing reported that an internship experience would be viewed as highly beneficial.

#### 10. SELECTION OF REPLACEMENT MEMBERS

Ms. O'Hara reported that Mr. Michel and Ms. Archer would complete their three-year term of service to the Bench Bar Committee on December 31, 2007 and asked for the committee's recommendation on possible replacement members. Following a brief discussion, the committee agreed that it is important to maintain geographical representation by selecting at least one member from "rural" Kansas. The committee recommended Norm Kelly of Salina and David Rebein of Dodge City.

#### 11. HABEAS ADJUDICATION TIME LIMITS

Judge Belot introduced Rachel Lyle, pro se law clerk, to the committee and suggested that she be nominated for sainthood given her line of work. On July 2, 2007, Chief Judge Lungstrum received a letter from Mr. Dale E. McCormick stating that his habeas petition had been pending for an unreasonable amount of time and requesting

that the court adopt a local rule to limit the amount of time it takes for a habeas case to be decided. Judge Belot asked Ms. Lyle for her opinion about adopting a such a local rule. Ms. Lyle told the committee that the vast majority of cases are resolved more quickly than Mr. McCormick's case and that his case had taken longer due to the unique nature of the case facts. Judge O'Hara said that he has dealt with Mr. McCormick on a number of occasions and he is disinclined to adopt a rule based upon one unique case. Ms. Schmidt moved and Judge O'Hara seconded the motion to forgo adopting a local rule regarding habeas cases. The motion carried unanimously.

Following further discussion, the committee agreed that the matter should be referred back to Chief Judge Lungstrum to respond to Mr. McCormick that the court declined to adopt a local rule because relief already exists in the form of case law and a writ of mandamus.

12. JURY SELECTION: LOCAL RULES 81.1 AND 38.1

Terry Campbell referred the committee to an anomaly in the Local Rules, affecting six Kansas counties, whereby petit jurors are called to serve on juries in one federal division, but removal venue over cases originally filed in those counties is in another federal division. Following a brief discussion, the committee agreed to recommend to the court that Local Rule 81.1 be amended so that cases removed from Brown, Douglas, Franklin, Marion, Marshall and Nemaha counties are removed to the federal courthouse which calls petit jurors from those counties.

13. BAR FUND FINANCIAL REPORT

Ingrid Campbell presented the Bar Fund Financial Report (see Tab 9 of the

agenda book). Mr. Melgren pointed out that, to date in fiscal year 2007, expenses have exceeded income by approximately \$38,500. Ms. O'Hara explained that the Bar Fund is still receiving a substantial amount of income each day from the 2007/2008 attorney registration fee process. Ms. Campbell mentioned that the auditors recommend that the Bench Bar Fund not maintain an unreasonably high balance and that we try to lower the \$300,000 balance. Ms. Campbell explained that there were several large non-recurring expenses during fiscal year 2007: 1) attorney workroom construction and furnishings; 2) retirement reception for Ralph DeLoach; 3) celebration for Judge Brown.

Judge Belot explained that the Court History Project's goal is to preserve important federal judicial items and that Jean Svadelnak has been hired as a consultant on the project. Judge Belot then asked the committee for their thoughts on the Court History Project and whether or not they feel it is an important undertaking. Mr. Melgren responded that although he feels court history is important, he cautioned that we remain aware of overspending and creating cash flow problems. Mr. McCausland asked if the Court History Project is accessible to anyone. Ms. Campbell responded that although the project is in the beginning stages, she believes it is a goal of the Court History Committee to make the results accessible. Ms. Schmidt stated that she is okay with court history, but not to the detriment of access to justice. She prefers to spend the funds on reimbursing attorneys for their uncompensated time such as on court-appointed attorneys in civil cases. Judge Belot asked the committee if they would like to receive a written report on the Court History Project and the committee responded affirmatively. Judge Belot directed Ms. Campbell to arrange for the

committee to receive a written report on the subject.

Mr. McCausland commented that \$25,000 seems like a lot of money to spend printing the Local Rules. He suggested that printing is not necessary because the rules can be viewed online. Ms. Campbell explained that this had been tried once before, but the committee decided to resume printing the Local Rules again due to a negative response from the bar. Ms. Campbell stated that she would explore cost-effective alternatives to the current printing procedures.

Judge Murguia moved and Judge O'Hara seconded the motion to approve the proposed FY 2008 Bar Fund budget.

14. MISCELLANEOUS AND NEW BUSINESS

Judge Belot explained that he may or may not continue to be the chair of the Bench Bar Committee because there will be a new chief judge in 2008. Judge Belot asked the committee if they feel that the committee should meet more than once each year. Mr. Campbell responded that he thinks one meeting per year is sufficient unless there is a special topic that needs to be discussed sooner. Ms. Bussing stated that she would like to receive a six-month report on action items generated at the annual meeting. Following discussion, the committee agreed that they should continue to meet one time each year in August.

Mr. McCausland requested that the meeting minutes be distributed to committee members soon after the meeting occurs. The committee also requested a copy of the Judges' Meeting minutes, or at least those portions concerning Bench Bar items. Judge Murguia responded that the court would consider the request.

Ms. Schmidt requested that the CJA voucher be made available online in an interactive format because currently the form must be completed by hand.

The meeting, having convened at 10:00 a.m., adjourned at 2:45 p.m.

Respectfully submitted,

s/ Skyler B. O'Hara

Skyler B. O'Hara

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, August 4, 2006, 10:00 A.M.

Topeka, Kansas

IN ATTENDANCE:

HONORABLE MONTI L. BELOT, JUDGE, CHAIR  
ERIC MELGREN, U.S. ATTORNEY  
JILL A. MICHAUX, ESQ.  
CHARLES D. KUGLER, ESQ.  
LARRY G. MICHEL, ESQ.  
JOAN K. ARCHER, ESQ.  
KARI S. SCHMIDT, ESQ.  
PAUL S. MCCAUSLAND, ESQ.  
DONALD C. RAMSAY, ESQ.

NOT PRESENT:

HONORABLE CARLOS MURGUIA, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER

1. APPROVAL OF MINUTES

Judge Belot welcomed new members Kari Schmidt and Paul McCausland. Jill Michaux moved and Eric Melgren seconded the motion to approve the August 5, 2005, minutes. The motion carried unanimously.

2. ELECTRONIC DISCOVERY

Judge Belot reported that he had spoken to Magistrate Judge Bostwick and that the magistrates have agreed to circulate the proposed federal electronic discovery rules among the court. Larry Michel said that he believes Magistrate Judge O'Hara is addressing ninety percent of his concern. Judge Belot responded that he would recommend to Magistrate Judge Humphreys that she meet with Mr. Michel, Don



Ramsay, and Joan Archer to discuss any remaining electronic discovery issues.

3. ATTORNEY PARTICIPATION IN CIVIL PRO BONO CASES

Judge Belot referred the committee to Magistrate Judge Waxse's e-mails, distributed at the meeting, in which he raises a concern about finding attorneys willing to take cases pro bono. Judge Belot explained that his practice is to give a lawyer an opportunity to provisionally accept an appointment pending review of the case.

Charles Kugler stated that to him, "pro bono" means "free". Ms. Michaux suggested adding language to the attorney registration form which clarifies that pro bono does not mean free. That is, the court does reimburse attorneys for out-of-pocket expenses.

Ms. Schmidt and Mr. McCausland expressed concern about the requirement that attorneys must receive advance approval of court appointed counsel expenses. Judge Belot wondered whether panel attorneys could incur expenses not to exceed an amount set by the court without having to seek approval in advance. Judge Belot explained that attorneys would still be required to submit an itemized list of expenses incurred before reimbursement would be made, but that it would be reasonable to provide money to an attorney just for reviewing a case.

Beyond that, the committee further suggested that a phone call from a judge or law clerk would be the best way to get an attorney to participate in a civil pro bono case. Additionally, they all liked Judge Belot's procedure of making provisional referrals to allow an attorney time to review the case and decide whether to accept or decline. The consensus was that this procedure would cut down on the hesitation a less-experienced attorney might have to agree to take a case without knowing anything about it. Judge

Belot stated that he would refer this matter to the judges for their consideration.

4. ATTENDANCE OF ATTORNEYS AT PSIR INTERVIEWS

Ms. Schmidt expressed her concern over the practice of a probation officer conducting a Pre-Sentence Investigation Report (PSIR) interview while a defendant is not in the presence of their attorney (see tab 4 of the agenda book). Ms. Schmidt relayed an occasion when this had happened to one of her clients. Judge Belot shared with the committee the response he received from Probation Officer Steve Kohman. Judge Belot asked whether it would be appropriate to treat this as an isolated incident, to which Ms. Schmidt agreed.

5. SELECTION OF REPLACEMENT MEMBERS

Following a brief discussion, Judge Belot stated that he would consider current members Charles Kugler and Jill Michaux as reapplying for their Bench-Bar Committee positions which expire on December 31, 2006.

6. UPDATE ON ATTORNEY WORKROOMS

Ingrid Campbell advised that the Topeka attorney workroom was completed in the spring of 2006 and that it was anticipated that the workrooms in Wichita and Kansas City would be available to attorneys in October of this year. Following the meeting, the committee toured the Topeka attorney workroom. Some of the members suggested that a copier and printer be added to the attorney workrooms. Ralph DeLoach responded that he would ask the court to consider the purchase of a commercial grade copier and printer for the attorney workrooms at each location.

7. 2006 BENCH & BAR SCHOLARSHIP

Skyler O'Hara reported that in June of this year, the District Court offered young

lawyers a scholarship to attend the Bench & Bar Conference in Colorado Springs, Colorado. The scholarship, funded by the District Court's Bench & Bar Fund, will cover the registration fee and food for the recipients. It will not fund the cost of travel for the recipients. Mr. DeLoach added that seven attorneys had applied but only four were able to take advantage of the scholarship.

A few members mentioned that they did not believe the plan developed this year was the best use of the Bench & Bar Fund's money. However, no one was opposed to the Bench & Bar Fund being used for scholarships of some kind.

8. REPORT ON PROPOSED MODIFICATION OF D.KAN.RULE 83.2.4

At the previous meeting, Judge Marten had suggested modifying D.Kan.Rule 83.2.4, *Electronic Communication Devices*, to eliminate the requirement that pro hac vice counsel must present an order to court security to be permitted to bring electronic communication devices into the courthouse. Ms. Campbell reported that Judge Marten's proposal is on the agenda for the next Court Security Committee meeting and that she will report on the status of this proposal at the next Bench-Bar Committee meeting.

9. BAR FUND FINANCIAL REPORT

Mr. DeLoach presented the Bar Fund Financial Report (see Tab 9 of the agenda book) which included a request to increase the audit allotment by \$50 and the naturalization ceremonies allotment by \$2,000 for this fiscal year. Ms. Archer moved and Mr. McCausland seconded the motion to increase the audit allotment by \$50 and the naturalization ceremonies allotment by \$2,000 for this fiscal year. Ms. Michaux moved and Mr. McCausland seconded the motion to approve the FY 2007 Bench & Bar

Fund budget as submitted. The motion carried unanimously.

10. MISCELLANEOUS AND NEW BUSINESS

Judge Belot stated that there were no reports from the bankruptcy court or the magistrate judges.

Several members commented that the court security officers in Wichita and Topeka continue to be much more accommodating than those stationed in Kansas City. Mr. DeLoach said that he would follow up with the court.

Regarding new business, Judge Belot reported that there is over \$300,000 in the Bar Fund and wondered if the balance might be a little excessive.

Ms. Michaux requested that a list of those admitted to the federal court be made available online.

Mr. Melgren stated that he thinks the attorney luncheons are a good use of the Bar Fund.

The meeting, having convened at 10:00 a.m., adjourned at 1:30 p.m.

Respectfully submitted,

s/ Ingrid A. Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, August 5, 2005, 10:00 A.M. Topeka, Kansas

IN ATTENDANCE:

HONORABLE CARLOS MURGUIA, JUDGE,  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT NUGENT, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC MELGREN, U.S. ATTORNEY  
HONORABLE BENJAMIN L. BURGESS, JR.  
JOSEPH D. JOHNSON, ESQ.  
JILL A. MICHAUX, ESQ.  
JOAN K. ARCHER, ESQ.

NOT PRESENT:

HONORABLE MONTI L. BELOT, JUDGE, CHAIR  
KURT A. HARPER, ESQ.  
CHARLES D. KUGLER, ESQ.  
LARRY D. MICHEL, ESQ.

NOTE: Judge Murguia presided over the Bench-Bar meeting in Judge Belot's absence.

1. APPROVAL OF MINUTES

Magistrate Judge O'Hara recommended that the October 7, 2004, minutes be corrected by replacing the word illicit, found on page 7 line 4, with the word elicit. Joe Johnson moved and David Phillips seconded the motion to approve the minutes as corrected. The motion carried unanimously.

2. ADDITION OF NEW MEMBER

Judge Murguia announced the selection of Charles Kugler to fill the remainder of the term of Steve Six who was chosen to serve as a district judge for Douglas County.

3. PROPOSED AMENDMENTS TO D.KAN.RULE 5.1 AND 56.1

Ingrid Campbell reported that Tim O'Brien had submitted proposed rule revisions to D.Kan.Rules 5.1 and 56.1 that would permit a deposition to be offered in its entirety, rather than excerpts only, in connection with a motion for summary judgment. As stated in Mr. O'Brien's July 29, 2005, letter addressed to Judges Lungstrum and Belot, "With the whole deposition, the Court would be able to peruse the document to get a sense of the proffered testimony, rather than relying on the often incomplete context of an excerpt." (see Tab 3 of the agenda book).

Judge O'Hara expressed some concern that lawyers might begin to routinely file entire depositions in lieu of taking the time to ascertain and present the relevant portions of the deposition. Mr. Johnson suggested that the Committee solicit additional input from members of the bar to determine the level of desire for such a rule change. Hearing no objections, Judge Murguia tabled the matter to give the Committee the opportunity to consult with members of the bar and report back at the next meeting.

4. TREATMENT OF LAWYERS BY COURT SECURITY IN KANSAS CITY

Ralph DeLoach reported that the Court Security Committee had been working on the situation and he hoped the treatment of lawyers by court security officers in Kansas City had improved. Jill Michaux stated that she thought things in Kansas City were better. Mr. Johnson stated that he had been before the Court in Kansas City approximately three weeks earlier and feels that people of color are being treated differently. Mr. DeLoach responded that he will try to develop mechanisms to continue to improve relations between the bar and court security in Kansas City.

5. WRITTEN COMMENTS REGARDING THE PROPOSED CRIMINAL PATTERN JURY INSTRUCTIONS

Ms. Campbell reported that she received no comments to the proposed criminal pattern jury instructions which had been distributed to Committee members in August of 2004. Eric Melgren added that he had submitted comments to the Judicial Conference of the United States Committee on Rules of Practice and Procedure via the U.S. Attorney's Office.

6. ARCHIVES PROJECT PROPOSAL

At the previous Bench-Bar Committee meeting, it had been suggested that the Court explore the establishment of a local chapter of the Tenth Circuit Historical Society. Ms. Campbell reported that upon further investigation it was determined that while the Tenth Circuit Historical Society allows for individual memberships, it does not permit affiliate chapters.

7. ATTORNEY LOUNGES IN COURTHOUSES

Ms. Campbell reported that it will cost a total of approximately \$38,700 to create attorney workrooms at all three courthouses, broken down by location as follows:

Kansas City (existing room located on first floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year

<b>Total cost for Kansas City</b>		<b>\$12,900</b>
Wichita Courthouse (existing room located on second floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year
<b>Total cost for Wichita</b>		<b>\$12,900</b>
Topeka Courthouse (room to be constructed on the first floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year
<b>Total cost for Topeka</b>		<b>\$12,900</b>
<b>Grand total</b>		<b>\$38,700</b>

Following discussion, Judge Murguia moved and Judge O'Hara seconded the motion to recommend to the Court that attorney workrooms be established at each courthouse location as proposed. The motion carried unanimously.



8. REPORT ON PROPOSED MODIFICATION OF D.KAN.RULE 83.2.4

At the previous meeting, Judge Marten had suggested modifying D.Kan.Rule 83.2.4 by removing the requirement that to bring electronic communication devices into the courthouse, pro hac counsel must present a court order to court security. Ms. Campbell reported that Judge Marten's proposal is on the agenda for the next Court Security Committee meeting and that she will report on the status of this proposal at the next Bench-Bar Committee meeting.

9. PUBLIC AVAILABILITY OF CRIMINAL ORDERS WHICH DIRECT THAT INMATES BE TRANSPORTED TO THE COURTHOUSE

At the previous Bench-Bar Committee meeting, Mr. Melgren inquired whether criminal orders which direct that inmates be transported to a courthouse are available to the public. Ms. Campbell reported that such orders are available to the public for viewing by anyone who comes to the clerk's office or on-line by any PACER subscriber. Ms. Campbell advised that the current solution is for the filer to move to seal documents which contain information deemed confidential. Following discussion, Mr. Melgren agreed to draft a proposed standing order to address the public availability of criminal motions and orders which direct that an inmate be transported to the courthouse.

10. PROPOSED AMENDMENT TO D.KAN.RULE 38.1(l)

In response to an inmate's request that the clerk's office provide him copies of jury papers and records, a proposal was submitted to modify D.Kan.Rule 38.1(l) to clarify that while jury records are available for public inspection at the courthouse, they are not available to be copied unless specifically permitted by court order (see Tab 10 of the agenda book).

Judge Burgess proposed further modifying the last sentence of the rule to include the language “. . . except by order of the Court.” Mr. Johnson moved and Mr. Melgren seconded the motion to recommend to the Court the modification of D.Kan.Rule 38.1(l) with the additional amendment. The motion carried unanimously.

11. PROPOSED AMENDMENT TO D.KAN.RULE 83.6.4

On behalf of the Kansas Disciplinary Administrator’s Office, Al Walczak suggested a change to the local rule regarding reciprocal discipline, D.Kan.Rule 83.6.4, which would “temporarily suspend pending due process in federal court” a Kansas lawyer who has been disbarred or suspended by the Kansas Supreme Court. Chief Judge Nugent relayed a situation where an attorney had been disbarred by the Kansas Supreme Court but continued to practice in Bankruptcy Court.

Following discussion, the members agreed that some action should be taken to amend the rule to include temporarily suspending in federal court an attorney who has been suspended by the Kansas Supreme Court. Mr. Melgren suggested that this amendment might better fit in D.Kan.Rule 83.6.6.

Judge Murguia moved and Chief Judge Nugent seconded the motion to recommend to the judges an amendment to the disciplinary rules which will temporarily suspend in federal court a Kansas lawyer who has been suspended or disbarred by the Kansas Supreme Court. The motion carried unanimously. Chief Judge Nugent volunteered to prepare a draft rule change.

12. SELECTION OF REPLACEMENT MEMBERS

Judge Murguia provided the Committee with a list of members of the bar who had applied to serve on the Bench-Bar Committee and solicited their recommendations.

Following discussion, Mr. Johnson moved and Ms. Michaux seconded the motion to recommend Patrick Nichols and Larry Rute for the vacancies. Mr. Johnson added that he would like the opportunity to encourage criminal defense attorneys Dan Monnat and Kurt Kerns to submit an application to serve on the Committee. The motion carried unanimously.

13. RUSSIAN JUDGE VISIT

Mr. DeLoach reported that the Russian judges were winding up their visit to Topeka and that one half of their expenses were being paid by the Rotary and the other half by the Bar fund.

14. BAR FUND FINANCIAL REPORT

Mr. DeLoach presented the Bar Fund Financial Report (see October 1, 2005 to September 30, 2005 Bar Registration and Disciplinary Fund Budget report distributed at the meeting). Mr. Johnson moved and Chief Judge Nugent seconded the motion to approve the FY 2006 Bar fund budget as proposed. The motion carried unanimously.

15. BANKRUPTCY COURT REPORT

Chief Judge Nugent reported that the new bankruptcy law takes effect October 17. As a result, bankruptcy filings have increased locally although nationally filings have decreased slightly. Judge Nugent also expressed his appreciation for Bar monies which fund meetings of the Bankruptcy Bench-Bar Committee.

16. MAGISTRATE JUDGES REPORT

Judge O'Hara reported that the workload among the magistrate judges had evened out between the offices and that there was no significant backlog. Judge O'Hara further informed Committee members that Magistrate Judge Rushfelt had

returned to work.

17. U.S. ATTORNEY'S REPORT

Mr. Melgren had nothing to report except the addition of a new civil attorney in Kansas City, Andrea Taylor.

18. FEDERAL PUBLIC DEFENDER'S REPORT

David Phillips reported the addition of an attorney, David Freund, and an investigator, Anthony Scognamillo, to his Wichita office.

19. RECOGNITION OF OUTGOING MEMBERS

Judge Murguia thanked outgoing members Joe Johnson and Kurt Harper for their years of service.

20. DATE AND LOCATION OF NEXT MEETING

Subject to Judge Belot's approval, Judge Murguia tentatively set the next meeting for Friday, August 4, 2006, at 10:00 a.m. in Topeka.

The meeting, having convened at 10:00 a.m., adjourned at 1:00 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, August 5, 2005, 10:00 A.M. Topeka, Kansas

IN ATTENDANCE:

HONORABLE CARLOS MURGUIA, JUDGE,  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE ROBERT NUGENT, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC MELGREN, U.S. ATTORNEY  
HONORABLE BENJAMIN L. BURGESS, JR.  
JOSEPH D. JOHNSON, ESQ.  
JILL A. MICHAUX, ESQ.  
JOAN K. ARCHER, ESQ.

NOT PRESENT:

HONORABLE MONTI L. BELOT, JUDGE, CHAIR  
KURT A. HARPER, ESQ.  
CHARLES D. KUGLER, ESQ.  
LARRY D. MICHEL, ESQ.

NOTE: Judge Murguia presided over the Bench-Bar meeting in Judge Belot's absence.

1. APPROVAL OF MINUTES

Magistrate Judge O'Hara recommended that the October 7, 2004, minutes be corrected by replacing the word illicit, found on page 7 line 4, with the word elicit. Joe Johnson moved and David Phillips seconded the motion to approve the minutes as corrected. The motion carried unanimously.

2. ADDITION OF NEW MEMBER

Judge Murguia announced the selection of Charles Kugler to fill the remainder of the term of Steve Six who was chosen to serve as a district judge for Douglas County.

3. PROPOSED AMENDMENTS TO D.KAN.RULE 5.1 AND 56.1

Ingrid Campbell reported that Tim O'Brien had submitted proposed rule revisions to D.Kan.Rules 5.1 and 56.1 that would permit a deposition to be offered in its entirety, rather than excerpts only, in connection with a motion for summary judgment. As stated in Mr. O'Brien's July 29, 2005, letter addressed to Judges Lungstrum and Belot, "With the whole deposition, the Court would be able to peruse the document to get a sense of the proffered testimony, rather than relying on the often incomplete context of an excerpt." (see Tab 3 of the agenda book).

Judge O'Hara expressed some concern that lawyers might begin to routinely file entire depositions in lieu of taking the time to ascertain and present the relevant portions of the deposition. Mr. Johnson suggested that the Committee solicit additional input from members of the bar to determine the level of desire for such a rule change. Hearing no objections, Judge Murguia tabled the matter to give the Committee the opportunity to consult with members of the bar and report back at the next meeting.

4. TREATMENT OF LAWYERS BY COURT SECURITY IN KANSAS CITY

Ralph DeLoach reported that the Court Security Committee had been working on the situation and he hoped the treatment of lawyers by court security officers in Kansas City had improved. Jill Michaux stated that she thought things in Kansas City were better. Mr. Johnson stated that he had been before the Court in Kansas City approximately three weeks earlier and feels that people of color are being treated differently. Mr. DeLoach responded that he will try to develop mechanisms to continue to improve relations between the bar and court security in Kansas City.

5. WRITTEN COMMENTS REGARDING THE PROPOSED CRIMINAL PATTERN JURY INSTRUCTIONS

Ms. Campbell reported that she received no comments to the proposed criminal pattern jury instructions which had been distributed to Committee members in August of 2004. Eric Melgren added that he had submitted comments to the Judicial Conference of the United States Committee on Rules of Practice and Procedure via the U.S. Attorney's Office.

6. ARCHIVES PROJECT PROPOSAL

At the previous Bench-Bar Committee meeting, it had been suggested that the Court explore the establishment of a local chapter of the Tenth Circuit Historical Society. Ms. Campbell reported that upon further investigation it was determined that while the Tenth Circuit Historical Society allows for individual memberships, it does not permit affiliate chapters.

7. ATTORNEY LOUNGES IN COURTHOUSES

Ms. Campbell reported that it will cost a total of approximately \$38,700 to create attorney workrooms at all three courthouses, broken down by location as follows:

Kansas City (existing room located on first floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year

<b>Total cost for Kansas City</b>		<b>\$12,900</b>
Wichita Courthouse (existing room located on second floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year
<b>Total cost for Wichita</b>		<b>\$12,900</b>
Topeka Courthouse (room to be constructed on the first floor)	four computer carrels sofa two lounge chairs five guest chairs coffee table end table two lamps writing table	\$10,000
	two desktop computers	2,000
	one telephone plus installation	300
	wireless Internet connection	600 per year
<b>Total cost for Topeka</b>		<b>\$12,900</b>
<b>Grand total</b>		<b>\$38,700</b>

Following discussion, Judge Murguia moved and Judge O'Hara seconded the motion to recommend to the Court that attorney workrooms be established at each courthouse location as proposed. The motion carried unanimously.



8. REPORT ON PROPOSED MODIFICATION OF D.KAN.RULE 83.2.4

At the previous meeting, Judge Marten had suggested modifying D.Kan.Rule 83.2.4 by removing the requirement that to bring electronic communication devices into the courthouse, pro hac counsel must present a court order to court security. Ms. Campbell reported that Judge Marten's proposal is on the agenda for the next Court Security Committee meeting and that she will report on the status of this proposal at the next Bench-Bar Committee meeting.

9. PUBLIC AVAILABILITY OF CRIMINAL ORDERS WHICH DIRECT THAT INMATES BE TRANSPORTED TO THE COURTHOUSE

At the previous Bench-Bar Committee meeting, Mr. Melgren inquired whether criminal orders which direct that inmates be transported to a courthouse are available to the public. Ms. Campbell reported that such orders are available to the public for viewing by anyone who comes to the clerk's office or on-line by any PACER subscriber. Ms. Campbell advised that the current solution is for the filer to move to seal documents which contain information deemed confidential. Following discussion, Mr. Melgren agreed to draft a proposed standing order to address the public availability of criminal motions and orders which direct that an inmate be transported to the courthouse.

10. PROPOSED AMENDMENT TO D.KAN.RULE 38.1(l)

In response to an inmate's request that the clerk's office provide him copies of jury papers and records, a proposal was submitted to modify D.Kan.Rule 38.1(l) to clarify that while jury records are available for public inspection at the courthouse, they are not available to be copied unless specifically permitted by court order (see Tab 10 of the agenda book).

Judge Burgess proposed further modifying the last sentence of the rule to include the language “. . . except by order of the Court.” Mr. Johnson moved and Mr. Melgren seconded the motion to recommend to the Court the modification of D.Kan.Rule 38.1(l) with the additional amendment. The motion carried unanimously.

11. PROPOSED AMENDMENT TO D.KAN.RULE 83.6.4

On behalf of the Kansas Disciplinary Administrator’s Office, Al Walczak suggested a change to the local rule regarding reciprocal discipline, D.Kan.Rule 83.6.4, which would “temporarily suspend pending due process in federal court” a Kansas lawyer who has been disbarred or suspended by the Kansas Supreme Court. Chief Judge Nugent relayed a situation where an attorney had been disbarred by the Kansas Supreme Court but continued to practice in Bankruptcy Court.

Following discussion, the members agreed that some action should be taken to amend the rule to include temporarily suspending in federal court an attorney who has been suspended by the Kansas Supreme Court. Mr. Melgren suggested that this amendment might better fit in D.Kan.Rule 83.6.6.

Judge Murguia moved and Chief Judge Nugent seconded the motion to recommend to the judges an amendment to the disciplinary rules which will temporarily suspend in federal court a Kansas lawyer who has been suspended or disbarred by the Kansas Supreme Court. The motion carried unanimously. Chief Judge Nugent volunteered to prepare a draft rule change.

12. SELECTION OF REPLACEMENT MEMBERS

Judge Murguia provided the Committee with a list of members of the bar who had applied to serve on the Bench-Bar Committee and solicited their recommendations.

Following discussion, Mr. Johnson moved and Ms. Michaux seconded the motion to recommend Patrick Nichols and Larry Rute for the vacancies. Mr. Johnson added that he would like the opportunity to encourage criminal defense attorneys Dan Monnat and Kurt Kerns to submit an application to serve on the Committee. The motion carried unanimously.

13. RUSSIAN JUDGE VISIT

Mr. DeLoach reported that the Russian judges were winding up their visit to Topeka and that one half of their expenses were being paid by the Rotary and the other half by the Bar fund.

14. BAR FUND FINANCIAL REPORT

Mr. DeLoach presented the Bar Fund Financial Report (see October 1, 2005 to September 30, 2005 Bar Registration and Disciplinary Fund Budget report distributed at the meeting). Mr. Johnson moved and Chief Judge Nugent seconded the motion to approve the FY 2006 Bar fund budget as proposed. The motion carried unanimously.

15. BANKRUPTCY COURT REPORT

Chief Judge Nugent reported that the new bankruptcy law takes effect October 17. As a result, bankruptcy filings have increased locally although nationally filings have decreased slightly. Judge Nugent also expressed his appreciation for Bar monies which fund meetings of the Bankruptcy Bench-Bar Committee.

16. MAGISTRATE JUDGES REPORT

Judge O'Hara reported that the workload among the magistrate judges had evened out between the offices and that there was no significant backlog. Judge O'Hara further informed Committee members that Magistrate Judge Rushfelt had

returned to work.

17. U.S. ATTORNEY'S REPORT

Mr. Melgren had nothing to report except the addition of a new civil attorney in Kansas City, Andrea Taylor.

18. FEDERAL PUBLIC DEFENDER'S REPORT

David Phillips reported the addition of an attorney, David Freund, and an investigator, Anthony Scognamillo, to his Wichita office.

19. RECOGNITION OF OUTGOING MEMBERS

Judge Murguia thanked outgoing members Joe Johnson and Kurt Harper for their years of service.

20. DATE AND LOCATION OF NEXT MEETING

Subject to Judge Belot's approval, Judge Murguia tentatively set the next meeting for Friday, August 4, 2006, at 10:00 a.m. in Topeka.

The meeting, having convened at 10:00 a.m., adjourned at 1:00 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF THURSDAY, October 7, 2004, 9:00 A.M. \_\_\_\_\_ Lawrence, Kansas

IN ATTENDANCE:

HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE  
HONORABLE JANICE MILLER KARLIN, BANKRUPTCY JUDGE  
HONORABLE BENJAMIN L. BURGESS, JR.  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC MELGREN, U.S. ATTORNEY  
VICTOR A. DAVIS, ESQ.  
TIMOTHY M. O'BRIEN, ESQ.  
JOSEPH D. JOHNSON, ESQ.  
JILL A. MICHAUX, ESQ.  
STEVE N. SIX, ESQ.

NOT PRESENT:

HONORABLE KAREN M. HUMPHREYS, CHIEF MAGISTRATE JUDGE  
HONORABLE ROBERT NUGENT, CHIEF BANKRUPTCY JUDGE  
KURT A. HARPER, ESQ.

1. WELCOME

Judge Vratil welcomed the Committee to the Circle S Ranch and thanked everyone for the tribute given to her the previous evening in recognition of her service as chair of the Bench-Bar Committee.

2. APPROVAL OF MINUTES

Joe Johnson moved and Judge Marten seconded the motion to approve the minutes of the April 8, 2004, Bench-Bar Committee meeting. The motion carried unanimously.

3. STATUS OF PROPOSAL FOR APPOINTMENT OF COUNSEL IN CIVIL CASES

Leigh Kinzer presented proposed civil appointment procedures as set forth in Tab 3 of the agenda book. Judge Marten suggested modifying the proposal to give the lawyers a date certain by which to respond and to have the judge select counsel, rather than automatically appoint the first lawyer to respond to the e-mail request. Judge Vratil agreed that she preferred including a deadline for lawyers to respond. Judge Marten moved and Jill Michaux seconded the motion to recommend the proposed appointment procedures with the stated modification. The motion carried unanimously.

4. ELECTRONIC DEVICES IN THE COURTHOUSE

Ralph DeLoach referred to the proposed rule amendments regarding electronic devices (see Tab 11 of the agenda book) which permit lawyers to bring cell phones and computers in to the courthouses and solicited feedback on how committee members are treated by court security when entering the courthouses. Eric Melgren responded that the court security officers in Topeka and Wichita are very friendly. Mr. Johnson added that he has only encountered problems with the court security officers in Kansas City, whom he finds to be rude and abrupt. Mr. DeLoach offered to address these issues and report back to the Committee.

5. SOCIAL SECURITY APPEALS (BACKLOG PROCESSING)

Magistrate Judge O'Hara addressed Social Security appeals. Judge O'Hara reported that the backlog of Social Security cases no longer exists due to the fact that the judges are giving Social Security cases a higher priority. Magistrate Judge Sebelius assumed much of the Social Security caseload in Topeka and the court hired Abby Schieber as a temporary emergency law clerk dedicated solely to Social Security cases.

Judge Marten asked that the judicial workload statistical report include the coding which explains, for example, why a case has been pending for more than 3 years. Judge Vratil directed Committee members to contact Ingrid Campbell if they wish to receive a report which includes the coding information.

6. REPORT OF STANDARDIZATION COMMITTEE

Judge O'Hara reported on changes to the pretrial order, scheduling order, planning report and initial order documents (see Tab 6 of the agenda book). He stated that he does not believe these pretrial documents will be changed annually but that the Standardization Committee will periodically review them as needed. Judge O'Hara added that the Standardization Committee has flagged the issue of how to handle electronic discovery and that many courts are establishing electronic discovery rules as they go.

Judge Vratil thanked Judge O'Hara for his work. Judge Marten moved and Mr. Johnson seconded the motion to recommend the adoption of the pretrial documents as amended. The motion carried unanimously.

7. ARCHIVES PROJECT PROPOSAL

Kim Leininger reported on a recent meeting of the American Association of State and Local History and the Federal Court Historical Society. Ms. Leininger informed the Committee that the court had archived approximately 2,000 senior judge documents last year and that the next step would be to put the documents in logical order on a database. She reported that the Tenth Circuit would like to establish local historical chapters and that it will allow some utilization of local librarians. Ms. Leininger added, however, that the court would likely need to identify additional resources.

Judge Vratil asked Committee members for input on what direction the project should take. Judge Marten moved and Victor Davis seconded the motion to contact the Archives Committee, look at the budgetary needs, and refer to the Archives Committee the question of whether to establish a local chapter of the Tenth Circuit Historical Society. The motion carried unanimously.

8. REPORT ON BENCH-BAR BROWN BAG LUNCH IN KANSAS CITY

Judge Vratil reported that the response to the Bench-Bar brown bag lunch in Kansas City was so good that another lunch is being planned. Tim O'Brien commented that the format of the gathering (including judges stationed at lunch tables, Chief Judge Lungstrum moderating questions at the front of the room, and free flowing discussion) contributed to its success.

9. JURY DIVERSIFICATION PROPOSAL

Judge Marten stated that he was disappointed to learn from Robert Loesche, Deputy General Counsel of the Administrative Office, that his proposed modifications to the jury selection procedure have problems and will invite litigation (see Tab 9 of the agenda book). Judge Marten reported that Judge Vratil had agreed to let him step aside as chair of the Jury Diversification Subcommittee but that he would like to stay on board as a member. Judge Marten suggested that Mr. O'Brien assume his role as chair. Mr. O'Brien expressed his willingness to do so. Subject to approval of continuation of the Subcommittee by Chief Judge Lungstrum, Judge Vratil asked Mr. O'Brien to report to the Bench-Bar Committee at its next meeting.

10. PROPOSED CRIMINAL PATTERN JURY INSTRUCTIONS

With regard to the proposed criminal pattern jury instructions sent to Committee



members by e-mail on August 30, 2004, Judge Vratil requested that any written comments be forwarded to Ingrid Campbell for distribution to Committee members.

11. TO LOCAL PROPOSED MODIFICATIONS RULES

Judge Vratil reviewed the Summary of 2005 Local Rules and Standing Order Revisions (see Tab 11 of the agenda book) and asked for comment. Steve Six responded that magistrate judges have been very effective as mediators. Mr. Six further noted that D.Kan.Rule 16.3(c)(2) requires the presence of someone with "settlement authority," but does not define what constitutes "full settlement authority." Judge O'Hara shared with the Committee an opinion he has written on this subject of "full settlement authority."

Judge Marten proposed that D.Kan.Rule 16.3(c)(2) be amended to add the language from Judge O'Hara's opinion which reads, "A person with settlement authority does not need to pick up the phone to call anyone else to find out whether he or she can go higher or lower. A person with settlement authority is 'the' decisionmaker. He or she is the person who has the authority to meet the other party's demand, even if he or she chooses not to do so." 205 F.R.D. 592, 52 Fed.R.Serv.3d 1055 (2004).

Mr. Johnson moved and Mr. O'Brien seconded a motion that the Committee recommend that the rules be adopted as proposed, with the addition to D.Kan.Rule 16.3(c)(2) of language which defines someone with "full settlement authority." The motion carried unanimously.

Judge Marten also proposed modifying D.Kan.Rule 83.2.4 to remove the requirement that to bring electronic communication devices into the courthouse, pro hac counsel must present a court order to court security personnel. Judge Vratil suggested

that this issue be deferred until the next meeting after the court has an opportunity to address its concerns with court security.

12. ATTORNEY LOUNGES IN COURTHOUSES

Ms. Michaux proposed that the court provide courthouse lounges where attorneys can access the Internet. Mr. DeLoach responded that the Bar fund was created just for this kind of scenario and that the next steps would be to identify the appropriate space in each location, explore the feasibility of providing Internet connections and/or hot spots in the lounges, and seek the approval of the court. Ms. Michaux moved and Judge Marten seconded the motion directing Mr. DeLoach to further study the proposed options and report back to the Committee at the next meeting. The motion carried unanimously.

13. PAGE LIMITATIONS AND DEPOSITION TRANSCRIPTS

Mr. O'Brien moved and Judge Marten seconded the motion to recommend the addition to the local rules of the 30 page limitation for dispositive briefs which most judges require. The motion carried unanimously.

Mr. O'Brien also raised the question whether D.Kan.Rule 56.1 and 5.1 should be amended to allow entire depositions and other exhibits to be electronically submitted, rather than only pertinent parts (see Tab 13 of the agenda book). Following discussion Mr. O'Brien suggested that additional consideration be given to this proposal. He also offered to draft language for such rule changes.

14. PUBLIC ACCESS TO ELECTRONIC CRIMINAL CASE FILES

Mr. Melgren expressed concern that as of November 1, 2004, criminal case transcripts will be available on line to any PACER user. Mr. DeLoach responded that

this issue had been thoroughly vetted through the Judicial Conference Committee on Court Administration and Case Management and that the court has made every effort to make attorneys aware of the new policy so that they may be more conservative with the information they illicit during court proceedings.

Mr. Melgren asked whether criminal orders which direct that inmates be transported to courthouses will be available to the public. Mr. DeLoach stated that he would look into the question and provide additional written information to the Committee.

15. RUSSIAN JUDGES VISIT TO KANSAS CITY

Ralph DeLoach provided the Committee an itinerary for the upcoming visit of the Russian judges (see Tab 15 of the agenda book) and invited everyone to attend those events in which they have an interest.

16. BENCH BAR FUND EXPENDITURES AND BUDGET

Kirk Alford presented the Bar Fund Financial Report (see Tab 16 of the agenda book). Upon the request of Mr. DeLoach, Judge Marten moved and Mr. O'Brien seconded the motion to authorize an expenditure not to exceed \$2,000 for the upcoming Russian judge visit and to approve the FY 2005 Bar fund budget as proposed. The motion carried unanimously.

17. SELECTION OF NEW MEMBERS

Judge Vratil provided the Committee a list of persons who applied to serve on the Bench-Bar Committee and solicited their recommendations. Following discussion, Mr. Johnson moved and Mr. Davis seconded the motion to recommend Samantha Angell or Larry Michel for one vacancy. Mr. Johnson moved and Ms. Michaux

seconded the motion to recommend Charlie Harris or Joan Archer for the second vacancy. The motions carried unanimously.

18. MAGISTRATE JUDGES REPORT

Judge O'Hara reported that magistrate judge workload is now pretty evenly distributed. Judge O'Hara informed Committee members that he and Magistrate Judge Waxse preside over court proceedings at Ft. Leavenworth while Magistrate Judges Humphreys and Bostwick preside over court proceedings at Ft. Riley.

19. BANKRUPTCY JUDGES REPORT

Judge Karlin reported that the bankruptcy court is now fully staffed but that six clerk's office staff were let go as of September 30, 2004. She also reported that things have been going well since the implementation of electronic case filing on September 1, 2004.

20. U.S. ATTORNEY'S REPORT

Mr. Melgren reported that AUSA Tom Luedke had moved to the civil section and that Shawn Streepy had taken early retirement.

21. FEDERAL PUBLIC DEFENDER'S REPORT

David Phillips stated that his office has had quite a few more trials and that CJA Panel training will be held on Friday, October 15, 2004.

22. CJRA REPORTS AND NATIONAL STATISTICS

Judge Vratil reported on the status of the CJRA statistics (see Tab 22 of the agenda book).

23. THE RULE OF LAW IN EMERGING DEMOCRACIES

Mr. DeLoach reported on his recent visit to Bosnia and Slovenia.

24. RECOGNITION OF OUTGOING MEMBERS

Judge Vratil recognized outgoing members Mr. O'Brien and Mr. Davis, and presented them certificates and court hats. Judge Vratil added that Judge Belot is taking over as chair of the Bench-Bar Committee and that Judges Marten and Humphreys will be replaced. Judge Vratil expressed pleasure and gratitude for her time as chair of the Committee. Judge Marten thanked everyone for their kindness and added that Judge Humphreys had asked him to convey her appreciation to the Committee as well.

Ms. Michaux moved and Judge Marten seconded the motion to retain the current format of the Bench-Bar meetings (an evening social event followed by a meeting the next day). The motion carried unanimously.

The meeting, having convened at 9:00 a.m., adjourned at 2:05 p.m.

Respectfully submitted,

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF THURSDAY, APRIL 8, 2004, 9:00 A.M. COTTONWOOD FALLS, KS

IN ATTENDANCE:

HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, CHIEF MAGISTRATE JUDGE  
HONORABLE ROBERT NUGENT, CHIEF BANKRUPTCY JUDGE  
HONORABLE BENJAMIN L. BURGESS, JR.  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC MELGREN, U.S. ATTORNEY  
VICTOR A. DAVIS, ESQ.  
TIMOTHY M. O'BRIEN, ESQ.  
JOSEPH D. JOHNSON, ESQ.  
KURT A. HARPER, ESQ.  
JILL A. MICHAUX, ESQ.  
STEVEN N. SIX, ESQ.

Judge Vratil welcomed Steve Six and Jill Michaux, new members of the Bench-Bar Committee. Judge Vratil announced that in recognition of her leadership role as the senior active magistrate judge in the District of Kansas, the Court has designated Magistrate Judge Humphreys the "Chief" Magistrate Judge for the District of Kansas.

1. APPROVAL OF MINUTES

Judge Marten moved and Joseph Johnson seconded the motion to approve the minutes of the October 16, 2003, Bench-Bar Committee meeting. The motion carried unanimously.

2. JURY DIVERSIFICATION

Judge Marten reported that he had consulted with General Counsel William Burchill at the Administrative Office of the U.S. Courts and was advised that his

proposed jury diversification plan appears to be one of the most progressive in the judiciary. Mr. Burchill said that his office would review the proposal and respond in writing with an opinion. Judge Vratil stated that the Court is looking forward to reviewing a written proposal from Judge Marten's Subcommittee on Jury Diversification, in addition to the opinion from the General Counsel's office. Judge Vratil indicated that the plan will need to go to the Tenth Circuit Judicial Conference for approval, which next meets in July, 2004. Judge Humphreys suggested that the plan include a means for tracking its success in diversification. Judge Vratil asked Ralph DeLoach to put together a checklist of steps that need to be taken for approval and implementation, along with target dates to accomplish implementation by November of 2004.

3. POSSESSION OF ELECTRONIC DEVICES IN COURTHOUSES

Following discussion, the committee reached the following consensus:

The committee agreed that laptop computers are essential for lawyers to conduct business in the courthouse and that in many instances their use is necessary in the courtroom. The committee agreed that laptop computers should be freely allowed in the courthouses and available for use without advance approval. Therefore, the committee suggested that D.Kan. Rule 83.2.4 might be eliminated or modified to reflect the need for lawyers to bring their laptop computers into the courthouse.

The committee agreed that cell phones are also essential to many tasks which lawyers are required to perform within the courthouse. The committee recommended that lawyers be allowed to bring cell phones into the courthouse as a matter of course, but that use of cell phones in the courtrooms should be strictly prohibited. If this prohibition is not adhered to, a lawyer should expect to have his or her phone

confiscated, pay a cash fine, or be required to render pro bono legal services as determined by the Court.

As for computers, cell phones and personal digital assistants (PDAs) with audio or video recording facilities, the consensus of the committee is that it is pointless to say what can come in and what must stay out of the courthouses since technology is changing so quickly and electronic devices are becoming increasingly interchangeable. Also, it would be asking a lot to expect a court security officer to inspect a device and ascertain its various functions, while still getting people through the door and conducting other necessary airport-type screenings. The Court already has a local rule (D. Kan. Rule 83.2.1) on photography and recordings which seems to strike the right balance by allowing electronic devices in the courthouse but prohibiting photographic and recording functions. It is not clear that any further rule is needed on this subject.

Finally, the committee agreed that with the permission of the Court, non-lawyers including pro se litigants should be allowed privileges similar to those of attorneys with the advance approval of a judge.

The committee also discussed their concern that the current rules are unfair because they do not apply to tenants or employees of the courthouse who either bypass security by entering and exiting the building through secured parking or are waved through security by the CSOs. For example, an assistant U.S. attorney can communicate with his office and witnesses during trial recesses and send and receive email, while opposing counsel in the same case may not be able to do so.



4. CHANGES TO D.KAN. RULE 83.6.3 (c)(2) and 83.6.4 (f) REGARDING THE DISCIPLINARY PANEL

Judge Vratil updated the Committee on additional changes to the rules as highlighted in yellow in the agenda book materials (see Tab 4).

5. STATUS OF PENDING CASES, MOTIONS AND SOCIAL SECURITY APPEALS

Judge Vratil shared information on the status of pending cases, motions and social security appeals. Judge Marten stated that he has been announcing social security appeal decisions from the bench over the last few months and will continue to do so for a few more months. He believes this has helped alleviate the backlog of cases and will reevaluate the success of this method again this summer.

6. UPDATE ON STANDARDIZATION PROCESS AND COMMENTS ABOUT TOPICS UNDER CONSIDERATION

Judge Vratil reported that a district standardization process began four to five years ago and that the Standardization Committee is currently reviewing pretrial orders.

7. ARCHIVES PROJECT PROPOSAL FROM JEAN SVADLENAK

Judge Vratil presented Jean Svadlenak's proposal for developing a website and digital archive of senior judge information. Essentially the proposal contemplates making the court history available to the public for Internet research, organizing, digitizing and making accessible more information on the senior judges and the work of the Court.

The committee agreed that substantially more time and money should not be put into the Court history archive project without a clear understanding of the Court's purpose and direction for establishing historical archives.

The committee agreed that it would be helpful to have Jean Svadlenak prepare a

mission statement describing the purpose of the collection, the scope of the collection, the guidelines for soliciting basic information from judicial officers, how the information will be used, and who will have access to the information. The mission statement would then be presented to the committee and the Court for review and approval. The estimated expense to have the mission statement prepared by Jean Svadlenak is \$500. Following discussion, Vic Davis moved and Timothy O'Brien seconded a motion to move forward with the recommendation contained in Jean Svadlenak's proposal, upon approval of a mission statement by the Bench-Bar Committee and the Court. The motion carried unanimously.

8. WHAT'S UP IN THE BANKRUPTCY COURT

Chief Judge Nugent provided the Committee with a report on the Bankruptcy Court (see attached).

9. BENCH-BAR FUND FINANCIAL REPORT

Mr. DeLoach presented the Bar Fund Financial Report to the Committee.

10. UPDATE FROM THE OFFICE OF THE U.S. ATTORNEY

Eric Melgren stated that the prosecution priorities of the United States Attorney's Office for the District of Kansas, in conjunction with the United States Department of Justice priorities, are (1) anti-terrorism; (2) combating gun violence through the Project Safe Neighborhoods program; (3) disrupting and dismantling organized drug trafficking organizations; (4) prosecuting white collar crime and corporate fraud; and (5) protecting civil rights. Mr. Melgren had a few comments on the first two of these priorities: "The anti-terrorism efforts involve less the traditional prosecution of crimes than using our office to create and maintain a coordinated network of state and federal officials

working to combat terrorism. Most investigative work in this area is done through the FBI-lead Joint Terrorism Task Force. I sit on their Counter-terrorism Executive Board in conjunction with this, and while I cannot comment specifically on any of their activities I can say that it is surprising how much goes on in the Midwest. Through Project Safe Neighborhoods, and its promotion of the stiff federal sentences for firearms violations, we have worked with state and local law enforcement to step up prosecutions of gun crimes, with the intent of identifying that small number of offenders who cause a disproportionately large amount of gun violence in our communities, and make our communities safer by charging these individuals with gun crimes and removing them from their communities through long federal sentences."

Finally, Mr. Melgren added that his office would participate in the upcoming law day events at Wichita recognizing the 50<sup>th</sup> anniversary of Brown v. Board of Education.

11. UPDATE FROM THE FEDERAL PUBLIC DEFENDER'S OFFICE

David Phillips stated that because of the continuing increase in criminal cases for the District of Kansas, he obtained approval to hire three new attorneys, one for each office. All three new attorneys are now on board. In addition, Mr. Phillips reported that his office had hired an assistant paralegal for Wichita and a paralegal and investigator for Kansas City. Mr. Phillips added that he is hopeful that his office will not be required to stop taking cases, as has been required in the past, because of the excessive caseload.

12. NEXT MEETING: DATE AND LOCATION

The next meeting will take place on October 6 and 7, 2004, at the Circle S Ranch in Lawrence, Kansas.

The meeting having convened at 9:00 a.m. adjourned at 1:00 p.m.

Respectfully submitted,

s/ Ingrid Campbell

Ingrid A. Campbell

UNITED STATES DISTRICT COURT  
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF THURSDAY, OCTOBER 16, 2003, 9:00 A.M. LAWRENCE, KANSAS

IN ATTENDANCE:

HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC F. MELGREN, UNITED STATES ATTORNEY  
J. STEVEN PIGG, ESQ.  
VICTOR A. DAVIS, JR., ESQ.  
TIMOTHY M. O'BRIEN, ESQ.  
HONORABLE BENJAMIN L. BURGESS, JR.

NOT PRESENT:

HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
JOSEPH D. JOHNSON, ESQ.  
KURT A. HARPER, ESQ.

1. APPROVAL OF MINUTES

Judge Vratil moved and Judge Marten seconded the motion approving the minutes of the April 11, 2003, Bench-Bar Committee meeting. The motion carried unanimously.

2. ELECTRONIC DISCOVERY

Magistrate Judge Waxse made a presentation on electronic discovery and questioned whether information regarding electronic discovery should be included in scheduling orders. Following a discussion, the committee agreed to recommend that scheduling orders briefly reference electronic discovery guidelines (to be drafted by the court) and direct parties to the court web site for additional information.

3. FEEDBACK FROM THE WICHITA BAR ASSOCIATION REGARDING COURT EXPERIMENTATION WITH 12 PERSON JURIES

Judge Marten reported that fewer than six lawyers responded to his inquiry whether members of the Wichita Bar Association prefer 12-person juries in civil cases. A few plaintiff's lawyers expressed a preference for 12 persons, but Judge Marten does not sense a ground swell of support for changing the number. He therefore recommended taking no action. Consequently, Judge Vratil tabled the item.

4. UPDATE FROM JURY SELECTION SUBCOMMITTEE

Judge Marten reported that the subcommittee met on August 21, 2003, in Topeka and determined that the ethnic composition of the federal jury pools is out of sync with the ethnic demographics of the State of Kansas. The subcommittee looked at alternatives and, for the refilling of the jury wheel in 2005, proposes to increase the number of questionnaire mailings from 44,000 to 100,000 - 125,000; segregate returned questionnaires by race; and then draw the appropriate number of jurors based on race to match the ethnic demographics of the state. Judge Marten agreed to prepare a written proposal to be distributed at the next Bench-Bar Committee meeting.

5. UPDATE ON PRETRIAL PROCEDURES FEEDBACK

Judge Marten reported that he had solicited feedback from the Wichita bar about the time and expense of filing a case in federal court. Judge Marten did not receive any strong expressions of discontent, but he did hear that counsel like more opportunities for oral argument on dispositive motions and that they feel they are required to do too many things too early in the process. Judge Marten reminded counsel that they can always seek relief from court deadlines.

6. REPORT ON WICHITA LUNCHEON AND UPDATE ON PROCESSING OF SOCIAL SECURITY CASES

Judge Marten stated that he believes the Wichita luncheon was very worthwhile and that he would like to do something similar 2 - 3 times a year.

Judge Humphreys reported that the court currently has a backlog of 120 social security cases ripe for decision; that the court is looking at the average time it takes to process a social security case; and that the judges are giving thoughtful consideration to streamlining the process.

Judge Vratil suggested committee members contact her should anyone have suggestions for expediting the processing of social security cases.

7. UPDATE ON APPOINTED COUNSEL IN CIVIL RIGHTS CASES

Judge Vratil told the committee that Chief Judge John Lungstrum has asked Judge Carlos Murguia to research the manner in which the court appoints counsel for indigent plaintiffs in civil cases, and to propose appropriate changes. This request arises from concerns that it may not be ethically appropriate for a judge to hand-pick and recruit particular counsel for particular cases, and that a more random and objective process may be more appropriate. Judge Waxse reported that he and Judge Murguia will have more information to report to the Bench-Bar Committee at the next meeting.

8. BANKRUPTCY COURT UPDATE

Judge Vratil referred committee members to Chief Judge Nugent's memorandum, "What's Up in Bankruptcy Court" (see tab 8 of the agenda).

9. UPDATE ON SELECTION OF ADDITIONAL BENCH-BAR COMMITTEE MEMBERS

Judge Vratil stated that the Bench-Bar Committee will have two vacancies on

January 1, 2004, with the expiration of Steve Pigg's term on December 31, 2003, and the expansion of the committee by one member. Committee members provided Judge Vratil with feedback on the pool of applications received.

Judge Vratil recognized outgoing member Steve Pigg and presented him with a certificate and court hat.

10. BAR FUND FINANCIAL REPORT

Ralph DeLoach presented the Bar Fund Financial Report and submitted the Bar Registration and Disciplinary Fund audit report to the committee. Following discussion, Judge Marten moved and Vic Davis seconded the motion to approve the Bar Fund budget. The motion carried unanimously.

11. REPORT ON VISIT TO WICHITA OF THE RUSSIAN JUDGE DELEGATION  
NOVEMBER 8 - 15

Mr. DeLoach distributed an agenda and reported on plans for the Russian judge delegation visit November 8 - 15.

12. NEXT MEETING: DATE AND LOCATION

Judge Vratil stated that future dates for meetings will be e-mailed to committee members.

The meeting having convened at 9:00 a.m. adjourned at noon.

Respectfully submitted,

  
Ingrid A. Campbell



UNITED STATES DISTRICT COURT  
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF FRIDAY, APRIL 11, 2003, 9:00 A.M., COUNCIL GROVE, KANSAS

IN ATTENDANCE:

HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
HONORABLE ROBERT E. NUGENT, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC F. MELGREN, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.  
MARK D. HINDERKS, ESQ.  
J. STEVEN PIGG, ESQ.  
VICTOR A. DAVIS, JR., ESQ.  
KURT A. HARPER, ESQ.  
JOSEPH D. JOHNSON, ESQ.  
TIMOTHY M. O'BRIEN, ESQ.

NOT PRESENT:

JANET M. SIMPSON, ESQ.  
MICHAEL S. HOLLAND, ESQ.  
AMY BERTRAND, ESQ.

1. APPROVAL OF MINUTES

Judge Marten moved and Magistrate Judge Humphreys seconded the motion approving the minutes of the September 24, 2002, Bench-Bar Committee meeting. The motion carried unanimously.

2. WELCOMING OF NEW MEMBERS

Judge Vratil welcomed Vic Davis, Kurt Harper, Joe Johnson and Tim O'Brien to the committee.

3. ACTION ITEMS

a. EVALUATION OF HISTORICAL DISPLAYS EXPANSION AND PRINTING COPIES OF JUDGE STANLEY'S ORAL HISTORY

Joe Johnson brought up the noise and congestion issues that arise for school and other groups wishing to view the historical display in the Topeka courthouse because the display is located just outside of the courtrooms. Judge Marten moved and Mr. Johnson seconded the motion to explore alternative locations for the historical display in Topeka. The motion carried unanimously. Regarding the printing of Judge Stanley's oral history, Mr. Johnson expressed his concern about setting the precedent and expense of printing oral histories for all judges. Also, Judge Stanley's oral history contains some comments which are racial in nature, and Mr. Johnson expressed concern that the court not appear to endorse such statements. Eric Melgren suggested that the committee place Judge Stanley's history on the court's Internet web site where it would be more accessible. By consensus the committee agreed that Bench-Bar funds should not be used to publish hard bound copies of the oral history, but that the oral history should be posted on the court's web site.

Judge Vratil discussed the possibility of digitally capturing additional archival information from senior judges and whether the court should begin scanning and photographing materials for electronic storage. The committee concurred in both suggestions. Judge Vratil stated that in order for the court to take on such a project, it would need a computer laptop, an image scanner and digital camera and camcorder. Judge Marten asked whether such equipment, if purchased with Bar funds, could be made available to outside bar groups.

Discussion was held about initially purchasing one set of equipment and conducting a pilot project in one location. Judge Humphreys moved and Mr. Melgren seconded the motion to purchase such equipment and software, at a cost not to exceed \$7,500. (Note: In approving the Bar Fund budget proposal, the committee separately approved a proposal to engage Jean Svadlenak, the court archivist, to gather this information on Judge Saffels and the four senior judges, for a projected total expense of \$15,000 (\$3,000 per judge).)

The committee discussed at length the entire subject of how best to correct, preserve and communicate information about the history, personnel and work of the court. The committee agreed that the entire focus needs to shift from hard bound books which are subject to limited distribution, to Internet communication media. Judge Vratil agreed to solicit feedback from the Archives Committee and ask that Jean Svaldenek brainstorm possibilities for a new and expanded web site.

b. FEEDBACK FROM THE WICHITA BAR ASSOCIATION REGARDING COURT EXPERIMENTATION WITH 12 PERSON JURIES

Judge Marten will prepare a survey for the next committee meeting.

c. DEMOGRAPHIC INFORMATION FOR EACH COURT LOCATION FOR ASSESSMENT OF WHETHER JURORS ARE REPRESENTATIVE OF THE SURROUNDING VICINITIES; COMPOSITION OF JURIES IN THE DISTRICT

Ingrid Campbell discussed the racial breakdown of juror demographics by location for the District of Kansas. Some questions were raised about the information compiled whereupon Ralph DeLoach offered to arrange for a statistician from the Administrative Office to assist in developing the

demographic information for Kansas. The committee consensus was that jurors are not representative of the community. Judge Vratil appointed a subcommittee comprised of Judge Marten as chair, David Phillips, Tim O'Brien, Kurt Harper, Mr. Melgren and Mr. Johnson, to further investigate this issue and report back at the next meeting.

d. CERTIFIED INTERPRETERS

Ingrid Campbell reported that the court spent \$30,307 on Spanish interpreters for fiscal year 2002, which is substantially less than the approximately \$70,000 it would cost to hire a Spanish-speaking staff interpreter. Mr. DeLoach reminded the committee of the availability of telephone interpreting for certain situations such as when an interpreter of a less-common language is needed. Mr. Johnson proposed staying away from telephone interpreting whenever possible. Judge Marten suggested preparing a written Spanish plea colloquially. Mr. Melgren offered to look into making a Spanish plea agreement available.

e. FOLLOW UP ON D.KAN. LOCAL RULES 83.5.3 AND 83.6.2 AND STATUS OF PRINTED COPIES OF 2003 LOCAL RULES

Ms. Campbell conveyed to the committee that D.Kan. Local Rules 83.5.3 and 83.6.2 had been modified for the 2003 printed and bound copies of the local rules, which are scheduled to be distributed to attorneys in late May or early June.

f. SEALING SETTLEMENT AGREEMENTS FILED WITH THE COURT

Magistrate Judge Humphreys reported that the court does not frequently receive requests to seal settlement agreements. She suggested that a local rule

on the subject is not needed. Judge Vratil agreed and suggested that no action be taken. The committee concurred.

g. PRO HAC VICE FEES

A survey of courts inside and outside the Tenth Circuit revealed that a number of districts are charging anywhere from \$5 to \$25 per case for pro hac vice admission, rather than a flat fee per calendar year. Mr. DeLoach added that it is much less burdensome and time-consuming to administer a per case fee rather than a fee per calendar year. Judge Marten moved and Judge Vratil seconded the motion to propose that the pro hac vice fee be raised to \$25 per case. The motion carried unanimously.

4. PRETRIAL PROCEDURES

Judge Marten reported that he has heard of lawyers avoiding federal court because the pretrial procedures are unnecessarily complicated or even unnecessary. Magistrate Judge Humphreys added that the court has the reputation of being slow and procedurally cumbersome. Mark Hinderks mentioned that jury instructions are required so early in the process that they are often ineffective.

Judge Marten would like to set up a time to discuss with lawyers their concerns. Judge Vratil suggested that Judge Marten advertise a brown bag lunch in the Wichita Bar Association's publication, the Bar-o-Meter, and obtain more details from lawyers. Judge Vratil stated that if it proves worthwhile, the same procedure could be repeated in Kansas City and Topeka.

5. DISTRICT STATISTICS

Judge Vratil presented the court's most recent case management statistics. Mr.

Melgren commented that the process for getting the administrative record in Social Security Administration cases is extremely slow. Magistrate Judge Humphreys stated that Chief Judge Lungstrum has asked her to take a look at ways to streamline the processing of social security cases and offered to follow up with the committee at the next meeting. Judge Vratil tabled the discussion of court administration of social security cases until Magistrate Judge Humphreys is able to report back.

6. SERVICE BY E-MAIL PURSUANT TO RULES 33, 34, 35 AND 36

The committee considered Jerry Palmer's proposal that local rules be revised to require that all discovery requests be served in an electronic format that would enable counsel to edit the request and serve it as a response. The committee noted that most lawyers freely provide discovery requests in electronic format upon request. The committee agreed that while this practice should be encouraged, it can be addressed in standard scheduling orders and a local rule is not necessary.

7. D.KAN.RULE 7.6 - ATTACHING "UNPUBLISHED" CASES

At Chief Judge Lungstrum's request, Judge Vratil proposed amending D.Kan. Rule 7.6 to clarify that no copies of "unpublished" decisions shall be furnished where they are available on line and the citation is provided. David Seely moved and Mr. O'Brien seconded the motion to amend D.Kan. Rule 7.6 accordingly. The motion carried unanimously.

8. CM/ECF UPDATE

Leigh Kinzer informed the committee that as of March 20, 2003, the court has required that all documents submitted for filing in civil cases be filed electronically or submitted to the court in .pdf format on 3.5" disks or CDs. The court will begin requiring

that documents submitted for filing in criminal cases be filed electronically as of May 20, 2003.

9. APPOINTED COUNSEL IN CIVIL RIGHTS CASES

Judge Vratil informed the committee that the court has been looking at procedures used to appoint counsel in civil rights cases and how hard the court should push an attorney to take an appointment. Judge Marten reported that in Wichita the courts appoint counsel to prepare an amended complaint, but then withdraw if they do not think that the case has merit. Mr. O'Brien suggested that a judge, and not a law clerk or clerk's office employee, needs to make the call to counsel. The committee agreed the court must not be reluctant to appoint counsel in appropriate cases and that if prospective counsel is called in advance, judges should be the ones who solicit attorneys to accept appointments.

10. REPORT ON BANKRUPTCY JUDGE SELECTION PROCESS

Judge Vratil reported that the bankruptcy judge selection process is on track.

11. GIVEAWAYS FOR STUDENTS WHO TOUR COURTHOUSES

The committee had mixed feelings about the public relations benefit of distributing items to students which are likely to be discarded or never used. As a result, the request to purchase giveaways for students who tour the courthouses has been set aside for further consideration.

12. BENCH-BAR FUND REPORT

Mr. DeLoach submitted the Bar Registration and Disciplinary Fund budget and audit report, and reported that a formal audit of the Bench-Bar fund is conducted every three years and an informal audit is conducted every year.

Ralph DeLoach requested that the CM/ECF fund be increased from \$5,000 to \$7,000. He also requested that Bench-Bar funds be used to purchase a new computer in the amount of \$1,598 for the part-time attorney registration clerk. Judge Marten moved and Mr. Davis seconded the motion to approve the Bar Fund budget (which includes a \$15,000 archival fee), increase the CM/ECF allotment by \$2,000, and to purchase a new computer for the attorney registration clerk. The motion carried unanimously.

13. RECOGNITION OF OUTGOING MEMBERS

Judge Vratil recognized outgoing members Mark Hinderks and David Seely and presented each with a certificate and court hat.

The meeting having convened at 9:00 a.m. adjourned at 1:00 p.m.

Respectfully submitted,

  
Ralph L. DeLoach



UNITED STATES DISTRICT COURT  
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF TUESDAY, SEPTEMBER 24, 2002, 9:00 A.M. LAWRENCE, KANSAS

IN ATTENDANCE: HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC F. MELGREN, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.  
JANET M. SIMPSON, ESQ.  
MARK D. HINDERKS, ESQ.  
J. STEVEN PIGG, ESQ.

NOT PRESENT: HONORABLE JOHN W. LUNGSTRUM, CHIEF JUDGE  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
MICHAEL S. HOLLAND, ESQ.  
AMY BERTRAND, ESQ.

1. APPROVAL OF MINUTES

Eric Melgren moved and Steve Pigg seconded the motion approving the minutes of the Bench-Bar Committee meeting of April 12, 2002. The motion carried unanimously.

2. ACTION ITEMS FROM LAST MEETING

a. CONDENSED COLUMN FORM VERSION OF THE LOCAL RULES

Ingrid Campbell referred the Committee to attachment 2(a) of the agenda book as an example of a column form version of the local rules. The Committee members agreed that they would like to see this format of the local rules made available on the court's Internet web site.

b. GSA FUNDING OF COURT HISTORY PROJECTS

Judge Vratil reported her plans to discuss the court history project with Archives Committee. Ralph DeLoach added that GSA is not able to fund the court history projects.

c. PROPOSAL TO INCREASE BAR REGISTRATION FEE TO \$20

Ralph DeLoach reported that the judges have approved an increase in the bar registration fee to \$20. Attorneys will be advised about the reasons for the fee increase including the reinstatement and distribution of bound copies of the local rules at the time of the mailing of the local rules.

d. ADVERTISEMENT OF AVAILABILITY OF COURT TECHNOLOGY

Ingrid Campbell reported that the clerk's office has periodically included the courtroom technology brochures with scheduling order mailings sent to lawyers which have cases before the court. Ms. Campbell noted that between the three divisions, courtroom technology is utilized the least in Wichita. As a result, the Courtroom Technology Committee has recommended placing an advertisement in the Wichita Bar Association's Bar-o-meter.

e. COURT EXPERIMENTATION WITH 12 PERSON JURIES

Ralph DeLoach reported that FED. R. CIV. P. 48 authorizes a court to seat 12 person juries in civil cases. Some federal courts which select 12 person juries include the Eastern District of Arkansas, the District of Nebraska and the District of Utah.

Magistrate Judge Humphreys stated that she believes there is a continued interest by the Wichita Bar Association to increase the number of jurors who

serve on civil trials from 7 or 8 to 12. In order to solicit additional feedback on this issue from the Wichita bar, Judge Vratil will ask Judge Marten to place this issue on the agenda of the upcoming Wichita Bar Association meeting and will report back to the Committee.

f. TRACK THE COMPOSITION OF POOLS OF RESPECTIVE JURORS AND COMPARE WITH THE COMPOSITION OF THOSE ACTUALLY SELECTED TO SERVE

Ingrid Campbell referred the Committee to exhibit 2(f) which shows the racial make-up of jury pools and juries actually selected for each location in the District of Kansas from October 2001 through August 2002. Ralph DeLoach referred the Committee to a February 25, 2002, opinion from Robert Loesche, Deputy General Counsel with the Administrative Office, which summarizes that "courts which have supplemented [jury pool selection through means in addition to voter registration lists] have experienced very mixed results both as to the administrative burden of doing so and as to actually improving the representativeness of their juries." (See exhibit 2(f)).

Janet Simpson offered to consult with the Wyandotte County District Court which uses driver's license lists to determine whether they have kept statistics on the number of no-shows they experience for those persons called to jury duty.

The Committee asked Ralph DeLoach to gather more detailed demographic information about the District of Kansas, and each of the three court locations, so the Committee can assess whether our jurors are representative of the surrounding vicinities. Also, between now and the next meeting he will pull together all available information regarding the composition of juries in the District

of Kansas. The Committee will also take a look at whether the current local rules with regard to jury selection should be revised.

A discussion was held on the use of certified interpreters and whether the numbers for the District of Kansas justify having an on-board staff interpreter. Ralph DeLoach will follow-up on the requirements for hiring permanent interpreters and will provide the Committee with the certified interpreter list at the next meeting.

g. COURT APPROVAL OF LOCAL RULE 83.5.3

Ralph DeLoach reported that the court approved the proposed local rule change (see exhibit 2(g)).

h. ADVERTISE BENCH-BAR COMMITTEE VACANCIES

Judge Vratil provided the Committee with a list of persons who have applied to serve on the Bench-Bar Committee and asked for their recommendations. Judge Vratil will pass along the recommendations to Chief Judge Lungstrum.

3. PUBLICATION OF JUDGE STANLEY'S ORAL HISTORY

Ralph DeLoach asked the Committee whether they wish to publish bound copies of the oral tapes of Judge Stanley's history. Judge Vratil requested that copies of the transcript of the oral tapes be sent to each Committee member to assist in evaluating whether to publish bound copies. Judge Vratil will also consult with the Archives Committee on this topic.

4. ELECTRONIC CASE FILES - MODEL RULES

Ingrid Campbell referred to the Model Rules for Electronic Case Filing which has

been approved by the Judicial Conference of the United States (see exhibit 4). Ms. Campbell advised that Magistrate Judge O'Hara chairs the CM/ECF local rules subcommittee which is tasked with establishing proposed local district court rules for electronic filing for the District of Kansas.

5. REIMBURSEMENT FROM THE ATTORNEY REGISTRATION AND DISCIPLINARY FUND FOR JUDICIAL OFFICERS TO ATTEND THE ANNUAL KANSAS CITY METROPOLITAN BAR ASSOCIATION

Judge Vratil posed to the Committee the question of whether or not judicial officers should be reimbursed from the attorney registration and disciplinary fund to attend the annual Kansas City Metropolitan Bar Association. David Seely suggested that the Committee also consider funding other similar proposals as long as they benefit the bar. Eric Melgren suggested that expenses be limited to "actual direct costs for presenters" which would be approved by the chief judge. Judge Vratil will draft a proposal to present to the judges.

6. LETTER FROM STEVE SIX ASKING THE COURT AND BENCH-BAR COMMITTEE TO REVISIT D. KAN. RULE 37.1(B)

After discussion, Judge Vratil confirmed that the consensus of the Committee was that while D. Kan. Rule 37.1(b) is not perfect, rather than changing the rule, the better way to address the problem raised by Steve Six is for lawyers to request an extension of time.

7. LOCAL RULE D. KAN. 83.6.2 - REVIEW SECTION DEALING THE COMMITTEE ON CONDUCT OF ATTORNEYS

Ralph DeLoach reported that the judges had instructed him to amend Local Rule D. Kan. 83.6.2 by repealing section (b) *Committee on Conduct of Attorneys* and section (c) *Duties of the Committee*. Repealing these sections in effect abolished the

Committee on Conduct of Attorneys.

8. BAR FUND FINANCIAL REPORT

Ralph DeLoach presented the bar registration and disciplinary fund budget (see last page of exhibit 8). Mr. DeLoach also reported that some of the funds will be used to support a visit by the Russian Federation Judges. Ralph DeLoach will provide each Committee member with a copy of the Russian judges' agenda when it has been completed. David Seely moved and Janet Simpson seconded the motion to adopt the budget as proposed and to recommend adoption to the court. The motion carried unanimously.

9. NEW BUSINESS

a. SEALING SETTLEMENT AGREEMENTS

A question arose whether settlement agreements filed with the court should be sealed. Magistrate Judge Humphreys offered to put this item on the magistrate judges' meeting agenda for discussion.

The meeting having convened at 9:00 a.m. adjourned at 12:15 p.m.

Respectfully submitted,

  
Ralph L. DeLoach

UNITED STATES DISTRICT COURT  
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF FRIDAY, APRIL 12, 2002, 9:00 A.M. FALL RIVER, KANSAS

IN ATTENDANCE: HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
ERIC F. MELGREN, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.  
JANET M. SIMPSON, ESQ.  
EVELYN ZABEL WILSON, ESQ.  
MARK D. HINDERKS, ESQ.  
J. STEVEN PIGG, ESQ.

NOT PRESENT: HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
MICHAEL S. HOLLAND, ESQ.

1. APPROVAL OF MINUTES

Judge Pusateri moved and Evelyn Zabel Wilson seconded the motion approving the minutes of the Bench-Bar Committee meeting of December 14, 2001. The motion carried unanimously.

2. WELCOME ERIC MELGREN, UNITED STATES ATTORNEY

Judge Vratil congratulated Eric Melgren on his recent appointment as United States Attorney for the District of Kansas and welcomed him to the Committee.

3. ACTION ITEMS FROM LAST MEETING

a. USE OF CELLULAR TELEPHONES IN THE COURTHOUSE

Ralph DeLoach reported that the issue regarding use of cellular telephones in the courthouse has been referred to the Court Security Committee which will meet this fall and consider whether our local rule should be changed to

authorize the introduction of cell phones in to the courthouse without the specific permission of a judge.

b. COURT APPROVAL TO UPDATE STANDING ORDERS

Ralph DeLoach reported that the court has approved the proposal to update local rule numbers referenced in Standing Orders 88-6 and 88-8 and to delete Standing Order 88-4.

c. COMPACTING COMPUTER PRINTED VERSION OF LOCAL RULES

Ralph DeLoach reported that it is possible to make the computer printed version of the local rules more compact. David Seely inquired whether the Clerk's Office could offer a condensed column form version that would require the use of less paper when printed. Judge Vratil requested that the Clerk's Office prepare a column form version of the local rules to be e-mailed to each Committee member.

d. PRO SE PACKET

Ralph DeLoach reported that the pro se packet is now available on the court's Internet web site.

e. GSA FUNDING OF COURT HISTORY PROJECTS

Ralph DeLoach reported that the possibility of GSA funding court history projects is currently under consideration. Specifically, GSA is giving consideration to funding exhibits about Senator Dole in the Dole Building and Senator Carlson in the Carlson Building. Mr. DeLoach hopes to have an answer for the Committee by the next meeting.



f. BAR REGISTRATION FEE

Ralph DeLoach reported that the proposal to raise the annual bar registration fee to \$20 has been deferred to the court's meeting on June 14, 2002. Mr. DeLoach further advised the Committee that the Bar Registration and Disciplinary Fund currently has sufficient funds to publish a bound version of the 2003 local rules without a fee increase in June 2002. He advised that a fee increase would probably be necessary in June 2003.

g. ADVERTISEMENT OF COURT TECHNOLOGY TRAINING

Ralph DeLoach referred the Committee to the court's *Courtroom Technology Information* brochure and flyer. Mr. DeLoach reported that the flyer was sent out with all scheduling orders for a one month period in December 2001. Mr. DeLoach suggested that the Clerk's Office may need to make another effort to publicize the existence of courtroom technology training to make sure everyone is aware of its availability. Janet Simpson suggested including the brochure or flyer with pretrial order mailings.

h. 12 PERSON JURIES

Ralph DeLoach contacted the FJC to determine if studies have been conducted regarding the use of 12 person juries for civil cases in federal court. Mr. DeLoach presented the *Report on the Importance of the Twelve-Member Civil Jury in the Federal Courts* by the American College of Trial Lawyers. Mr. DeLoach offered to pursue this issue further with the Administrative Office, including whether there are any additional Judicial Conference Committee Reports on the use of 12 person juries and whether the court is at liberty to

experiment with 12 person civil juries. If courts are allowed to experiment with 12 person juries, Ralph DeLoach will also survey other federal courts and inquire about their experience with 12 person juries. Mr. DeLoach offered to track the composition of a pool of prospective federal jurors and compare them with those actually selected to serve on a jury to determine whether the pool and the actual juries are equally diverse.

i. DISTRICT COURT REVIEW OF BAR FUND AUDIT

The court has not met for a judges' meeting which would allow for presentation of this agenda item since the last Bench-Bar meeting. This item will be on the agenda for the next judges' meeting scheduled for June 14, 2002.

j. DISTRICT COURT REVIEW OF COURT HISTORY PROJECTS

The court has deferred consideration of this agenda item until the next judges' meeting scheduled for June 14, 2002.

k. COMMITTEE OVERSIGHT PURSUANT TO D. KAN. RULE 77.6

Judge Vratil presented the District of Kansas' 2000 and 2001 Case Management Statistics; CJRA Report Comparison for September 30, 2001 and March 31, 2002; and, Motion Goal Report for the period October 1, 2001, through March 31, 2002. After discussion of the reports, Judge Vratil asked whether the Committee believed the court is adequately moving cases along. The consensus of the Committee is that cases are moving at about the right pace, not too fast or too slow, but that the Committee will continue to monitor the case management statistics as necessary.

## NEW BUSINESS

### 1. PROPOSED REVISION OF LOCAL RULE D. KAN. 83.5.3

Ralph DeLoach reported that the proposed revision of Local Rule D. Kan. 83.5.3 clarifies the administration of the Bar Registration and Disciplinary Fund. Mr. DeLoach stated that if the Committee agrees with and recommends the proposed revision he will present the revised local rule to the court for its consideration. The Committee unanimously agreed that Local Rule D. Kan. 83.5.3 be revised as proposed.

### 2. ADVERTISING FOR BENCH-BAR MEMBERSHIP

Judge Vratil reported that the terms of Committee members Janet Simpson, Michael Holland, David Seely and Mark Hinderks will expire on 12/31/02. Judge Vratil stated that as a result, solicitations of interest to serve on the Bench-Bar Committee will be included in the 2002 annual attorney registration drive.

### 3. REPORT ON CM/ECF

Ralph DeLoach reported that the court will gather in Wichita on April 24 and 25, 2002, for a presentation of Case Management/Electronic Case Files (CM/ECF). Since practicing lawyer input is very important, Ralph DeLoach invited interested Committee members to attend the meeting. Mr. DeLoach reported that the District of Kansas is scheduled to go live on CM/ECF in March of 2003. Several members of the Committee shared their experiences with CM/ECF in the Western District of Missouri and stated that while the benefits of electronic case filing outweigh the disadvantages, they have experienced some frustration with being "kicked out" of the system and with the inability to submit some filings, such as exhibits, electronically.

4. UPDATE ON THE TOPEKA MAGISTRATE POSITION

Ralph DeLoach reported that an announcement for the Topeka magistrate position will be published in the next issue of the Kansas Bar Journal. He advised that the position will be filled subject to the availability of funding in fiscal 2003 budget approved by Congress.

The meeting having convened at 8:30 a.m. adjourned at 12:00 p.m.

Respectfully submitted,

  
Ralph L. DeLoach

**UNITED STATES DISTRICT COURT  
District of Kansas**

**Bench-Bar Committee Meeting**

MINUTES OF FRIDAY, DECEMBER 14, 2001, 8:30 A.M. WICHITA, KANSAS

IN ATTENDANCE: HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JULIE A. ROBINSON, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
JAMES E. FLORY, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.  
MICHAEL S. HOLLAND, ESQ.  
EVELYN ZABEL WILSON, ESQ.  
MARK D. HINDERKS, ESQ.  
J. STEVEN PIGG, ESQ.

NOT PRESENT: JANET M. SIMPSON, ESQ.

1. APPROVAL OF MINUTES

Judge Marten moved and David Seely seconded the motion approving the minutes of the December 19, 2000, Bench-Bar Committee meeting. The motion carried unanimously.

2. REAPPOINTMENTS AND WELCOMING OF NEW MEMBERS

Judge Vratil welcomed Jim Flory to the Committee and announced the reappointments of Mark Hinderks and David Seely for additional one year terms. Judge Vratil stated that solicitations of interest to serve on the Bench-Bar Committee will be included in the 2002 annual attorney registration drive.

3. MISSION OF COMMITTEE

Judge Vratil referred the Committee members to D.Kan. Rule 77.6 which

describes the mission of the Bench-Bar Committee.

4. OLD BUSINESS

A. SUBCOMMITTEE PROPOSAL REGARDING RULE 83.2.4

Judge Humphreys reported that the Subcommittee had not met to discuss Judge Pusateri's suggestion that Local Rule 83.2.4 be revised to allow cellular phones in the courthouses. The Committee viewed a video clip demonstrating a shooting device which was disguised as a cellular telephone. Following discussion on whether cell phones should be allowed in the courthouses, Judge Vratil suggested and the Committee agreed that this matter should be referred to the Court Security Committee.

B. STANDARDIZATION

Magistrate Judge Humphreys reported that the December 13, 2001, Supplemental Report and Proposal of the Standardization Committee will be presented for adoption at the December 17, 2001 judges' meeting.

C. STANDING ORDERS

The Committee voted by consensus to recommend that the court update local rule numbers referenced in Standing Order Numbers 88-6 and 88-8 and to delete Standing Order Number 88-4.

D. REPORT REGARDING DISTRIBUTION OF LOCAL RULES

Ingrid Campbell reported that 117 hard copies of the local rules were distributed by the Kansas City, Wichita and Topeka Clerk's Offices in 2001. The Committee discussed whether the court should issue bound copies of the local rules in 2002 and if so, whether to increase the attorney registration fee to

accommodate the price of printing and distribution. In the alternative, Ralph DeLoach will explore the possibility of making the computer printed version of the local rules more compact and report back at the next meeting.

5. NEW BUSINESS

A. UPGRADE OF TOPEKA MAGISTRATE POSITION AND OTHER JUDICIAL PERSONNEL MATTERS

Ralph DeLoach reported that, if authorized by the Judicial Conference of the United States and funded by Congress, the court will employ a new full-time magistrate in Topeka which will replace the part-time magistrate position. Also, if a full-time magistrate comes on board in Topeka, Magistrate Judge O'Hara will relocate to the Kansas City.

B. DISTRICT WIDE CASE ASSIGNMENT

Ralph DeLoach reported that the Clerk's Office is developing a case draw to ensure that Judge Robinson will maintain an appropriate caseload.

C. FAST TRACK PROGRAM FOR LAWSUITS; CASE AND MOTION DISPOSITION

Judge Vratil discussed the Civil Justice Reform Act and specifically the 6 month pending motion report. She indicated that the District of Kansas had reduced pending motions by one half from March to September of 2001. Judge Vratil asked the Committee to consider what degree of oversight it wished to exercise under D.Kan. Rule 77.6. Further discussion was deferred to the next meeting.

D. PAGE LIMITS IN BRIEFS AND MEMORANDA

Judge Vratil stated that the standardized scheduling orders will institute

a 30 page limit for argument sections of briefs and legal memoranda. The Committee agreed that the page limit is a good idea if the presiding judge retains the discretion to be flexible in enlarging the number of pages allowed.

E. ACCESS TO COURT FILES

Ralph DeLoach reported that as of June 4, 2001, the District of Kansas no longer allows court files to be checked out of the courthouse. The lawyer members of the Committee did not question this change. Mr. DeLoach explained that files will eventually be made available on the Internet with the implementation of electronic case filing.

F. UPDATED PRO SE GUIDELINES PACKET

Ralph DeLoach reported that Marlin Miller and a committee of Wichita Clerk's Office staff had updated the pro se plaintiff instructional packet. Brent DeShazer is currently working to make the packet available on the court's Internet web site.

G. PUBLIC WEB SITE DEMONSTRATION

Judge Marten demonstrated to the Committee the various features currently available on the court's Internet web site.

H. BAR FUND AUDIT, BUDGET AND RENEWAL OF REGISTRATION FEE

Ralph DeLoach presented the bar registration and disciplinary fund budget (see last page of tab 5.H.). Judge Humphreys' moved and Michael Holland seconded the motion to adopt the budget as proposed and to recommend adoption to the court. The motion carried unanimously.

Judge Vratil distributed a proposal for further court history exhibits,



prepared by Jean Svadlenak, at the request of the Court Archives Committee. Judge Vratil reported that the court had preliminarily approved the proposal and asked that the Archives Committee to obtain budget estimates. Judge Pusateri inquired whether GSA could fund any of the proposed projects. Ralph DeLoach said he would follow up but did not think it was likely that GSA would fund any of the projects.

Some Committee members expressed concern about whether the bar fund should underwrite expenditures for the exhibits about Senators Bob Dole and Frank Carlson, since they do not pertain particularly to the courts. David Phillips moved and Judge Pusateri seconded the motion to endorse the funding of projects 3 through 6. The motion carried unanimously. The Committee deferred further consideration of projects 1 and 2.

By consensus the Committee also passed a motion to suggest that the court raise the attorney registration fee to \$20 annually in order to underwrite funding of projects 3 through 6 and possibly return to bound copies of the local rules. Ralph DeLoach stated that if the court raises the registration fee, the lawyers should be provided with the reasoning for any fee hike. The Committee consensus was that the fee raise would meet no opposition from the bar.

I. COURT BUSINESS

Information only.

J. TRAINING ON COURTROOM AUTOMATION

Ralph DeLoach reported that training is currently being provided to interested members of the bar. He advised that training availability is being

advertised in the Bar Journal and will be advertised in local bar letters as well as through distribution of court flyers at the counter and in court mailings to attorneys.

K. COLLEGE OF FEDERAL ADVOCATES

Information only.

L. 12 PERSON JURIES

Judge Pusateri stated that the Bench and Bar Committee of the Kansas Bar Association would like the federal court to consider using 12 person juries. After brief discussion, Ralph DeLoach was directed to contact the Federal Judicial Center to see if studies regarding 12 person juries have been conducted in the federal system.

6. NEXT MEETING: TIME AND PLACE

Ralph DeLoach will look into the availability of either the Salina Country Club or the Flint Oak Ranch for the next Bench-Bar Committee meeting to be held in April of 2002.

7. COURT HISTORY AND ARCHIVES PROJECTS AND VIEW OF WICHITA EXHIBIT

Time did not permit discussion of the court history and archives projects and a view of the Wichita court history exhibit.

The meeting having convened at 8:30 a.m. adjourned at 12:15 p.m.

Respectfully submitted,

  
Ralph L. DeLoach

**UNITED STATES DISTRICT COURT  
District of Kansas**

**Bench-Bar Committee Meeting**

MINUTES OF TUESDAY, DECEMBER 19, 2000, 10:00 A.M. KANSAS CITY, KANSAS

IN ATTENDANCE: HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE DAVID J. WAXSE, MAGISTRATE JUDGE  
DAVID SEELY, ESQ.  
MARK L. BENNETT, JR., ESQ.  
JANET M. SIMPSON, ESQ.  
MICHAEL S. HOLLAND  
EVELYN ZABEL WILSON, ESQ.  
MARK D. HINDERKS, ESQ.

NOT PRESENT: HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
JACKIE WILLIAMS, UNITED STATES ATTORNEY

1. APPROVAL OF MINUTES

Judge Vratil moved and Mark Bennett seconded the motion approving the minutes of the Bench-Bar Committee meetings of June 7 and August 10, 2000. The motion carried unanimously.

2. STANDARDIZATION REPORT UPDATE

Referencing footnote 1 of her November 17, 2000, letter on the standardization process to the members of the Bench-Bar Committee, Judge Vratil reported that the Court has decided to leave Local Rule 6.1 unchanged.

David Seely mentioned his concerns about "witness coaching" contained in the Courtroom Guidelines. Judge Marten responded that this rule was designed to prohibit witness coaching. Michael Holland agreed that he is against witness coaching but is

concerned about the attorney-client privilege. Magistrate Judge Waxse suggested that the rule be redrafted to state the purpose and to say "may" rather than "shall."

In reference to 1a. of the Courtroom Guidelines, Mark Hinderks suggested inserting "identifiable" or "known" before the word "objections." Under the 1. Exhibit heading Judge Marten expressed his thought that the requirement that the parties "shall mark the exhibits at least two weeks prior to trial" seems like a long time before trial. Judge Marten noted that he had had no problem accomplishing this 3-4 days prior to trial. Mark Hinderks suggested that a couple of business days prior to trial should be sufficient.

Judge Marten also suggested including in the Courtroom Guidelines that there is one automated courtroom per courthouse and counsel should notify the court if they need to use it. Ralph DeLoach added that members of his staff are in the process of developing an electronic courtroom training curriculum. He advised that training would be periodic depending on demand. Furthermore, Mr. DeLoach noted, courtrooms have realtime court reporting capability and that the Court is looking at whether court reporters should be required to be certified realtime.

Judge Marten inquired as to whether this might be a good time to talk about automation issues. First, Judge Marten noted that CM/ECF is scheduled to be implemented in our Court in 2002 which will substantially change how things operate in the Clerk's Office. Second, Judge Marten raised the issue of allowing the bar to use the Court's videoconferencing equipment and establishing a fee schedule. Judge Marten stated that currently there are no guidelines for the private use of public equipment.

3. COMMENTS RECEIVED ON THE PROPOSED AMENDMENTS TO LOCAL RULES OF COURT

Ralph DeLoach provided an overview of the comment process. No comments were received on the proposed amendments to the local rules of court as of December 15, 2000.

4. SUBCOMMITTEES' PROPOSAL REGARDING LOCAL RULE 83.2.4 ELECTRONIC COMMUNICATION DEVICES

Deferred until further notice.

5. PROPOSED AMENDMENT TO LOCAL RULE 16.1 PRETRIAL CONFERENCES, SCHEDULING CASE MANAGEMENT

Deferred until further notice.

6. LOCAL RULE 15.1 MOTIONS TO AMEND

At the October 22, 1998, judges' meeting, the Court directed that when motions to amend or "*motions for leave to file*" are granted, the Clerk's Office is to maintain the original proposed pleading without the requirement that an additional pleading be filed. The words *motions for leave to file* were not added to Rule 15.1 and Judge Vratil stated that the purpose was to change Rule 15.1 to include motions for leave to file. The Committee unanimously agreed to the change. Ralph DeLoach stated that he believed we could have the change made in time for the next publication of the local rules of practice and procedure.

7. STANDING ORDERS

Ralph DeLoach asked the Committee whether they should take a further look at the standing orders in the local rules and either do away with them or incorporate them as part of the local rules. Judge Marten moved and Mark Hinderks seconded the motion to review the standing orders and see what could be done with them. Judge

Vratil asked Ralph DeLoach to report back on the standing orders at the next meeting.

8. REPORT ON JUDGES' BIOGRAPHIES

Ralph DeLoach reported that there had been no response to the advertisement in the Kansas Bar Journal for a reprint of biographies of judges.

9. BAR FUND AUDIT REPORT

Ralph DeLoach informed the Committee that their charge is to make a recommendation to the Court regarding approval of a proposed budget and continuation of the \$10.00 fee for registration of attorneys. Judge Vratil inquired whether there is a target balance the Committee attempts to maintain in the attorney disciplinary and bar registration fund. Ralph DeLoach responded that he would recommend a balance of \$50,000 and that he does not believe going below \$30,000 would be prudent. Judge Vratil suggested that one possible place to save money would be by placing the local rules on the Court's external web site and substantially reducing the number of printed local rules. Judge Marten inquired as to whether we could find out how much it would cost to print 1,000 copies of the local rules. Ralph DeLoach suggested the possibility of e-mailing attorneys a copy of the local rules. Judge Marten moved and Michael Holland seconded the motion that the Committee recommend to the Court that the local rules be made available on the Court's external web site and that hard copies only be made available upon request. The motion carried unanimously.

Judge Vratil noted that the budget for court appointed attorneys is only \$6,000 which provides a very limited amount of money available for attorney expenses. Judge Marten moved to budget \$10,000 as opposed to \$6,000 to court appointed attorneys


with a review of the adequacy of this fund as needed. David Seely seconded the motion. The motion carried unanimously.

10. EXPIRATION OF MARK BENNETT'S TERM AS OF DECEMBER 31, 2000

Judge Vratil thanked Mark Bennett for his willingness to serve two separate terms on the Bench-Bar Committee. She advised that his excellent common sense advice had been invaluable. Mark Bennett expressed his thanks and appreciation for the opportunity to serve on the Bench-Bar Committee.

The meeting having convened at 10:00 a.m. adjourned at 12:00 p.m.

Respectfully submitted,

  
Ralph L. DeLoach

**UNITED STATES DISTRICT COURT  
District of Kansas**

**Bench-Bar Committee Meeting**

MINUTES OF THURSDAY, AUGUST 10, 2000, 1:00 P.M. KANSAS CITY, KANSAS

IN ATTENDANCE: KANSAS CITY:  
HONORABLE KATHRYN H. VRATIL, JUDGE, CHAIR  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
MARK L. BENNETT, JR., ESQ.  
JANET M. SIMPSON, ESQ. (excused at 3:00 p.m.)  
EVELYN ZABEL WILSON, ESQ.

WICHITA VIA VIDEOCONFERENCE:  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE

NOT PRESENT: HONORABLE J. THOMAS MARTEN, JUDGE  
DAVID SEELY, ESQ.  
MICHAEL S. HOLLAND, ESQ.  
MARK D. HINDERKS, ESQ.

1. REPORT AND PROPOSAL OF THE STANDARDIZATION COMMITTEE

Judge Vratil opened the floor to a general discussion of the Report and Proposal of the Standardization Committee. Judge Pusateri inquired whether it was the intention of the proposed change to Local Rule 6.1 to allow the clerk to grant exceptions pursuant Local Rule 77.2. Judge Vratil responded that it was not the Committee's intention to abrogate Local Rule 77.2. Judge Pusateri suggested that any changes to Local Rule 6.1 should clarify this point.

Judge Vratil stated that the reason for the proposed change to Local Rule 6.1 is that it gives the court a chance to react to a motion for extension of time without granting the motion because there is insufficient time to respond. Judge Pusateri



inquired whether it is intended that sanctions under Fed.R.Civ.P. 37 apply or whether it is the intent to limit sanctions to Fed.R.Civ.P.16(f). Judge Vratil responded that Fed.R.Civ.P. 16(f) by incorporating Fed.R.Civ.P. 37 would make those sanctions available to the court. Judge Vratil further stated that the clerk's extension is a short, easy way to grant extensions and therefore it should be made clear that this does not apply to a clerk's extension.

After further discussion by the Committee all the members agreed to support the effort of the judges to standardize. Judge Vratil stated that she would represent to the judges that although the lawyers have mixed views about the proposed changes to Local Rule 6.1 they are agreeable to trying it for a year and seeing how it works. Jackie Williams commented that his office is in favor of standardization and the one year trial period implementation.

Judge Pusateri pointed out and Magistrate Judge Humphreys recommended that the words "(as set forth above)" found in the second paragraph of proposed Local Rule 39.2 be deleted. Evelyn Zabel Wilson suggested that the third paragraph of proposed Local Rule 39.2 include a deadline for the defendant to respond. Judge Vratil agreed this was a good suggestion.

In reference to the Scheduling Order located at Tab 3 of the Report and Proposal of the Standardization Committee, Janet Simpson suggested adding the word "order" to the end of the sentence of line 9 of subsection e. on page 4.

In reference to the Pretrial Order Form located at Tab 4 of the Report and Proposal of the Standardization Committee, Magistrate Judge Humphreys reported that this format for pretrial orders has been used in Wichita for a year and that it has made a

world of difference in the time pretrial conferences take. The Committee agreed they like having one form and Judge Vratil commented that she hopes it will become available on the Web site for downloading.

Turning to David Seely's August 1, 2000, letter to Judge Vratil regarding the Bench-Bar Committee (see attached), Judge Vratil commented that Mr. Seely's wording suggestion of "memorandum in opposition" (see page 1, paragraph 4, line 4) was a good suggestion.

As to Fed.R.Civ.P.56.1 (see page 2, paragraph 2, line 9 of Mr. Seely's letter), the lawyers on the Committee expressed their concern that 10 days is too little to controvert facts if the court construes a non-response as established for purposes of trial. Judge Vratil inquired whether people need 20 days. Evelyn Zabel Wilson responded that she feels they need more than 10 *calendar* days. The lawyers on the Committee agreed that 10 *business* days would be more realistic.

After discussion about what "reasonable effort to confer" means in reference to Local Rule 37.2 (see page 2, paragraph 3 of Mr. Seely's letter), Judge Vratil agreed to tweak the language.

Upon Judge Vratil's solicitation of additional comments, Mark Bennett responded that he would like to see the criminal side standardized. Mark Bennett moved and the Committee members unanimously voted to recommend that the Standardization Report subject to the aforementioned modifications be adopted and implemented on a one year trial basis.

Finally, Judge Pusateri stated that he would like the court to reconsider Local Rule 83.2.4 Electronic Communication Devices. Judge Pusateri expressed his opinion

that computers and palm pilots should be allowed in the courthouse unless specifically denied by a judge. Ralph DeLoach commented that the policy in all three locations has not been consistent but should be. Judge Pusateri again commented that he would like to see a reversal of the Rule so that all communication devices are allowed in the courthouse unless a judge says otherwise. Judge Vratil appointed a subcommittee consisting of Judge Pusateri, Jackie Williams, Magistrate Judge Humphreys and Evelyn Zabel Wilson to come up with a proposal for presentation at the next meeting.

The meeting having convened at 1:00 p.m. adjourned at 4:00 p.m.

Respectfully submitted,



Ralph L. DeLoach

**UNITED STATES DISTRICT COURT  
District of Kansas**

**Bench-Bar Committee Meeting**

MINUTES OF WEDNESDAY, JUNE 7, 2000, 2:00 P.M.

TOPEKA, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE KATHRYN H. VRATIL, JUDGE  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.  
JANET M. SIMPSON, ESQ.  
MARK D. HINDERKS, ESQ.  
HONORABLE JAMES P. O'HARA, MAGISTRATE JUDGE (joined at  
3:45 p.m.)

NOT PRESENT: HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
MARK L. BENNETT, JR., ESQ.  
MICHAEL S. HOLLAND, ESQ.  
EVELYN ZABEL WILSON, ESQ.

1. APPROVAL OF MINUTES

Judge Lungstrum moved and Judge Marten seconded the motion approving the minutes of the Bench-Bar Committee meeting of March 3, 2000. The motion carried unanimously.

2. BAR REGISTRATION FUND EXPENDITURES SINCE LAST MEETING AND BUDGET REVIEW

Kirk Alford and Ralph DeLoach reported on bar registration fund expenditures and provided a budget review. Judge Marten moved and Jackie Williams seconded the motion to increase the naturalization reception budget to \$2,500 for the year; to increase to \$50,000 the budget for the printing and postage costs of publication and distribution of the local rules; to ratify court approval of expenses of \$2,500 associated with the management meeting held in

Topeka on November 4 and 5, 1999; and to ratify court approval of an increase in the travel budget to \$2,000. The motion carried unanimously.

Old business which had been previously discussed but not approved was addressed as follows: Jackie Williams moved and David Seely seconded a motion for Jean Svadlenak to oversee a project to create framed 20 x 24 photographic portraits of all former and/or retired magistrate judges at the cost of \$5,889. The motion carried unanimously.

Jackie Williams moved and David Seely seconded a motion to print 150 copies of four mini-biographies of Mary Petty, Thelma Buser, Betty Ross and Harold Pittell as one book in soft cover at the cost of \$3,172. The motion carried unanimously.

The Committee members discussed whether to reprint ten additional copies of biographies for Judges O'Connor, Saffels, Rogers and Stanley. After discussion, Judge Lungstrum recommended that the committee solicit orders in the *Kansas Bar Journal* for biographies prior to printing additional copies. Judge Lungstrum asked Ralph DeLoach to run such an advertisement in the *Kansas Bar Journal* and suggested the Committee table this request until the next Bench-Bar Committee meeting. David Seely moved and Judge Vratil seconded the motion to table this request until the next Bench-Bar Committee meeting. The motion carried unanimously.

3. PROPOSED MODIFICATION OF D.KAN. RULE 83.5.3 (a)

Judge Vratil moved and Janet Simpson seconded the motion to table discussion of modification of D. Kan.Rule 83.5.3(a) for referral to the Disciplinary Panel. The Committee agreed that the matter would then be placed on the agenda for the next Bench-Bar Committee meeting for further discussion.

Judge Lungstrum inquired whether the Bench-Bar Committee could have a liaison to the Disciplinary Panel. Ralph DeLoach replied that he believed that was possible. Judge Lungstrum nominated Judge Humphreys to serve as liaison for the Bench-Bar Committee and to attend the upcoming Disciplinary Panel meeting.

4. PROPOSED MODIFICATION OF CIVIL COVER SHEET

Discussion took place about the possibility of modifying the civil cover sheet to include addresses of plaintiffs. Judge Vratil suggested including the names and addresses of plaintiffs and defendants on the complaint. David Seely mentioned possibly including this information on the case management report. Judge Lungstrum suggested the Committee pass a resolution requesting that the Standardization Committee review this issue. Judge Marten moved and Mark Hinderks seconded the motion referring modification of the civil cover sheet to the Standardization Committee. The motion carried unanimously.

5. PROPOSED MODIFICATION OF D.KAN.RULE 5.1

Judge Marten moved and Janet Simpson seconded the motion to modify D.Kan.Rule 5.1(d) Entry of Appearance by Counsel as submitted by Judge Marten (see attached). The motion carried unanimously.

6. LOCAL RULE MODIFICATIONS NECESSARY TO CONFORM TO FED.R.CIV.P. 26

After discussion Judge Vratil recommended that the Committee refer discussion of proposed local rule changes necessary to conform to Fed.R.Civ.P.26 to the Standardization Committee.

7. PUBLICATION OF WEB PAGE

Ralph DeLoach reported that a memo (see attached) announcing the availability of the Court's Internet Web site issued by Chief Judge VanBebber was sent to all attorneys with the attorney registration packet. Mr. DeLoach also reported that a press release (see attached) will be published in the Kansas Bar Journal.

After reporting that only those opinions selected by each judge would be posted on the Court's Internet Web site, Judge Lungstrum asked Mr. DeLoach whether the Court could routinely post every opinion on the Internet Web site. Mr. DeLoach will report back to the Committee whether there are any issues surrounding the mechanics of routinely posting every opinion on the Court's Internet site.

8. PUBLICATION OF LOCAL RULES

The Committee discussed the pros and cons of continuing to print bound copies of the local rules versus posting the local rules on the Court's Internet Web site. Judge Lungstrum stated that he would vote against doing away with the bound copies of the local rules. Janet Simpson offered that she believes it is too soon to do away with the bound version of the local rules. Upon inquiry by Judge Lungstrum it was the unanimous opinion of the lawyers in attendance that they were not in favor of doing away with printed copies of the local rules this year.

David Seely asked Ralph DeLoach whether the Clerk's Office can keep track of the number of times the local rules are downloaded from the Internet. Mr. DeLoach will look into this and report back to the Committee. Also, Judge Marten requested that a notification be added to the local rules which states that attorneys need to check for Standing Orders since those

changes are issued throughout the year and not necessarily published in the local rules.

Ralph DeLoach reminded the Committee of the impending publication timeline for printing the 2001 local rules (see attached). Judge Vratil inquired as to the Committee's thoughts on having a special meeting prior to the July 2000 judges' meeting to address local rule changes. The Committee agreed that was a good idea.

9. PASSING OF THE TORCH

Judge Lungstrum stepped aside as Chair of the Bench-Bar Committee so that he may concentrate on preparing for service as chief judge of the district court beginning in January 2001. Judge Vratil graciously agreed to accept the position of chair of the Bench-Bar Committee for the indefinite future.

The meeting having convened at 2:10 p.m. adjourned at 4:15 p.m.

Respectfully submitted,

  
Ralph E. DeLoach



UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, MARCH 3, 2000, 10:10 A.M. VIDEO CONFERENCE

IN ATTENDANCE: KANSAS CITY:  
HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
JANET SIMPSON, ESQ.

WICHITA:  
HONORABLE JOHN THOMAS MARTEN, JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
MICHAEL HOLLAND, ESQ.  
DAVID SEELY, ESQ.

TOPEKA:  
EVELYN WILSON, ESQ.

NOT PRESENT: HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
JAMES O'HARA, ESQ.  
MARK L. BENNETT, JR., ESQ.

1. APPROVAL OF MINUTES

Judge Lungstrum moved and Judge Marten seconded the motion approving the minutes of the Bench-Bar Committee meeting of November 3, 1999. The motion carried unanimously.

2. REVIEW OF FED.R.CIV.P.45 (a)(3) SUBPOENA

Judge Belot recommended the adoption of a local rule restricting the issuance of subpoenas by pro se litigants which was considered at the November 3, 1999 Bench-Bar meeting. At that meeting the Clerk was asked to research issuance of subpoenas by pro se litigants in this district and whether or not adoption of a local rule restricting issuance of subpoenas by pro se litigants would be in contravention of the federal rule. After a presentation

by Chief Deputy Ingrid Campbell of research into the issues and discussion, the Committee determined that the adoption of an additional local rule is not necessary given the low incidence of pro se subpoena abuse throughout the district and the ability for discretionary intervention by a judicial officer.

3. REVIEW OF D.KAN.RULE 83.5.3 (a) REGISTRATION OF ATTORNEYS

At the November 3, 1999, Bench-Bar Committee meeting Judge Humphreys raised several issues regarding the registration of attorneys including whether D.Kan.Rule 83.5.3(a) should be clarified to more explicitly indicate the jeopardy lawyers may be in for failure to pay the registration fee. Judge Lungstrum suggested the possibility of including language in the rule which would make clear that the failure of an attorney to pay the registration fee would result in notification to the litigant and dismissal from the case. Judge Marten mentioned that this might assist those lawyers who wish to get out of a case. Judge Lungstrum agreed and stated that permissive language (may) rather than mandatory (shall) should be used regarding the consequences of failure to register.

Janet Simpson mentioned the potential difficulty the Court might encounter in attempting to notify litigants of their attorney's failure to pay the registration fee when there is no record of how to reach litigants. Judge Lungstrum questioned whether the civil cover sheet could simply be revised to include the address of plaintiffs.

Judge Humphreys volunteered to draft language which would modify D.Kan.Rule 83.5.3 (a) and present it to the Committee at the next meeting. Chief Deputy Ingrid Campbell will look into modification of the civil cover sheet.

4. REVIEW OF D.KAN.RULE 5.1 FORM OF PLEADINGS AND PAPERS

At the December 10, 1999, Judges' Meeting the Court discussed the D.Kan. Rule 5.1 requirement that every attorney in a firm who files a pleading enter a formal appearance. The Court referred consideration of abandoning this requirement to the Bench-Bar Committee. The question posed to the Committee by Judge Lungstrum is whether the Committee wants to modify the rule and if so how. After some discussion it was agreed that the rule should be modified to allow members of a firm to sign pleadings for one another and that the Committee should move quickly on the matter. A subcommittee was formed which consists of Judge Marten, David Seely and Janet Simpson. Judge Marten volunteered to have a draft of the proposed rule modification to Mr. Seely and Ms. Simpson by March 10, 2000. The subcommittee will then have their final proposal by the end of March. Judge Lungstrum suggested that the final proposal then be circulated for telephone or fax vote in order to expeditiously resolve this matter.

5. REVIEW OF D.KAN.RULE 83.2.4 ELECTRONIC COMMUNICATION DEVICES

As directed by the Committee, Ralph DeLoach explored streamlining entrance to court facilities for lawyers who are in trial so that they would not need daily permission to bring computers, cell phones, etc. into the courthouse. As instructed by the Committee, Mr. DeLoach reported the results of his exploration to the Court at their Thursday, March 2, 2000 meeting. Ralph DeLoach advised the Committee that the Court decided to handle this matter informally. That is a judge may either in the form of a memo or orally inform court security that litigants be given permission to bring computers or other electronic communication devices into the courthouse for the duration of a trial. There being no objections, Judge Lungstrum declared the matter addressed.

6. MODIFICATION OF D.KAN.RULE 81.1(b) PLACE OF FILING NOTICE OF REMOVAL

Ralph DeLoach reported that the Court followed the recommendation of the Bench-Bar Committee and adopted this rule change at their November 18, 1999 meeting.

7. STANDARDIZATION UPDATE

Judge Humphreys gave an update on the Standardization Committee in Judge Waxse's absence. The Standardization Committee is made up of Judge Vratil (Chair), Judge Crow, Judge Walter, Judge Waxse, Judge Belot and Judge Humphreys. The mission of the Standardization Committee is to study standard orders issued by the judges and settle on one order in each category which could be used by the entire Court. Documents still under discussion by the Committee include scheduling orders and pretrial orders. Judge Lungstrum offered that it may be appropriate to provide the orders to the Bench-Bar Committee for comment prior to adoption. At Judge Lungstrum's suggestion, Judge Humphrey's agreed to go to the Standardization Committee and ask if the Bench-Bar Committee may have input.

Judge Lungstrum asked if the Bench-Bar Committee wants to continue to have a Standardization Subcommittee since the judge's committee is looking into standardization. The Committee agreed that the subcommittee should be disbanded with a request to the Court that the full committee be given an opportunity to comment prior to adoption.

8. ANNUAL \$10.00 BAR REGISTRATION FEE AND BAR FUND EXPENDITURES

Ralph DeLoach reported on the Bar Fund Financial Report. After discussion, Judge Marten moved and David Seely seconded the motion ratifying expenditures since the November 3, 1999 meeting. Janet Simpson moved and Judge Marten seconded the motion approving the

annual \$10.00 bar registration fee. The motions carried unanimously. Kirk Alford presented a list of future historical display expenses, among others, for approval by the Committee. It was agreed to defer all expenditures except updating historical information about the United States magistrates until the new registration period in June 2000. Finally, the Committee agreed not to publish additional copies of judges' biographies for sale to the Bar due to a perceived lack of interest by the Bar.

NEW BUSINESS

Jackie Williams thanked the Court for looking into upgrading the grand jury facilities in Wichita.

Judge Lungstrum thanked everyone for participating in the video conference and stated that if the timing allowed the next meeting would be in person in Topeka in conjunction with the Kansas Bar Association meeting. Judge Lungstrum also stated that it is his intention the June meeting will be his last meeting as Chair since he will be taking on the role of chief judge in January 2001.

The meeting having convened at 10:10 a.m. and adjourned at 11:55 a.m.

Respectfully submitted,

  
Ralph L. DeLoach

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF WEDNESDAY, NOVEMBER 3, 1999, 10:30 A.M. SALINA, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
CLARENCE L. KING, ESQ.  
DAVID SEELY, ESQ.  
MARK BENNETT, JR., ESQ.  
JAMES O'HARA, ESQ.  
JANET SIMPSON, ESQ. (NEW BENCH-BAR MEMBER)  
STEVE HORNBAKER, ESQ. (NEW BENCH-BAR MEMBER)

NOT IN  
ATTENDANCE: HONORABLE JOHN THOMAS MARTEN, JUDGE  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
RUTH BENIEN, ESQ.

Judge Lungstrum thanked Clancy King for hosting the Salina meeting and reported that the meeting represented the end of the terms of Clancy King and Ruth Benien. Judge Lungstrum introduced Janet Simpson and Steve Hornbaker who will be filling the vacancies created by the expiration of the terms of Clancy and Ruth. Judge Lungstrum provided a brief background of the Bench-Bar Committee for the benefit of the new members.

1. APPROVAL OF MINUTES

Clancy King moved and David Seely seconded the motion approving the minutes of the Bench-Bar Committee meeting of September 10, 1999. The motion carried unanimously.

2. ACTION ITEMS

Judge Lungstrum reviewed the action items from the last Bench-Bar meeting and advised that the Court has not yet formally met to consider those items listed as 2. A), B), and C) of the

Bench-Bar Agenda.

3. FED.R.CIV.P. 45 (a) (3)

This agenda item was referred by Judge Belot and Judge Brown. Judge Belot recommends the adoption of a local rule restricting the issuance of subpoenas by pro se litigants. After discussion Judge Lungstrum directed the Clerk to research whether the Court had authority to implement such a rule, as it appears to be in contravention of the federal rule. Additionally, the Clerk was asked to sample Clerk's Offices regarding how often the unnecessary issuance of subpoenas occurs by pro se litigants.

4. D. KAN RULE 83.5.3 (a) Registration of Attorneys

Judge Humphreys provided some background regarding this issue and referred to the attached memo. After discussion it was determined that the following points need to be addressed.

- i) Does there need to be a way to notify litigants (plaintiffs) when an attorney is removed from the practice of law in the federal court for non-payment of the registration fee;
- ii) Is there an automated ability to notify all judges of active cases which an attorney represents when the attorney has been removed from practicing in federal court;
- iii) Should the rule be clarified to more explicitly indicate the jeopardy lawyers may be in for failure to pay the registration fee.

The Clerk was asked to research these points and report back to the committee.

5. D. KAN. RULE 16.1 EXEMPTING CERTAIN CASES FROM PROVISIONS OF FED.R.CIV.P. 26 (a) AND 26 (f). REVIEW EXEMPTION FROM DISCLOSURE REQUIREMENTS IN ANTICIPATION OF AMENDMENTS TO FED.R.CIV.P. 26 BECOMING EFFECTIVE 12-1-00

Judge Lungstrum advised the committee of the anticipated amendments to the Fed.R.Civ.P. 26 which will become effective 12/1/00. He indicated that the committee should be aware of these amendments and that steps should be taken to modify our local rule 16.1 to conform with the federal rule as amended. Judge Lungstrum asked permission of the committee to work with the Clerk in making sure that changes were made to our local rule to conform to the modifications in the federal rule without coming back to the committee. After discussion David Seely moved and Jim O'Hara seconded the motion authorizing Judge Lungstrum and the Clerk to make modifications as requested. Ralph DeLoach will alert Judge Lungstrum once the federal amendments have been made.

6. SHARING WRITTEN SUBMISSIONS

Judge Humphreys reported for the committee appointed to look into sharing written submissions. That committee consisted of Judge Humphreys, Chair, David Phillips, and Jackie Williams. The committee recommended that the rule not be modified and that the Court handle these issues on a case by case basis.

7. D.KAN RULE 81.1 REMOVAL FROM STATE COURTS

Ralph DeLoach provided a brief explanation and indicated that the modification to this rule was requested by Rachel Lyle, Pro Se Staff Attorney. After discussion Judge Humphreys moved and Clancy King seconded the motion approving the amendment. The motion carried unanimously.



8. REPORT FROM SUBCOMMITTEE ON STANDARDIZATION

Judge Lungstrum advised that the Court has not yet considered the standardization of the pretrial order and in addition is looking into the standardization of the scheduling order. Jim O'Hara is the chair of the Standardization Subcommittee along with David Seely. Steve Hornbaker has been added to the subcommittee to replace Ruth Benien. The Clerk will report the results of the Court's deliberations to the committee once they have been reached. David Phillips suggested that standardization of criminal omnibus hearings might be a good idea. David was asked to work on this issue with Jackie Williams and report back to the Court.

Judge Lungstrum advised once again that the committee should bring all issues and concerns, not just those related to rules, to the attention of the committee.

9. BAR REGISTRATION AND ATTORNEY DISCIPLINARY FUND

Ralph DeLoach reported on the Bar Registration and Attorney Disciplinary Fund. After discussion, Mark Bennett moved and David Phillips seconded the motion approving the Bar Registration and Attorney Disciplinary Fund budget. The motion carried unanimously. After additional discussion David Seely moved and Mark Bennett seconded the motion ratifying all expenditures from the Bar Fund since the last report.

The meeting having convened at 10:30 a.m. adjourned at 12:00 noon.

Respectfully submitted,

  
Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench-Bar Committee Meeting*

MINUTES OF FRIDAY, SEPTEMBER 10, 1999, 10:00 A.M. KANSAS CITY, KANSAS

IN ATTENDANCE (KANSAS CITY):

HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
RUTH BENIEN, ESQ.  
CLARENCE L. KING, ESQ.  
MARK BENNETT, JR., ESQ.

IN ATTENDANCE (WICHITA VIA VIDEO CONFERENCE):

HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID SEELY, ESQ.

NOT IN ATTENDANCE:

HONORABLE JOHN THOMAS MARTEN, JUDGE  
JAMES O'HARA, ESQ.

1. APPROVAL OF MINUTES

Mark Bennett moved and Clarence King seconded the motion approving the minutes of the February 22, 1999, Bench-Bar Committee meeting. The motion carried unanimously.

2. ACTION ITEMS

After review of the items recommended by the Bench-Bar Committee and considered by the Court at its meeting on April 8 and 9, 1999, Clarence King asked for clarification of Rule 83.2.4. The Rule restricts the ability of attorneys to bring computers into the courthouse. Judge Lungstrum attempted to assuage Mr. King's concerns by advising that the rule provides for the Court to exempt persons from compliance. Mr. King indicated he would like D. Kan. Rule 83.2.4 footnoted to clarify the method for obtaining an exemption from the rule. There was also

discussion about providing a temporary ID or exemption letter to be used during the period of time attorneys are required to be in the courthouse. The Bench-Bar Committee asked the Clerk to explore streamlining entrance to the building and report to the Court.

3. REVIEW THE NEED TO AMEND D. KAN. RULE 83.6.1 (a) TO BE CONSISTENT WITH THE AMENDED KANSAS DISCIPLINARY RULES

After brief discussion the committee agreed to recommend to the Court that D. Kan. Rule 83.6.1 (a) be amended to conform to the Kansas Disciplinary Rules.

4. REVIEW THE NEED TO MODIFY D. KAN. RULE 7.6 (b) IN LIGHT OF WESTLAW/LEXIS AVAILABILITY

After discussion regarding the lack of availability of Westlaw/Lexis to lawyers, particularly in small firms; the Committee agreed that the rule should not be changed.

5. SHARING THE GOVERNMENT'S VERSION OF THE OFFENSE, FOR PREPARATION OF THE PRESENTENCE REPORT, WITH DEFENSE COUNSEL

After a lengthy discussion two major issues fell out of the above agenda item:

(1) Ex parte contact. The Committee agreed that probation officers should have unrestricted contact with defendants and prosecutors in the development of their presentence investigation reports.

(2) Should written submissions be shared by both sides?

Judge Lungstrum appointed a committee consisting of Judge Karen Humphreys (Chair), Jackie Williams and David Phillips to review the question of sharing written submissions and report to the Bench-Bar Committee at its next meeting. The Committee will consult with Gary Howard, chief probation officer.

6. REVIEW THE NEED TO MODIFY D.KAN. RULE 7.1 (b)

After discussion regarding an amendment that would eliminate replies as a matter of right the Committee declined to recommend such an amendment to the Court.

7. PUBLICATION TIMELINE FOR LOCAL RULES (INFORMATION ONLY)

8. REPORT FROM THE SUBCOMMITTEE ON STANDARDIZATION

Ruth Benien submitted a standardized Pretrial Order for consideration by the Committee. After discussion Clarence King moved and Judge Pusateri seconded the motion recommending the adoption of the standardized Pretrial Order to the Court. The motion carried unanimously. Judge Lungstrum and Judge Humphreys advised they would speak to the Court in support of adoption of the standardized Pretrial Order. There was further discussion regarding standardization of certain areas of the scheduling order. The Subcommittee on Standardization will look into areas of the scheduling order which may lend themselves to conformity. The Subcommittee will prepare a recommendation for consideration by the full Committee at its next meeting.

9. REPORT ON ELECTRONIC CASE FILES

Judge Lungstrum briefly advised that the case management/electronic case files project is moving forward with a full head of steam. He indicated that courts in the future will require filings to be made electronically.

10. REPORT ON CJA PANEL ATTORNEY SELECTION AND TRAINING

David Phillips reported that training sessions are scheduled for September 17 and 19 in Lawrence and Wichita, Kansas, respectively. He reported that a representative from the Sentencing Commission has agreed to make a presentation at those training sessions.

Additionally, he advised that application for panel membership has been extended until

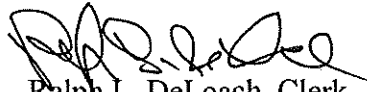
November 1, 1999, and that an effort to advertise the need for qualified panel members is underway.

NEW BUSINESS

David Phillips expressed concern about not being authorized to interview individuals who may be in a position to help the Public Defender assist clients in defense of revocation proceedings. In essence, he advised that there is no discovery for revocations. Judge Lungstrum asked David Phillips to reduce his concerns to writing and send them to Judge Lungstrum with a copy to Chief Judge VanBebber.

The meeting having convened at 10:00 a.m. adjourned at 12:00 noon.

Respectfully submitted,

  
Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF MONDAY, FEBRUARY 22, 1999, 10:30 A.M. KANSAS CITY, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
HONORABLE KAREN M. HUMPHREYS, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
RUTH BENIEN, ESQ.  
MARK BENNETT, JR., ESQ.  
JIM O'HARA, ESQ.  
DAVID SEELY, ESQ.

NOT IN ATTENDANCE:

HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
CLARENCE L. KING, ESQ.  
NICHOLAS DAILY, ESQ., EX OFFICIO

Judge Lungstrum welcomed everyone to the meeting at 10:30 a.m. Judge Lungstrum introduced two new judicial members of the Bench/Bar Committee, Judge J. Thomas Marten and Magistrate Judge Karen W. Humphreys. Judge Lungstrum also introduced David Seely, Esq., the newest attorney member of the committee who will be replacing Larry Withers.

1. APPROVAL OF MINUTES

Judge Marten moved and Mark Bennett seconded the motion that the Minutes of the Friday, October 16, 1998 meeting be approved as submitted. The motion carried unanimously.

2. ACTION ITEMS FROM PREVIOUS BENCH/BAR MEETING

(D) Local Rule 32.1. The court could not reach a consensus on the proposed amendment to Local Rule 32.1. Judge Marten discussed the problems that exist in an amendment to a rule such

as this. Since the Bench/Bar Committee already supports the concept of confidentiality of these reports, no further action is necessary by the committee. The committee agreed to defer the drafting of any future proposed amendments to this rule to the court with the request that any proposed modifications would be brought to the attention of the committee for review and comment.

(G) Local Rule 9.1(g). Judge Lungstrum discussed the court's declination to consider the proposed amendment to Local Rule 9.1(g).

(I) Faxed Service. Discussion occurred regarding research done by the Clerk's Office on any Administrative Office initiatives in the faxed service/faxed filing area. There currently are no AO initiatives in this area. Judge Lungstrum explained the court is not of the opinion that a local rule should be adopted permitting faxed service/faxed filing as there currently is no national rule permitting this practice.

(O) Training Program on Courtroom Technology. Discussion occurred regarding the progress of the proposed training program on courtroom technology to be offered to members of the bar. Judge Lungstrum indicated his courtroom is currently occupied by a lengthy trial and as soon as his courtroom becomes available, this training will proceed.

(K) Spanish Translation of Presentence Investigation Reports. Ralph DeLoach, Clerk of Court, reported that there is no funding from the Administrative Office for this purpose.

(N) CJRA Committee Certificates of Appreciation. Certificates of Appreciation for each outgoing member of the CJRA Committee have been prepared and signed by the Chief Judge. These certificates will be mailed out to respective members with a letter of thanks from the court.

3. FEES FOR USING COURTROOM TECHNOLOGY

Discussion occurred regarding the imposition of fees for using courtroom technology. Judge Lungstrum explained his opposition to charging a fee for using the evidence presentation equipment. However, the use of video conferencing equipment may be justified. Judge Lungstrum indicated he feels it is important to get the reactions of the bar to charging fees for service in this area.

The issue was raised about a situation occurring where one party did not have the financial ability to pay for these services. Ralph DeLoach discussed the AO funding shortfall for this technology and that the AO is asking the courts to take a look at charging fees for its use. The concern is whether or not the charging of these fees will discourage use of the technology.

Judge Lungstrum indicated it might be better to charge more for bar membership or increase the filing fee to offset the cost of courtroom technology. It was the consensus of the Bench/Bar Committee members that fees should not be charged for the use of most courtroom technology. They did believe it might be acceptable to charge a fee for the use of video conferencing since this technology would offset travel costs to litigants.

Ralph DeLoach explained the mobility of the video conferencing equipment and where it is currently available. Ralph also mentioned a demonstration of the video conferencing equipment could be available at the next Bench/Bar Committee meeting in July.

4. REVIEW OF BAR FUND

Kirk Alford, Manager of Administrative Services in the Clerk's Office, was present to provide an overview of the Bar Fund audit and income and expenditures. Upon submission of the audit and its accompanying recommendations and there being no objection, the



recommendations of the auditor will be implemented forthwith. The committee unanimously recommended continuation of the annual \$10 registration fee.

5. PROPOSED MODIFICATIONS TO LOCAL RULES 3.2, 15.1, AND 16.3

Magistrate Judge Newman discussed Local Rule 3.2 and Judge VanBebber's comments about repealing the rule. Judge Lungstrum indicated the repeal of this rule should properly be initiated in a judges' meeting. Discussion occurred regarding the difficulty in complying with this rule as it is written.

Magistrate Judge Newman discussed his proposed modification to Rule 15.1. Discussion took place regarding when the amended pleading would be deemed filed for purposes of computing the response deadline. After discussion, it was agreed that Jim O'Hara and David Seely would work with Magistrate Judge Newman to further amend this rule to clarify the issues of service and response deadlines. This subcommittee will distribute a proposed amendment to Judge Lungstrum, Ralph DeLoach, and committee members for review within three weeks.

Magistrate Judge Newman discussed the background for the amendment to Local Rule 16.3, the alternative dispute resolution (ADR) rule, to bring it into compliance with Congress's recent mandate. It was the consensus of the Bench/Bar Committee to recommend the adoption of this amendment as a stop gap measure to comply with the congressional mandate. The committee will await comment from the court on the direction it wants to take in the future regarding ADR.

6. EXPENSES FOR NATURALIZATION CEREMONIES

Ralph DeLoach discussed the financial burden placed on the Bar Auxiliary and the Daughters of the American Revolution for providing refreshments during naturalization ceremonies, particularly in Wichita where ceremonies are held more frequently than in Kansas City and Topeka. A proposal was made to set aside Bar Funds in the amount of \$2,500 yearly to reimburse these organizations for expenses incurred in connection with naturalization ceremonies. The proposal was approved by a consensus of the committee.

7. ELECTRONIC CASE FILING IN THE DISTRICT OF KANSAS

Ralph DeLoach discussed the electronic case filing project and how it is working in the Western District of Missouri and whether or not we would want to apply to be an early implementation court. After discussion, the committee agreed by consensus that the District of Kansas should let the ECF initiative prove itself before we volunteer for implementation.

8. SUBCOMMITTEE ON STANDARDIZATION

Jim O'Hara provided an update on the subcommittee on standardization and their proposal to standardize pretrial orders among the three divisional offices. The subcommittee plans to draft a version for review by the Bench/Bar Committee at its next meeting. It was decided that Jim O'Hara would take over as chair of this committee in place of Larry Withers.

NEW BUSINESS

David Seely indicated the main concern of Wichita bar members is the status of the Wichita magistrate judge position. Judge Marten provided an update of the Magistrate Judge

Selection Committee's progress for Wichita. Ralph DeLoach discussed the time frame and process for filling the upcoming Kansas City magistrate judge vacancy.

Judge Lungstrum discussed the status of the federal judgeship vacancy in our district.

The meeting having convened at 10:30 a.m. adjourned at 12:40 p.m.

Respectfully submitted,

  
Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF FRIDAY, OCTOBER 16, 1998, 10:30 A.M.

TOPEKA, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
LARRY WITHERS, ESQ.  
CLARENCE L. KING, ESQ.  
RUTH BENIEN, ESQ.  
MARK BENNETT, JR., ESQ.  
JIM O'HARA, ESQ.

NOT IN ATTENDANCE:

NICHOLAS DAILY, ESQ., EX OFFICIO

Judge Lungstrum welcomed everyone to the meeting at 10:30 a.m.

1. APPROVAL OF MINUTES

Judge Pusateri moved and Jim O'Hara seconded the motion that the minutes of the Wednesday, June 3, 1998 meeting be approved as submitted. The motion carried unanimously.

2. PROPOSED NEW LOCAL RULES OF PRACTICE AND PROCEDURE AND/OR AMENDMENTS TO EXISTING LOCAL RULES

(D) Disclosure of Subsidiaries and Affiliates by the Parties in a Lawsuit. Judge Lungstrum provided an overview of the reasons behind the proposed Standing Order. As a result of the increased focus on the Court's duty to prevent itself from being involved in cases with which there are financial conflicts of interest, a mechanism is needed for parties to assist the court in identifying such cases by disclosing subsidiaries and affiliates of the entities that are parties to

the lawsuit. Judge Lungstrum described the automated conflict program the Court is using that was developed by the District of Maine. It matches the party in the lawsuit with financial holdings provided in advance by the judge.

Judge Lungstrum recommended the committee, if in agreement with the concept, give input to the language of the proposed Standing Order and that a new local rule be proposed that adopts the same language as the Standing Order.

Discussion took place regarding financial disclosure orders some of the judges currently are using and Judge Lungstrum explained that this Standing Order (local rule) would supercede these other individual orders and would standardize the procedure. Further discussion took place regarding the concern about the possibility that the Standing Order, as currently proposed, puts the signing lawyer in undue jeopardy. The suggestion was made that language suggesting a "good faith" attempt by the signing attorney to do due diligence at the time of signing the certificate would be more appropriate. The committee suggested adopting language indicating whether or not a party as has a "direct financial interest" instead of simply "financially interested." It is believed that a change in the language would narrow the scope of inquiry and provide more protection for lawyers who are making a good faith attempt to comply with the disclosure requirements. The committee additionally advised that it may ask to further modify the rule at a future time.

Larry Withers moved and Clancy King seconded the motion that the Court adopt a new local rule detailing procedures that will assist the Court in preventing itself from being involved in cases with possible conflicts of interest.

(A) Rules 83.5.5, 83.6.1, 83.6.2, and 83.6.3. Magistrate Judge Newman explained the background for the proposed changes and referred to the Model Rules of Professional Conduct. The changes suggested are intended to clean up the rules making them consistent with the Supreme Court of Kansas rules regarding professional conduct.

Clancy King moved and Ruth Benien seconded the motion adopting the amendments to these rules. The motion carried unanimously.

(B) Disposition of Sealed Cases. Judge Marten provided an overview of this proposed rule amendment. There is apparently a large number of old sealed cases in Wichita which are taking up unnecessary space. Judge Marten drafted a rule amendment that would provide for the automatic lifting of the seal in the absence of some showing that the seal should be continued. Discussion took place regarding notification to attorneys prior to the seal being lifted and various issues unique to lifting the seal in criminal cases. Judge Lungstrum suggested piloting the rule in the civil area and increasing the proposed time period for the original seal from 5 years to 10 years with a possible extension on approval by the court. The committee unanimously recommended the adoption of this rule by the Court with the suggested changes by Judge Lungstrum.

(C) Confidentiality of Pretrial and Presentence Investigation Reports. Judge Marten discussed the background and purpose surrounding the proposed amendment. Discussion took place regarding the need to provide a copy of these reports to private consulting services and interpreters. The committee suggested the proposed rule be modified to include language regarding copying and disseminating these reports to specifically include interpreters, investigators, etc., and that authorization for further dissemination to other necessary parties

could be acquired *ex parte*. Mark Bennett moved and Ruth Benien seconded the motion that the Court adopt this rule with the modifications. The committee unanimously agreed to recommend to the Court the adoption of this rule with the suggested modifications. Judge Marten will redraft the proposed rule to include the suggested modifications for consideration at the upcoming Judges' Meeting.

(E) Social Security Briefing Schedule. Judge Lungstrum explained the reporting guidelines for Judges that are included in the Civil Justice Reform Act (CJRA) of 1991. In September 1998, the Committee on Court Administration and Case Management (CACM) recommended to the Judicial Conference that social security appeals be included in the public reporting requirements. The Judicial Conference adopted the recommendation in September and all districts will be required to report social security cases not decided within six months of 60 days after the filing of the transcript. Under the District of Kansas's local rule, social security cases are not fully briefed, even without extensions, until 164 days after the filing of the transcript. The committee considered making a recommendation to the Court to shorten the briefing time as now described in Local Rule 83.7(d). Committee members determined that they should recommend to the Court that the briefing time outlined in D.Kan.Rule 83.7(d) be shortened to coincide with the times for filing briefs in the Tenth Circuit, which would allow for such appeals to be decided within the reporting deadlines even if extensions might be granted.

3. Recommendations by David Phillips Regarding Proposed CJA Application Form, Formation of a CJA Panel Selection Committee and Formation of a Panel Mentoring Program in Addition to Modification of D.Kan.Rule CR44.1

David Phillips explained the reasoning behind the proposed CJA panel attorney application form, formation of a CJA selection panel, and formation of a panel mentoring

program. Magistrate Judge Newman explained the proposed modifications to Local Rule CR44.1. That rule creates a panel selection committee that reviews panel membership annually. Discussion took place regarding experience being a criterion for panel member selection. The suggestion was made to modify the proposed rule to require "knowledge of" rather than "demonstrated experience in" the *Federal Criminal Law, Federal Rules of Criminal Procedure, and the Federal Rules of Evidence*. The suggestion was also made to include knowledge of the *United States Sentencing Guidelines*. David Phillips moved and Magistrate Judge Newman seconded the motion that the adoption of the rule, with the suggested modifications, be made to the Court. The motion carried unanimously. David Phillips submitted the application form for the committee and court's review. The application form will be modified to include the knowledge vs. demonstrated experience language.

4. Proposed Amendments to the Federal Rules of Civil Procedure and Evidence and Proposed Amendments to the Federal Rules of Bankruptcy Procedure

Judge Lungstrum explained the approval process for the proposed amendments to these federal rules. Judge Lungstrum gave an overview of some of the concerns raised regarding the disclosure rule (Rule 26) and concerning other proposed changes to the civil procedure and evidence rules. Discussion took place regarding whether comments to the proposed amendments should be made by the committee as a group, or individually. The committee unanimously agreed that there should be no group response and that any comments should be made individually.



5. Rule 9(g)

Jackie Williams provided an overview of the suggested modifications to Local Rule 9(g) regarding prisoners proceeding *in forma pauperis*. There was no recommendation made by the committee. The proposed modification to the rule will be taken up at the upcoming Judges' Meeting. Jackie Williams will provide to the Clerk by next Wednesday the proposed rule modification in a format which indicates the proposed deletions and insertions using the strikeout and redlining method.

6. Federal Practice Seminar

Judge Lungstrum discussed the possible development of a federal practice seminar that could be made available to practicing attorneys. Discussion took place regarding whether this type seminar should be offered through the Kansas Bar Association or by the Court. Further discussion took place regarding whether CLE credits should be available or whether it should be offered without CLE credit to attorneys interested in learning more about federal practice. A federal practice seminar might be helpful to attorneys in light of our reciprocity with the Western District of Missouri, which has an admission requirement in this area. Discussion also took place regarding whether or not a fee should be charged for attendance at such a seminar. The committee unanimously recommended that a federal practice seminar be offered in-house (not through the KBA) and that no admission fee be charged other than the normal annual \$10 admission fee and that the Court seek CLE credit for participants.

7. Follow-up on Reciprocity Publications

Ralph DeLoach explained the informational publications to Kansas lawyers regarding the reciprocity agreement between the District of Kansas and the Western District of Missouri.

Sheryl Loesch explained the various legal publications that included this information and that the Western District of Missouri has indicated admission would be granted upon the completion of an application for admission. Previously, admission was not granted until a Kansas attorney filed a case.

8. Further Discussion of Faxed Filings

Sheryl Loesch explained her research regarding whether or not other federal courts allow faxed filings. No federal district courts surveyed permitted faxed filings in the regular course of business. Faxed filings were only permitted with court approval as provided in the *Federal Rules of Civil Procedure*. Additionally, Ruth Benien advised that the state also allowed faxed service which, in fact, may be even more helpful to an attorney than faxed filing. Ralph DeLoach will follow up with the Administrative Office to determine if a program for faxed service is being proposed for use by the district court.

9. Report from the Subcommittee on Standardization

Larry Withers gave an overview of the concern regarding the lack of uniformity among the Judges in this district regarding scheduling conference orders and pretrial conference orders. The subcommittee is looking at recommending to the Court conformity in pretrial orders. The subcommittee feels the differences among Judges regarding pretrial orders are more in form than substance. The subcommittee is working on a proposed document to present to the entire committee prior to December 1, 1998. Magistrate Judge Newman suggested the subcommittee run the proposed document by him first since he sees many different versions of these orders. The proposed document will be presented to the committee during the winter meeting. Judge

Lungstrum invited Larry Withers, whose term on this committee expires December 31, to attend that meeting to speak on this issue.

10. Recognition of Members of the Civil Justice Reform Act Committee and Discussion of the Assumption of the Role of that Committee by the Bench/Bar Committee

At the suggestion of Nick Badgerow, the Co-Chair of the CJRA Committee, Ralph DeLoach discussed the recognition of members who have completed their service on the CJRA committee. Ralph discussed prior recognition given to members of the original CJRA committee. Judge Lungstrum suggested authorizing Ralph DeLoach to use funds from the Bar Fund to prepare a certificate for the members of the CJRA committee and to also do the same for retiring members of the Bench Bar Committee. The committee unanimously agreed to Judge Lungstrum's suggestion. Judge Marten suggested hosting a lunch at each location in recognition of those CJRA members and that certificates be presented to the members at the lunch.

11. Courtroom Technology Training

Sheryl Loesch provided an overview of the proposed training on courtroom technology. Judge Lungstrum indicated that the technology is very easy to use and that, oftentimes, he has his courtroom deputy train lawyers on the use of the various technologies prior to their court proceedings. The Court will seek CLE credit for lawyers participating in this training.

12. Bar Registration and Disciplinary Fund Financial Reports

Ralph DeLoach gave an overview of the various reports and presented the proposed budget. Jim O'Hara moved and Larry Withers seconded the motion to adopt the Bar Fund budget. The motion carried unanimously.

13. Status of Pending Local Rule Amendments

Ralph DeLoach provided an overview of the time frame for the publication of the next edition of the *Rules of Practice and Procedure for the District and Bankruptcy Court*. The public comment period ends October 16, 1998. The camera-ready copy is due to the printer on November 10, 1998. The effective date of the next publication is January 1, 1999.

14. Payment of Annual Registration Fees by Government Attorneys, Law Clerks, etc.

Upon clarification concerning the difference between the annual registration fees and the admission fees referenced in the letter from the Administrative Office, Jackie Williams withdrew the request to eliminate this fee for Assistant U.S. Attorneys.

15. New Business

David Phillips requested that Spanish translation of the Presentence Report be provided to Hispanic defendants who do not speak English. Mr. Phillips would like his request referred to the Judges for consideration at a future meeting. He will research this request and be prepared to discuss it at a future Judges' Meeting.

David Phillips also discussed the Judicial Conference's recommendations regarding appointment of counsel in death penalty cases. He feels some of these recommendations should be incorporated into a local rule. Mr. Phillips will prepare proposed draft rules to be considered at a future meeting.

Judge Marten raised the issue of informing CJA panel attorneys of the Court's expectations regarding their billing practices. Oftentimes, CJA vouchers are cut by the Judges because the fees requested are over the allowed limit. Judge Marten suggested, since we are

rebuilding the CJA panel, that all CJA panel attorneys be provided with an understanding of appropriate billing and compensation practices. Judge Lungstrum suggested incorporating the billing and compensation practices into the CJA panel training program.

The meeting having convened at 10:30 a.m. adjourned at 3:30 p.m.

Respectfully submitted,

*Ralph L. DeLoach (D.L.)*

Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF WEDNESDAY, JUNE 3, 1998, 11:00 A.M.

KANSAS CITY, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
LARRY WITHERS, ESQ.  
CLARENCE L. KING, ESQ.  
RUTH BENIEN, ESQ.  
MARK BENNETT, JR., ESQ.  
JIM O'HARA, ESQ.  
NICHOLAS DAILY, ESQ., EX OFFICIO

NOT IN ATTENDANCE:

HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY

Judge Lungstrum welcomed everyone to the meeting at 11:00 a.m. and introduced his summer intern, Bhavi Shaw.

1. APPROVAL OF MINUTES

Larry Withers moved and Nick Daily seconded the motion that the minutes of the Friday, February 6, 1998 meeting be approved as submitted. The motion carried unanimously.

2. PROPOSED AMENDMENTS TO RULE 6.1 OR 7.1, RULE 7.3 AND RULE 81.1

Judge Lungstrum led a discussion regarding the proposed amendment to Rule 6.1 or 7.1 that addresses the issue of computing the effective date of court filings. The Committee unanimously recommends to the Court the adoption of this proposed amendment as Rule 6.2, entitled "Effective Date of Court Filings for Purposes of Calculating Limitation Periods."

Judge Lungstrum explained the proposed amendment to Rule 7.3 pertaining to Motions

to Reconsider. After discussion, the Committee unanimously agreed to recommend to the Court the adoption of the Rule amendment with several changes.

Judge Newman led a discussion of the proposed amendment to Rule 81.1. During the discussion, it was determined a more appropriate place for this amendment would be Rule 5.1(d) to include attorney appearances in transferred cases in addition to attorney appearances in removal cases. The Committee unanimously agreed to recommend to the Court adoption of the proposed amendment to Rule 5.1 (see attached).

3. UPDATE ON PANEL ATTORNEY TRAINING

David Phillips provided the Committee with training dates for panel attorneys. The upcoming training schedule is as follows:

July 10 - Kansas City  
July 24 - Wichita  
August 14 - Topeka

The training faculty will consist of several assistant defenders from Mr. Phillips' office and Joe Johnson for the Topeka seminar, Dan Monnat for the Wichita seminar, and Jim Eisenbrandt for the Kansas City seminar. Mr. Phillips passed around various handouts that would be provided in the training. Judge Lungstrum mentioned the improvement he has noticed in the quality of the panel since the inception of the training program.

4. EFFORTS TO IMPROVE THE QUALITY OF THE CJA PANEL

David Phillips provided a revised application form for panel attorneys. He feels the panel should start anew and that current panel members desirous of remaining on the panel be required to complete an application. Mr. Phillips also passed out a copy of the Plan for Implementation of the Criminal Justice Act. He suggested that the panel selection committee be expanded to include a senior status panel attorney along with someone from the Federal Public Defender's

staff. Mark Bennett reported that lawyers who have no prior criminal law experience have found it difficult to secure panel appointments. There was discussion regarding the possibility of developing a mentor program for non-criminal attorneys to gain experience that would qualify them to be added to the panel. The Committee unanimously endorsed the innovations presented by Mr. Phillips and agreed they should be recommended to the court. At the invitation of Judge Lungstrum, David Philips agreed to make a presentation to the court regarding efforts to train and otherwise improve the quality of CJA panel attorneys.

5. UPDATE ON RECIPROCITY AGREEMENT BETWEEN THE WESTERN DISTRICT OF MISSOURI AND THE DISTRICT OF KANSAS

Ralph DeLoach reported that, to date, 300 attorneys from the Western District of Missouri have been sworn in and admitted to practice in the District of Kansas. Only 25 Kansas attorneys have been admitted to practice in the Western District of Missouri under the reciprocity agreement. There was discussion about the additional CLE requirement for admission to the Western District of Missouri and how that might be a factor in the small number of admissions from Kansas attorneys to the Western District of Missouri. Ruth Benien discussed the Western District of Missouri practice of not admitting Kansas attorneys until they actually have a case to be filed. Ralph DeLoach will work on publicizing the reciprocity agreement among Kansas attorneys and also will contact the Clerk in the Western District of Missouri regarding admitting Kansas attorneys whether or not they have a case to be filed.

6. BAR REGISTRATION AND DISCIPLINARY FUND FINANCIAL REPORTS

Ralph DeLoach advised that we have exceeded the \$50,000 set aside for the archives project. Clancy King moved and Jim O'Hara seconded the motion to approve an additional set aside of \$30,000 for the court archives project.



Ralph DeLoach discussed the expended and obligated funds for court appointed attorneys in civil cases. The expenditures are substantially below the set aside so no additional funds are now needed.

7. DISBANDING OF THE CIVIL JUSTICE REFORM ACT COMMITTEE

Judge Lungstrum discussed the status of the Civil Justice Reform Act Committee (CJRA). He informed the Committee that the Court has decided to disban the CJRA Committee but that no official date has been set for this action. He advised the Bench/Bar Committee assume the responsibilities of the CJRA Committee. There was discussion about balancing representation on the Committee geographically, and in other ways, in an effort to make the Committee as diverse as possible. More details will be provided at the next Committee meeting in the Fall.

8. EXPIRATION OF BENCH/BAR COMMITTEE APPOINTMENTS

Judge Lungstrum expressed his appreciation to all members serving on the Bench/Bar Committee for their time and commitment. Judge Lungstrum advised that some member's terms have expired and that he was suggesting renewal and extension of terms as follows:

Larry Withers	Expiration 12/31/98
Clancy King and Ruth Benien	Expiration 12/31/99
Mark Bennett	Expiration 12/31/00
Jim O'Hara	Expiration 12/31/01

An order will be prepared and presented to the Court reflecting the above.

9. KANSAS BAR FOUNDATION PROPOSAL

Ralph DeLoach provided a handout from the Kansas Bar Foundation which described the various programs for which they are seeking financial support. After discussion attorney

members of the Bench/Bar Committee advised that it is their belief that a majority of the members of the Federal Bar would not approve of the donation of funds from the Bench/Bar Fund to the Kansas Bar Foundation, despite the merit of their exemplary programs.

10. DISPOSITION OF SEALED CASES  
CONFIDENTIALITY OF PRESENTENCE INVESTIGATION REPORTS

Judge Lungstrum led a discussion regarding Judge Marten's proposed Order to Show Cause Concerning Sealed Pleadings and his suggestion that a local rule be drafted addressing this issue. The Committee unanimously agreed to ask Judge Marten to consult with Judge Newman to draft a proposed rule for review at the next Bench/Bar meeting.

In a memo Judge Marten complained of situations that have occurred when Presentence Investigation Reports were passed around to individuals not designated as recipients. Judge Marten also suggested that the Committee might want to consider a local rule on this subject. After discussion Judge Lungstrum requested David Phillips research the law, consult with Mark Bennett, and be prepared to address this issue at an upcoming Judges' meeting. Mr. Phillips will also include the Pretrial Services Report in his presentation to the Court.

11. NEW BUSINESS

Judge Lungstrum informed the Committee about the Court's recent Naturalization Ceremony which was held in Ft. Scott, KS on May 22, 1998 and the Court's desire to become more visible in the outlying areas of the state.

Judge Lungstrum encouraged comments from the Bar on whatever issues they believed to be important. Ruth Benien raised the issue of Court acceptance of faxed filings and faxed service. Judge Lungstrum noted this issue and indicated that it is worthy of further discussion and inquiry.

Mark Bennett raised the issue of lack of standardization in judges' procedures. He suggested the possibility of standardizing certain procedures. Judge Lungstrum invited suggestions on some specific areas of standardization. A subcommittee was appointed to look into areas of standardization and report back to the Committee at its Fall meeting. The Subcommittee on Standardization consists of the following members: Larry Withers, Chair; Ruth Benien; Mark Bennett; and Jim O'Hara.

David Phillips suggested that death penalty appointment procedures be developed. David Phillips advised that several panel members were wanting to drop off the panel because judges were cutting their vouchers, especially vouchers for expert services. Mr. Phillips suggested the creation of an appellate procedure to review the action taken by a judge when cutting expenses from a CJA voucher. Mr. Phillips will bring a proposal regarding these two issues to the next Committee meeting.

The meeting having convened at 11:00 a.m. adjourned at 1:30 p.m.

Respectfully submitted,



Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF FRIDAY, FEBRUARY 6, 1998, 10:30 A.M. WICHITA, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
LARRY WITHERS, ESQ.  
CLARENCE L. KING, ESQ.  
RUTH BENIEN, ESQ.  
NICHOLAS DAILY, ESQ., EX OFFICIO

BY TELEPHONE: JIM O'HARA, ESQ.

NOT IN ATTENDANCE:  
MARK BENNETT, JR., ESQ.

Judge Lungstrum welcomed everyone to the meeting at 10:30 a.m.

1. APPROVAL OF MINUTES

Chief Judge Pusateri moved and Clarence King seconded the motion that the minutes of Friday, July 11, 1997 and Wednesday, October 8, 1997 meetings be approved as submitted. The motion carried unanimously.

2. REVIEW OF BAR REGISTRATION AND DISCIPLINARY FUND AUDIT;  
APPROVAL OF 1998 REGISTRATION FEE; AND APPROVAL OF FISCAL 1998  
BUDGET

Ralph DeLoach provided handouts of the Bar Registration and Disciplinary Fund projected budget for the period of November 1, 1997 through October 31, 1998; the Statement of Bar Registration and Disciplinary Fund for the month of December 1997; and the Bar

Registration and Disciplinary Fund Audit. Ralph explained the financial division is audited by the Administrative Office every two years. This AO audit includes an audit of the Bar Registration and Disciplinary Fund. In addition to this audit, the District of Kansas has an independent audit of the Bar Registration and Disciplinary Fund prepared by a CPA on a yearly basis.

Judge Lungstrum clarified the funds earmarked for training are for court appointed counsel training. Judge Lungstrum would like the obligations to attorneys appointed in civil rights cases to be listed in a way that reflects the accounting period to ensure enough funds are earmarked to cover these expenditures.

Judge Pusateri raised the question of what is included in the expenditures for Historical Exhibits/Displays category. Ralph DeLoach explained this included the 4<sup>th</sup> floor exhibit in the Kansas City, KS courthouse and also judges' portraits.

Larry Withers asked if the Bar Fund accounting was made public to attorneys who pay the annual registration. Ralph DeLoach indicated the thought was that committee members, as members of the bar, would provide information to their interested fellow bar members.

Judge Pusateri suggested a summary of the Bar Fund be included in the annual publication of the *Rules of Practice and Procedure*. Judge Lungstrum indicated the bottom line purpose of the Bar Fund is for expenditures in disciplinary actions. Judge Lungstrum asked Ralph DeLoach to consider the publication of this Fund's accounting as something to raise at the Judges' meeting. Ralph DeLoach will put together an accounting comparison and get copies out to committee members next week. Ralph indicated the Rule requires the court to annually review the audit and set the registration fee for the upcoming year. Clancey King moved and

Larry Withers seconded the motion to continue the \$10 annual registration fee. The motion carried unanimously.

Ralph DeLoach suggested changing the time frame in which the committee and the court review and approve the projected budget so that it would be more timely.

Ralph DeLoach will disseminate next week the information raised in discussion regarding the fiscal 1998 budget. If no committee members request a telephone conference call to further discuss the budget, it will be deemed approved by the committee.

3. UPDATE ON THE ATTORNEY ADMISSION RECIPROCITY AGREEMENT BETWEEN THE DISTRICT OF KANSAS AND THE WESTERN DISTRICT OF MISSOURI

Ralph DeLoach explained the reciprocity agreement between the District of Kansas and the Western District of Missouri. On February 2, 1998, Judge O'Connor swore in 102 attorneys from the Western District of Missouri. Carolea Dick, the attorney admissions clerk, received several calls from attorneys who had attended this swearing in ceremony commenting on how nice the ceremony was.

Judge Lungstrum asked Ralph DeLoach to follow up with Bob Connor to make sure the process is working in the Western District of Missouri. Judge Lungstrum asked Jim O'Hara to check on this also and inform Judge Lungstrum or Ralph DeLoach.

4. PROPOSED LOCAL RULE CHANGES: RULE 5.1, 9.1, 72.1.1, AND 83.5.6

Judge Newman explained the proposed changes to Rule 5.1(c). He further explained the proposed change to Rule 9.1(e) was a substitution to conform to existing law. The proposed changes to Rule 72.1.1 were due to the newly appointed part time magistrate judge in Topeka to allow her to complete duties not currently included in our local rule. Judge Newman further

recommended that a Standing Order be entered regarding this issue. The proposed changes to Rule 83.5.6 were to clarify and conform the District of Kansas rule to the State rule.

Nicholas Daily moved and Larry Withers seconded a motion to recommend for approval of the Court the proposed rule changes and also that a standing order be entered mirroring the changes to Rule 72.1.1. The motion carried unanimously.

5. NEW BUSINESS

Judge Newman addressed an additional rule change to Rule 5.1(d) which pertained to the entry of appearance by counsel. David Phillips raised the question of whether that change would require the Federal Public Defender to enter a separate Notice of Appearance. Judge Lungstrum asked Judge Newman to consider additional language to clarify for attorneys their status in the case (such as a removal case).

Larry Withers raised the suggestion of simply requiring an entry of appearance be filed in every case. Judge Lungstrum and Nicholas Daily discussed the issue of getting compliance to that requirement. After further discussion, Judge Pusateri moved and Jackie Williams seconded the motion that the committee recommend the adoption of the proposed change to Rule 5.1(d). The motion carried unanimously.

Judge Lungstrum raised a question concerning Rule 83.5.2(c) wherein the rule states that attorneys must be sworn in in open court. A discussion took place regarding a rule change which made it optional to swear in attorneys in open court or in chambers. Ruth Benien explained the state rationale for this open court requirement was to allow the public to be present in case there was some reason the admittee should not be admitted. Judge Lungstrum is going to recommend the Court make this change.

Judge Lungstrum informed David Phillips that he has heard positive feedback on the training his office provided to CJA panel members. David said this training would be on an on-going basis and he will periodically give the committee an update.

Discussion took place regarding the improvement of the quality of the CJA panel. David Phillips is working on this and is to come forward at the June committee meeting with some ideas and comprehensive suggestions the committee can consider and pass on to the Court.

Chief Judge Van Bebber asked Judge Lungstrum to discuss with the committee the issue of continuing the CJRA advisory group since the Act has sunset. Discussion took place regarding several good ideas that came out of the Act and that Courts were continuing to practice. The Court will need to decide whether to maintain a CJRA advisory group since the group is no longer doing anything at this time. Discussion took place about doing away with the CJRA advisory group and possibly incorporating that group with the Bench/Bar Committee. Judge Pusateri raised the question of whether or not the Bench/Bar Committee would want lay people on the committee, which was one of the innovations permitted for CJRA advisory groups. There was discussion about ways to make the Bench/Bar Committee more of a bench/bar committee rather than generally just a rules committee. A suggestion was made that an agenda item could be added to address issues pertaining to the bar.

Judge Lungstrum discussed considering the recommendation, should the CJRA advisory group be eliminated, that the Bench/Bar Committee membership be expanded to better represent the diversity of the bar. The conclusion of the group was that no one on the committee felt the strong need to have a separate group and would not object to adding additional members to the Bench/Bar Committee. Additionally, Judge Lungstrum recommended that future meetings be



expanded to include a working lunch in order for the committee to have the time to cover more issues of interest to the bar.

The meeting having convened at 10:30 a.m. adjourned at 12:10 p.m.

Respectfully submitted,

Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF WEDNESDAY, OCTOBER 8, 1997, 1:00 P.M. TELEPHONE CONFERENCE

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
CLARENCE L. KING, ESQ.  
MARK BENNETT, JR., ESQ.  
JAMES O'HARA, ESQ.  
NICHOLAS DAILY, ESQ., EX OFFICIO

NOT IN ATTENDANCE:  
LARRY WITHERS, ESQ.  
RUTH BENIEN, ESQ.

Judge Lungstrum explained the purpose of the conference call was to determine if the Bench/Bar Committee would like to recommend to the Court that District of Kansas Local Rule 83.5.2 be amended to provide for admission to persons admitted to practice in the United States District Court for the Western District of Missouri. The Committee had discussed the idea at some length at its two immediately preceding meetings. This proposed change would alleviate many pro hac vice applications submitted by Western District of Missouri attorneys who routinely have cases in the District of Kansas. Judge Lungstrum explained that the Western District of Missouri was attempting to adopt similar changes to their attorney admission rules to extend admission to persons admitted to practice in the United States District Court for the District of Kansas.

Judge Lungstrum explained that, if adopted, this rule should be included in the next

publication of the Local Rules, which goes to print in mid-November. Although the Western District of Missouri might not be voting on their rule changes until their November 6 meeting; Judge Lungstrum, due to the printing deadline, asked the Bench/Bar Committee to consider the proposed rule change for "conditional" approval based on the approval of the reciprocal rules by the Western District of Missouri at their upcoming meeting.

Judge Pusateri made a motion that the Bench/Bar Committee adopt the proposed rule change. Jim O'Hara seconded the motion. The proposed rule change was unanimously approved.

Mark Bennett moved that the Committee suggest to the Court that the District of Kansas place the same conditions on admission requirements as the Western District of Missouri. Clarence King seconded this motion. This change was unanimously recommended by the Committee. This rule change is a separate issue from the reciprocity issue discussed above and will be handled in the normal course of court business.

David Phillips inquired about what would happen should the Western District of Missouri not pass their proposed pro hac vice reciprocity rule changes. Judge Lungstrum indicated that the District of Kansas rule change on this issue would die.

Jackie Williams expressed his view that this rule, with the proposed change, would be a very good rule and he thanked Judge Newman for his efforts in this area.

The telephone conference meeting having convened at 1:00 p.m. adjourned at 1:45 p.m.

Respectfully submitted,

  
Ralph L. DeLoach, Clerk

UNITED STATES DISTRICT COURT  
District of Kansas

*Bench/Bar Committee Meeting*

MINUTES OF FRIDAY, JULY 11, 1997, 10:00 A.M.

SALINA, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, JUDGE, CHAIR  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE JAMES A. PUSATERI, CHIEF BANKRUPTCY JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
LARRY WITHERS, ESQ.  
CLARENCE L. KING, ESQ.  
MARK BENNETT, JR., ESQ.  
JIM O'HARA, ESQ.  
NICHOLAS DAILY, ESQ., EX OFFICIO

NOT IN ATTENDANCE:

DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
RUTH BENIEN, ESQ.

Judge Lungstrum formally thanked Clancy King for hosting the meeting in Salina. He suggested the Committee hold future meetings during the year at the three court locations and hold the fourth meeting at another location, possibly a place of holding court such as Ft. Scott, KS.

1. APPROVAL OF MINUTES

Chief Judge Pusateri moved and Larry Withers seconded the motion that the minutes of Friday, February 14, 1997, be approved as submitted. The motion carried unanimously.

2. RULES APPROVED BY THE BENCH/BAR COMMITTEE AND THE COURT WHICH ARE PENDING PUBLICATION (INFORMATION ONLY)

Regarding the amendment to Local Rule 16.3, Ralph DeLoach explained that Chief Judge Van Bebber sent a letter to the mediator panel attorneys advising them of the change in the rule which in essence eliminates court sponsored mediation panels. Subsequent to the last

Bench/Bar meeting, Judge Lungstrum directed Ralph DeLoach to survey each of the three court locations to determine which mediators were most often used as mediators. The list will be distributed to chambers and will enable the court to share names of experienced mediators with out-of-area attorneys in search of a mediator. Ralph DeLoach advised that the survey had taken place and the list would soon be distributed to chambers.

3. PUBLICATION TIMELINE FOR 1998 LOCAL RULES

Ralph DeLoach explained the publication timeline and comment period to the committee. Mailing of the newly published Local Rules to attorneys registered to practice in the District of Kansas will begin December 15, 1997 for a January 1, 1998 effective date.

Judge Lungstrum brought to the committee's attention the publication timeline involved when considering a rule change proposal.

Ralph DeLoach mentioned the possibility of making the Local Rules available electronically in the future, possibly through PACER. He also described the court's PACER system. A general discussion regarding automation initiatives ensued wherein Chief Judge Pusateri described Bankruptcy Court's home page on the web and the information Bankruptcy Court has available electronically and through imaging. Judge Marten and Ralph DeLoach described the imaging project the District Court uses in conjunction with prisoner cases.

4. ACCOUNTING OF OBLIGATIONS TO AND EXPENDITURES FROM THE BAR FUND FOR ATTORNEYS APPOINTED IN CIVIL RIGHTS CASES

Judge Lungstrum explained the background of the Bar Fund and how the Bench/Bar Committee and the Court have explored areas to appropriately utilize this fund. One area of utilization is funding of court approved expenditures for lawyers representing indigent parties in civil rights cases. Since this rule was developed without an historic perspective, Judge

Lungstrum stressed the need for the Court and Clerk's Office to closely monitor funds earmarked for these cases. Clancy King asked if Ralph DeLoach felt the current fund's balance was adequate to cover expenses. Ralph DeLoach advised he believed the fund's balance to be adequate and explained to the Committee that one way to monitor these funds is the requirement that attorneys seek advance approval for expenditures. Ralph DeLoach explained that the Clerk's Office will continue to closely monitor expenditures and report back to the committee.

5. REVIEW OF PRO HAC VICE ADMISSION PROCEDURES IN THE WESTERN DISTRICT OF OKLAHOMA, THE NORTHERN DISTRICT OF OKLAHOMA, THE DISTRICT OF COLORADO, AND THE WESTERN DISTRICT OF MISSOURI

Judge Lungstrum reported to the Committee that the Court examined the pro hac vice local rule and determined that Department of Justice attorneys are relieved from having to file affidavits each time they get involved in a case when not a member of the District of Kansas Bar. Judge Lungstrum explained that the court researched the number of pro hac vice motions that had been denied and there had apparently only been one on the merits. In the Committee's last meeting, Magistrate Judge Newman made the observation that the Court might want to look at revamping this rule so it would not be so cumbersome on the Clerk's Office. Ralph DeLoach researched how other neighboring districts handle pro hac vice cases and explored the issue of reciprocity between the District of Kansas and the Western District of Missouri. He also compiled the pro hac vice procedures of four other neighboring districts. Ralph DeLoach summarized these procedures as follows:

The three Oklahoma districts have reciprocity among themselves. Non-member attorneys from outside the state must meet eligibility criteria. There are slight variations in eligibility criteria in the three Oklahoma districts.

The District of Colorado has eliminated pro hac vice admission requirements. Attorneys

must be a member of a Bar anywhere. A one time admission fee of \$75 is charged. No annual registration fee is charged.

The Western District of Missouri's pro hac vice practice is similar to the District of Kansas practice. Local counsel must participate in the case but may be excused at the first appearance. Non-member attorneys must make application and pay a fee in every case. The District of Kansas requires non-member attorneys to make application in every case; however, the fee is only required once a year.

6. PRO HAC VICE RECIPROCITY (WESTERN DISTRICT OF MISSOURI)

Ralph DeLoach contacted the Western District of Missouri to determine interest in reciprocity. The Court in Missouri invited Judge Lungstrum to present the reciprocity concept to them. Judge Lungstrum indicated there is one subject still being discussed in Missouri pertaining to pro hac vice admission and that is the requirement of three CLE credits each year to maintain membership in the Western District of Missouri Bar. Jim O'Hara raised the concern about the quality of CLE programs. He said it is not difficult for attorneys to comply with this requirement, but attorneys want to attend quality programs.

Judge Lungstrum left the discussion with the Missouri court by indicating that each district would respect the admission criteria (other than the Bar membership requirement) from the other district. Ralph DeLoach, Bob Conner (the Clerk from the Western District of Missouri), and Magistrate Judges Newman and Maughmer (from the Western District of Missouri) will work on the details of implementation to be presented to the respective courts. Judge Lungstrum feels there is a possibility that a proposal to be submitted to our full court for a satisfactory reciprocity agreement can be worked out. Ralph DeLoach will also check into the District of Nebraska's pro hac vice procedures.

7. REPORT ON JUDICIARY'S ELECTRONIC CASE FILES PROJECT (E.C.F.)

Judge Lungstrum explained the idea behind the Electronic Case Files Project is to transition courts to have all pleadings filed and docketed electronically. Judges would have the ability to view the complete file on computer and download documents from the file as needed.

Judge Lungstrum is one of the two liaisons from the Court Administration and Case Management Committee to the Automation and Technology Committee of the Judicial Conference. Judge Lungstrum indicated the Electronic Case Files Project is continuing and anticipates courts moving to this system within the next five years.

Bankruptcy Court in Kansas is moving in this direction with some of these concepts. Chief Judge Pusateri mentioned the Clerk's Office is currently imaging filed pleadings. Currently, both Kansas City and Wichita Bankruptcy Courts have electronic courtroom minute sheets that can be accessed in the courtroom. Ralph DeLoach mentioned there will be E.C.F. pilots established throughout the country - one will be the District Court in the Western District of Missouri and will involve Title 7 cases. Chief Judge Pusateri mentioned the Bankruptcy Appellate Panel is involving the District of Kansas Bankruptcy Court in a pilot videoconferencing program.

8. ELECTRONIC COURTROOM PHOENIX, ARIZONA

Judge Marten mentioned the District of Kansas has applied for funding for an electronic courtroom. Sheryl Loesch provided her observations of the electronic courtroom she observed during a recent visit to the district court in Phoenix. Sheryl indicated Judge Strand's courtroom in Phoenix had 14 monitors located throughout the courtroom. Seven monitors were located in the jury box, one monitor was located in the court reporter/courtroom deputy work area, one monitor was located at the podium, and one monitor was located at each counsel table, the



witness stand, the judge's bench, and the computer work station. Sheryl Loesch passed out a diagram of the electronic courtroom and a brief description of same to each committee member present. She explained that the system used in Phoenix is at no cost to the court. Attorneys using the electronic equipment are charged at a half day or full day rate by the vendor. After 90 full days of use, the system is paid in full. The vendor also provides training to interested attorneys. Five court employees were trained by the vendor at no cost to the court. The electronic courtroom has been met with much success in Phoenix.

9. FOLLOW-UP ON PUBLIC DEFENDER'S EFFORTS TO PROVIDE TRAINING FOR PANEL ATTORNEYS

Ralph DeLoach passed out to each committee member present a memo from Michael Harris of the Federal Public Defender's Office which summarized the recent seminar provided to CJA panel attorneys that was conducted by the Federal Public Defender's Office. Judge Lungstrum indicated that the Federal Public Defender's Office conducted an excellent training session and complimented Mike Harris, Assistant Public Defender at Kansas City, for his excellent work in organizing the training effort.

10. TERMS OF BENCH/BAR MEMBERS

Judge Lungstrum welcomed Jim O'Hara to the committee. Jim's term does not expire until 2001.

11. FEDERAL PRACTICE HANDBOOK

Ralph DeLoach explained to the Committee that Martin Bauer and a group of former law clerks compiled a Federal Practice Handbook to assist lawyers with the practice requirements of each judge. The handbook has recently been updated. Both a hard copy and a computer diskette were provided to each committee member present. Ralph DeLoach explained that copies will be

available in either form to attorneys upon written request.

12. NEXT MEETING

Committee members discussed and agreed that the next meeting should be scheduled sometime in early November in Wichita, Kansas.

ADDITIONAL BUSINESS

Ralph DeLoach provided an update for committee members on the status of the halftime Magistrate Judge position in Topeka. This Magistrate Judge position will be primarily handling prisoner cases and prisoner case management. The position will, hopefully, come on line by the end of the year.

The meeting having convened at 10:00 a.m. adjourned at 12:00 noon.

Respectfully submitted,

Ralph L. DeLoach, Clerk

**UNITED STATES DISTRICT COURT  
District of Kansas**

*Bench/Bar Committee Meeting*

MINUTES OF FRIDAY, NOVEMBER 8, 1996, 9:00 A.M. KANSAS CITY, KANSAS

IN ATTENDANCE: HONORABLE JOHN W. LUNGSTRUM, CHAIR  
HONORABLE G. THOMAS VAN BEBBER, CHIEF JUDGE  
HONORABLE WESLEY E. BROWN, SENIOR JUDGE  
HONORABLE RICHARD D. ROGERS, SENIOR JUDGE  
HONORABLE MONTI L. BELOT, JUDGE  
HONORABLE J. THOMAS MARTEN, JUDGE  
HONORABLE RONALD C. NEWMAN, MAGISTRATE JUDGE  
HONORABLE JAMES A. PUSATERI, BANKRUPTCY JUDGE  
JACKIE WILLIAMS, UNITED STATES ATTORNEY  
DAVID PHILLIPS, FEDERAL PUBLIC DEFENDER  
LARRY WITHERS  
NICHOLAS DAILY  
CLARENCE L. KING, JR.  
RUTH BENIEN  
MARK BENNETT, JR.

1. APPROVAL OF MINUTES

Judge Pusateri moved and Nicholas Daily seconded the motion that the minutes of June 13, 1996, Bench/Bar meeting be approved as submitted. The motion carried unanimously.

2. ACTION ITEMS FROM JUNE 13, 1996 BENCH/BAR MEETING

- (a) Expansion of Juror Questionnaire - The committee reviewed the juror qualification questionnaire, 28 USC 1896 (h) and discussed the purpose to be served by an expansion of the questionnaire. After discussion the committee concluded that the need for an additional written questionnaire should be considered by the presiding judge, on a case by case basis.
- (b) Clarification of Authority of Judges to Authorize Attorneys to Question Jurors - After discussion, Judge Lungstrum appointed a subcommittee composed of Ruth

Benien, Chair, Mark Bennett and Jackie Williams to study further the authority and appropriateness of judges authorizing attorneys to question jurors, including whether or not our local rule is satisfactory. He directed the subcommittee to report back with a proposed rule change, or for a recommendation of no rule change and that they should be prepared to support their conclusion either way.

(c) Training for CJA Panel Attorneys - David Phillips reported on his effort to provide for the training needs of CJA panel attorneys. Mr. Phillips advised that he proposed beginning with a basic training program and graduating to a more advanced program. Mr. Phillips provided several handouts which included panel selection criteria from several districts, a CJA panel application form, an outline for panel training, proposed CJA panel selection criteria for our district and a paper on the nuts and bolts of the stages of defending a federal criminal case. He advised that he has had discussion with the judges of the court and they all feel training would be extremely beneficial. Mr. Phillips intends to propose a panel attorney selection process for consideration by the Bench/Bar committee and the court at their February 1997 meetings. He advised he also intends to propose a reduction in the panel size. He stated training should begin the early part of next year and that the expense would be nominal. He indicated the Public Defender's office would continue to be a resource for guidance of panel attorneys.

Chief Judge Van Bebber asked that David look into whether or not his effort would require any modification of the current Criminal Justice Act Plan.

3. Admission to Practice Pro Hac Vice

No discussion, for the information of the committee only.

4. Discussion of the Administrative Office Report on District of Kansas Jury Procedures

Ralph DeLoach provided some background by reporting that he requested the Administrative Office of the U.S. Courts to study the District of Kansas jury procedures and

to make recommendations regarding advisable change and/or enhancement. Judge Lungstrum advised the current plan is not legally defective, but may warrant some review.

Judge Lungstrum referred the committee to two recent federal cases addressing jury selection issues; U.S. v. Ruiz-Castro, 92F.3d 1519 (10th Cir. 1996); U.S. v. Michael D. Shinault, Case No. 95-10072-01 (August 30, 1996 Dist. of KS).

The committee's only comment regarding the report was to express the view that they would be in favor of filling the court's master jury wheel with registered voters as opposed to actual voters with the expectation of increasing the diversity of age, sex and race.

5. Procedural Brochure for Pro Se Civil Rights Attorneys who Contemplate Reimbursement of Expenses

Judge Lungstrum provided background regarding the necessity to make appointed counsel in civil rights cases aware of the need for advance approval from the court for payment of expenses. It appears there has been some problem in getting this message out clearly to appointed counsel. As a result, the clerk's office was directed to prepare a brochure highlighting the need for prior approval which will be provided to the attorneys when appointed. Judge Lungstrum indicated the brochure may need to be modified to further advise counsel that a showing of continued indigency should also be made when making an application for expenses.

6. Conflict between D. Kan. Rule 83.8.8 and Bankruptcy Rule 9033

Chief Judge Pusateri reported that some conflict exists between the district court and bankruptcy court rule. He briefly described the areas of concern and agreed to propose a modified rule to be considered by the Bench/Bar committee and the court at their February meeting.

7. Mediator Training Proposal and Proposed Letter for Signature of Chief Judge Van Bebber Advising the Current Mediation Panel of Future Requirements

Judge Lungstrum provided a summary of the public comments received regarding the proposed rule on mediation, D.Kan. Rule 16.3. The comments were split with about one-half

in favor of the modified rule and one-half opposed. The Bench/Bar committee did not feel the comments in opposition rose to a level which would require a recommendation to the court that the rule, previously approved by the court, should now be modified.

Judge Newman provided a proposed letter to be sent to those mediators currently on the Federal Court Mediation Panel list advising of training and other requirements. He also provided a mediator application form.

The clerk has been instructed to coordinate dissemination of information to the current mediator panel and be the central repository for mediator applications.

8. Recommended Revisions to Local Rule 5.1

After brief discussion the committee agreed by consensus to the revision of Local Rule 5.1. Subsequent to the consensus Judge Lungstrum suggested, and the committee agreed, to insert the words "to dismiss" in the proposed rule modification as follows; motion to extend time to answer/respond, to dismiss or transfer/change venue, or other responsive pleading.

9. Proposed Modification of Local Rule 38.1(l)

After brief discussion the committee agreed by consensus to the proposed modification of Local Rule 38.1(l).

10. Rule Amendments

For information only.

The meeting having convened at 9:00 a.m. adjourned at 10:15 a.m.

Respectfully submitted,

  
Ralph L. DeLoach, Clerk