

UNITED STATES DISTRICT COURT
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF MAY 5, 2022, at 9:00 A.M.

WICHITA, KS

IN ATTENDANCE:

HONORABLE DANIEL D. CRABTREE, JUDGE
HONORABLE JOHN W. BROOMES, JUDGE
HONORABLE TERESA J. JAMES, MAGISTRATE JUDGE
HONORABLE KENNETH G. GALE, MAGISTRATE JUDGE
HONORABLE DALE L. SOMERS, CHIEF BANKRUPTCY JUDGE
DUSTON J. SLINKARD, U.S. ATTORNEY
KIRK REDMOND, FIRST ASSISTANT FEDERAL PUBLIC DEFENDER
HONORABLE MARLA LUCKERT, CHAIR, KANSAS BENCH-BAR
DAVID PRELLE ERON, ESQ.
BRADLEY T. WILDERS, ESQ.
BRANDEN SMITH, ESQ.
BRYAN C. CLARK, ESQ.
ERIC W. BARTH, ESQ.
ANGELA D. GUPTA, ESQ.
TERELLE A. MOCK, ESQ.
RAZMI M. TAHIRKHELI, ESQ.
SKYLER B. O'HARA, CLERK OF COURT
KIM LEININGER, CHIEF DEPUTY CLERK

NOT PRESENT:

HONORABLE ERIC F. MELGREN, CHIEF JUDGE
RYAN KEITH MEYER, ESQ.

1) OPENING REMARKS AND INTRODUCTIONS

Judge Daniel D. Crabtree welcomed committee members and introduced new members:

Eric W. Barth, Angela D. Gupta, Terelle A. Mock, and Razmi M. Tahirkehli.

2) APPROVAL OF OCTOBER 13, 2021, MINUTES

Judge Crabtree asked the committee if they noted any corrections or changes to the October 13, 2021, minutes. Bryan Clark noted that his name is spelled with a "y" not an "i". Duston Slinkard moved to approve the minutes as corrected, Bradley Wilder seconded the motion, and the motion passed unanimously.

3) FEDERAL CRIMINAL JUSTICE SYSTEM MAP PUBLICATION

Judge Crabtree explained that the committee vetted the production of the map at its October 2021 meeting. It was approved by the committee and also approved by the court at its fall 2021 meeting. Kirk Redmond conveyed that the goal is to create a way to clearly communicate what happens in the federal criminal justice system in Kansas with a graphic interface as opposed to a description. A meeting is scheduled to finalize the map and they will solicit feedback on the final version from the court before making it broadly available in hard copy and digital formats. The hard copy, printed on legal size paper, will fold up like a brochure making it easy to distribute.

4) 2022 LAW DAY MOCK TRIAL EVENT

Judge Somers reported that their intern, Myah Blocker, hired through the Administrative Office's Diversity and Inclusion Program, worked with the U.S. Bankruptcy Court's Diversity, Outreach, and Inclusion Committee to develop a Law Day program. It will be held on Friday, May 6, 2022, at 2:00 PM in the Kansas City special proceedings courtroom. The University of Missouri Kansas City's Moot Court Team will conduct a mock trial with Magistrate Judge Teresa James presiding. Students may attend in person or by ZOOM. The committee also established the Julie A. Robinson Award to recognize a community leader who positively impacted the legal system and community. After receiving many outstanding nominations, the U.S. Bankruptcy's Bench Bar Committee selected Judge Julie A. Robinson as the inaugural recipient of the award named in her honor. Judge Somers believes both the program and the award will be offered in years to come. Judge Crabtree commended the bankruptcy court for developing this valuable outreach program and bringing it to our district.

5) STATUS OF PROPOSED AMENDMENT TO LOCAL RULE 38.1

Clerk of Court Skyler O'Hara explained that in 2020, the Federal Public Defender's Office challenged the constitutionality of LR 38.1, the court's jury plan, for not including jurors from the Fort Scott, Salina, and Dodge City divisions in the monthly petit jury pools. These three divisions were excluded, in part, because of the hardship to jurors required to drive from remote locations; however, these divisions were still included in the grand jury pools. Following the challenge, the court issued Administrative Order (AO) 2020-1 requiring the inclusion of the divisions of Ft. Scott, Salina, and Dodge City in the petit jury pools on a quarterly basis. The court voted unanimously to incorporate AO 2020-1 into LR 38.1.

Judge Crabtree also updated the committee on a proposed rule change to LR 38.1(d) that would add driver's license rolls to the source list of names used to fill the jury wheel. The proposed rule change was tabled at the April judges' meeting. Judge Toby Crouse was appointed to chair a committee to further study the issue and determine if adding driver's license rolls to the court's jury source list would increase the diversity of our juries.

6) RULE ONE AD HOC COMMITTEE PROPOSAL

Judge Crabtree explained that Judge O'Hara chaired a committee of judges and lawyers who reviewed our civil local rules and forms pursuant to the Federal Rules of Civil Procedure Rule One directive. The last comprehensive Rule One review was chaired by Judge Marten in 2012. Earlier this spring, Judge O'Hara's committee submitted its recommendations to the court for discussion at the April 14 judges' meeting. Due to time constraints, the discussion will resume at the May 13 judges' meeting, prior to Judge O'Hara's retirement ceremony. The

proposed rules have not yet been vetted by the court and may be modified before being published for public comments.

Judge Crabtree broke down the rules into six categories. The first category consists of technical amendments which include eliminating local rules initially adopted to accommodate the migration to the court's electronic filing system. Many of these rules are obsolete and require the renumbering of other rules.

The second category focused on consent procedures for a magistrate judge to preside over civil cases to disposition. The recommendations are designed to harmonize our local rules with the authorizing statute regarding consents.

The third category includes rule processing changes. For example, one of the rule changes contemplates a 6 p.m. filing deadline. Also included in this category is a revision to the local rule regarding the sealing of documents. The third category also clarifies deadlines for motions to reconsider.

The fourth category addresses discovery rules. The proposal would require a pre-motion conference with the court before filing a discovery motion, a 10-page limit on motions and oppositions to discovery orders, and a 3-page limit on replies. The proposal also shortens the schedule for replies from 17 days to 14 days.

The fifth category addresses dispositive motions. The proposal is to implement a 30-page limit on dispositive motions and a 10-page limit on all replies. The presiding judge would retain discretion to grant additional pages upon party request.

The sixth category addresses local rules governing time extensions.

Following Judge Crabtree's summary of the proposed rule modifications, he opened the floor for further discussion on the proposed rule changes. He further encouraged committee members to take advantage of the opportunity to provide feedback when the rule modifications are published for the thirty-day comment period.

Judge Ken Gale requested that committee members comment on the proposal requiring parties to attend scheduling conferences in person with the magistrate judges. Judge James clarified that currently magistrate judges have discretion to determine if the hearing should be in-person or by phone. Her initial order typically sets the scheduling conference by phone, except if all counsel live in the Kansas City metro area or if the case is considered complex. However, if all of the parties are not able to attend in person, the scheduling conference can be switched to phone. This is also Judge Gale's practice. After discussion, the attorney members generally agreed that the magistrate judges should have the discretion to decide if it is necessary to meet in-person or by phone. Requiring the parties to travel from distances outside of the local area costs time and money. The attorneys also generally agreed that attending the scheduling conference by Zoom is a favorable option.

Judge Gale explained that the proposed rules allow for the provisional filing of sealed documents. The responsibility is on the proponent to file a memorandum in support, stating why the document should remain sealed. Judge Crabtree clarified that the sealed document has a sunset provision which would expire unless an argument is made to keep it sealed.

Judge Gale also explained that another rule change requires the magistrate judges to hold a conference prior to filing the discovery motion. Currently the procedures among the magistrate judges vary. Some of them hold informal off-the-record conferences on discovery issues. Others hold formal, mandatory conferences. It was suggested that one benefit of the proposed

rule is that it may compel an opponent to resolve issues prior to the conference with the judge. In the Western District of Missouri there are rarely motions to compel because the magistrate judges' rules on discovery matters at the conference and subsequent briefing on the issue is rare. Generally, the Kansas magistrate judges do not make formal rulings at discovery conferences.

Judge Broomes discussed his page limit requirements and while he is not interested in imposing his procedures upon the rest of the court, he personally believes that page limits work.

7) BENCH-BAR FINANCIAL STATEMENT & FY 2022 BUDGET REPORT

Ms. O'Hara referred to Tab 4 in the agenda booklet and reported that the bench-bar fund currently has a balance of \$591,493. The annual registration period begins next month. It is anticipated that approximately 6,500 attorneys will register in 2022, adding approximately \$162,500 to the fund balance. Spending has declined in the last couple of years due to COVID and we are well within our budget in each spending category. A new budget will be presented in October for the committee's consideration.

8) PRINTING OF LOCAL RULES AND BAR CARDS

Ms. O'Hara reported that it costs approximately \$25,000 to print the local rules books. The court may not use bench-bar funds to print it, therefore costs come out of our congressional appropriation. The District of Kansas is the only court in the 10th Circuit that continues to print the local rules and budget cuts have made the continued printing of local rules unsustainable. Beginning in 2023, the court will no longer print copies of the local rules. We are reformatting the rules into a printer friendly version that will be posted on our website.

Ms. O'Hara shared that the cost of printing bar identification cards is approximately \$3,000. Members generally agreed that they use the identification cards to enter federal building and would like to continue to receive them.

9) NEW BUSINESS

Chief Justice Luckert reported that she is very proud of how the state court system responded to the pandemic. The Kansas legislature suspended statutes preventing the state courts from conducting remote hearings. Those suspensions will sunset this time next year and they are discussing what they would like reality to be a year from now. Generally, it seems practitioners are in favor of remote proceedings for both criminal pretrial hearings and in civil proceedings. During her term, Chief Justice Luckert made a concerted effort to conduct one-on-one meetings with members of the Kansas legislature. Through building relationships with the legislature, they have successfully addressed judicial pay and increased the number of judicial positions throughout the state.

Judge Crabtree reported that from 2017-2019 there was a gentle upward trend in case filings in Kansas. In March 2020 filings fell by 5%, however, national filings were up by 33% attributed to a single large MDL case. In 2021, civil filings were down 11% in Kansas and down 34% nationwide. From 2017-2019 there were 12-14 civil jury trials per year in Kansas. In 2020 we had 15 civil jury trials, but only six jury trials in 2021. Anecdotally it appears jury trials are on track to be back to normal range in 2022. Judge Crabtree reported similar reductions in the court's criminal caseload.

Hearing no further business, Judge Crabtree announced that the next bench-bar meeting will be held in the fall in Topeka. At that meeting, we will replace three members whose terms

will end at the end of 2022. Judge Crabtree asked members to encourage their colleagues to consider submitting applications.

The meeting having convened at 9:00 a.m., adjourned at 11:45 a.m.

Respectfully submitted,

s/ Kim Leininger

Chief Deputy Clerk