

UNITED STATES DISTRICT COURT
District of Kansas

Bench-Bar Committee Meeting

MINUTES OF SEPTEMBER 26, 2023, at 12:00 p.m.

Topeka, KS

IN ATTENDANCE:

HONORABLE DANIEL D. CRABTREE, JUDGE
HONORABLE ERIC F. MELGREN, CHIEF JUDGE
HONORABLE JOHN W. BROOMES, JUDGE
HONORABLE ANGEL D. MITCHELL, MAGISTRATE JUDGE
HONORABLE RACHEL E. SCHWARTZ, MAGISTRATE JUDGE
HONORABLE DALE L. SOMERS, CHIEF BANKRUPTCY JUDGE
SKYLER B. O'HARA, CLERK OF COURT
KATE BRUBACHER, U.S. ATTORNEY
KIRK REDMOND, FIRST ASSISTANT FEDERAL PUBLIC DEFENDER
TIMOTHY M. O'BRIEN, CHAIR, KANSAS BENCH-BAR
DAVID PRELLE ERON, ESQ.
BRADLEY T. WILDERS, ESQ.
ERIC W. BARTH, ESQ.
ANGELA D. GUPTA, ESQ.
TERELLE A. MOCK, ESQ.
RAZMI M. TAHIRKHELI, ESQ.
JENNIFER HILL, ESQ.
JENNIFER B. WIELAND, ESQ.
KATE MARPLES SIMPSON, ESQ.
JESSICA KNOX, FINANCIAL MANAGER
MARYLE HER, FINANCIAL SPECIALIST
CHASITY SCHOONOVER, OPERATIONS ADMINISTRATOR

1) RULE 2 COMMITTEE UPDATE

After welcoming members and making introductions, Judge Crabtree announced that due to scheduling issues, the committee would begin with item 3 on the agenda. Judge Schwartz provided an update on the Rule 2 Committee's efforts to review and update the criminal local rules for the District of Kansas. The committee is focusing on three key areas: (1) the elimination of rules that are obsolete; (2) identification of civil rules that apply to criminal cases; and (3) updating any criminal rules that are out of date. Additionally, the committee is considering the

issue of whether the Criminal Justice Act (CJA) plan and Speedy Trial Act plan should remain part of the local rules, or if they should be removed and exist as standalone district court plans because they require a different level of review and approval than the other rules.

Judge Broomes recently proposed a change to page limits and briefing deadlines in criminal cases. The Rule 2 committee addressed the issue and considered creating a standalone rule regarding page limits and criminal briefing deadlines, as the civil response deadlines are too lengthy within a Speedy Trial context and replies are rarely filed.

Judge Schwartz opened the floor to questions and feedback from the committee. Mr. Tahirkheli asked if counsel has recourse when they miss the 14-day deadline to ask a district judge for review of a magistrate judge's detention order. Judge Schwartz said that there will be a clause giving the district judge discretion to accept motions filed out of time for good cause. Chief Judge Melgren raised the issue of how the custody or release of a defendant will be impacted by a 14-day deadline to appeal a release/detention order to the district judge. Judge Mitchell reminded the committee that the civil rules specify how to request a stay of a magistrate judge's ruling when counsel requests review by a district judge, so the Rule 2 committee will need to decide whether to carry over that practice to the criminal rules. Chief Judge Melgren inquired whether there will be a "3-day rule" for filing motions for extension of time, because counsel is not currently applying that rule to criminal cases. Judge Schwartz said the current draft does carry that rule over to apply to criminal cases. Chief Judge Melgren and Judge Crabtree both expressed support for applying the "3-day rule" to criminal cases.

2) APPROVAL OF APRIL 28, 2023, MINUTES

Judge Crabtree asked the committee if they noted any corrections or changes to the April 28, 2023, minutes. David Prella Eron moved to adopt the minutes as written, Razmi Tahirkheli seconded the motion, and the motion passed unanimously.

3) COURT REPORTS

a) REPORT FROM THE CHIEF JUDGE OF THE DISTRICT COURT

Chief Judge Melgren provided an update on the filing statistics for the district. Declining filings over the last few years have impacted budgets for the Federal Public Defender's Office, United States Probation Office, and the Clerk's Office. Overall, there has been a decrease of 50% in the criminal filings over the last 10 years, presenting huge funding challenges. The majority of defendants continue to be indicted in the Wichita division, despite it not being the most staffed courthouse. The most significant impact of the reduced filings over the last few years was uncertainty over whether the court would be able to fill Judge Gale's position when he retired in August 2023. The court successfully argued that comparatively high criminal filings in Wichita, and geographic distance from the other divisions, made it necessary for the position to be filled in order to avoid potentially catastrophic consequences for the court. If filings continue to be low, the next vacancy may not be filled, as has been the case with three other magistrate judge positions within the Tenth Circuit in recent years.

The Tenth Circuit Court of Appeals has a longstanding vacancy which will likely be filled shortly by Rich Federico of the Federal Public Defender's Office. The district court has had a vacancy since January 2022 with no known nominees currently under consideration.

b) REPORT FROM THE CHIEF JUDGE OF THE BANKRUPTCY COURT

Chief Judge Somers reported that though bankruptcy numbers had been down significantly in the previous years, statistical year 2023 saw an increase of 5-6%, with Kansas

trending up in several areas. Currently, the Kansas City division has the majority of bankruptcy filings with Wichita and Topeka evenly splitting the remaining filings. The bankruptcy judges will be participating in work measurement studies over the coming months, which the Administrative Office will use to help decide staffing.

The bankruptcy court continues to embrace virtual and telephonic hearings as much as possible with the hope of encouraging rural practitioners to return to bankruptcy practice.

c) REPORT FROM THE CLERK OF COURT

Clerk of Court Skyler O'Hara reported that the judiciary will be in a better position than many agencies should the government shutdown occur on October 1, 2023, as there are approximately two to three weeks of non-appropriated and no-year funds that will allow the judiciary to meet payroll requirements during that time. If and when those funds are exhausted, the court will enter Phase 2 of the shutdown, where only essential service will be provided. CM/ECF will remain available, and courthouses will remain open throughout any potential shutdown. More information will be provided if and when necessary.

The court will begin a refresh of several Topeka courthouse spaces including courtrooms, attorney conference rooms, witness rooms, and the jury assembly room. These rooms will receive new paint and carpet and the courtrooms will receive new jury chairs. Ms. O'Hara reminded the committee of the availability of attorney workrooms in each courthouse which are funded by bar funds. Suggestions for improvements to the attorney workrooms are always welcome; one recent suggestion was wireless printers.

When the FY2024 budget is finally in place, the judiciary expects a significant reduction in funding. At present, an across-the-board reduction of 11.4% is expected, but that number is not final and could change as negotiations progress. This reduction is on top of cuts to personnel

funds due to reductions in case filings. The court has prepared for the declining appropriations by not filling vacant positions and adjusting how work is accomplished.

Mr. Eron inquired whether the switch to electronic registration/renewal has impacted the court's attorney registration numbers. Ms. O'Hara reported that bar registration numbers have remained consistent with around 6,000 attorneys renewing their membership each year.

Mr. Tahirkheli inquired if committee should reach out to western Kansas practitioners and encourage them to consider bankruptcy practice. Chief Judge Somers encourages everyone to reach out to the rural practitioners; there is a learning curve for bankruptcy practice, but the court's use of virtual hearings should lessen the burden.

4) ATTORNEY ADMISSIONS

a) PROPOSED AMENDMENT TO D. KAN. RULE 83.5.3

Ms. O'Hara shared a proposed update to LR 83.5.3 to clarify that the annual renewal period for attorneys expires on June 30 each year and to remove the current 30-day grace period for renewals, to make the court consistent with the state of Kansas rules. Terelle Mock moved to recommend the changes to the court, Bradley Wilders seconded the motion, and the motion passed unanimously.

b) OARS UPDATE

The OARS (Online Attorney Renewal System) program which is used by the district for annual attorney renewals, has reached end of life the court is making plans to switch to the CM/ECF-based approach used by the Western District of Missouri and most other courts. The court anticipates that the change will bolster data security and streamline the process for attorneys. The committee had no questions or concerns regarding the replacement of OARS.

5) BENCH-BAR FUND UPDATE

Ms. O'Hara reintroduced Jessica Knox, Financial Manager, and Maryle Her, Financial Specialist, who both joined the court in 2023. Ms. O'Hara referred the committee to tab 5 of the agenda book for the FY 2023 financial reports and the proposed FY 2024 budget. The attorney wireless expansion continues to be an item of interest and remains on the FY 2024 budget. The court received a bid for the project that saved \$40,000 compared to original estimates. To date, \$70,000 has been spent and the remaining \$40,000 is included in the 2024 budget. Also of note, the utilities category has increased to include expected maintenance costs of the expanded Wi-Fi system and cyclical replacement of wireless access points going forward. Mr. Eron inquired whether there will need to be increased budget to account for increased data usage. Ms. O'Hara indicates that has already happened.

Judge Mitchell inquired about the budget line items for court appointed attorneys, mediators, and interpreters. The court appointed attorney category would be used to reimburse attorneys appointed in civil cases for any expenses that they incur while serving as appointed counsel. The mediator category is used to reimburse mediators in pro se consumer bankruptcy cases where mediation is ordered, and interpreters would likewise be reimbursed for expenses when appointed by the court. All three categories rarely have activity.

Kate Simpson moved to accept the FY 2023 report and to approve the FY 2024 budget, and Mr. Tahirkheli seconded the motion. The motion passed unanimously.

Judge Crabtree reminded the committee that there is a substantial balance in the Bar Fund and historical displays in the courthouses are due for an upgrade. Also, while the clerk's office no longer has the resources to provide staffing or support, he encouraged everyone to consider proposing, developing, and spearheading another event for the bar in the coming years.

6) PROPOSED GUIDELINES FOR BENCH-BAR FUND REQUESTS

Judge Crabtree referred the committee to tab 6 of the agenda book. Previously, the committee supported contributing to the Federal Bar Association (FBA) Conference in Kansas City in 2024, but was wary of becoming a grant-making body. The proposed guidelines will provide consistency for consideration of future requests. Ms. Simpson moved to approve the proposed guidelines as drafted and forward them to the court for consideration, and Mr. Tahirkheli seconded the motion. The motion passed unanimously.

Chief Judge Melgren shared that according to Judge Bough, the Western District of Missouri increased their FBA Conference contribution to \$15,000 and encouraged the District of Kansas to do the same. Chief Judge Melgren inquired as to the committee's opinion of raising the contribution if the court is agreeable. There was general agreement that the committee would be in favor of increasing the court's contribution toward the 2024 FBA national conference, as this is a once-in-a-lifetime opportunity.

7) JURY POOL SOURCES

Ms. O'Hara provided an update on the status of research into supplementing jury pool sources by including driver's license information in addition to voter registration list. Research into evidence-based practices for supplementing the jury pool is ongoing at both the local and national levels. The state of Kansas does not maintain demographics on licensees, so there is no way to estimate whether the change will be beneficial or detrimental to jury diversification. Additionally, there are issues with de-duplication of the lists and the fact the driver's license issuance is not tied to citizenship, so that list will contain licensees who are not citizens and therefore are not eligible to serve on jury duty.

8) SELECTION OF NEW MEMBERS

Judge Crabtree shared that the committee only has two departing members this year, so there are two vacancies to fill – one for Wichita and one for Kansas City.

After discussion and a vote on both positions, the committee agreed to recommend Sarah Ruane (Kansas City) and Teresa Shulda (Wichita) to fill the vacancies.

9) RECOGNITION OF DEPARTING MEMBERS

Judge Crabtree thanked outgoing members Bradley Wilders and David Prella Eron for their services and presented them with certificates.

10) NEW BUSINESS AND NEXT MEETING

Hearing no new business, Judge Crabtree advised that the next meeting will be held in spring 2024 at a location to be determined.

The meeting, having convened at 12:00 p.m., adjourned at 2:25 p.m.

Respectfully submitted,

s/Chasity Schoonover

Operations Administrator