

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