

## MINUTES OF THE FEDERAL PRACTICE COMMITTEE

October 20, 2011--Noon

Via Teleconference

Present via teleconference:	Willie Epps	Julia Kitsmiller	Brian Gaddy
	Jeff Ray	Ann Thompson	Travis Poindexter
	Lisa Nouri	Rodney Nichols	Marsha Fischer
	Diana Diaz	Doug Harpool	Lynette Siegel

The meeting began at 12 noon with Ms. Thompson calling roll. A handout was provided electronically to members which detailed the meeting's agenda, upcoming FPC meetings, and the proposed revision to WDMO Local Rule 37.1. Also distributed were the minutes from the September 8, 2011 meeting in Jefferson City.

### Approval of Minutes

Mr. Epps asked for additions or corrections to the minutes from the September 8, 2011 meeting which was held at the brand new courthouse in Jefferson City, Missouri. Hearing none, Mr. Ray moved for approval and Mr. Oliver seconded the motion. The Committee approved the minutes unanimously. Mr. Epps thanked Ms. Fischer for drafting the meeting minutes of September 8<sup>th</sup>. Mr. Epps then volunteered to take the meeting minutes for the October 20<sup>th</sup> teleconference.

### Federal Criminal CLE

Mr. Epps announced that plans are underway for the Committee to sponsor a free CLE at the Whittaker Courthouse on November 3, 2011, from 1 p.m. until 4 p.m. Mr. Epps stated that the first 50-minute session will focus on pre-trial litigation with the U.S. magistrate judges serving on a panel. Ms. Nouri volunteered to moderate this panel comprised of Judges Larsen, Maughmer, and Hays. The second 50-minute session will examine the federal sentencing guidelines post-*Booker*, *Gall*, *Kimbrough*, and *Spears*. Ms. Thompson reported that Chief Judge Gaitan and Judge Laughrey have committed to serving on the panel. Ms. Thompson indicated that Judge Kays may participate if he is in the building and not in trial. Mr. Oliver indicated that he will moderate this second panel. The third 50-minute session will focus on ethical issues arising in federal criminal defense. Mr. Epps said that he would moderate this third panel which features the following panelists: Mr. Gaddy, Ms. Nouri, and Mr. Poindexter.

Ms. Diaz and Ms. Thompson stated that the Clerk's Office will provide coffee, soft drinks, and cookies for those attending the CLE. Ms. Diaz reported that 56 had already registered for the event. Ms. Thompson stated that the event will take place on the 4<sup>th</sup> floor in the U.S. Probation conference room. Ms. Diaz said that signs will be posted in the Courthouse that day directing attorneys to the 4<sup>th</sup> floor.

Mr. Epps volunteered to pass around an extra microphone to individuals in the audience who

want to ask questions of the judges during the first two sessions. Mr. Oliver volunteered to provide the same service during the third session of the CLE program. Ms. Diaz announced that CLE credit is pending in Missouri and Kansas, including a one-hour ethics credit.

### **EAP Evaluation Update**

Ms. Thompson discussed the status of the EAP evaluation. She stated that Ms. Donna Stienstra of the Federal Judicial Center has put together a 30-question survey for the EAP. After reviewing, Ms. Thompson said that she felt the survey was too long. So Ms. Thompson asked Ms. Stienstra to cut the number of questions in half. Ms. Thompson reported that once she receives the revised survey, she will circulate to Ms. Kitsmiller and Mr. Nichols who have agreed to assist with this project.

### **Local Rule 37.1**

Ms. Thompson discussed a proposed revision to Local Rule 37.1 regarding Discovery Motions. She stated that she had met with the Judges on the Rules Committee to see if they were receptive to the clarification. She stated that the Judges liked the idea generally. Ms. Thompson stated further that Judge Laughrey had one change to the proposal. That is, this revision should not apply to the initial motion. Accordingly, the revised language to subsection (b) would read as follows:

- (b) Sub-section (a) shall not apply to an initial motion requesting this Court compel or deny discovery pursuant to a subpoena issued under the authority of the Western District if the primary case is pending in another District. Once such a motion has been filed and a miscellaneous case initiated within the Western District, counsel shall then follow the requirements in sub-section (a) to resolve the discovery dispute.

The entire Local Rule 37.1 would read as follows:

- (a) Except when authorized by an order of the Court, the Court will not entertain any discovery motions, until the following requirements have been satisfied:
  1. Counsel for the moving party has in good faith conferred or attempted to confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion. *See* Rule 26(c), Federal Rules of Civil Procedure and *Crown Center Redevelopment Corp. v. Westinghouse Elec.*, 82 F.R.D. 108 (W.D. Mo. 1979); and
  2. If the issues remain unresolved after the attorneys have conferred in person or by telephone, counsel shall arrange with the Court for an immediate telephone conference with the judge and opposing counsel. No written discovery motion shall be filed until this telephone conference has been held.

- (b) Sub-section (a) shall not apply to an initial motion requesting this Court compel or deny discovery pursuant to a subpoena issued under the authority of the Western District if the primary case is pending in another District. Once such a motion has been filed and a miscellaneous case initiated within the Western District, counsel shall then follow the requirements in sub-section (a) to resolve the discovery dispute.

Ms. Thompson stated that the Court would post the revised Local Rule for comment. The change would then be effective January 1, 2012.

### **New Business and Announcements**

Ms. Thompson announced that the Court had made a decision to increase local fees. It will now cost practitioners \$20 per year, instead of \$10 per year, to be members of the WDMO. Reinstatement fees and pro hac vice fees also will double in 2012.

Ms. Thompson reminded Mr. Epps and Mr. Oliver that their first term on FPC was coming to an end. She suggested that if Mr. Epps and Mr. Oliver did not wish to serve a second term on the Committee, they should write a short note to the Court requesting non-reappointment.

Ms. Thompson stated that Ms. Fischer's second term on the Committee is ending on December 31, 2011, and that she is not eligible for re-appointment. Ms. Fischer stated that she will be sad to leave the FPC, but would be available to help with any future FPC projects in the Central portion of the District.

The free CLE is scheduled for November 3, 2011, at 1 p.m. in the Whittaker Courthouse, 4<sup>th</sup> floor. On November 16, 2011 at noon, FPC will have lunch with the Judges at the Whittaker Courthouse, 2<sup>nd</sup> floor training rooms. There will be an FPC teleconference on December 15, 2011, at noon.