

MINUTES OF THE WDMO FEDERAL PRACTICE COMMITTEE
June 16, 2011-Via Teleconference

Present via teleconference: Willie Epps, Julia Kitsmiller, Lynnette Siegel, Lisa Nouri, Brian Gaddy, Doug Harpool, Ann Thompson, Marsha Fischer, Michael Oliver, Travis Poindexter, Rodney Nichols and Jeff Ray with Matt Dameron joining later. Paul Seyferth was unable to join. Also present for portions of the meeting were Chief Judge Fernando J. Gaitan, Jr. and District Operations Manager Bill Terry.

The meeting began at 1:00 p.m., and Mr. Epps modified the agenda to allow for the discussion led by Judge Gaitan on Rule 16 Conferences to take place prior to review of the minutes.

Rule 16 Conferences

The meeting began with general discussion of Rule 16 Conferences and a presentation by Judge Gaitan. Judge Gaitan informed the committee about his recent meeting in Washington, D.C. regarding case management and considerations of more efficient ways to handle cases. Lawyers may now want more face to face time with the Court whereas 22 years ago when Judge Gaitan took the bench, lawyers wanted fewer mandatory conferences with the Court. Judge Gaitan pointed out that in many cases lawyers are looking for a more robust Rule 16 conference with the Judge. Mr. Epps advised that the committee will discuss the issue and solicit feedback from attorneys. Considerations included a scheduling order that asks the parties to submit proposed pretrial order issues that are significant and asks the attorneys to agree on deadlines. If the lawyers can't agree (which only happens about 25% of the time), then the Judge could bring in attorneys and clients to discuss pretrial issues. Further discussion ensued on whether this conference would be in chambers or in the courtroom, whether or not to include a court reporter, and a continuing requirement to meet with the Court. Mr. Gaddy wondered whether this would only apply in civil cases, and Judge Gaitan advised that he is not opposed to criminal case management type conferences. Judge Gaitan added that he is involved early in the process in all capital cases. Ms. Thompson noted that the more robust Rule 16 conferences would only occur where there are disagreements. Mr. Harpool suggested that an early meeting with the Judge may send a message to attorneys and the parties as well.

Mr. Epps will report feedback to Judge Gaitan after collecting reports from committee members. Mr. Poindexter will discuss with the Springfield criminal bar. Also, Mr. Gaddy will poll the criminal bar, and Mr. Harpool will handle feedback from the civil bar.

Meeting and Approval of Minutes

After the presentation and discussion with Judge Gaitan, Mr. Epps asked for additions or corrections to the minutes from the February 17, 2011 meeting. Hearing none, Ms. Kitsmiller moved for their approval, and Mr. Ray seconded the motion. The Committee approved the minutes unanimously.

Fall Meeting Date

Mr. Epps led discussion on the September 8, 2011 meeting date in conjunction with the Jefferson City Bar Reception and possible times, including a tour of the new courthouse. The Judges will meet en banc at 3:30 p.m., and Ms. Thompson will propose times for the FPC

meeting and tour at a later date. All Committee members are encouraged to attend the Jefferson City meeting.

The next meeting of the FPC will be July 21 and will include lunch for those attending in person in Kansas City.

Local Rule Issue

Ms. Seigel presented a local rule issue brought to her attention by a member of our bar (FILING A MOTION TO ENFORCE A FOREIGN THIRD-PARTY SUBPOENA), and she described the scenario and possible solutions.

Extensive discussion ensued with comments and input from Mr. Terry and Ms. Thompson on the Court's procedures and Local Rule 37.1. Possible solutions included clarification of the local rule and creating a third party subpoena exception to the telephone conference requirement. Mr. Terry discussed the CM/ECF options and issues involved and whether to create a miscellaneous case initiating event or filing a separate motion that preserves the thread. The current process requires an additional step in ECF to file both the motion and suggestions.

After further discussion, the Committee asked Mr. Terry to report back and for Ms. Thompson to submit the issue to the Court's Local Rules Committee composed of Judges Laughrey, Sachs and Maughmer. Ms. Fischer added that even though this problem may happen a few times per year, it is important for the FPC to report concerns of attorneys and present appropriate feedback.

EAP Evaluation Project

Ms. Thompson asked the FPC to participate in the evaluation process for the Court's Early Assessment Program (EAP) by preparing survey questions and identifying attorneys who have used the program. This is a review of the EAP process itself rather than the Administrator personally, and the Court is seeking constructive criticism and suggestions to improve the program. Anonymity will be assured. Mr. Nichols and Ms. Kitsmiller will work with Ms. Thompson on this project.

Any survey should be sent under Judge Gaitan's letterhead to assure attorneys will open and respond and be limited to ten questions. Also, it is important to speak with attorneys that use the EAP often. Discussion ensued about using a customized survey in each locale-KC, Springfield and Jefferson City. Most criticism of the now 20 year program includes complaints that the process happens too early, that a neutral mediator is preferred over a court employee and that no significant changes have been made. Mr. Epps added that with medical malpractice or product liability cases, experts are needed before settlement considerations.

New Business and Announcements

Mr. Epps reminded members of the June 23 and 24 dates for the Federal Practitioners' Summer Social and the D. Brook Bartlett Lectures in Kansas City. Hearing no new business, the meeting was then adjourned at approximately 2:00 p.m.