AMENDED PLAN FOR THE ADMINISTRATION OF THE FEDERAL PRACTICE FUND AND THE FEDERAL PRACTICE COMMITTEE

I. Establishment of Federal Practice Fund

A. Authority. The United States District Court for the District of Nebraska ("court") establishes the Federal Practice Fund ("Fund") pursuant to the policies of the Judicial Conference of the United States ("Judicial Conference"), as set forth in the *Guide to Judiciary Policy*, Volume 4, Chapter 6 (*"Guide"*), and other related provisions; 28 U.S.C. § 1914; Nebraska General Rule 1.7(h); and the court's inherent authority. Volume 4, Chapter 6, § 670 of the *Guide* is incorporated into this plan by reference.

B. Purpose. The Fund exists for the management and expenditure of attorney admission funds maintained locally by this court.

1. Local Attorney Admission Funds. Local attorney admission funds are non-appropriated funds segregated from all other monies in the court's custody.

2. Permissible Sources. Sources of monies placed in the Fund include pro hac vice admission fees that are in addition to the original attorney admission fee prescribed by the Judicial Conference under 28 U.S.C. § 1914; earnings from the investment of monies in the Fund; and any monies remaining in the Fund at the end of each fiscal year.

3. Excluded Sources. Monies from any other sources, including those specified in the *Guide*, § 670(d), are not placed in the Fund.

II. Policies for Fund Expenditures

A. Permissible Uses. The Fund may only be used for purposes that inure to the benefit of the members of the bench and the bar in the administration of justice. Proper uses of the Fund include those listed in the *Guide*, § 670.20, as well as those found in (1) and (2) below.

1. Locally Approved Uses. The court approves the following expenditures from the Fund:

a. Litigation costs for indigent pro se civil litigants (including mediation expenses) and attorney fees for court-appointed counsel when appropriated funds are not available for such

purposes. Except as otherwise determined by the chief judge in special cases, counsel appointed by any judge of this court to represent an indigent pro se civil litigant is entitled to a fee of up to $2,000 to be paid from the Fund at the discretion of the appointing district or magistrate judge. The clerk of the court pays counsel one half of this fee when counsel files an appearance in CM/ECF, and pays the remainder of the fee after the court enters judgment or other closing documents in the case.

b. Mediation expenses of litigants who, although not proceeding *in forma pauperis* or with appointed counsel, are without adequate funds to pay mediation expenses themselves, as found by the assigned district, bankruptcy, or magistrate judge.

c. Payment of attorneys appointed to serve as guardians *ad litem* in civil cases in this court. The reimbursable expenses of the guardian *ad litem* may include attorney fees when the guardian *ad litem* is authorized to hire counsel.[1]

d. Educational programs for members of the bar of this court, including continuing legal education programs that fulfill the Nebraska Supreme Court's continuing legal education requirements.

e. Expenses of members of the bar of this court, especially members of the Federal Practice Committee, as they relate to advising the judges of this court on matters of practice. Expenses may include travel expenses related to attendance at the Eighth Circuit Judicial Conference and other conferences or seminars that assist those members in providing counsel to the judges of this court.

f. Monetary support for the work of the Federal Practice Committee, the Historical Society of the United States Courts in the Eighth Circuit and the District of Nebraska Branch, including, but not limited to, paying for the travel or other

[1]18 U.S.C. § 3509(h)(1) provides, in part, "The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child." Payment of such compensation and expenses in criminal cases must be made with decentralized court funds, and not with monies from the Fund. However, payment of guardian *ad litem* compensation and expenses in civil cases may be paid with monies from the Fund.

expenses of attorney members of such societies, branches, or committees.

g. Expenses of the Fund, including fees for services rendered by outside auditors or accountants in auditing the Fund.

2. Uses Approved by General Counsel. The court maintains a compilation of requests for Fund expenditures for which the court has sought advice from the Office of General Counsel of the United States Courts, along with an explanation of whether General Counsel allowed each expenditure.

B. Advice on Expenditures. The other judges of the court, court staff, the Federal Practice Committee ("committee"; *see* § VIII below), and bar members may suggest to the chief judge and the active district judges how the Fund should be used.

1. Budget Subcommittee. As part of this process, the chief judge or his or her designee[2] and the chair of the committee annually appoint certain committee members to a budget subcommittee. The court's administrative manager, in consultation with the budget subcommittee, prepares an annual budget prior to the new calendar year identifying anticipated expenses and revenues for the coming year. The chief judge reviews the budget and may either approve it or request revisions. The budget is not in effect until the chief judge and the chair of the committee approve it.

2. Subcommittee Review of Expenditure Requests. In addition, the chief judge may, but is not required to, notify the committee chair when the court receives unbudgeted requests for Fund expenditures. The chair forwards these requests to the budget subcommittee for review. The chair notifies the chief judge if the budget subcommittee approves the request and, if approved, in what amount.

C. Payment of Litigation Costs and Attorney Fees. Litigation costs (including mediation expenses) and attorney fees may be incurred and paid in the sole discretion of the chief judge.

D. Other Expenses. Other expenses not exceeding $5,000 in the aggregate may be incurred or paid at the direction of the chief judge alone, or if the chief judge is absent, the active district judge next senior in service.

[2]The chief judge may designate an active Article III judge to oversee the committee.

Additional expenses may be incurred or paid at the direction of the chief judge upon a vote of a majority of the active district judges.

1. Disbursement Directives. The chief judge must direct the clerk to make disbursements from the Fund in writing or by e-mail, specifying the amount to be disbursed. If the directive is by e-mail, the clerk retains a hard copy of the e-mail and makes it available for inspection by auditors.

2. Authority to Exceed Authorized Amount. The clerk has authority to exceed the authorized amount by no more than 10%.

III. Limitations on Use of the Fund

A. Limitations. Limitations on use of the Fund include those found in the *Guide*, § 670.30, as well as the following:

1. No Unreasonable Accumulation of Funds. The court avoids unreasonable accumulation of funds. The reasonableness of any accumulation of funds is measured against the potential for large unanticipated litigation expenses of appointed counsel.

2. Equipment Purchases. If the Fund is used to purchase equipment, the equipment becomes the property of the United States District Court for the District of Nebraska, and is available for use by the members of the court's bar subject to any guidelines established by the active district court judges. The Fund may not be used to augment the purchase of computers and other information technology equipment that is otherwise subject to funding by the Judiciary Information Technology Fund.

IV. Duties of the Custodian

A. Clerk as Custodian. The clerk of the court is appointed custodian of the Fund. The custodian's duties are detailed in the *Guide,* § 670.70.

B. Successor Custodian. Whenever a clerk of this court leaves office, his or her successor in office becomes the successor custodian of the Fund. The outgoing custodian participates in an exit audit as provided in the *Guide,* § 670.70.20. The successor custodian executes a receipt for all monies in the Fund in accordance with the *Guide,* § 670.70.20(b).

V. Maintenance of the Funds

A. Pro Hac Vice Admission Fee. The clerk charges a pro hac vice fee to attorneys seeking to be admitted pro hac vice. The proceeds of this fee become part of the Fund. *See* NEGenR 1.7(h).

B. Accounts. The clerk segregates monies in the Fund from all other monies in the court's custody by placing them in interest-bearing accounts in federally insured banks or savings institutions, government securities, or money market funds invested in government obligations. The clerk maintains sufficient liquid funds to meet known or anticipated obligations, while maximizing, to the extent practicable, the amounts earning income.

C. Reports. At least semi-annually, but more frequently if the chief judge directs, the clerk provides the judges of this court a report showing the following: beginning balance of assets; revenue during the reporting period, including collections and investments; disbursements during the reporting period; ending balance of assets (bank balances and undeposited collections); obligations, accounts payable, or known future expenditures; and available balance.

D. Audits. Audits of the Fund are conducted according to the provisions in the *Guide,* § 670.80.20.

E. Disbursements. All disbursements from the Fund are made by check or debit card. All checks must be signed by the clerk or the chief deputy clerk. Before signing checks or authorizing use of a debit card, the clerk or chief deputy clerk ensures that all disbursements are made in accordance with this plan.

VI. Procedures for Seeking Reimbursement from the Fund

A. Prior Authorization to Incur Expenses. Whenever practical, prior authorization should be sought before expenses are incurred. Except for applications submitted by a judge, applications for authorization to incur expenses to be paid by the Fund must be submitted in writing, as follows:

1. For litigation expenses in a pending case, to the district, magistrate, or bankruptcy judge assigned to the case, in accordance with the guidelines;

2. For mediation expenses in a pending case, to the district, magistrate, or bankruptcy judge who is considering referring the case to mediation, pursuant to the guidelines and the court's Mediation Plan;

3. For all other expenditures, to the chief judge.

B. Applications by a Judge. Applications submitted by a judge are made as directed by the chief judge.

C. Applications for Authorizations. Except for applications submitted by a judge, applications for authorization to incur expenses must set forth the purposes for incurring the expenses, the estimated cost, the applicant's efforts to keep the cost as low as possible, and the applicant's efforts to obtain funds from other sources to pay the expenses. The guidelines for reimbursable attorney expenses are attached to this plan and marked as Attachment A. Applications for litigation or mediation expenses in pending cases may be submitted *ex parte* and *in camera*, if, as set forth in the application, disclosure of the application or its purposes would compromise the litigation or negotiation strategy of the party in whose behalf it is made.

D. Repayment From Judgment or Settlement. An application for authorization to incur litigation or mediation expenses to be paid from the Fund constitutes an agreement that should the applicant obtain a monetary recovery in the case by judgment or settlement, the applicant will repay the Fund from such recovery before the remainder is distributed, unless otherwise ordered. The assigned judge may, on motion, waive up to $1,000 otherwise required to be repaid, if such waiver is required to settle the case; the chief judge must approve any larger waiver.

E. Written Approval of Applications. A judge must approve an application for authorization to incur expenses to be paid from the Fund in writing or by e-mail, stating the maximum amount approved.

1. Authorization to Incur Litigation and Mediation Expenses. For litigation and mediation expenses, the judge must electronically file the original authorization order in the case (under seal, if appropriate).

2. Other Authorizations to Incur Expenses. All other authorizations must be in writing or by e-mail and be maintained by the clerk of the court. If the authorization is by e-mail, the clerk retains a hard copy of the e-mail.

3. Authorizations Open to Auditors. All authorizations, including those granted *in camera* and under seal, are available for inspection by auditors.

VII. Dissolution of the Fund

A. By Vote. A majority of the active district court judges may vote to dissolve the Fund. Any balances in the Fund shall be disposed of in accordance with the majority vote of the active district judges in ways that fulfill or further the purposes of the Fund.

B. Final Audit. If the active district judges vote to dissolve the Fund, a final audit is conducted and a written accounting rendered to the court, according to the *Guide,* § 670.80.30.

C. Notice to Claimants. At the time of dissolution, the custodian gives notice to all persons known or believed to have incurred expenses for which the Fund may be authorized or obligated to pay. Such persons are given at least 30 days to submit their claims for payment.

VIII. Federal Practice Committee

A. Establishment. Pursuant to the *Guide*, § 670.60, the court appoints the committee to advise the court and the chief judge, when requested, on matters relating to the administration of the Fund and to the practice of law in this court.

B. Composition of the Committee. The committee consists of not more than 22 members. All members of the committee, both "ex officio" and "at-large," have one vote, and the decision of the majority governs.

1. Ex Officio Members. The clerk of the district court, the clerk of the bankruptcy court, the chief of the probation and pretrial services office, the United States Attorney, the Federal Public Defender, a lawyer designated by the Nebraska Attorney General, a faculty member designated by the dean of the Creighton University School of Law, a faculty member designated by the dean of the University of Nebraska College of Law, and the chairperson of the committee from the preceding year are "ex officio" members of the committee.

2. At-Large Members. The chief judge or his or her designee appoints not more than 12 lawyers who are members of this court's bar to serve as "at-large" members of the committee, each serving a term to be designated by the chief judge. The chief judge or designee is encouraged, but not required, to stagger the terms of these 12 members. Members' terms are not limited, but the chief judge or designee is encouraged to appoint new members on a regular basis.

C. Chairperson. The chief judge or his or her designee selects one member of the committee as the chairperson. Subject to the oversight of the chief judge or designee, the chairperson presides over the meetings of the committee and acts for the committee when it is not practical to convene a meeting of the committee.

D. Meetings. The chairperson calls meetings of the committee as frequently as necessary to consider matters that the chief judge or his or her designee puts before it. The committee is encouraged but not required to hold at least two meetings annually, one at the annual meeting of the Nebraska State Bar Association and the other during the Eighth Circuit Judicial Conference.

1. Telephonic Meetings Permitted. The chairperson may conduct meetings by telephone.

2. Closed Meetings. Unless the chief judge or his or her designee authorizes otherwise, the meetings of the committee are not open to the public. However, the court's judges and employees may attend meetings and participate therein.

E. Subcommittees. Subject to the oversight of the chief judge or his or her designee, the chairperson may appoint such subcommittees, consisting of members of the committee, as he or she deems appropriate. Such subcommittees have the powers delegated by the chairperson.

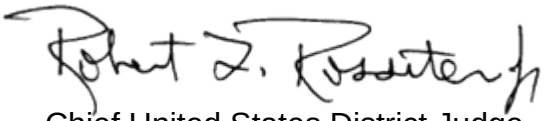
F. Dissolution and Removal. All members of the committee serve at the will of the chief judge or his or her designee and the court. The court or chief judge may dissolve the committee at any time. The chief judge or his or her designee may at any time remove a chairperson and appoint a new chairperson. The chief judge or his or her designee may at any time remove a member of the committee and appoint a new member.

G. No Compensation. No member of the committee receives compensation for service on the committee except for reimbursement of expenses incurred while doing committee business. The chief judge must approve reimbursement of any such expenses. Reimbursements are paid only from the Fund.

IT IS THEREFORE ORDERED that this Amended Plan for the Administration of the Federal Practice Fund and the Federal Practice Committee is adopted by the court on this 29th day of December, 2021.

IT IS FURTHER ORDERED that the chief judge is authorized to issue standing or general orders to implement this plan.

BY THE COURT:



Chief United States District Judge

Attachment A

GUIDELINES FOR COUNSEL APPOINTED TO REPRESENT INDIGENT LITIGANTS ON ATTORNEY EXPENSES REIMBURSABLE FROM THE FEDERAL PRACTICE FUND

The court appreciates the professional services provided by members of its bar who accept appointments in civil cases. One reason the Federal Practice Fund was established is to have resources available to reimburse appointed counsel in civil cases for out-of-pocket expenses incurred in representing indigent parties. *See* NEGenR 1.7(g) and (h).

The local rule limits reimbursements to those expenses a) reasonably incurred after advance authorization, and b) for which no other source of payment exists. These guidelines, however, authorize appointed counsel to incur some expenses without prior authorization. The guidelines also explain what constitutes a reimbursable expense and the procedures used to request reimbursement.

1. Pre-authorized Limit and Authorization to Exceed.

a. Counsel appointed to represent indigent civil litigants ("counsel") are authorized to incur reasonable and necessary reimbursable expenses (calculated in accordance with these guidelines) up to $500 without submitting to the court any application for prior authorization.

b. Counsel must obtain advance approval from the court before incurring any reimbursable expense that would take the total of such expenses over $500. Counsel will

not receive reimbursement for expenses exceeding $500 before receiving prior authorization.

i. Counsel should electronically file a "Motion to Incur Expenses from the Federal Practice Fund," setting forth the purposes for incurring the expenses, estimating the amount needed, and explaining efforts to keep that amount to a minimum and to obtain funds from other sources. This event is located in CM/ECF under "Motions."

ii. If the application contains information that could jeopardize the client's position or strategy in the case, counsel may submit it *ex parte* and *in camera* to the magistrate judge or bankruptcy judge assigned to the case and seek leave to file it under seal. If the magistrate judge is absent or unavailable, counsel may submit the application to the district judge assigned to the case.

2. Client's Responsibility to Pay Litigation Expenses.

The client remains responsible for litigation expenses even if the court allows the client to proceed *in forma pauperis* or appoints counsel. *See* NECivR 3.3(b)(2). A client must repay any amounts reimbursed from the Federal Practice Fund if the case settles with a payment of money, fees, and costs awarded under 42 U.S.C. § 1988 or other statute, or the client is awarded money damages.

3. Examples of Authorized Expenses.

The following expenses may be incurred and are eligible for reimbursement in accordance with these guidelines. The list is not exhaustive.

a. Lodging and Meals. When counsel must travel out of town solely on business associated with the appointment, lodging and meal expenses actually incurred

are reimbursable up to the government per diem allowance provided for court personnel. Unless prior court approval is granted, the court will not reimburse lodging and meal costs for law clerks, paralegals, secretaries, investigators, or others.

b. Mileage. Counsel's travel costs are reimbursable at the current government rate.

c. Copying. Actual costs up to twenty cents per page for copies of records and documents necessary for case preparation are reimbursable. No reimbursement is available for copies of cases or articles. Before incurring costs, counsel should bring to the court's attention a governmental defendant's attempts to impose higher copying costs.

d. Computerized Research. The cost of services such as Lexis or Westlaw is reimbursable.

e. Expert Witnesses. Expert witness fees and expenses are reimbursable at the rate allowed court employees.

f. Depositions. Court reporter fees for depositions of essential witnesses are reimbursable. To keep expenses down, counsel should conduct telephone depositions for out-of-town witnesses, tape-record depositions, and forego copies of non-essential transcripts.

g. Witness and Service Fees.

h. Telephone Calls and Postage. Necessary long distance charges and postage incurred in the client's representation are reimbursable. Excessive phone calls to and from the client will not be reimbursed.

i. Mediation Expenses. The client's share of the fee for a case mediated through the court's Mediation Plan is reimbursable. If the case is mediated privately, only the portion of the fee that the client would have paid under the Mediation Plan is reimbursable.

j. Other Necessary Out-of-pocket Expenses as Justified.

4. Procedure for Reimbursement.

a. To receive reimbursement for expenses, counsel electronically files a "Motion for Reimbursement from the Federal Practice Fund." This event is located in CM/ECF under "Motions."

1. When practicable, counsel should wait to file requests for reimbursement until representation of the client is complete.

2. All expenses for which reimbursement is sought, even those under the $500 amount, must be explained. Counsel must provide supporting documentation, including an itemized invoice. A copy of the motion and the supporting materials need not be served on opposing counsel or parties since they will not address the merits of the case.

3. If a request for reimbursement exceeds $500, counsel must state which of the expenses were incurred after the $500 limit was reached, and whether the court gave advance approval to incur those expenses.

4. If the supporting documentation or the contents of a motion for reimbursement are subject to the E-Government Act or might jeopardize a client's position

or strategy in the case if disclosed, counsel may file the materials as restricted or sealed pursuant to Nebraska Civil Rules 5.3 and 7.5 or Nebraska Criminal Rules 12.5 and 49.1.1.

5. All motions for reimbursement from the Federal Practice Fund are referred to the chief judge.

5. Questions.

Counsel may direct inquiries about the administration of the Fund or the procedures for requesting reimbursement from the Fund to the clerk of the court.

REVISON CONTROL LOG

Section Revised	Date Revised	Reason for Revision	Judicial Approval
I(A); III(E); IV(A)	1/31/06	Plan updated to include the following changes: • Updated reference to existing NELR 67.4 to NEGenR 1.2(I) in (I(A)). • Updated reference to existing NELR 83.5(j) to NEGenR 1.7(g) in (III(E)). • Removed footnote [2]See, e.g., General Order 93-06,available in http://www.ned.uscourts.gov > General Orders. General Order No. 93-06 rescinded on August 6, 2004, and superseded by NEGenR 1.7(h).	01/31/06
Attach-ment A	01/31/06	Updated references of existing NELRs 67.4, 83.4(f)(g), and 3.5(h) to NEGenR 1.2(I), 1.7(g) and (h), and NECivR 3.3(b)(2) in (Attachment A).	01/31/06
III(A)	03/20/07	The court has elected to no longer contract with a single attorney for prisoner civil litigation cases. Instead, attorneys may be appointed by the judges, as needed. Language addressing only paying attorney fees to counsel under contract was removed and replaced with language which addresses the fee structure and requirements for attorneys seeking payment.	07/27/07
IV(C)	03/20/07	At the November 2, 2006 Federal Practice Committee Meeting, the Committee approved changing the collection of the annual assessment fee from $5 every year to $10 every other year, starting in January 2007.	07/27/07
III(B)	03/20/07	Clarified that non-appropriated funds may not be used for criminal guardian ad litem expenses.	07/27/07
Attach-ment A	03/20/07	Modified the procedure for counsel seeking reimbursement of expenditures from the Fund.	07/27/07
VI(D)	06/15/07	At the April 23, 2007 Federal Practice Committee Meeting, Chief Judge Bataillon recommended that the Committee develop an annual budget, identifying recommended uses of the Fund.	07/27/07
VI(J)	06/15/07	Language added to plan to allow the clerk authority to exceed the chief judge's authorized disbursement	07/27/07

Section Revised	Date Revised	Reason for Revision	Judicial Approval
		amount by no more than 10%. The intent is to alleviate having to seek re-approval from the chief judge for nominal miscellaneous expenditures or cost overruns.	
Attach-ment 1	06/15/07	The clerk's office created an event in CM/ECF for counsel to use when seeking authorization to incur expenses. The new event is titled "Motion to Incur Expenses from the Federal Practice Fund."	07/27/07
III(A)	10/23/07	Added "or other closing documents" back to document to clarify that counsel representing indigent litigants are paid for the second half of their fee, even if there is not a judgment in the case. Similar language was in the original contract with Asaka. "Counsel will be paid the remainder of the fee after the court enters judgment or other closing documents in the case."	10/23/07
II(A) and II(B)	07/14/08	Plan updated to include the following: • Appointment of the of the chiefs of probation and pretrial to the committee, • Number of members increased to no more than 21, and • Appointments of the chiefs of the probation and pretrial services offices as ex officio members to the committee.	07/14/08
II(A); II(A)(2), II(B), II(B)(1), III(A), VIII(B)(1), VIII(B)-(F)	12/01/11	The Federal Practice Committee approved the Amended Plan on December 1, 2011, and the judges approved the plan on December 23, 2011. Changes of note to the plan include: • Expanded sections outlining permissible and impermissible uses of the fund (II(A) and III(A)); Added section directing the clerk's office to maintain a compilation of requests for fund expenditures that were sent to the Office of General Counsel for guidance (II(A)(2)); • Added section directing the clerk's office to maintain a compilation of request for fund expenditure that were sent to the Office of General Counsel for guidance (II(A)(2));	12/23/11

Section Revised	Date Revised	Reason for Revision	Judicial Approval
		• Added section formalizing the role of the committee's budget subcommittee (II(B)); • Added Bankruptcy Court Clerk to list of committee members (VIII(B)(1)); and • Added provision that chief judge may appoint a designee to oversee the committee and subcommittees (II(B)(1) and VIII(B)-(F)).	
V.E.	01/16/13	Added debit cards as acceptable payment method.	01/18/13
	03/10/14	Converted Plan to Word from WordPerfect.	
V.E.	03/11/14	Changed requirement from two signatures/approvals to one.	03/11/14
I; II(A); III(A); IV(A) and (B); V(D); VII(B); VIII(B)(1); Att A 4(a)(4)		Summary of changes: • Section I - removed references to 28 U.S.C. § 1913, which applies to the appellate courts • Sections I, II, III, IV, V, VII, VIII - updated citations to Guide to reflect attorney admission guidance is now found in Chapter 6 • Section IV - updated language to conform with Guide Transmittal 04-13 • Section VIII - removed reference to chief of pretrial services • Section 4.a.4 of guidelines - updated citations to local rules	06/17/16
I.B. and V.A.	10/01/21	• Eliminated references to biennial attorney assessment. • Added pro hac vice admission fees as source of funds. Non-substantive technical changes were made throughout the document.	12/29/21