

LAWYERS ADVISORY COMMITTEE

MINUTES – JANUARY 24, 2018

The Lawyers Advisory Committee met at the Hilton East Brunswick. The meeting was convened by Chair Thomas R. Curtin at 6:30 p.m. and the following occurred:

1. Thomas Curtin began by acknowledging that LAC member Sharon King and her husband, Stanley King, will be receiving the Dr. Martin Luther King, Jr. Champion of Social Justice and Equality Award presented by Rutgers Law School's Black Law Students Association.

Curtin recognized former New Jersey Attorneys General Peter Harvey, John Hoffman and Christopher Porrino.

The current Attorney General, Gurbir Grewal, was introduced by his predecessor, Christopher Porrino. Mr. Grewal provided remarks to the committee.

Assistant U.S. Attorney John Fietkiewicz introduced the current U.S. Attorney for the District of New Jersey, Craig Carpenito, who also provided remarks to the committee.

2. The Chair invited a motion to approve the minutes of the April 6, 2017 meeting. The motion was seconded and the minutes were approved.
3. In his report to the LAC, Chief Judge Jose Linares spoke about the current judicial vacancies which number three and will grow to five by the end of 2018. The Chief Judge has expressed to the Association of the Federal Bar and other legal organizations his concerns about the issues caused by the vacancies. He reported that despite the vacancies, the Court is addressing matters in an effective and efficient manner.

Chief Judge Linares indicated that due to the backlog of Social Security Appeals, he is exploring a Social Security Pilot Project whereby visiting Recalled Magistrate Judges will decide Social Security appeals.

On the positive side, the Chief Judge announced that due to the number and complexity of cases filed in the District of New Jersey, our Court will be allowed three additional omnibus judicial positions once they are approved by Congress.

4. Dennis Drasco and Peter Pearlman reported on behalf of their subcommittee on the proposed amendment to Local Civil Rule 101.1 to add subsection (c)(6): “Any *pro hac vice* counsel admitted in the action is deemed to have certified under Fed. R. Civ. P. 11(b) to the representations of the signer of any pleading, written motion, or other paper submitted to the Court or the Clerk on behalf of his or her client.”

The LAC members voted and approved the proposed amendment.

[Subsequent to this LAC meeting, L. Civ. R. 101.1 was amended to add subsection (c)(6), but that subsection was adopted in the form below and was effective on July 5, 2018 by order of same date:

Civ. RULE 101.1 ADMISSION OF ATTORNEYS

. . . (c)(6) Any *pro hac vice* counsel admitted in the action is deemed to have certified under Fed. R. Civ. P. 11(b) to those pleadings, written motions or other papers that the *pro hac vice* counsel signs, files, submits or later advocates to the Court.]

5. Professor Edward Hartnett reported on behalf of his subcommittee on the proposed amendment to Local Civil Rule 16.1(b)(1) to add subsection (H) to the rule. The subcommittee, consisting of Professor Hartnett, Peter Pearlman and Dennis Drasco, will review whether “date(s)” should be included in the amendment. The LAC members voted and approved the following proposed amendment:

Civ. RULE 16.1 PRETRIAL CONFERENCES; SCHEDULING; CASE MANAGEMENT

* * *

(b) Scheduling and Case Management Orders

(1) At or after the initial conference, the Magistrate Judge shall, after consultation with counsel, enter a scheduling order which may include, but need not be limited to, the following:

- (A) dates by which parties must move to amend pleadings or add new parties;
- (B) dates for submission of experts' reports;
- (C) dates for completion of fact and expert discovery;
- (D) dates for filing of dispositive motions after due consideration whether such motions may be brought at an early stage of proceedings (i.e., before completion of fact discovery or submission of experts' reports);
- (E) a pretrial conference date;
- (F) any designation of the case for arbitration, mediation, appointment of a special master or other special procedure;
- (G) limitations on the scope of preservation, as well as on the scope, method or order of discovery as may be warranted by the circumstances of the particular case to avoid duplication, harassment, delay or needless expenditure of costs; and

(H) in an action asserting professional malpractice or negligence, whether an affidavit of merit has been served, or is required to be served, whether the defendant has any objections to the adequacy of the affidavit

[Subsequent to this meeting, L. Civ. R. 16.1(b)(1) was amended to add subsection (H), but that subsection was adopted in the form below and was effective on July 5, 2018 by order of same date:

- (H) in an action asserting professional malpractice or negligence,
- (1) whether an affidavit of merit has been served, or is required to be served,
- (2) the date by which an affidavit of merit must be served,
- (3) if an affidavit has been served, whether the defendant has any objections to the adequacy of the affidavit, and
- (4) if appropriate, dates for filing of summary judgment motions concerning the necessity or adequacy of the affidavit.]

6. William Mentlik reported on the proposed amendment to the Local Civil Rules to adopt a provision which appears in Local Patent Rule 2.2:

Discovery cannot be withheld or delayed on the basis of confidentiality absent Court order. Pending entry of a confidentiality order, discovery and disclosures deemed confidential by a party shall be produced to the adverse party for outside counsel's Attorney's Eyes Only, solely for purposes of the pending case and shall not be disclosed to the client or any other person.

Thomas Curtin recommended that this matter be referred to the Board of Judges for further review.

7. Jack O'Brien reported for the subcommittee on the proposed amendment to Local Civil Rule 401.1. Upon the recommendation of subcommittee member, Steven Richman, the word "interior" was substituted for "environs." The LAC members voted and approved the following amendment to Rule 401.1:

Civ. RULE 401.1 ~~MEDIA COVERAGE~~ RESTRICTIONS OF ALL BROADCASTING, PHOTOGRAPHING, VIDEO OR VOICE RECORDING

- (a) ~~The taking of photographs and operation of audio or videotape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs, during the progress of and in connection with judicial proceedings, including proceedings before a Magistrate Judge, whether or not court is actually in session,~~ All broadcasting, photographing and recording, both video and voice, by way of camera, cell phone or other device, is are prohibited throughout the interior

of the United States Courthouses in Camden, Newark and Trenton. Environs of the courtroom shall include the entire United States Courthouses at Camden, Newark and Trenton, including all entrances to and exits from said buildings. This prohibition applies to all person, whether or not they are engaged in radio, television or internet broadcasting, blogging or print media, for commercial gain or personal use, and whether or not the Court is in session. A Judge or Magistrate Judge may, however, permit the use of ~~electronic or photographic means~~ photographs, video or voice recordings for the presentation of evidence or the perpetuation of a record. Any exceptions to this rule must be requested in advance and written permission obtained by the presiding judge and/or tenant agency occupying the space where the exemption is requested.

[Since this meeting, amended L. Civ. R. 401.1, as shown above and was effective on July 5, 2018 by order of same date.]

8. Dennis Gleason reported on behalf of the subcommittee on the continuing saga of amending Local Civil Rule 5.3. The subcommittee questioned judicial officers and practitioners about their experiences with this rule and unearthed many issues, including: 1) Should 5.3(c) be amended to include other filings, such as pleadings and transcripts of court proceedings?; 2) Should language be added to the ECF notice regarding the redactions required under Fed. R. Civ. P. 5.2?

It was recommended that the Association of the Federal Bar present a "sealing" tutorial to practitioners. Beth Scher, Ed Kole and Kerri Chewing would chair this subcommittee.

Dennis Gleason and the subcommittee will review the comments presented at the LAC meeting and report back to the LAC at its next meeting.

9. There being no further business, a motion to adjourn was made and seconded. The meeting was adjourned at 8:10 P.M.

Respectfully submitted,

Jack O'Brien