

LAWYERS' ADVISORY COMMITTEE

MINUTES - MAY 12, 2009 MEETING

The Lawyers' Advisory Committee met at the Hilton East Brunswick on May 12, 2009. The meeting was opened by Chair Thomas R. Curtin at 6:00 p.m. and thereafter the following occurred:

1. The minutes of February 18, 2009 meeting were approved without changes.
2. Thomas Curtin reported the next LAC meeting is set for October 20, 2009 at the Westin Hotel in Mount Laurel, New Jersey, the date of the "Gerry" dinner. Curtin also reported that the Court's Historical Society will hold its meeting preceding the "Gerry" dinner.
3. Chief Judge Garrett E. Brown, Jr., reported that two new Magistrate Judges, Douglas Arpert and Lois Goodman, have been sworn-in and have been assigned to the Trenton vicinage, and one new Magistrate Judge, Karen Williams has been sworn-in and has been assigned to the Camden vicinage. Magistrate Judge Goodman's formal swearing-in will be on May 19, 2009; Magistrate Judge Arpert's formal swearing-in will be on June 4, 2009 and Magistrate Judge Karen Williams's swearing-in will be on June 25, 2009.

Chief Judge Brown reported the status of the Court:

- The Court remains at full-strength at seventeen active District Judges.
 - District of New Jersey is currently third in the nation in Patent filings and second in the nation in Multidistrict Litigation filings. Due to the Court's increased case load in Patent and MDL cases, the Judicial Conference approved last year two additional Magistrate Judge positions which are now filled.
 - Chief Judge Brown reported that he will be giving the Court's "State of the Court" speech to the New Jersey State Bar on May 15, 2009 in Atlantic City.
4. Leda Wettre reported on behalf of the Subcommittee reviewing proposed amendments to Local Civil Rule 5.3 concerning motions to seal. Two subsections of the rule were proposed for amendments, (c)(2) and (c)(3). Leda Wettre is to send a letter to Chief Judge Brown outlining the concerns of the rule and to inquire at the Board of Judges' meeting their interpretation of 5.3(c)(3) and whether this subsection should be amended to clarify it. A recommendation for (c)(2) is to provide that where a party files a motion to seal confidential documents belonging to another party, individual or entity, the "owner" of the confidential documents be given 14 days after the filing of the motion to submit additional support for it.

The Subcommittee raised other issues regarding 5.3 that merit further consideration such as the possible use of omnibus motions to seal to obviate three separate sealing motions corresponding to the three rounds of briefing on dispositive and other motions. Thomas Curtin recommended that any additional comments to these proposed amendments be submitted to the Subcommittee.

Jeffrey Greenbaum discussed the “Sunshine in Litigation Act of 2009.” This Act would place restrictions, similar to L.Civ.R. 5.3, on the ability of Courts to issue protective orders and to seal settlements in civil cases. It would accomplish this through the creation of a new statute. The Judicial Conference of the United States, Administrative Office of the U.S. Courts and the ABA oppose this legislation.

5. The Subcommittee considering proposed Local Civil Rule 30.1 concerning “Communications between witness and counsel during cross-examination at depositions and at trial,” was carried to the next meeting.
6. Donald Robinson reported on behalf of the Subcommittee studying whether “Appendix R to the Local Rules, *Guidelines for Litigation Conduct*,” should be elevated to rule status so that the guidelines are more than aspirational. The LAC recommendation to the Board of Judges:
 - Magistrate Judges be notified to discuss Appendix R at their initial Rule 16 Conference with counsel and possibly refer to it in the Scheduling Order.
 - Local Civil Rule 72.1(a)(3)(B) be amended to reflect that notification.
 - The Board should consider including Appendix R into all *pro hac vice* applications/Orders, and the Rules Committee, chaired by Judge Simandle, should consider a requirement in the Local Rules to direct that moving papers of *pro hac* counsel include a representation that Appendix R has been reviewed and counsel’s conduct will conform with it.
7. Hon. Joseph Irenas reported on behalf of Magistrate Judge Madeline Arleo regarding amending L. Civ. R. 301.1(c), *Compensation to Mediators*. This topic was carried to the next meeting.
8. Francis X. Dee and Cynthia Jacob reported on behalf of the Subcommittee studying whether conflicts of interest issues arise relating to payments to a litigation consultant who also may be called as a fact witness in the litigation. The Subcommittee received an “Opinion Letter” from the “New Jersey Supreme Court Advisory Committee on Profession Ethics.” The Committee decided that the “Rules of Professional Conduct” do not categorically prohibit payment to a litigation consultant who has knowledge of a corporation, such as a former employee of the corporation.

LAC recommended that the Advisory Committee’s Opinion-Letter be published in the New Jersey Law Journal and on the Court’s Web site.

9. Judge John W. Bissell discussed the Court's Alternate Dispute Resolution program and whether an amendment to Local Civil Rule 301.2 should be considered to include an option for early neutral evaluation of a particular matter. This was carried to the next meeting. Any additional comments should be directed to Judge Bissell.
10. The next Historical Society program will be held on September 17, 2009, and the program will honor the Judges who have served as Chief Judges for the District of New Jersey.
12. The meeting was adjourned at 8:30 P.M. The next LAC meeting is set for October 20, 2009.

Respectfully submitted,

John T. O'Brien