

LAWYERS' ADVISORY COMMITTEE

MINUTES - OCTOBER 24, 2012 MEETING

The Lawyers' Advisory Committee met at the Mount Laurel Westin. The meeting was opened by Chair Thomas R. Curtin at 5:15 p.m. and thereafter the following occurred:

1. The minutes of the July 11, 2012 meeting were approved with one addition to indicate that Robert Shepherd will act as Chair of the subcommittee on filing motion(s) to dismiss the complaint under Fed. R. Civ. P. 12(a) (4).

2. Report by Chief Judge Jerome B. Simandle:

Chief Judge Simandle discussed the prospect of sequestering funding under the Budget Control Act of 2011, which, if not remedied by Congress before January 1, 2013, will imperil the court's continuing ability to meet its missions in civil and criminal cases due to drastic and unprecedented cuts in personnel and programs.

Chief Judge Simandle discussed the Western District of Pennsylvania's Pilot Program for expedited civil litigation of cases not requiring lengthy and expensive pretrial and trial proceedings. The program offers parties the option of alternative, abbreviated, efficient, and cost-effective litigation and trial. Thomas Curtin selected a subcommittee to review the matter, consisting of: Philip Sellinger, Chair; Ronald Hedges; Kerri Chewing; Bruce Goldstein; John Flaherty; Jeffrey Greenbaum; and Jack O'Brien.

Chief Judge Simandle further reported that the Board of Judges adopted amendments recommended by the LAC to the following Local Civil Rules: 6.1; 7.1(d) (5); 7.1(h); 7.2(d); 54.2; and 72.1. The Chief reported that the Board of Judges did not adopt a uniform "Final Pretrial Order" to be used throughout the District because of differing judicial views of what should be required in the Order.

Chief Judge Simandle announced an invitation to the members to attend the Holiday Party at Jasna Polana on December 13.

3. Ronald Hedges reported on the subcommittee's behalf regarding whether L. Cr. R. 1.1 should be amended to include the provisions of L. Civ. R. 5.3 on sealing courtrooms and documents. Hedges indicated that this amendment is unnecessary and the LAC should take no action.
4. Robert Shepherd reported on the subcommittee's behalf about the effect of Fed. R. Civ. P. 12(a) (4) when a motion to dismiss addresses fewer than all counts in the Complaint. Specifically, the issue is whether a party who has filed the motion to dismiss is obligated to file an answer to the claims which are not covered by the motion or whether the obligation to file an answer to those claims is tolled by the filing of the motion. To eliminate uncertainty, the subcommittee recommended proposing the following local rule or Appendix:

L. Civ. R. 12.1 “When a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) addresses fewer than all of the claims for relief in a Complaint, the pleading in response to any claims for relief which have not been dismissed shall be filed 14 days after entry of the Court’s order resolving said motion to dismiss.”

Thomas Curtin advised that any additional comments to this proposed rule should be forwarded to Robert Shepherd who will then submit a final version of the proposed rule at the next meeting.

5. The LAC voted to take no action on Donald Robinson’s subcommittee recommending that “private reprimands” be eliminated from L. Civ. R. 104.1(e) (6) and L. Civ. R. 104.1(e) (11).
6. Thomas Curtin moved to the next meeting the report on the subcommittee’s review of the Judges’ varying requirements for the filing of documents on the CM/ECF System.
7. Thomas Curtin moved to the next meeting the report on the subcommittee’s review of proposed amendments to Local Civil Rule 16.1, specifically, L. Civ. R. 16.1(g) (1), to change the word "affidavit" in both sentences to "affidavit, certification or declaration pursuant to 28 U.S.C. Section 1746.” The subcommittee will also identify other places in the Local Rules where the "affidavit" requirement should be similarly modified.
8. Thomas Curtin moved to the next meeting the report on the subcommittee’s review of L. Civ. R. 5.1 to delete the requirement of furnishing the Clerk with four copies of a complaint and other initiating pleadings upon filing and the subcommittee’s review of the Local Rules, including the Court’s ECF Policies and Procedures, to delete the requirement of filing a certificate of service when electronically filing documents.
9. The meeting was adjourned at 6:30 PM. Thomas Curtin will notify the members of the date of the next LAC meeting.

Respectfully submitted,

John T. O’Brien