

## LAWYERS' ADVISORY COMMITTEE

### MINUTES - OCTOBER 16, 2008 MEETING

The Lawyers' Advisory Committee met at the Hilton East Brunswick on October 16, 2008. The meeting was opened by Chair Thomas R. Curtin at 6:30 p.m. and thereafter the following occurred:

1. The minutes of June 19, 2008 meeting were approved without changes.
2. Thomas Curtin introduced Ricardo Solano, First Assistant Attorney General, at New Jersey's Attorney General's Office, to the Lawyers' Advisory Committee and thanked members for their contributions to the committee.
3. Chief Judge Garrett E. Brown, Jr., reported that Magistrate Judge John J. Hughes will be departing the bench on March 31, 2009. The Judicial Conference of the United States has approved two additional Magistrate Judge positions in the District, one position for Trenton and one position for Camden. Due to Magistrate Judge Hughes's departure, Trenton will have two openings. Chief Judge Brown reported that two Magistrate Judge Merit Selection Committees have been selected to interview applicants to fill the vacancies.
4. Donald Robinson reported on behalf of the subcommittee charged with recommending a standard form of order to be used if the parties cannot agree to a stipulated confidentiality order governing procedures for designation of confidential documents during discovery, and procedures for sealing documents consistent with Local Rule 5.3. The subcommittee recommended proposing the order as a default order, to be used by the Court if the parties cannot timely agree on the form of order. This proposed default form of order was submitted to the Board of Judges as part of the proposed Local Patent Rules package. Public comment period regarding this package will conclude November 19, 2008.
5. Donald Robinson discussed Local Civil Rule 40.1(c), Allocation and Assignment of Cases, and whether the assignment of "related cases" should be broader in scope, for example including "subject matter." The consensus of the members was that a related case is within the discretion of the court, and that the better course is not to consider an amendment at this time but rather to monitor any issues that may arise.
6. Philip Sellinger and Peter Pearlman reported on behalf of the subcommittee reviewing "Communication between witness and counsel during cross-examination at depositions and at trial." The subcommittee agreed that different issues may arise during civil depositions and civil and criminal trials. The subcommittee concluded that during a deposition a witness is permitted to consult with his/her attorney during long breaks in testimony; however, there is no consensus on consulting with a witness during short breaks. The subcommittee welcomes additional comments regarding this subject.

7. Judge Simandle reported on behalf of the Local Patent Rules Committee and stated that the final draft of proposed local rules governing patent litigation was submitted to the Board of Judges at its September meeting, including alternative rules for ANDA litigation. The Board of Judges approved the final draft of the rules, selecting the alternative with rules for ANDA litigation. The proposed rules have been published and the public comment period extends until November 19, 2008.
8. Dennis Gleason reported on behalf of the subcommittee regarding "Revision of Computation of Time" as it relates to the Court's Local Rules. Mr. Gleason reported that the "timing amendments" to the Federal Rules of Civil Procedure ("FRCP") will be enacted as of December 1, 2009. These new rules will revise computation of time in units of seven. A memorandum and chart was distributed to the LAC's members identifying all local rules that set forth a deadline requiring a computation of time. Proposals to amend local rules to conform with the new computation of time rules in the FRCP will be tabled until a later meeting closer to enactment of the FRCP amendments.
9. Francis X. Dee reported on behalf of the subcommittee studying the issue of conflicts of interest relating to payments to a litigation consultant who also may be called as a fact witness in the litigation. This problem arises, for example, when a retiree has particular knowledge regarding litigation issues such as location of historical documents, and requests payment as a consultant for extensive work, and then is later called as a fact witness. The subcommittee will request guidance from the New Jersey's Supreme Court Advisory Committee on Professional Ethics. Two LAC members were added to this subcommittee: Cythnia Jacob and Rosemary Alito. Cynthia Jacob will inquire in order to determine if that Committee will entertain such an inquiry.
10. Donald Robinson, on behalf of Magistrate Judge Arleo, discussed a proposed amendment to the Court's Mediation Rule (Local Civil Rule 301.1(3)(c)) to reduce the number of uncompensated hours provided by mediators from three hours to one hour and to raise the compensation to \$350 per hour from \$300 per hour. It was agreed to continue the discussion of this issue at a later meeting.
11. Leda Wettre discussed whether Local Civil Rule 5.3 regarding motions to seal should be amended. It was recommended to table this item for further discussion at a future meeting.
12. Federal Rule of Evidence 502 was discussed and whether there is a need to review and/or revise Local Rule 5.2. This agenda item will be carried to the next meeting.

13. Jim Murphy and Jack O'Brien reported on the Court's new Policy on the electronic availability of transcripts of Court Proceedings. Effective November 1, 2008, the Court, in accordance with the Judicial Conference Policy and amendments of Federal Rule of Civil Procedure 5.2 and Federal Rule of Criminal Procedure 49.1, will implement a policy regarding placing official court transcripts on the ECF System.

Respectfully submitted,

John T. O'Brien