

## **LAWYERS' ADVISORY COMMITTEE**

### **MINUTES - OCTOBER 12, 2010 MEETING**

The Lawyers' Advisory Committee met at the Hilton in East Brunswick. The meeting was opened by Chair Thomas R. Curtin at 6:15 p.m. and thereafter the following occurred:

1. The minutes of June 2, 2010 meeting were approved without changes.
2. Report by Chief Judge Garrett E. Brown, Jr.:

Chief Judge Brown reported that the Court is currently not at full strength and has two vacancies and it is expected that the President will soon be announcing two nominations to fill the two vacancies. As a result of the two vacancies, Judges sitting in Newark are being assigned twenty-five percent additional cases.

Chief Judge Brown announced that Thomas Curtin, the Chair of the Lawyers' Advisory Committee, was recently honored by the University of Notre Dame's Law Association as the 2010 recipient of The Rev. Michael D. McCafferty award. This award honors those who have rendered distinguished service to the University of Notre Dame.

3. Thomas Curtin welcomed Edward Harnett, Professor of Law at Seton Hall Law School, as a new member.

Thomas Curtin reported that the Board of Judges unanimously passed a resolution addressing the Lawyers' Advisory Committee's concerns about the perceived practice of requiring pre-approval before a party may file a Rule 12 motion to dismiss. The Court will clarify their published preferences to conform to this resolution.

4. William Mentlik reported on behalf Judge Simandle, Chair of the Local Patent Rules Committee, regarding ongoing work of the Committee. The Committee reconvened on September 16 to address certain issues and discuss provisions of the rules for cases handled under the Hatch-Waxman Act. At the September 16 meeting, Judge Simandle appointed subgroups to develop a number of items discussed for further review, including proposed language for amendments.
5. Keith Miller discussed his proposal to amend Local Civil Rule 33.1, entitled "Interrogatories," because the current rule does not reflect Federal practice in the age of word processing. The Committee discussed certain edits to be added to the proposed rule and requested a new version of the rule be circulated among the Committee.

Below is the new version of the proposed rule 33.1(a):

Proposed amendment to Local Civil Rule 33.1(a), entitled “Interrogatories”:  
(a) Interrogatories shall be so arranged that after each separate question or request, there shall appear a blank space reasonably calculated to enable the answering party to have the answer to the interrogatory typed in. Each question shall be answered separately in the space allowed. If the space allowed shall not be sufficient for the answer, the answering party may insert additional pages or retyped pages repeating each question in full, followed by the answer in such manner that the final document shall have each interrogatory immediately succeeded by the separate answer thereto. **Upon request, interrogatories shall be provided in electronic word processing format for ease of answering if technologically feasible. The answering party shall repeat each question in full immediately prior to each corresponding answer.**

The Committee voted on the proposal to the amendment, subject to the added text shown above, and approved the amendment to L.Civ. R. 33.1(a).

6. Jeffrey Greenbaum reported on behalf of the subcommittee on amending Local Civil Rule 10.1 by adding a subsection (c) requiring early disclosure of certain documents that are referred to in a pleading but are not attached to the pleading. The Committee recommended that “referred” be added to the text:

Before responding to any pleading as to which a responsive pleading is allowed, the responding party may serve a written request for production of any document that is quoted in or referred to in the pleading, but that is not annexed as an exhibit to the pleading. Within seven days after service of such a written request, the party that filed the pleading shall serve a copy of the document on the requesting party or make the document available for inspection and copying by the requesting party.

The Committee voted on the proposal to the amendment and approved the amendment to L.Civ.R. 10.1(c).

7. Steven Richman reported on several issues regarding litigating matters in U.S. Courts where privacy and discovery laws of other international jurisdictions may be implicated in the U.S. discovery process. He cited examples where lack of codified standards pose issues for attorneys and their clients, because of lack of uniformity of response among American Courts. The subcommittee formed to look at these issues met, and Steven reported its consensus that at the present the rules and case law provide an appropriate analytical mechanism, and education of the bar and bench about these matters is appropriate.

8. Jack O'Brien announced that the Clerk's Office has posted *pro bono* forms on the Court's Web site which require *pro bono* attorneys to use for Pre-approval for expenses over \$5,000, and a Reimbursement Voucher to cover out-of-pocket expenses at the end of the litigation.
9. Jeffrey Greenbaum discussed the topic "contention interrogatories" and whether District of New Jersey should consider a similar rule as the Southern District of New York or whether contention interrogatories or interrogatories in general present particular burdens that should be addressed by local rule. A subcommittee consisting of the following members was appointed by the Chair to consider this matter: Jeffrey Greenbaum, Chair; Michael Griffinger; Francis Dee; Bruce Goldstein; Peter Pearlman; Kerrie Chewning; Aney Chandy, Michael Meisel, and Magistrate Judges Donio, Falk and Shwartz.
10. Leda Wettre reported on the next Historical Society program which will be held on October 21, 2010, and the program will honor the Clerk's Offices of both the U.S. District Court and U.S. Bankruptcy Court, U.S. Probation Office and Pretrial Services and U.S. Marshal's Service. The presentation and reception will be held in the lobby of the Martin Luther King, Jr., Federal Building and U.S. Courthouse in Newark.
11. Chief Judge Brown thanked the members of the LAC for their hard work and continued dedication to the Committee and invited the members to the Holiday luncheon on December 8, 2010 at Jasna Polana.
12. The meeting was adjourned at 8:00 P.M. Thomas Curtin will notify the members of the date of the next LAC meeting.

Respectfully submitted,

John T. O'Brien