

LAWYERS' ADVISORY COMMITTEE

MINUTES – SEPTEMBER 3, 2014 MEETING

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

1. Thomas Curtin welcomed all members and thanked them for their good work on behalf of the LAC.
2. The minutes of the March 5, 2014 meeting were approved without changes.
3. Chief Judge Jerome B. Simandle applauded Thomas Curtin's contributions to the Lawyers' Advisory Committee during this year's Third Circuit Conference, which was held at the Hershey Resort from May 7 to 9. Curtin organized a breakfast meeting, to which he invited LAC members from all courts within the Third Circuit for a discussion. The meeting was well attended, particularly by members of the New Jersey LAC.

The Chief Judge also announced that Magistrate Judge Madeline Arleo had been nominated by the President and had appeared at a hearing before the Senate Judiciary Committee. He reported that there will be four potential judicial vacancies in 2015. While three additional judgeships have been approved for our Court, due to the number and complexity of our cases, any new judgeships above the current 17 active judgeships will be subject to Congressional approval.

4. Chief Judge Simandle reported on the proposed Standing Order directing temporary modifications of certain local rules in Hurricane Sandy litigation: L. Civ. R. 201.1(f)(1), 201.1(g), 201.1(h)(1), 301.1(c) and 301.1(e)(6). Comments are due by September 18, 2014.
5. Professor Edward Hartnett reported on behalf of the subcommittee recommending amendments to the Court's CM/ECF Policies and Procedures. Specifically, he addressed the proposal to amend ¶ 14(b)(1), within the section for "Service of Documents by Electronic Means," to bring it into conformance with Fed. R. Civ. P. 5. Amended ¶ 14(b)(1) would allow any filing user to opt out of electronic service in a particular case. The first paragraph of 14(b)(1) would remain the same and a second paragraph would be added as follows, where "NEF" represents notice of electronic filing:

Upon the electronic filing of a pleading or other document, the Court's ECF System will automatically generate and send a NEF to all ECF Filing Users associated with that case. Transmission of the NEF constitutes service of the filed document on Filing Users.

Any Filing User may elect to opt out of electronic service in a particular case and to require service on such Filing User by other means authorized in Federal Rule of Civil Procedure 5(b). Such election shall be made by giving written notice to the Clerk and all other parties in any case to which such election applies. Such written notice shall be given at or before the initial conference required by Local Civil Rule 16.1(a)(1). Making this election does not relieve a Filing User of the obligation to file documents electronically. Those who make this

election cannot themselves rely on electronic service on other parties to the case. Such an election is discouraged, because experience in this District has shown that electronic service has been quicker, more convenient, and more reliable than traditional means of service under Federal Rule of Civil Procedure 5(b).

The LAC voted on and approved the proposed amendment. This recommendation will be forwarded to the Board of Judges for its consideration.

Professor Hartnett also reported on a new subsection, to be added as subsection (j) to Local Civil Rule 26.1(b)(2):

(j) Whether the parties have discussed consenting to service of all papers outside the scope of the ECF System by email or other electronic means pursuant to Federal Rule 5(b)(2)(E), provided that the discovery plan shall not disclose the substance and the outcome of the discussion but shall be limited to certifying that the discussion took place; and (A conforming amendment would also change the designation of current Local Civil Rule 26.1(b)(2)(j) to Local Civil Rule 26.1(b)(2)(k)).

The LAC voted on and approved the proposed amendment. This recommendation will be forwarded to the Board of Judges for its consideration.

6. Professor Hartnett further reported on behalf of the subcommittee recommending the amendment of Local Civil Rule 79.2, so as to ease the burden on the Court and Clerk's Office. Members of the LAC recommended the insertion of certain text in the proposed amendment, so the revised rule would read as follows:

Civ. RULE 79.2 PARTS OF THE PUBLIC RECORD NOT AVAILABLE ON PACER

Material filed with the Clerk but not fully available on PACER due to inconvenience or for technical reasons (such as oversized documents that are difficult to scan and audio, video, text, or data files that are submitted on optical discs) is part of the public record, and it is the policy of the Court to request that counsel, if reasonably feasible, provide the media and members of the public access to a copy of all such material in pending actions, for the purpose of review or copying at the requesting party's expense. This policy does not apply to material filed under seal in accordance with these rules, material excluded from remote public access by Fed. R. Civ. P. 5.2(c), and material excluded from the ECF System pursuant to Paragraph 11(b) of the Electronic Case Filing Policies and Procedures.

The LAC voted on and approved the proposed amendment. This recommendation will be forwarded to the Board of Judges for its consideration.

7. Leda Wettre reported on behalf of the subcommittee recommending the elimination of the requirement that a Certificate of Service be filed with the Court, where all parties have been served via the Court's CM/ECF System, consistent with the Federal and Local Civil Rules.

She proposed updating certain provisions of ¶14(b)(1) of the CM/ECF Policies and Procedures and adding a sentence to Local Civil Rule 5.2. The revised rule would read as follows:

Civ. RULE 5.2 ELECTRONIC SERVICE AND FILING DOCUMENTS

Papers served and filed by electronic means in accordance with procedures promulgated by the Court are, for purposes of Federal Rule of Civil Procedure 5, served and filed in compliance with the local civil and criminal rules of the District of New Jersey. Where papers filed electronically effect proper service upon all persons required to be served, no proof of service is required to be filed with the Court.

The LAC voted on and approved the proposed amendment, subject to amending the text of other local rules. Leda Wettre will determine which other local rules may need to be amended and will report back at the next meeting. This recommendation will be forwarded to the Board of Judges for its consideration.

8. Michael Griffinger recommended that L. Civ. R. 5.3, governing the sealing of documents, be amended, as it relates to patent filings. Griffinger discussed the onerous requirements and practical issues involved in the filing of motions to seal documents. He recommended the creation of a subcommittee to review this matter and will select the members of this subcommittee, whom he will email.

Chief Judge Simandle recommended that the subcommittee review the Local Rules of the Third Circuit on the sealing of documents and Curtin proposed that the subcommittee review the rules of other jurisdictions.

9. Leda Wettre, President of the Court's Historical Society, and Magistrate Judge Arpert updated the members regarding the 225th Anniversary of the United States District Court for the New Jersey. Justice Alito will speak at the event and Thomas Curtin will be Master of Ceremonies. Leda reported that tickets are currently on sale and a maximum of 500 tickets will be sold.

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