

LAWYERS' ADVISORY COMMITTEE

MINUTES – MARCH 5, 2013 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. Thomas Curtin welcomed members.
2. The minutes of the October 24, 2012 meeting were approved.
3. Chief Judge Simandle discussed the effects of sequestering funding under the Budget Control Act of 2011, resulting in a \$400 million shortfall in Judiciary funding. The across-the-board cut in funding 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, the U.S. Probation and Pretrial offices must significantly reduce their drug treatment programs and other similar programs, resulting in a potential effect on public safety. The Federal Public Defenders office is required to furlough its employees for 25 days due to sequestration. Sequestration is also causing a 20 percent cut in the Clerk's Office budget, including a 10 percent or \$1.3 million decrease in the personnel budget, notwithstanding an increase in civil filings during the prior three years.

Paul Fishman, U.S. Attorney, reported that the Justice Department has given notice to all of its 94 offices of the potential consequences of funding cuts due to sequestration. Fishman added that even though funding cuts will affect the morale in his office, the office will continue to investigate illegal activities just as it did before the budget cuts. Fishman commented that in light of the budget climate, he will work with the Court and the Federal Public Defenders office to determine how his office can assist in efficiently processing cases.

In reaction to a recent U.S. Supreme Court case addressing the circumstances of plea negotiations, Fishman's office will propose to the Court that it conduct a status conference during criminal proceedings.

Paul Fishman reported a change in management at the U.S. Attorney's Office and William Fitzpatrick will be appointed First Assistant.

4. Lede Wettre reported on the subcommittee's proposed amendments to accord the Local Civil Rules with the language of 28 U.S.C. § 1746. The proposed amendments replace the term of "affidavit" in the Local Civil Rules with a reference to 28 U.S.C. § 1746 or mirror the language used in that section so as to refer to "declaration(s), verification(s), certification(s), statement(s) [and] oath(s)," in addition to affidavits. The LAC voted on

and approved the proposed amendments. This recommendation will be forwarded to the Board of Judges for its consideration.

5. Jack O'Brien reported on the proposed amendment to L.Civ.R. 67.1 to reflect changes in the Court Registry Investment System (C.R.I.S). The LAC voted on and approved the proposed amendment. This recommendation will be forwarded to the Board of Judges for its consideration.
6. Thomas Curtin moved to the next meeting the report on: 1) 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 2) the subcommittee's review of the Local Civil Rules, including the Court's ECF Policies and Procedures, to delete the requirement of filing a certificate of service when electronically filing documents.
7. Philip Sellinger reported for the subcommittee regarding 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. Sellinger discussed expanding the program to address complex litigation. The subcommittee will submit a final report at the next meeting.
8. Robert Shepherd reported for the subcommittee regarding the ambiguous effect under Fed. R. Civ. P. 12(a) (4) of a motion to dismiss that addresses fewer than all counts in the complaint. Specifically, the issue is whether a party which has filed the motion to dismiss must file an answer to the claims 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 the following proposed local rule:

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."

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

9. Michael Furey reported on the subcommittee's review of the Magistrate Judges' varying requirements of filing or not filing documents on ECF. The subcommittee proposed the following amendment to L. Civ. R. 7.1(b) (2):

(b) All Motions

(2) The Notice of Motion and all papers in support of or in opposition to the motion, including briefs, must be filed electronically with the Clerk. In those instances where a Judge or Magistrate Judge exercises authority under L. Civ. R. 7.1(b) (1) to depart from the requirements of ordinary formal motion practice, all papers in support of or in opposition to any informal motion application must be filed with the Clerk.

(4) The decision of the Magistrate Judge on an informal motion application is appealable under L. Civ. R. 72.1(c) in the same manner as an appeal of a decision on a motion filed under the formal requirements of L. Civ. R. 7.1.

Chief Judge Simandle requested that this item be deferred until Magistrate Judges Goodman and Arpert review the proposed amendment to the Local Civil Rules. Any additional comments can be forwarded to the subcommittee.

10. Richard Collier reported for the subcommittee on the following issues: 1) the current system of universal consent to electronic service for those who use the ECF System, i.e., whether this mandatory consent violates the Federal Rules; 2) the possibility of providing for a mechanism of consent to electronic service of papers that are not filed via ECF; 3) the necessity of filing proof of electronic service; and 4) whether there should be a more explicit incorporation of the Electronic Case Filing Policies and Procedures in the Local Civil Rules.

This matter is continued until the next meeting and any additional comments can be forwarded to the subcommittee.

11. Robert DelTufo requested that the minutes reflect the passing of William F. Hyland, former New Jersey attorney general in the 1970's. LAC members praised Mr. Hyland for being a dedicated, humble and wonderful individual and Mr. Del Tufo, Hyland's first assistant attorney general, remembered Mr. Hyland as an extraordinarily talented person with unquestionable integrity and a commitment to serve the interests of the public rather than his own.

The meeting was adjourned at 8:00 PM. Thomas Curtin will notify the members of the date of the next LAC meeting.

Respectfully submitted,

John T. O'Brien