

LAWYERS' ADVISORY COMMITTEE

MINUTES - JULY 11, 2012 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 March 7, 2012 meeting were approved without changes.
2. Thomas Curtin, Chair of the LAC, presented former Chief Judge Brown a photograph of the members of the LAC which was taken at the March 7, 2012 meeting.

Thomas Curtin welcomed two new members to the LAC: John Hoffman from the Office of the Attorney General and retired Magistrate Judge Joel B. Rosen.

Thomas Curtin announced to the members that Karol Corbin Walker has been appointed as President to the ABA's National Conference of Bar Presidents.

3. Report by Chief Judge Jerome B. Simandle:

Chief Judge Simandle reported that despite two vacancies on the Court, the Court has continued to be very productive through the redoubled efforts of the District and Magistrate Judges and staff. The statistic for "median time to disposition" of civil cases has continued to decrease and now is the lowest (6 months) of any of the largest federal district courts, even though the civil case load continues to increase (over 11 % in 2011 alone, plus further increases this year). This progress is due to a number of factors, including the front-loading of case management and settlement efforts of the Magistrate Judges, the prompter disposition of motions by the District Judges, the success of court-annexed ADR, and the increased usefulness of the CM/ECF electronic docket. He noted that all of these steps were taken with the guidance and encouragement of the LAC and within the LAC's continuing efforts to improve our local rules and procedures over the years. He noted, however, that the prospect of sequestration of funding under the Budget Control Act of 2011, 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 because of cuts in personnel and programs that are drastic and unprecedented.

4. Donald Robinson discussed revisions of L.Civ.R. 104.1 as it relates to "private" reprimands as opposed to "public" reprimands. Thomas Curtin selected a subcommittee to review the matter. The following members were appointed: Donald Robinson, as Chair, Ronald Hedges, Professor Edward Hartnett, Cynthia Jacob, and Bruce Goldstein.

Donald Robinson discussed an amendment to L. Civ. R. 6.1(b) regarding automatic extensions to plead or otherwise defend. Thomas Curtin commented that it appeared that this amendment was previously proposed by Arnold Calmann's subcommittee and approved at the last meeting. Thomas Curtin asked Donald Robinson to communicate with Arnold Calmann to confirm this.

Donald Robinson also discussed an amendment to L.Civ. R. 7.1(d)(5) to include an automatic extension for applications and motions for preliminary injunction. The LAC voted and opposed the proposed amendment.

Donald Robinson proposed whether L.Cr. R. 1.1 should be amended to include the provisions set forth in L.Civ.R. 5.3 regarding sealing of courtrooms and sealing of documents. Thomas Curtin selected a subcommittee to review the proposal. The following members were appointed: Donald Robinson, Ronald Hedges, James Clark, Francis Dee, Keith Miller and Carl Poplar.

Leda Wettre discussed proposed amendments to Local Civil Rule 16.1, which were discussed. The proposal to amend Rule 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" was approved and her subcommittee was asked to identify other places in the Local Rules where the "affidavit" requirement should be similarly modified. The other proposed amendments to L. Civ. R. 16.1 were opposed.

5. Robert Shepherd discussed Fed. R. Civ. P. 12(a)(4) that provides that the filing of a motion to dismiss will toll the time in which to file an answer; and, if the motion is denied, the party must then file the answer within 14 days of the denial of the motion. Mr. Shepherd raised 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 to dismiss or whether the obligation to file an answer to those claims is tolled by the filing of the motion regardless of the fact that the claims are not covered by the motion to dismiss. Thomas Curtin selected a subcommittee to review the issue: The following members were appointed: Robert Shepherd, Chair, William Mentlik, Arnold Calmann, Karol Corbin Walker, Leda Wettre and Michael Furey.
6. Jeffrey Greenbaum reported on behalf of the subcommittee regarding proposed Local Civil Rules concerning Interrogatories, Contention Interrogatories, and Requests for Admission. The LAC voted and opposed the proposed amendments.
7. Ronald Hedges discussed certain recommendations for electronically stored information (ESI) discovery in federal criminal cases. Chief Judge Jerome B. Simandle and Ronald Hedges reported that the U.S. Attorney's Office, Office of the Federal Public Defender and the Association of the Federal Bar will be sponsoring a seminar on this subject at Newark on September 27.
8. Karen Confoy discussed what documents such as letters, etc. should be electronically filed and which documents should be submitted to chambers only, and how that information is communicated to counsel. Thomas Curtin selected a subcommittee to review the matter: The following members were appointed: Michael Furey, as Chair, Karen Confoy, Francis Dee, Michael Griffinger, Jack O'Brien and Theresa Burnett.

Jack O'Brien and Kerri Chewing discussed amending L.Civ.R. 5.1 to delete the

requirement of submitting four copies of a complaint and other initiating pleadings upon filing. Karol Corbin Walker and Jack O'Brien discussed amending certain Local Rules including the Court's ECF Policies and Procedures to delete the requirement of filing a certificate of service when electronically filing documents; though, the certificate or proof of service is required if a Party being served is not a ECF Registered User such as pro se litigants, etc. Thomas Curtain selected a subcommittee to review the matter: The following members were appointed: Karol Corbin Walker, Jack O'Brien, Kerri Chewning, Richard Collier, Professor Edward Hartnett, Jeffrey Greenbaum, and Keith Miller.

9. The meeting was adjourned at 8:05 PM. Thomas Curtain will notify the members of the date of the next LAC meeting.

Respectfully submitted,

John T. O'Brien