

LAWYERS' ADVISORY COMMITTEE

MINUTES - JUNE 2, 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 March 10, 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 due to Judge Greenaway's elevation to the Third Circuit Court of Appeals and Judge Hayden electing to go on senior status. Judge Brown is hoping that the two vacancies will be filled soon.

3. Thomas Curtin welcomed new members to the Lawyers' Advisory Committee. Thomas Curtin announced that Chief Judge Brown and Michael Griffinger will be honored at the Brennan dinner which takes place on June 16 at Mayfair Farms and he requested all LAC members to attend the event.
4. Jeffrey Greenbaum was unable to attend the meeting, therefore, Donald Robinson reported on behalf of the subcommittee appointed in regards to the practice of several judges prohibiting the filing of dispositive motions unless the judge has previously granted leave to file such motion or require consultation with the Magistrate Judge before such motion is filed. The subcommittee prepared a report outlining practical problems for the attorneys knowing which pre-approval procedure to follow. The subcommittee Report also included a proposal to amend Local Civil Rule 6.1 by adding a new 6.1(c) that would automatically extend the time to answer or otherwise move when a party submits a letter requesting a pre-motion conference or leave to file a motion. Another recommendation by the subcommittee would be for individual judges to exempt Rule 12 motions from any pre-motion filing requirement. The proposal affects only Rule 12 motions. The subcommittee recommended that the Court publish the practices of individual judges on the Court's official Web site. The proposed text of the amendment is attached to the Report in Attachment A. The LAC voted and approved the proposed amendment to Local Civil Rule 6.1.
5. James P. Murphy, Jr., Chief Deputy of the Court, provided an update of Electronic Case Filing. James Murphy reported that the Court's training class has been approved by the Supreme Court of New Jersey Board on Continuing Legal Education for 2.4 CLE hours.

6. Cynthia Jacob reported on behalf of the subcommittee on amending Local Civil Rule 10.1(c) requiring early disclosure of certain documents that are referred to in a pleading but are not attached to the pleading. Jacob reported that the subcommittee was not unanimous on the proposed amendment:

Before a 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 the pleading or is alleged to be a basis for any claim or defense asserted 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 LAC Committee recommended the rule to be modified. Thomas Curtin recommended to defer voting on this amendment to carry this agenda item to the next meeting.

7. William Mentlik reported on behalf of the subcommittee considering the subject of filing “cross-motions” with the Court and whether Local Civil Rule 7.1(h) should be amended. The consensus of the subcommittee is not to amend the rule.
8. Dennis Gleason discussed The New Jersey Supreme Court Civil Practice Committee proposed changes to the way responses/objections to interrogatories and document requests are prepared and whether the Court’s Local Rule(s) will need to be amended. The consensus of the Committee is to wait until the State Rules are implemented and then review the Court’s Local Rule(s) for any changes.
9. Judge Jerome B. Simandle reported on the subcommittee regarding the topic “Vanishing Jury Trial.” Judge Simandle reported that the number of jury trials has decreased by one-half since 1992. He also discussed whether the Court’s ADR programs are a factor for this decrease of jury trials. The subcommittee will continue to examine the factors affecting the number of jury trials and welcomes any additional comments on this subject.

New Business

10. Steven Richman discussed 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. Steven mentioned some of the issues that arise such as: a) discovery including e-discovery; b) privacy (personal data); and c) civil and criminal sanctions. Thomas Curtin requested Steven to submit a report to the LAC.

11. Paul Fishman, U.S. Attorney for New Jersey, discussed a recent U.S. Supreme Court case, *Padilla v. Kentucky*, __ U.S. __, [2010 WL 1222274 \(March 31, 2010\)](#), where the Court held that a defendant was denied his right to effective assistance of counsel under the Sixth Amendment when his attorney failed to inform him that he might be deported if he pled guilty to state drug charges. As a result of this decision, Fishman reported that the Court will be required to amend the standard Rule 11 for a defendant to plead guilty and the Judge's colloquy during a guilty plea will also be required to be updated. Magistrate Judge Shwartz along with the U.S. Attorney's Office and the Office of the Federal Public Defender will update the Rule 11 form.
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

Proposed Amendment to Local Civil Rule 6.1

(c) The filing of a letter requesting a pre-motion conference or leave to file a motion in lieu of answer, submitted to judges requiring pre-motion conferences or court leave, shall extend the time to answer or otherwise move. Unless the court sets a different time, the filing of such a letter extends time for the following periods:

- (1) until a period of 21 days after the court's granting leave to file a motion or a conference to discuss same; or
- (2) until a period of 14 days after the denial of the requested leave.

(d) [text of old (c)]