

LAWYERS' ADVISORY COMMITTEE

MINUTES - OCTOBER 20, 2009 MEETING

The Lawyers' Advisory Committee met at the Mt. Laurel Westin on October 20, 2009. The meeting was opened by Chair Thomas R. Curtin at 4:00 p.m. and thereafter the following occurred:

1. The minutes of May 12, 2009 meeting were approved without changes.
2. Chief Judge Garrett E. Brown, Jr., reported the status of the Court:
 - The Court remains at full-strength at seventeen active District Judges.
 - District of New Jersey is addressing a challenging docket which in addition to intellectual property cases the Court is also addressing antitrust and securities matters. An example of the challenging docket, the District of New Jersey is currently third in the nation in Patent filings and second in the nation in Multidistrict Litigation filings.
 - Chief Judge Brown reminded members that the New Jersey's State Bar's Mid-Year Meeting will take place in San Francisco on November 3 - 8.
 - 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 16, 2009 at Jasna Polana.
3. Donald Robinson discussed his May 13, 2009 letter to Chief Judge Brown on behalf of the Subcommittee studying whether "Appendix R to the Local Rules, *Guidelines for Litigation Conduct*," should be elevated to rule status so that the guidelines are more than aspirational. Chief Judge Brown reported that the Board of Judges believed the Guidelines should remain aspirational. At Robinson's request, Chief Judge Brown will report to the Judges that they should consider informing all of the Magistrate Judges that at their initial Rule 16 Conference, counsel should be informed that they are required to "become familiar with Appendix R." And this would also apply to all *pro hac vice* counsel. Chief Judge Brown asked that Donald Robinson send him a letter to that effect.
4. Leda Wettre reported on behalf of the Subcommittee reviewing proposed amendments to Local Civil Rule 5.3 concerning motions to seal. Two subsections of the rule were proposed for amendments, (c)(2) and (c)(3). Leda Wettre is to send to Chief Judge Brown redline version of the proposed changes of the rule and outlining the concerns of the rule so that the Board of Judges may consider the revised rule at their December meeting. A recommendation for (c)(2) is to provide that where a party files a motion to seal confidential documents belonging to another party, individual or entity, the "owner" of the confidential documents be given 14 days after the filing of the motion to submit additional support for it. Also under consideration is a revision to the Rule requiring parties to file redacted versions of documents publicly when an entire document does not qualify for sealing.

5. Philip Sellinger reported on behalf of the Subcommittee considering proposed Local Civil Rule 30.1 concerning “Communications between witness and counsel during cross-examination at depositions and at trial.” The Subcommittee is near a consensus for the text of the proposed rule; though, certain issues remain. The Subcommittee will meet before the next LAC meeting so to discuss the remaining issues.
6. Donald Robinson discussed whether there is a practice requesting leave prior to filing of dispositive motions. A subcommittee consisting of the following members was appointed by the Chair to consider this matter: Jeffrey Greenbaum, Cynthia Jacob and Michael Griffinger.
7. Magistrate Judges Madeline Arleo and Claire Cecchi discussed amending L.Civ. R. 301.1(c), *Compensation to Mediators*. The proposed revision would be to increase the Mediators’ compensation by eliminating the first three hours without compensation. The Committee voted on the proposed amendment and approved the amendment to L.Civ.R.301.1(c).

Tom Curtin recommended to continue the discussion to the next meeting regarding the Court’s Arbitration program.

8. Steven Richman and James Murphy, Chief Deputy, reported on an embedded “tracking” software issue that occurred in another jurisdiction. The Court notified the Administrative Office of the U.S. Courts advising them of this matter. The Administrative Office will likely be issuing a “patch” to install in all Courts so to protect against this type of “tracking” software.
9. Judge John W. Bissell discussed the Court’s Alternate Dispute Resolution program and whether an amendment to Local Civil Rule 301.1 should be considered to include an option for neutral evaluation of a particular matter. The Committee voted and approved the proposed amendment to Local Civil Rule 301.1(e)(4) and to Appendix Q. The new 301.1(e)(4) would read:

(4) If the parties and the mediator agree, the mediation session may include a neutral evaluation by the mediator of the parties’ positions on any designated claims, counterclaims, defenses or other material issues; and the parties and mediator may arrange a schedule within the mediation timetable for briefing and discussing such matters.

301.1 (e)(4) becomes (5).

301.1 (e)(5) becomes (6).

Appendix Q II. (B). Add a new third sentence to the second paragraph of this guideline (between the sentence ending in “pleadings” and that beginning with “short” To read as follows:

Furthermore, a mediation may include the submission of “claims, counterclaims, defenses and other material issues” to the mediator for his or her evaluation as a neutral, at any point in the mediation, should the parties so agree. See L. Civ. R. 301.1 (e)(4). The purpose of neutral evaluation by the mediator is to secure his or her views on material issues which, often because of contrary positions strongly held by the parties, are erecting barriers to a negotiated settlement. Such a neutral evaluation may result in an advisory opinion as to the strengths and /or weaknesses of a party’s legal or factual position on an issue so presented to the mediator. It is anticipated that, upon completion of any such evaluation and its assessment by the parties, either the action will settle or the mediation will resume to its conclusion.

10. Jack O’Brien reported on amendments to the Local Rules to reflect the changes (Revision of Computation of Time) to the Federal Rules of Civil Procedure effective December 1, 2009. The Committee voted and approved the proposed amendments to the Local Rules of the Court. The proposed amendments will be submitted to the Court’s Rules Committee.
11. The meeting was adjourned at 5:00 P.M. Thomas Curtin will notify the members of the date of the next LAC meeting.

Respectfully submitted,

John T. O’Brien