

Minutes of the Federal Practice Section Executive Committee Meeting
May 9, 2007

In attendance were:

Anne Marie Blanchard, George Cahill, Hon. Robert Chatigny, Hon. Warren Eginton, Jonathan Einhorn, Charles Goetsch, Hugh Keefe, Hon. Mark Kravitz, Ethan Levin-Epstein (Co-Chair), Margaret Mason, Patrick McHugh, Robert Oliver, Richard Order, Paul Sanson, David Schaefer, Hope Seeley, Tim Shearin, Frank J. Silvestri, Jonathan Tropp (Co-Chair), Hon. Stefan Underhill and Jacob Zeldes.

The meeting was called to order by Ethan Levin-Epstein at 6:40 p.m. at the Quinniack Club in New Haven.

1) Chief Judge Chatigny reported that Judge Vanessa Bryant has come on duty and has begun to accept civil cases, including cases that have been transferred from other Judges. She is temporarily located in the old Tax Court, and will soon relocate to Magistrate Judge Smith's former chambers. Magistrate Judge Smith is paired with Judge Bryant. Notwithstanding systemic concerns regarding the vanishing jury trial, our District is presently busy with trials. Judge Chatigny reported the Chief Justice's single-minded focus on obtaining a judicial pay raise.

2) Jonathan Tropp reported on the Civil Practice Committee's deliberations concerning proposed amendments to the Local Rules. The Court has proposed new Local Rule 7(f), which is open for public comment until May 14, 2007, with a planned effective date of June 1. Rule 7(f) would require a party moving to amend a pleading to report the adverse party's position on the motion. Some members of the Civil Practice committee had questioned the utility of the proposed rule, while others anticipated that the rule might reduce delay or objection or both. Rule 5(d), concerning sealing of the court and of judicial documents, will be addressed by the Court at its meeting on July 13, 2007, and the Court has requested input from the Bar before it votes. Rule 5(d) would prevent the sealing of proceedings to which a First Amendment right attaches, absent urgent circumstances and compelling reasons based upon particularized findings after notice to the public. Rule 5(d) also provides three mechanisms for seeking the sealing of judicial documents: (1) by filing the document to be sealed with a motion, (2) by motion without filing the document to be sealed, or (3) upon permission of the Presiding Judge, by motion, with submission of the document to be sealed *in camera*. The principal concern raised by members of the Civil Practice committee was that there be a mechanism to avoid having confidential documents become available to the public in the event a motion to seal were denied. Committee members raised additional questions concerning the First Amendment qualification, the timing of a motion to seal the court, and the appropriateness of *ex parte* submissions in this context.

- 3) The Criminal Practice committee reported that similar proposed rules concerning sealed proceedings and documents were being evaluated both by the committee and within the U.S. Attorney's office.
- 4) The Executive Committee discussed the proposed Rule 7(f). Judge Kravitz explained that the Court frequently sees motions to amend to which there is no objection (or, at least, no objection that cannot be readily worked out) and that the rule is intended to minimize delay. Judge Chatigny distinguished the liberal Rule 15(a) standard for granting leave to amend from the good-cause showing that must be made for motions to amend the pleadings after a Rule 16 deadline. On motion duly made and seconded, the Executive Committee voted (12-1) to express support for Rule 7(f) as proposed.
- 5) The Executive Committee discussed the proposed Rule 5(d). Judge Underhill explained that the rule was carefully crafted to track Second Circuit precedents. A First Amendment right attaches to proceedings in open court, but not to a settlement agreement placed on the record in Chambers or, in the criminal context, to the canvass of a defendant in Chambers. Judge Underhill acknowledged that documents submitted *in camera* would be returned upon denial of a motion to seal, but cautioned that this procedure is only available with the advanced permission of the Presiding Judge. He further cautioned that Second Circuit precedent limits the ability of a judge to grant summary judgment on the basis of a sealed document, absent compelling circumstances (e.g., in a trade secrets case). Judge Underhill asked the Section to provide any comments to the Court by no later than July 6.
- 6) Ethan Levin-Epstein urged those in attendance to join us and to encourage their colleagues to join us for our annual Pine Orchard Social, which will be Wednesday, June 6. The Judges have been polled and, notwithstanding the annual Second Circuit Conference the next day, most of the Judges expect to attend the Social.
- 7) The minutes of the April 11, 2007 meeting of the Federal Practice Section were approved.
- 8) Jonathan Tropp encouraged committee members to spread the word that we will have two CLE programs, one on May 29 at the CBA Headquarters concerning Settlement Conferences and Mediation in the Federal Court with Judges Martinez and Garfinkel and Tim Shearin, and one during the morning session of the CBA annual meeting on June 18, 2007 on E-Discovery with Brad Babbit, Erika Amarante, Ross Garber and Elizabeth Stewart.

The meeting adjourned at 7:45 p.m.

Respectfully submitted,

Jonathan B. Tropp