

Center Management Council
September 20, 2022
Report of Legislation & Rules Committee

FEDERAL JUDICIAL SECURITY

Congress is considering legislation directed at improving security for Federal Judges, in part by allowing their identifying information to be removed from the Internet. NJ is very interested, because as you may recall a son of a Federal Judge was killed at the family's front door in 2020, by a disgruntled litigant and in 2005 the family of a Federal Judge in Chicago was murdered by another disgruntled litigant. The Senate has marked up the bill but has not voted on it, apparently because some Senators want to add a provision to improve security for members of Congress.

I was reminded of this bill during an Ohio State Bar meeting because the New Jersey Bar is asking other state bar associations to write their congressional delegations in support of the bill. That effort prompted me to ask whether this may be an issue that DRI and the SLDO's might be interested in considering whether to support.

Attached is what I found on the ABA site, which supports the legislation and copies of the House and Senate versions of the bill. The Senate version is the most current version.

CLASS ACTION TASK FORCE

LCJ has submitted a proposal to amend Federal Civil Rule 23(b)(3). They are looking for others to support the amendment, but there is time to consider this. The October meeting of the Advisory Committee on Civil Rules has canceled its October meeting.

The current provision requires the court to make a finding that a class action is "superior to other available method for fairly and efficiently adjudicating the controversy." They suggest this provision be amended to include provisions which would have the court evaluate whether non-judicial forums might make certifying a class a less superior method to address the issue affecting potential class members. Here is their proposed language:

"(b) Types of Class Actions. A class action may be maintained if Rule 23(a) is satisfied and if:

(3) the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy **or otherwise providing redress or remedy**. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions, including the potential for higher value remedies through individual litigation or arbitration and the potential risk to putative class members of waiver of claims through class proceedings;
- (B) the extent and nature of any (i) litigation concerning the controversy already begun by or against class members, (ii) **government action, or (iii) remedies otherwise available to putative class members**;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.;
- (E) **the relative ease or burden on claimants, including timeliness, of obtaining redress or remedy pursuant to the other available methods; and**

(F) the efficiency or inefficiency of the other available methods.”

LCJ’s 13-page suggestion can be found here: <https://www.uscourts.gov/rules-policies/archives/suggestions/lawyers-civil-justice-22-cv-l>

FEDERAL RULES TASK FORCE

LCJ has submitted several new proposals in the last few weeks. One asks the Advisory Committee on the Appellate Rules to amend Rule 26.1 to “require disclosure of non-party outcome-contingent rights to settlement or judgment proceeds tied to the outcome of cases, specifically including such interests arising from litigation investment contracts.” This 5-page suggestion can be found here: <https://www.uscourts.gov/rules-policies/archives/suggestions/lawyers-civil-justice-22-ap-c>.

They were joined by the U.S. Chamber of Commerce Institute for Legal Reform when they suggested this same issue be addressed by the Advisory Committee on the Civil Rules by adding this language to considerations included in Civil Rule 16(c)(2) for discussion at Pre-Trials:

“Consider whether any person (other than named parties or counsel of record) has a right to compensation that is contingent on obtaining proceeds from the civil action, by settlement, judgment or otherwise.”

Their 8-page suggestion can be found here:

<https://www.uscourts.gov/rules-policies/archives/suggestions/lawyers-civil-justice-and-us-chamber-commerce-institute-legal>.

WEST VIRGINIA CIVIL RULES

A representative panel of West Virginia Lawyers submitted substantial amendments to their Civil Rules as requested by Supreme Court. The effort was directed, in part, at bringing some West Virginia rules into closer alignment with the Federal Civil Rules. The rules of for the drafting panel required that the panel only submit amendments which had unanimous support. They were published earlier this summer. The comment period runs next month.

LCJ has drafted comments (Attached) and is soliciting support from major corporate and defense organizations. DRI has been requested to join LCJ’s comments. I contacted the Defense Trial Counsel of West Virginia to see whether they want DRI to assist in making comments. I learned they are submitting comments of their own, but the draft isn’t available yet. They may want our help. The LCJ comments are written from the perspective of business clients, so some of their comments may not supported by DTCWV.

I do not believe DRI should sign off on the LCJ draft until we hear back from DTCWV.