Federal Practice and Procedure Section Newsletter

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Chair's Message

by Jack T. O'Brien

While familiar to many of you, I would like to introduce myself as the newest chair of the Federal Practice and Procedure Section of the New Jersey State Bar Association. I follow in the footsteps of Beth Sher, whom I wish to thank for her active, enthusiastic leadership of our section. The other officers—Kerri Chewning, Christopher Walsh and Paul Marino—also welcome you.

Our section remains committed to highlighting developments in federal practice in New Jersey. Since my tenure began in August, we alerted members to the most recent amendments to the Federal Rules of Practice and Procedure, namely, Fed. R. Civ. P. 37, 45 and Fed. R. Crim. P. 11, 16, which became effective on Dec. 1. We will continue to email advance notice of proposed federal rule changes and adoptions and also encourage input by our members on proposed amendments to our local court rules.

We also continue our mission of presenting exciting opportunities to educate our practitioners and to introduce new members of our ever-changing federal family. Last October, we hosted a reception at the Law Center to honor our newest federal judge, Magistrate Judge James B. Clark III, and to celebrate the Hon. Patty Shwartz's elevation to the United States Court of Appeals for the Third Circuit. On Jan. 23, we co-sponsored a New Jersey Institute for Continuing Legal Education (ICLE) discussion by all of the New Jersey magistrate judges focused on topics such as protective orders, electronic and expert discovery, privileges, settlement conferences, and motion practice, to name a few. On Feb. 24, former Chief Judge Garrett E. Brown led a panel discussion at the Law Center on certain ethical issues frequently confronting our members.

On April 29, we are planning a discussion by Magistrate Judge Ann Marie Donio of issues attendant to social media. We will email further details. And, at the New Jersey State Bar Association's Annual Meeting and Convention in Atlantic City on May 14-16, the Hon. Michael A. Chagares, of the Third Circuit, will preside over the topic of appellate practice.

I hope to see many of our members at these worthwhile events.

Amidst this good news, I sadly recognize the recent loss of two friends, very dear to those in this district, Richard Collier and the Hon. Stanley S. Brotman. Rich Collier passed away on Christmas Day after a very courageous battle with cancer. Rich was not just a former chair, his dedication to this section was unsurpassed. A true federal practitioner to the end, Rich worked tirelessly on amendments to our local court rules, even when he was gravely ill. It is an understatement to say that he will be sorely

missed.

The District of New Jersey also mourns the death of the Hon. Stanley S. Brotman, who passed away on Feb. 21 at the age of 89. Throughout the judge's career he was a dedicated public servant. Judge Brotman served as a district judge in Camden from 1975 until his retirement in September. From 1989 to 1992, he acted as chief judge for the Virgin Islands. In 1997, Chief Justice William Rehnquist appointed him to a seven-year term on the Foreign Intelligence Surveillance Court. With more than 38 years on the bench, Judge Brotman is the longest-serving federal judge in the district's history, according to Chief Judge Jerome B. Simandle. Judge Brotman was a true friend to the employees of the Camden Clerk's Office. Each day during his long career, he made it a point to stop by the clerk's office to pick up his mail, to ask employees about their families and to discuss court matters. Judge Brotman's colleagues will miss his worldly experience and the Camden Clerk's Office will sincerely miss him, both as a judge and a friend. ■

Inside this issue

In Remembrance of Richard F. Collier Jr.: A Man For All Seasons

by Christopher Walsh

On Christmas Day we lost a dear friend and a great lawyer.

Richard F. Collier Jr. was chair of the Federal Practice and Procedure Committee from 1990 to 1992, during which time he and his passion for the rules of federal procedure reinvigorated the committee as a body devoted to improving the level of practice before the federal courts in New Jersey. After his tenure as chair, Rich remained committed to the committee, working with his successor, Robert E. Bartkus, to develop a book devoted to civil procedure in New Jersey's federal courts. That book was first published by the New Jersey Institute for Continuing Legal Education in 1992 and has been continuously updated since then, although it is now published by the *New Jersey Law Journal* under the title *New Jersey Federal Civil Procedure*.

Rich was a reliable contributor to the 'Book'—as it is known by many of us—from its first publication until his passing. He was also a member of the Lawyers Advisory Committee and regularly provided advice and suggestions for rule changes to the district court.

Beyond his contributions to the advancement of federal practice in New Jersey, Rich was a great advocate for his clients no matter what court he was in. He separated himself from the rest of us with his tremendous intellect, unequalled passion for his work, and limitless devotion to his clients. Many of the stories of Rich's extraordinary devotion to his clients, such as the time he drove in a middle-of-the-night snow storm to a judge's house to pursue an emergent appeal, are well known, thanks to the press coverage they received. But Rich gave all his clients the same level of attention and devotion, even if their causes were not going to be reported in the morning paper. He did not hesitate to deny himself the respite of a weekend, court holiday, or previously scheduled vacation if his clients needed him. Even as a senior attorney, he regularly pulled all-nighters to file impeccably drafted temporary restraining order papers on a day's notice.

But most of all Rich was a great person and a great friend. He had the rare ability to aggressively and passionately represent his client's interests while at all times treating his adversary and the court with dignity and respect. His sly sense of humor—which even in the most stressful situations never left him—melted away the natural tension between adversaries and made litigation fun. And his innate and abiding sense of fairness led his adversaries to quickly learn that he could be trusted not to mislead the court or take undue advantage of them. For his unfailingly fair and respectful treatment of his adversaries, Rich was named Somerset County's Professional Lawyer of the Year by the New Jersey Commission on Professionalism in the Law in 1999.

After his passing Rich was remembered as a "mensch and a credit to our profession," a "genuine gentleman," a "tough and formidable foe [who] was always fair and reasonable," a "gentleman of the old school," and a "great person and friend to all who had the pleasure to meet him."

Rich's role model as a lawyer was Sir Thomas More, who was described by a contemporary as "a man of an angel's wit and singular learning. He is a man of many excellent virtues;...a man of marvelous mirth and pastimes and sometime of steadfast gravity—a man for all seasons." Rich was all this, and much more.

Rest in peace, Rich. ■

Be Careful What You Ask For: Recent Precedent on Reviewing Arbitration Awards and the Standard Applicable to Motions to Compel Arbitration

by Maureen Coghlan

Arbitration continues to be a favored forum for companies seeking to cap costs and expedite results. Businesses typically view arbitration as a more private and flexible means of resolving a dispute. Recently, the United States Supreme Court and the United States Court of Appeals for the Third Circuit issued separate opinions that should guide companies and the attorneys who represent them when drafting and litigating arbitration agreements.

Oxford Health Plans, LLC v. Sutter[1]

In *Oxford Health Plans, LLC v. Sutter*, the United States Supreme Court addressed a circuit split as to whether Section 10(a)(4) of the Federal Arbitration Act (FAA)[2] permits a court to vacate an arbitrator's decision that an arbitration agreement provides for class arbitration. The Court unanimously answered no—if the parties requested the arbitrator to decide whether their arbitration agreement permits class arbitration. In so holding the Court rejected the argument that Section 10(a)(4) of the FAA, which directs courts to set aside an award "where the arbitrator[] exceeded [his or her] powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made," required the lower courts to set aside the arbitrator's decision. The Court reasoned that, because the parties submitted the question of whether their agreement permitted class arbitration to the arbitrator, they got what they bargained for when the arbitrator issued his opinion—even if the Court would have decided the matter differently. In other words, "the arbitrator did what the parties had asked: He considered their contract and decided whether it reflected an agreement to permit class proceedings."[3]

Did the Arbitrator Exceed His Powers?

Pediatrician John Sutter entered into a contract to provide medical care to members of Oxford Health Plans, LLC. Sutter alleged that Oxford failed to make prompt and full payments and sued on behalf of himself and a proposed class of New Jersey doctors under contract with Oxford. Oxford moved to compel arbitration based on the following contract clause:

> No civil action concerning any dispute arising under this Agreement shall be instituted before any court, and all such disputes shall be submitted to final and binding arbitration in New Jersey, pursuant to the rules of the American Arbitration Association with one arbitrator.[4]

Relying on this language, the state court agreed with Oxford and referred the matter to arbitration.

The parties then made a decision that subsequent reviewing courts would view as dispositive: They agreed that the arbitrator should decide whether their contract authorized class arbitration. When the arbitrator decided that the above clause did authorize class arbitration, Oxford filed a motion to vacate in federal court, arguing that the arbitrator exceeded his power. The district court denied the motion, a decision the Third Circuit Court of Appeals affirmed. Based on the delegation of authority to the arbitrator to decide whether the parties' contract authorized class arbitration, the Supreme Court also refused to vacate the arbitrator's decision, which he had clearly based on the parties' contract language. Despite suggestion by the Court that it disagreed with the arbitrator's reading of the contract, Justice Elena Kagan summed it up thusly: "[t]he arbitrator's construction holds, however good, bad, or ugly."[5]

Misinterpreting a Contract is Not the Same as Abandoning the Interpretive Role

The Court was careful to distinguish *Oxford Health* from *Stolt-Nielsen, S.A. v. AnimalFeeds International Corporation*,[6] a decision handed down by the Court while the *Oxford Health* arbitration was proceeding. In *Stolt-Nielsen*, the Court held that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so."[7] Unlike the *Oxford Health* case, the parties in *Stolt-Nielsen* stipulated they never reached any agreement on whether class arbitration was permissible. Therefore, the Court vacated the arbitration panel's decision permitting class arbitration given that it could not possibly have been rooted in the text of the parties' agreement when the parties *themselves* said there was no agreement to permit class arbitration. In the Court's view, the arbitration panel in *Stolt-Nielsen* exceeded its authority not by misconstruing the parties' agreement but because the panel had abandoned its role of interpreting that agreement when it imposed a procedure that was not required by the parties' contract. The arbitration decision in *Stolt-Nielsen* could not stand because "it lacked *any* contractual basis for ordering class procedures, not because it lacked…a 'sufficient one.'"[8]

Should Courts Decide Whether an Arbitration Agreement Permits Class Arbitration?

Justice Samuel Alito issued a concurring opinion in *Oxford Health*, seemingly with the intent of providing his answer to a question left unaddressed after *Oxford Health* and *Stolt-Nielsen*: whether the availability of class arbitration is a "question of arbitrability" that should be decided by courts, not arbitrators.[9] Justice Alito had serious concerns regarding whether the arbitrator's ultimate decision in *Oxford Health* could bind the absent class members. He questioned, "[w]ith no reason to think that the absent class members ever agreed to class arbitration, it is far from clear that they will be bound by the arbitrator's ultimate resolution of this dispute."[10] Nor did Justice Alito view opt-out notices for absent class members as curing the problem, given that arbitration is a matter of contract between the parties and that "an offeree's silence does not normally modify the terms of the contract."[11] Rather, Justice Alito would appear to require class members to opt-in to the class arbitration proceeding. However, equally concerning to Justice Alito was the idea that absent class members could decide whether to claim a class benefit without being bound to accept an unfavorable judgment.[12] He suggested these types of difficulties illustrate why courts should typically decide whether class arbitration is available, explaining he only joined the majority opinion because Oxford agreed to present the question of whether the parties' contract authorized class arbitration to the arbitrator.

Guidotti v. Legal Helpers Debt Resolution, L.L.C.[13]

For its part, the Third Circuit recently issued a precedential opinion that emphasized the underlying theme in *Oxford Health*—that arbitration is a matter of consent—and clarified the standard courts should apply when determining whether an agreement to arbitrate exists. In *Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, the Third Circuit acknowledged its precedents were less than clear regarding what standard a court should apply when evaluating a motion to compel arbitration. The Court directed that the Rule 12(b)(6) standard applies when it is apparent from the face of the complaint, or the documents relied upon in the complaint, that a party's claims are subject to an enforceable arbitration clause. By contrast, a Rule 56 standard applies where: 1) the complaint or any supporting documents cited in the complaint call the clause's enforceability into question, or 2) where the plaintiff responds with additional facts that call the enforceability of the arbitration clause into question.

Did Guidotti Agree to Arbitrate?

Dawn Guidotti entered into a contract with several parties to settle her consumer debts and filed a putative class action when no settlement materialized. Guidotti alleged the defendants promised to settle her consumer debts and convinced her to open a special bank account into which she would automatically deposit a monthly payment. She claimed fees were deducted from this account, but no settlement was achieved on her behalf.

After Guidotti filed suit, several defendants filed two separate motions to compel arbitration, while the remaining defendants either filed motions to stay or sought to join the motions to stay. Citing the attorney retainer agreement (ARA), which Guidotti signed, and which included an arbitration clause requiring any dispute to be submitted to binding arbitration, the district court ordered Guidotti's claims against certain defendants to proceed to arbitration. The district court

concluded, however, that Guidotti was not required to arbitrate her claims against other defendants. The court reasoned that because Guidotti did not receive the account agreement that contained the arbitration clause relevant to those claims at the time she signed the special purpose account agreement (SPAA), despite the fact that the SPAA referred to the account agreement, she had not consented to arbitrate her claims. The Third Circuit reversed and remanded, concluding that the district court should have applied a summary judgment standard and permitted limited discovery to determine whether Guidotti was aware of the arbitration clause in the account agreement when she signed the SPAA.

The Standard for Evaluating Motions to Compel Arbitration

In *Guidotti*, the Third Circuit directed courts deciding whether a party must arbitrate pursuant to a valid arbitration agreement to apply either the Rule 12(b)(6) standard applicable to a motion to dismiss or the Rule 56 standard applicable to a motion for summary judgment. When it is clear from a complaint, or documents relied on in a complaint, that an agreement to arbitrate exists, then the motion to dismiss standard should apply.[14]

The Rule 12(b)(6) standard is inappropriate, however, when: 1) a complaint fails "to establish on its face that the parties agreed to arbitrate,"[15] or 2) when "the opposing party has come forth with reliable evidence that is more than a 'naked assertion…that it did not intend to be bound' by the arbitration agreement, even though on the face of the pleadings it appears that it did."[16] Courts presented with this first scenario must deny a motion to compel "pending further development of the factual record."[17] Courts presented with this second scenario, which "will come into play when the complaint and incorporated documents facially establish arbitrability but the non-movant has come forward with enough evidence in response to the motion to compel arbitration to place the question in issue" should apply the Rule 56 standard.[18] Both scenarios require the court to conduct a factual inquiry into whether there was a valid agreement to arbitrate and permit limited discovery on this issue. Courts can then consider a renewed motion to compel arbitration and either grant the motion or "proceed summarily to a trial regarding 'the making of the arbitration agreement or the failure, neglect, or refusal to perform the same,' as Section 4 of the FAA envisions."[19]

Limited Discovery to See Whether Guidotti Agreed to Arbitrate

The Third Circuit noted that Guidotti presented more than a "naked assertion" that she was not aware of the arbitration clause in the account agreement and pointed to the fact that all the relevant documents had a "DocuSign header" except for the account agreement. This fact led the circuit court to conclude that Guidotti had come forward with enough evidence to trigger the summary judgment standard. In the Third Circuit's view, however, Guidotti did not establish that there was no agreement to arbitrate her claims such that she was entitled to summary judgment in her favor. Rather, a genuine issue of material fact existed regarding whether Guidotti was aware of the arbitration clause and had agreed to arbitrate. Therefore, the circuit court directed the district court to permit limited discovery to resolve this question.

In sum, clear evidence of consent should prevent a party seeking to avoid its obligation to arbitrate from coming forward with facts that would trigger the Rule 56 standard and potentially drive up litigation costs and delay resolution of the dispute. Counsel should also carefully consider how to frame the question presented to the arbitrator for resolution. When parties agree to present an issue to an arbitrator, so long as the arbitrator exercises the authority delegated by the parties and decides the matter presented, courts are unlikely to vacate the arbitrator's decision, however good, bad or ugly. ■

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Endnotes

1. 133 S. Ct. 2064, 186 L. Ed. 2d 113, 2013 U.S. LEXIS 4358 (2013).
2. 9 U.S.C. § 1 *et seq.*
3. *Id.* at 2069.
4. *Id.* at 2067.

5. *Id.* at 2071.
6. 559 U.S. 662, 130 S. Ct. 1758, 176 L. Ed. 2d 605 (2010).
7. *Id.* at 2067 (*citing Soltz-Nielsen*, 559 U.S. at 684) (emphasis in original).
8. *Id.* at 2069 (emphasis in original).
9. *Id.* at 2071, 2068 n.2.
10. *Id.* at 2071.
11. *Id.* (*citing* 1 Restatement (Second) of Contracts § 69(1) (1979).
12. *Id.* at 2072 (*quoting American Pipe & Constr. Co. v. Utah*, 414 U.S. 538, 546-47, 94 S. Ct. 756, 38 L. Ed. 2d 713 (1974)).
13. 716 F.3d 764 (3d Cir. 2013).
14. *Id.* at 773-74.
15. *Id.* at 774 (*citing Somerset Consulting, LLC v. United Capital Lenders, LLC*, 832 F. Supp. 2d 474, 482 (E.D. Pa. 2011)).
16. *Id.* at 774 (*quoting Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd.,* 636 F.2d 51, 55 (3d Cir. 1980)).
17. *Id.*
18. *Id.*
19. *Id.* at 767 (*quoting Somerset*, 832 F. Supp. 2d at 482).

District of New Jersey Adopts Sweeping Amendments to Local Civil Rules

by Jesse Ehnert

In June 2013, Chief Judge Jerome Simandle entered an order amending and adding to the Local Civil Rules for the United States District Court for the District of New Jersey (referred to here as the Local Rules).[1] The following summaries highlight the amendments, as well as their likely purposes, which were gleaned both from the plain language of the rules and the court's comments accompanying the text of the amendments when they were proposed and published for public comment in April 2013.[2]

This article characterizes each amendment as accomplishing a *clarification*, an *addition*, or a *modification*, or some combination of the three. A clarification is an amendment that is intended not to change the rule, but to prevent misunderstandings that may have occurred due to the prior wording of the rule. An addition, like a clarification, is also typically intended to prevent misunderstandings, but fills one or more gaps on issues where the rule had been silent. Finally, a modification is an amendment that is actually intended to change the effect of the rule.

L. Civ. R. 6.1 Extension of Time and Continuances

Clarification. Local Rule 6.1(b) permits a party to extend, with or without notice, the time to answer or otherwise respond to a pleading. Due to confusion about whether the rule permitted an extension to respond to an amended pleading, the subsection was revised to clarify that it does apply to amended pleadings, as well as any other pleadings that permit a response. The rule was also amended to make explicit that the deadline to request the extension is the *original* response deadline, and thus will not change even if the response deadline has been extended by stipulation or order. Be sure to note the additional requirements in Local Rule 6.1(a) for requesting an extension of time to respond; that subsection was not revised by the recent amendments.

L. Civ. R. 7.1 Application and Motion Practice

Clarification. Local Rule 7.1(d)(5) permits a party to request an automatic extension of time to respond to a dispositive motion, without consent of the moving party or the court. The effect of requesting an extension under this rule is the adjournment of the motion return date to the subsequent motion day on the court's calendar. The revision to subsection (d)(5) clarifies that the right to an automatic extension applies only to the originally noticed return date. Therefore, the rule does not apply where the return date has already been extended by stipulation or court order.

Addition. Local Rule 7.1(h) permits a party to file a cross-motion but, prior to the revision, did not specify whether the briefs in support of and in opposition to the cross-motion were to be filed separately or together with the motion papers. Nor did it provide page limits for cross-motion briefs. Due to these omissions, parties had sometimes submitted requests to file an over-length brief in order to address both the original motion and the cross-motion. The revised subsection (h) specifies that the parties will file combined briefs addressing the motion and cross motion. The revision sets a 40-page limit for the brief in opposition to the original motion and in support of a cross-motion, and a 40-page limit for the reply brief in support of the original motion and in opposition to the cross-motion. The rule does not permit a reply brief in support of the cross-motion without leave of the court.

L. Civ. R. 7.2 Affidavits and Briefs

Clarification. Local Rule 7.2(d) governs the typeface for briefs, and permits either 14-point proportional font (Times New Roman is the most commonly used proportional font) or 12-point non-proportional font (such as Courier New 12, a less popular and less readable font). The rule also allows parties to use 12-point proportional font, but due to the smaller type requires all page limits to be reduced by 25 percent. Thus, an initial motion

brief has a 30-page limit instead of 40. Prior to amendment, the rule did not explicitly state that the 15-page limit on reply briefs would similarly be reduced, to 11.25 pages, and as a result many reply briefs were up to 15 pages in length despite using 12-point proportional font. The amendment makes the 11.25-page limit explicit.

L. Civ. R. 12.1 Defenses and Objections: When and How Presented

Clarification. Local Rules 12.1 and 12.2 did not exist prior to being adopted as part of the recent amendments. Local Rule 12.1 confirms that motions to dismiss under Fed. R. Civ. P. 12(b) may be filed without prior court approval. The comments to the proposed rule explained that the new rule was in response to the practice of some magistrate judges of requiring parties to seek authorization to file motions for summary judgment. The rule clarifies that this "gatekeeping procedure" does not apply to motions to dismiss.

L. Civ. R. 12.2 Motion to Dismiss Fewer than All Claims

Clarification. Local Rule 12.2 confirms the usual practice for dealing with claims not addressed by a motion to dismiss, which is that the time to file an answer with respect to those claims is tolled pending the court's resolution of the motion.

Addition. The amendment also set a specific deadline to file an answer in response to the surviving claims, which is 14 days from the date of the court's order resolving the motion to dismiss. NOTE: Strictly speaking, Local Rule 12.2 applies only where a motion to dismiss addresses fewer than all claims; by its terms, it does not apply where a motion to dismiss addresses all claims but is not granted in its entirety. Yet in both cases, an answer will need to be filed to address the remaining claims. Because there is no rule governing the latter situation, it may well be expected that the court will fill in the gap by applying the new 14-day deadline.

L. Civ. R. 54.2 Compensation for Services Rendered and Reimbursement of Expenses

Clarification. This rule was rewritten in order to clarify the rule's initial purpose, which was to permit a party to file a motion for attorneys' fees within 30 days from the date final judgment was entered. The rule enlarges the 14-day period provided under Fed. R. Civ. P. 54(d)(2)(B)(i). The amendment makes clear that this Local Rule applies to the motion for fees itself, and not simply the supporting affidavit(s).

L. Civ. R. 67.1 Deposit in Court and Disbursement of Court Funds

Modification. This rule governs the handling of funds deposited with the court, for example from a party seeking to be relieved of responsibility over disputed funds.[3] The most significant amendments to the rule reflect changes in the Federal Court Registry Investment System (C.R.I.S.) that were intended to protect investments of the deposited funds and include the authorization for C.R.I.S. funds to be invested in non-marketable Government Accounting Series securities instead of regular Treasury bills. The revision also reflects the transition of the administration of C.R.I.S. from the Southern District of Texas, where the system originated, to the Administrative Office of the United States Courts.

Appendix D to the Local Rules, which sets forth a form of order granting a motion to deposit funds with the court, has also been revised in conformity with the amended rule.

L. Civ. R. 72.1 United States Magistrate Judges

Addition. Local Rule 72.1(c)(1)(A) governs appeals of non-dispositive decisions by a magistrate judge. The rule was amended to permit the appealing party to file a reply brief after the opposing party files an opposition brief. The deadline for filing the reply brief is seven days before the return date of the application.

L. Civ. R. 104.1 Discipline of Attorneys

Modification. Local Rule 104.1(a) governs the procedure by which the court disciplines an attorney convicted of certain crimes. Prior to amendment, the rule required the court to immediately suspend the attorney. Under the amended rule, the suspension is temporary and the court is required to enter an order to show cause why the suspension should not be permanent. An attorney's failure to respond to the order to show cause will result in disbarment. The amended rule further provides that the interests of the court will be represented by counsel, who will investigate the matter and recommend an appropriate sanction to the court.

L. Civ. R. 5.1, 5.3, 6.1, 7.2, 9.2, 9.3, 11.2, 16.1, 37.1, 41.1, 54.2, 65.1, 66.1, 69.1, 104.1 and 201.1

Clarification. These 16 rules have all been amended to reference 28 U.S.C. § 1746, the statute that permits (with certain exceptions) an unsworn declaration to be used with the same legal effect as a sworn declaration. Previously, the 16 rules had variously referred to affidavits, declarations, and certifications, and did not expressly permit an unsworn declaration. It is now clear that an unsworn statement is acceptable under these rules. Thus, Local Rule 5.1, for instance, now expressly permits an unsworn certificate of service so long as it complies with 28 U.S.C. § 1746.

NOTE: Any Local Rules *not* amended to reference 28 U.S.C. § 1746 should be interpreted to continue to require a sworn statement as described in the rule, and do not permit an unsworn statement under 28 U.S.C. § 1746. ■

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Endnotes

1. The order amending the Local Rules, which sets forth the revisions in redline, can be found online at http://www.njd.uscourts.gov/sites/njd/files/AmdRulesOrd062013.pdf.
2. The amendments proposed in April were all adopted in substantially the same form as proposed.
3. *See* Wright and Miller, *Federal Practice & Procedure* § 2991.

Overhaul of Rule 45 Clarifies and Simplifies Subpoena Procedure

by Lisa Gonzalo

Rule 45,[1] an important tool in a federal litigator's toolbox for compelling third-party discovery, has undergone its first major overhaul since 1991. Rule 45 subpoenas are essential for obtaining a nonparty's attendance and testimony at a hearing or trial[2] and are frequently used to compel a nonparty's cooperation with pretrial discovery, including attendance and testimony at a deposition, production of documents, electronically stored information or other tangible things, and inspection of designated premises.[3] On April 16, 2013, the United States Supreme Court adopted proposed Rule 45 amendments and submitted them to Congress for review.[4] The goal of the proposed amendments is to "clarify and simplify the rule."[5] The amendments went into effect on Dec. 1, 2013.

All Subpoenas are Issued from the Trial Court

One of the most significant changes is that the amended rule requires all subpoenas to be issued from the court where the litigation is pending. The amended rule permits a party to serve a subpoena anywhere in the United States. Under the old rule, the court from which the subpoena must issue depended on what the subpoena commanded: Subpoenas for trial testimony were issued from the court where the trial was to be held;[6] subpoenas for deposition testimony were issued from the court in the district where the deposition was to be taken;[7] and subpoenas for production or inspection were issued from the court in the district where the production or inspection was to be made.[8] The amendment simplifies the rule by centralizing the issuance of subpoenas from a single court, essentially creating a nationwide service of process. So, for example, if a matter is pending in one district, and a party needs to compel testimony or documents from third parties in multiple other districts, under the amended rule that party now may issue all of the subpoenas from the same trial court, rather than multiple subpoenas from different district courts.

Amendments Clarify the Compliance Court's Subpoena Power and the 100-Mile Rule

Although the issuance of subpoenas has been centralized in the trial court, the enforcement responsibilities under the amended rule still lie with the court in the district where compliance is required. The amendments create a new subsection (c), aimed at clarifying the territorial limits on the power of a compliance court to enforce a subpoena. Under the old rule, nonparty trial witnesses could be required to travel more than 100 miles, so long as: 1) the requirement would not result in "undue burden";[9] and 2) the place specified by the subpoena was within the state where the witness resided, was employed, or regularly transacted business.[10] The compliance court was permitted to condition the enforcement of such a subpoena on payment to the witness by the party who served the subpoena, where travel over 100 miles will cause the witness to incur "substantial expense."[11]

Some courts, however, have interpreted the old Rule 45 in a way that expanded the subpoena power of the court beyond its territorial limits. For example, the Rule 45 committee note comments make reference to a case, *In re Vioxx Products Liability Litigation*,[12] wherein the court compelled a witness from New Jersey to testify at a trial in New Orleans. The new subsection (c) is intended to resolve any ambiguity that existed under the old rule that would lead a court to require a nonparty witness to travel more than 100 miles, unless that witness resides, is employed, or regularly transacts business in the state.

New Authority to Transfer Subpoena-Related Motions Back to the Issuing Court

The amendments give the compliance court authority to transfer any motions made under Rule 45 back to the court where the subpoena was issued and where the litigation is pending. This is a new provision, which was added as a new subsection (f). Under the old rule,

only the court that issued the subpoena could resolve a subpoena-related motion.[13] Thus, where the compliance court was not the trial court where the matter was pending, the old rule did not provide authority for that court to transfer the matter back to the trial court for resolution. However, as discussed above, all subpoenas under the amended rule are issued from the trial court. Thus, since Dec. 1, 2013, the "issuing court" will always be the trial court.

The new amendment allows courts in jurisdictions where compliance is required to transfer the motion back to the original trial court, but only if the person subject to the subpoena consents to the transfer or if the court finds "exceptional circumstances." It remains to be seen what kinds of 'exceptional circumstances,' which are not defined in the amended rule, will tend to warrant a transfer, but the Rule 45 committee note suggests that transfers may be permitted "in order to avoid disrupting the issuing court's management of the underlying litigation" and where such interests "outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion."[14]

This ability to transfer a subpoena-related motion back to the trial court is an important change because, for example, if resolution of the subpoena-related motion involves an outcome-determinative issue, the trial court, rather than the court where the person subject to the subpoena resides, is the most appropriate court to resolve the issue. This new provision also helps to eliminate the risk of inconsistent rulings in cases where multiple subpoenas have been issued in multiple jurisdictions and are being challenged under similar objections.

Amended Contempt Provisions Account for New Transfer Power of Compliance Court

The amended rule creates a new subdivision (g), which addresses punishment for failing to comply with subpoenas. Under the old rule, there were two options for dealing with noncompliance: either the issuing party could move for an order from the issuing court to compel compliance[15] or the court enforcing the subpoena could hold that witness in contempt for noncompliance.[16] The amended rule takes into account the newly granted authority for courts to transfer subpoena-related motions, and makes clear that in the event of transfer, the power of the compliance court to hold a person in contempt for subpoena disobedience transfers to the trial court. The amended rule also contains new language clarifying that contempt sanctions are not only applicable to a person who fails to comply with a subpoena, but also to a person who disobeys a subpoena-related order.

Notice Requirement for Subpoenas to Produce Documents is More Prominent

All parties to the underlying litigation must be provided notice of the subpoena for documents before it is served. The notice requirement, which already existed under the prior rule, has been given a more prominent location within the amended rule, having been moved from Section 45(b)(1) to Section 45(a)(4).[17] The committee note comments reflect a concern over the frequency with which parties serving document subpoenas fail to give required notice to the other parties to the litigation, and noted that this amendment is "intended to achieve the original purpose of enabling the other parties to object or serve a subpoena for additional documents."[18] The amended rule requires that a copy of the subpoena be served on each party, along with the notice.

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Endnotes

1. Fed. R. Civ. P. 45.
2. Fed. R. Civ. P. 45(a)(1)(A)(iii).
3. Fed. R. Civ. P. 45(a)(1)(B)-(D).
4. The full text of the United States Supreme Court's April 16, 2013, order with proposed amendments is available at http://www.uscourts.gov/RulesAndPolicies/rules/pending-rules.aspx.
5. *See* Fed. R. Civ. P. 45 Committee Note.

6. Fed. R. Civ. P. 45(a)(2)(A).
7. Fed. R. Civ. P. 45(a)(2)(B).
8. Fed. R. Civ. P. 45(a)(2)(C).
9. Fed. R. Civ. P. 45(c)(3)(A)(iv).
10. Fed. R. Civ. P. 45(c)(3)(A)(ii).
11. Fed. R. Civ. P. 45(c)(3)(B)-(C).
12. 438 F. Supp. 2d 664 (E.D. La. 2008).
13. Fed. R. Civ. P. 45(c).
14. *See* Fed. R. Civ. P. 45 Committee Note (discussing subdivision (f)).
15. Fed. R. Civ. P. 45(c)(2)(B)(i) and 45(e).
16. Fed. R. Civ. P. 45(e).
17. This amendment applies only to notice pertaining subpoenas for documents. Notice requirements for taking deposition testimony and trial testimony from nonparty witnesses are governed by other rules. *See* Fed. R. Civ. P. 30(b)(1) (notice requirements for depositions); Fed. R. Civ. P. 26(a)(2)-(3) (pretrial disclosures pertaining to trial witnesses and expert testimony).
18. *See* Fed. R. Civ. P. 45 Committee Note (discussing changes to subdivision (a)).

An Interview With the Honorable Claire C. Cecchi, District Judge, United States District Court

by Jonathan D. Klein

The editors of the *Federal Practice and Procedure Section Newsletter* are honored to continue the interview series of judicial officers in the United States District Court for the District of New Jersey with insightful and extremely useful commentary by District Court Judge Claire C. Cecchi. Judge Cecchi has served as a judicial officer for the District of New Jersey for over seven years, first as a magistrate judge (appointed in 2006) and, since 2011, as a district judge.

As a relatively newly elevated district judge, Judge Cecchi has a unique understanding of each judicial post, and what truly makes a federal practitioner successful during each stage of litigation. The following provides a personal look into Judge Cecchi's life, inspirations, and advice for federal practitioners. The editors of the *Federal Practice and Procedure Section Newsletter* thank Judge Cecchi for taking the time to participate in this meaningful dialogue.

Q: Where did you grow up?

I grew up in Whitestone, Queens. Whitestone was a great place to grow up, with lots of personality, and I have wonderful memories of my childhood. The neighborhood today is still very much the same as when I was a child living there with my parents and brother.

Q: Where did you attend school?

I attended the Bronx High School of Science. I graduated from Barnard College, Columbia University, and Fordham University School of Law. Law school is particularly significant to me, not only for the great legal training, but also because I met my husband, James Cecchi, there on the first day of school. As I have often told the story, my maiden name was Chadirjian, and we sat together as our surnames both started with the letter C and the sections were divided that way. We just celebrated our 24th anniversary.

Q: What inspired you to become a lawyer?

During my time at Columbia, I spent a summer working at a New York City law firm. My experience there was eye opening and I developed a great interest in the law. I also knew that I wanted to give back to the community in some way through public service, and thought that becoming a lawyer would give me a unique opportunity to do so.

Q: Is there a person or mentor who you credit with helping you with your career?

I have been inspired in so many ways by the lawyers and judges I have worked with throughout my career. I started my career in the public sector and then went on to private practice. No matter what position I held or what court I appeared in, there were always role models around me helping me learn and become a better lawyer. One of the most significant lessons they taught me was that whether you are a lawyer or a judge, you must be well prepared, considerate, and respectful toward others.

Q: What do you count among your most notable life events or proudest professional accomplishments?

As for life events, nothing beats getting married and the birth of my son, James, now 10. In terms of my professional accomplishments, my proudest moments were becoming a magistrate judge and a district judge here in the District of New Jersey. Joining what is arguably the finest bench in the federal system has been a great honor, and I am proud to sit in such an outstanding district.

Q: What advice would you give to lawyers appearing before you for the first time?

The single biggest piece of advice I would give to lawyers is to come to court prepared. Appearing in court provides an important opportunity to present your case, and counsel should be ready with thorough and persuasive arguments, supported by references to the record. Counsel must have the ability to think on their feet, anticipate other issues related to their argument, and be able to answer questions from the court. Well-prepared, effective advocates are able to step out of the construct of their briefing, and understand the nuances of both the facts of their case and the applicable law. In other words, a lawyer's credibility is enhanced by a firm command of the record and the ability to engage in a dialogue on discrete portions of the case law. An attorney who comes to court unprepared cannot fully take advantage of the opportunity to present their client's position and make a favorable impression on the court.

Counsel should also recognize that effective oral argument requires more than a mere recitation of the arguments laid out in briefing. It should be assumed that the court has read and is familiar with everything submitted up to that point. Good oral argument crystallizes and reinforces your position, but also frequently focuses on filling gaps, addressing weaknesses in your argument, or specifically rebutting arguments of opposing counsel.

Lawyers should always be mindful of their tone. All attorneys should be respectful of their adversaries and court staff. Do not interrupt opposing counsel when they are speaking. Let them finish their argument and then present your position. The court appreciates respect and civility amongst counsel.

Q: How would you describe your ideal brief?

An ideal brief is concise, direct, and clearly conveys a story. The best briefs contain well-reasoned, thorough, and fully researched arguments that allow the reader to follow the factual and legal analysis from Point A to Point B. If I can follow your argument throughout your brief and it is strongly supported, it is far more likely to be persuasive, which, of course, is the ultimate goal of any brief.

It is also very important that a brief not substitute conclusory statements of law for fully reasoned arguments. Briefs submitted to the court too often contain a recitation of case law, followed by a request for the court to reach a specific conclusion. A well-written brief, however, is one that applies the law to the specific facts of the case, and analyzes the law in terms of the specific questions before the court.

Of course, a good brief must also have all the basics, such as a sufficient statement of facts and a proper framing of the issues presented to the court. In addition, far too many litigants forget to address simple but necessary things, such as the relief being sought or particularized standards of review. With so many issues pending before the court at any given time, a brief that directly hits all relevant issues is helpful to the court and better serves a client's interests.

Q: Do you accept informal letter briefs?

Yes, I accept informal briefs on certain matters. For instance, an informal brief may be appropriate when the court asks for supplemental briefing or when counsel is addressing a non-dispositive issue. In those circumstances, full-blown briefing may not be required and it would be beneficial for both the parties and the court to deal with the issues quickly, without bogging down the case. In contrast, informal letter briefs usually will not be appropriate on a summary judgment or other dispositive motion. Before filing an informal letter brief, counsel should call chambers to determine whether it is appropriate in that particular case.

Q: What do you think are the most important attributes of a successful federal practitioner?

We have so many highly skilled attorneys in this district. Successful lawyers are able to advance their client's positions in a way that brings their case to life and allows the court to follow their thinking and analysis. A strong attorney is also able to cite to case law or support within the record for their positions and synthesize the issues for the court to decide. Good lawyers present all facts to the court, even those that are not favorable, and know when to yield an argument if their position is not strong. They do not twist the facts, needlessly repeat themselves in argument to the court or to a jury, or make arguments unrelated to the issues that need to be decided. Last, but certainly not least, good attorneys are courteous and civil, while remaining strong advocates for their client's interests.

Q: What is your preferred procedure for receiving notification of an application for emergency relief? For example, should a practitioner file an emergent motion as well as contact your chambers to provide notice that a party is seeking emergent relief?

The typical procedure for filing an application for emergency relief involves contacting the clerk's office to inform them that an emergent application is forthcoming. Once the application is electronically filed, counsel should also call chambers to inform my courtroom deputy that the matter is pending.

Q: With regard to a motion to seal, do you prefer that materials subject to the motion be submitted to chambers in addition to being filed with the court?

Yes, material subject to a motion to seal should be submitted directly to chambers. Motions to seal are typically referred to the magistrate judges for disposition. Counsel should consult the magistrate judge's preferences for further guidance on motions to seal.

Q: How would you recommend an attorney proceed if he or she thinks that oral argument would be particularly helpful to the court?

Oral argument can be extremely helpful in highlighting or narrowing down points of contention. There are times when the briefing does not fully capture the heart of the parties' dispute. If counsel believe argument is warranted, they should request oral argument in their brief and follow up by sending a letter to chambers detailing the reasons why oral argument will be helpful. In certain instances, the court may schedule oral argument without receiving a request from the parties. By holding oral argument, the court can bring the relevant legal and factual questions into focus, streamline the questions that must be answered, or gain a fuller perspective of the scope of the issues in a case.

Q: Is being a judge what you thought it would be?

Becoming a judge is everything I thought it would be and more. Every day I am faced with new and interesting challenges, which I welcome wholeheartedly. I am very lucky to have outstanding colleagues who I am so proud to work with on a daily basis. In addition, this district has some of the most talented attorneys in the nation who inspire me with their skill and dedication. Also, knowing that I am serving the public has been immensely gratifying.

Q: What do you find to be the most challenging difference between being a magistrate judge and a district judge?

I have greatly enjoyed serving both as a magistrate judge and as a district judge. In many ways, the positions are different sides of the same coin, and my experience as a magistrate judge prepared me well to serve as a district judge. Because I served as a magistrate judge, I was familiar with the types of cases that would be part of my docket as a district judge. Similarly, I understood how cases evolve in federal court. Of course, there are differences in the types of motions pending before the two judges—with the district judge focusing on dispositive matters. Nevertheless, the overall concepts are fundamentally related. In the end, a successful case results from the team effort between the magistrate judge and district judge.

Q. What is your view on alternative dispute resolution?

I think ADR is an important complement to litigation. When I was in law school, one of my first exposures to ADR was when I interned with the staff counsel on the Second Circuit who was responsible for mediating cases on appeal from the district court. Getting to be a part of that process at an early stage in my career really allowed me to see the benefits of having the parties analyze their issues through a give-and-take and have a direct hand in crafting their own futures.

It may be the case that a client's best interests are served not by litigation, but by mediation. ADR offers parties the ability to shape the outcome of their case and determine how it concludes. Many parties who start off opposed to the idea often find that they are able to resolve their disputes through mediation. The District of New Jersey has a wonderful roster of accomplished mediators who have successfully resolved a multitude of cases. I would encourage all counsel to consider utilizing ADR in their cases. ■

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Political Turmoil, Family, and Compromise Appointments: The Nominations of the Judges Dickerson

by Sara F. Merin

Two of the District of New Jersey's earliest judges were brothers, and they served back-to-back tenures on the court.[1] The consecutive appointments of Mahlon and Philemon Dickerson—each a political leader of New Jersey in his own right—were the result of a compromise during turbulent economic and political times to preserve the president's party's narrow majority in the House of Representatives.[2]

The 1830s were politically divisive, with the Whigs gaining influence and the Jacksonian Democrats fighting to maintain a majority in Congress and to hold back the Whigs' national rise.[3] Both Mahlon and Philemon Dickerson were Jacksonian Democrats and loyal supporters of President Martin Van Buren, also a Jacksonian Democrat.[4]

The tensions and conflict of this era are captured in Philemon Dickerson's experience as a member of Congress from 1839 to 1841. Dickerson was elected to the House of Representatives as one of a New Jersey delegation consisting of four Democrats and one Whig.[5] The House was evenly divided, and the New Jersey delegation was the deciding factor to determine whether the Democrats or the Whigs were the body's majority party.[6] New Jersey's governor—a Whig—rejected the election returns from two towns and, as a result, sent a delegation to Congress from New Jersey that consisted solely of Whigs. The wholly Whig New Jersey delegation was rejected by the House of Representatives in a partisan battle, and the mixed slate of winners—including Dickerson—was seated.[7] This, however, did not occur until July 1940, a year and a half into the two-year term.[8]

Philemon Dickerson's sought-after means of an exit from the contentious political atmosphere came in 1940, when in June District of New Jersey Judge William Rossell died, leaving a vacancy on the bench.[9] Philemon actively courted the judgeship, even asking President Van Buren for the position.[10]

While not unsympathetic to Philemon's desire for the judicial position, President Van Buren was unwilling to upset his party's narrow majority in the House of Representatives.[11] A compromise resulted. On July 13, 1840, the president nominated Mahlon Dickerson—18 years Philemon's senior and recently retired from an esteemed career in politics—to the position as a placeholder until after the 1840 election and the conclusion of Philemon's full term in Congress, and made it clear to Philemon that the position would be his eventually.[12] Mahlon, however, was not privy to this arrangement; the news of his nomination was a surprise.[13] Mahlon nevertheless accepted the nomination and was sworn in on Aug. 3.[14] He, however, noted in his diary that, if Van Buren "had consulted me before hand the appointment would not have been made."[15] Philemon ran for re-election in 1840 and lost, a loss attributable to economic turmoil and the success of the Whig party, which included the election of a Whig president, William Henry Harrison.[16] In March 1841, Mahlon quietly resigned, and Philemon became the sixth judge of the District of New Jersey.[17]

A Brief Biography of Philemon Dickerson

Philemon Dickerson took the district bench in 1841 and served until his death in 1862.[18] Before becoming a district judge, he was active in Democratic politics, but he was not an equivalent force to his elder brother.[19] A lawyer by training, Philemon served in the New Jersey Assembly from 1821 to 1822 and was elected to two terms in the House of Representatives, serving from 1833 to 1836.[20] In the fall of 1836, Peter Vroom was elected governor of New Jersey but declined due to ill health, and the Legislature offered the position to Dickerson.[21] He accepted, resigning his position in Congress, but his tenure as governor was short-lived, lasting only one highly acrimonious year marked primarily by partisan

gridlock between the Democrats and the Whigs, before he was voted out of office.[22] Dickerson then ran for and was elected to Congress in 1839, as discussed above, experiencing yet another acrimonious partisan situation.

A Brief Biography of Mahlon Dickerson

The elder brother, Mahlon Dickerson, was nominated to the court by President Martin Van Buren in 1840.[23] He was confirmed by the Senate and received his commission in the same year.[24] He served for only one year.

Before becoming district judge, Mahlon Dickerson had retired home to New Jersey at age 68 in 1838, marking what appeared to be the end of an illustrious political career in state (New Jersey and Pennsylvania) and federal politics, including judicial service in New Jersey.[25] As explained in a 2006 history of the court, Dickerson's career in government "was characterized by a winning personality, faithful Democratic loyalties, and administrative talents of a high order."[26]

Mahlon Dickerson's political career in New Jersey began in 1810, when he returned to the state upon inheriting his father's iron mine after working as a lawyer in New Jersey and Pennsylvania and serving in a variety of governmental positions in Pennsylvania for almost 20 years.[27] In addition to running the mine, he was elected to three consecutive terms, from 1811 to 1813, in the New Jersey Assembly.[28] He was appointed to be an associate justice of New Jersey's Supreme Court in 1813 and resigned that position in 1815 after being elected as governor of New Jersey, a position he held until 1817.[29] One of the notable events of Dickerson's term as governor was the passage of a bill to create a fund for free public schools; when the first public schools were eventually established in 1929, they were financed, in part, by income from the 1817 fund.[30]

In 1817, Dickerson moved on to the federal stage, serving as one of New Jersey's senators from 1817 to 1833—and he won two of his elections unanimously.[31] After being considered as a potential candidate for the vice presidency on Andrew Jackson's second-term ticket before Martin Van Buren was chosen for the position, Dickerson was appointed secretary of the Navy and served from 1834 until his retirement in 1838 under both Presidents Andrew Jackson and Martin Van Buren.[32] In a distinction held by few on the federal bench, a U.S. naval vessel was posthumously named after Dickerson. The U.S.S. Dickerson, a destroyer that was later converted into a high-speed transport, was commissioned in 1919 and was used by the Navy until 1945 when it was lost to enemy action following a Kamikaze strike.[33]

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Endnotes

1. Stephen B. Presser, *Studies in the History of the United States Courts of the Third Circuit* 258, 264 (Bicentennial Comm. of the Judicial Conf. of the U.S.).
2. Mark Edward Lender, *"This Honorable Court" The United States District Court for the District of New Jersey, 1789-2000* at 75-76 (Rutgers Univ. Press 2006).
3. *See* W. Robert Fallaw, *Philemon Dickerson* in *The Governors of New Jersey 1664-1974: Biographical Essays*, at 108-10 (Paul A. Stellhorn and Michael J. Birkner, eds. 1982).
4. *Id.* at 108.
5. *Id.* at 109.
6. *Id.* at 109-10.
7. *Id.* at 110.
8. *Ibid.*
9. Lender, *supra* note 2 at 75; Presser, *supra* note 1 at 258.
10. Lender, *supra* note 2 at 75; Fallaw, *supra* note 3 at 110.
11. Fallaw, *supra* note 3 at 110; Lender, *supra* note 2 at 75-76.
12. Fallaw, *supra* note 3 at 110; Lender, *supra* note 2 at 76.
13. Lender, *supra* note 2 at 76.
14. *Ibid.*

15. *Ibid.*
16. Fallaw, *supra* note 3 at 110; American President: a Reference Resource, Miller Center of the University of Virginia, *available at* http://millercenter.org/president/harrison/essays/biography/3 (Nov. 12, 2013); *see also* Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* 482-518 (W.W. Norton 2005) (a discussion of the rise of the Whigs, including the Whigs' success during the 1840 election).
17. Fallaw, *supra* note 3 at 110; Presser, *supra* note 1 at 257.
18. Federal Judicial Center, Biographical Directory of Federal Judges: Dickerson, Philemon, *available at* http://www.fjc.gov/servlet/nGetInfo?jid=615&cid=999&ctype=na&instate=na (Nov. 12, 2013); Lender, *supra* note 2 at 74-76.
19. Fallaw, *supra* note 3 at 108.
20. *Id.* at 109.
21. *Ibid.*; Lender, *supra* note 2 at 75.
22. Fallaw, *supra* note 3 at 109; Lender, *supra* note 2 at 75.
23. Federal Judicial Center, Biographical Directory of Federal Judges: Dickerson, Mahlon, *available at* http://www.fjc.gov/servlet/nGetInfo?jid=614&cid=999&ctype=na&instate=na (Nov. 12, 2013) (hereinafter, "FJC: Mahlon Dickerson").
24. FJC: Mahlon Dickerson, *supra* note 23.
25. Lender, *supra* note 2 at 74.
26. *Ibid.*
27. *Ibid.*; FJC: Mahlon Dickerson, *supra* note 23.
28. FJC: Mahlon Dickerson, *supra* note 23; Robert R. Beckwith, *Mahlon Dickerson* in Paul A. Stellhorn and Michael J. Birkner, Eds., *The Governors of New Jersey 1664-1974: Biographical Essays* 94 (New Jersey Historical Commission 1982).
29. FJC: Mahlon Dickerson, *supra* note 23; Beckwith, *supra* note 28 at 94.
30. Beckwith, *supra* note 28 at 95.
31. FJC: Mahlon Dickerson, *supra* note 23; Beckwith, *supra* note 28 at 95.
32. Lender, *supra* note 2 at 74; Dep't of the Navy, Naval Historical Center, Mahlon Dickerson (1770-1853) – 10th Secretary of the Navy, *available at* http://www.history.navy.mil/photos/pers-us/uspers-d/m-dikrsn.htm (Nov. 12, 2013).
33. NavSource Online, U.S.S. Dickerson, *available at* http://www.navsource.org/archives/10/04/04021.htm (Nov. 12, 2013).