

The Metropolitan Corporate Counsel

www.metrocorpcounsel.com

Volume 18, No. 4

© 2010 The Metropolitan Corporate Counsel, Inc.

April 2010

Lewis F. Collins, Jr.: A Year Of Accomplishment – Keeping LCJ Focused On Procedural Rule Reform

The Editor interviews Lewis F. Collins, Jr., President, Lawyers for Civil Justice (LCJ) and Partner, Butler Pappas Weihmuller Katz Craig LLP. Mr. Collin's term as president of LCJ expires in May 2010.

Editor: During your term as president of LCJ, it has focused on reform of the Federal Rules of Civil Procedure relating to e-discovery. Describe these efforts.

Collins: LCJ has made extraordinary progress in educating both our allies as well as key judicial rulemakers on the need for fundamental procedural rule reform which will hopefully result in a revamp of Rules governing notice pleading, discovery and motions practice. Our May 2009 and December 2009 Membership Meetings highlighted the approach in Final Report of the Joint Project of the American College of Trial Lawyers (ACTL) and the Institute for the Advancement of the American Legal System (IAALS). This Report together with the Pilot Project Rules of the IAALS constitutes the ACTL and IAALS approach which has served as the basis for our rule-making agenda. Following this action, LCJ took a whole series of actions designed to support the ACTL and IAALS approach:

First, our members formed a series of working groups, each of which is preparing different components of a major White Paper on rule reform which will be offered to underpin the need for reform at a Conference at Duke University in May sponsored by the Federal Rules Advisory Committee.

Second, LCJ encouraged its members



Lewis F. Collins, Jr.

(both corporate and law firms) as well as corporate counsel and their law firms generally to gather hard data and anecdotal evidence on litigation costs for the White Paper. We encourage our members and corporate counsel and their law firms to provide this type of information to Bruce Parker at brparker@venable.com, even after the May conference since the White Paper is a work-in-progress that will supply increasingly

useful information as the amount of data increases. The federal process moves at a slow pace and there are many states that need to address the issues.

Editor: You mentioned that issues covered by the ACTL and IAALS approach also need to be addressed at the state level?

Collins: Yes. Much more civil litigation

is filed in state court. We must be aware, however, that state rules of civil procedure are modeled on the Federal Rules. Therefore, amending the Federal rules will have a domino effect on the state procedure rules.

But, LCJ is not content to wait this process out. These issues are being tackled now at the state as well as the federal level. With respect to its efforts to support the ACTL and IAALS approach at the state level, LCJ plans to apply the lessons it learned in encouraging the states to track the 2006 e-discovery amendments to the Federal Rules. That effort continues.

Certain predictable issues addressed by those amendments – excessive discovery demands and unreasonable expectations about the preservation of inaccessible information – continue to plague producing parties at a state level. To date, LCJ has submitted written comments consistent with those amendments in many states including Alaska, Iowa, Maryland, Ohio and Virginia. More recently, we have been at the forefront of efforts to encourage other states to enact similar reforms.

I am happy to say that LCJ has been chiefly responsible for promoting a state model bill which was ultimately embraced by the American Legislative Exchange Council (ALEC), which lends some sanity to the production of e-discovery materials. This model bill is supported by other business organizations including the Chamber ILR and the CJRG.

Editor: How have LCJ's proposals for legislative reform been received?

Collins: It is quite difficult in the current political climate to achieve broad civil justice reform at either the federal or the state level. I am very concerned that the plaintiffs' bar remains one of the top lob-

bing groups in the country, particularly when it comes to supporting anti-business candidates and issues. On the other hand, defense lawyers volunteer their time by testifying at hearings and developing scholarly articles that bolster LCJ's position. In my own state of Florida, we have worked to support reform of expert evidence rules. Although we were not successful in this effort last year, we remain hopeful that the Florida legislature will recognize the benefit of eliminating junk science from the courtroom.

Editor: How useful are LCJ meetings in supporting its initiatives?

Collins: The LCJ membership meets twice yearly. But, our work continues throughout the year – with some of our committees meeting regularly throughout the year.

Our two membership meetings are extremely important to propelling the LCJ agenda. We include recognized policymakers. This enable us to learn more about their views on important issues as well as to educate them on our own perspective.

LCJ has been fortunate to have guest speakers which include federal and state judges, members of Congress and staff and even past chairmen of the House and Senate Judiciary Committees. We've also had a number of state supreme court justices, and at least one former U.S. Attorney General has joined us. We periodically include representatives from various print and electronic news media.

Editor: How has your leadership in various defense organizations helped you lead LCJ so effectively?

Collins: Serving as President of the Federation of Defense & Corporate Counsel prepared me for the great task of leading

LCJ. One of the key goals of the FDCC is the advancement of "Justice" in our civil litigation system. As president, I became familiar with the civil justice issues facing the business community. In order to be president of LCJ, one must have previously served as president of one of the three founding defense organizations of LCJ. These three defense bar organizations (FDCC, DRI and IADC) nominate, and the LCJ board confirms, the person who will assume the position of president of LCJ.

This vital partnership gives the LCJ a grass roots system of information flowing from and to LCJ through these three fine defense organizations. This interaction with defense counsel nationwide alerts LCJ to developments of which it should be aware. It also enables LCJ to call on some of them when there is a need for defense bar support on an issue. We are pleased that, in recent years, LCJ law firm members have provided the bulk of testimony at hearings, as well as provided numerous statements in support or opposition to specific proposed civil rules changes. This is extremely valuable to our corporate clients and it is a task that we enjoy because of the expertise we bring to those issues.

Editor: How can individual defense lawyers join LCJ?

Collins: Law firms are invited to join LCJ. All 65 openings for law firm associate memberships are currently filled, but interested individuals should notify LCJ Executive Director Barry Bauman of their interest in joining so that they can submit an application when vacancies occur. These can be submitted either by calling the LCJ Washington office at 202/429-0045 or submitting an application form to Barry at bbauman@lfcj.com.