

Proposal for Appointment of Expert

by Frank A. Louis

Given the target for disposition of cases in best practices, a premium is now placed on efficient management. An inherent bottleneck in the present system involved appointment of economic experts and finalization of their report. As presently structured, there is inherent delay built into the system which ranges from a minimum of two weeks to frequently as much as six weeks. The following is a proposal to eliminate this existing delay.

Generally, an expert is appointed at a case management conference. Counsel leaves the courthouse and within a few days writes to the expert advising of the appointment. The expert then forwards a retainer letter to counsel, who then forwards the letter to their client. By the time everyone signs the agreement several weeks are lost. Given the practical realities of business, most experts will not begin work (nor should they) until the retainer is received and the retainer agreement executed. No work begins until payment is made. The delays are substantial and avoidable.

The proposed system would require a joint effort between bench and bar to reach the goal that selection of the expert, definition of the scope of their responsibilities, execution of the retainer agreement and obtaining the initial document request are all done the same day. The attached proposed order contains specific time periods when certain things must be done. This procedure can be implemented on a vicinage basis by the bench and bar cooperatively selecting experts whose resume, initial retainer agreement (including their

fee requirements) and initial document request are all at the courthouse. At case management the parties would review and execute the retainer agreement. The party who is to comply with the initial document request would leave the courthouse not only with the document request, but an order that specifically provides when the documents are to be supplied to the expert.

A proposed order, which would be signed the same day, is attached to this article. It provides not only that the retainer agreement be executed that day, but who has responsibility for payment and when it is to be paid. The order further establishes a schedule within which the initial document request is to be responded to and establishes a mechanism to advise the court of non-compliance. In paragraph six of the proposed order, that responsibility is allocated to the expert.

The order has substantive provisions that might minimize delay. In paragraph 1, the expert is advised of the valuation date and in paragraph 2 the expert is directed to prepare a current cash flow analysis. There are too many cases where the expert prepares a valuation report but does not prepare a current cash flow analysis. This is important, since business assets are valued as of the filing date but support is determined based upon the circumstances in existence at trial. The lack of current cash flow becomes another reason a case is not "ready" for an early settlement panel.

This procedure contemplates an expert book located at the courthouse. This book would contain not only the resume, but also the retain-

er agreement, the expert's proposed fees and the initial document request so counsel and the parties have options in selecting experts. If they cannot agree on an expert, then the court, in entering a case management order, would select the expert.

The order contains a requirement that experts bill parties on a periodic basis. This would be consistent with the obligation now imposed upon counsel, and would have the salutary effect of keeping the parties advised as to the cost. Cost is always a factor to be considered in evaluating the desirability of settlement.

The close working relationship between bench and bar required to implement this procedure is consistent with the broad and appropriate partnership that should exist between bench and bar.

Chief Justice Robert Wilentz commented on this partnership on several occasions. On March 19, 1987, in a speech at the New Jersey State Bar Association Long-Range Planning Conference, Chief Justice Wilentz discussed the role the bar would play with the Supreme Court:

My guess is that the ultimate resolution of the question about the Bar's role in judicial administration will depend on how much time the Bar — how much time particular lawyers — are willing to spend. This is not a challenge. It's simply a very practical question. More difficult for me to envisage are the limits and the structure of the Bar's role at the state level, your role in that part of judicial administration that includes designing the entire system, revising it, evaluating it, making the rules, and making it work. While the Supreme Court and I have the ultimate responsibility, nothing prevents us

from sharing in a process if it promises better rules, a better system, and better performance. (emphasis added)

In that same speech, he discussed the sharing of both "administrative and policy functions," noting:

Some limits to the experiment seem certain: the concept of a statewide judiciary administered by one person — the Chief Justice — pursuant to the policies of one board — the Supreme Court — is not only constitutionally mandated, it has proven itself. It has worked and

worked well. That limit, however, as I view it, *doesn't in any way — short of surrendering ultimate responsibility — prevent a sharing both of administrative and policy functions if that appears to be the way to make the system work even better.* (emphasis added)

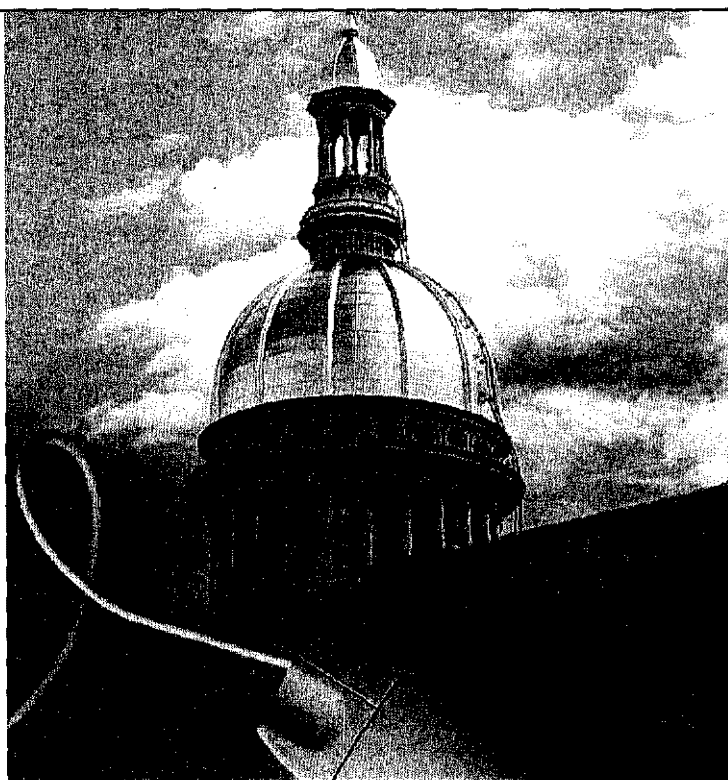
At the dedication to the Bar Center in April 1998, his comments mirrored arguments advanced by the lawyer members of the sub-committee in discussing the role of the Bar Association in judicial education. He noted:

The stature of this Bar Association is such that the Court will soon be considering *practical means of greater involvement of this Association in judicial administration at both the state and vicinage level.* The New Jersey State Bar Association deserves and has the respect of the Supreme Court. (emphasis added)

With this cooperative effort I believe the systemic goal of efficiently moving cases can be achieved. ■

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