



Judges Michel and Rader at the AIPLA 2010 Annual Meeting

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At the AIPLA 2010 Annual Meeting on Thursday, Chief Judge Rader and Judge Michel served on a panel discussing the role of amicus briefs at the Federal Circuit. They were joined by Paul Clement, Seth Waxman, and Patrick Coyne, outgoing Chair of the AIPLA Amicus Committee, along with Jay Thomas from Georgetown. As expected, it was a spirited discussion, covering everything from what the Judges find persuasive in amicus briefs, to the value to the court of filing amicus briefs at the petition for rehearing en banc stage in addition to on the merits, to the role of amicus like the AIPLA and others in affecting the development of the law.

The Judges noted that in some instances, when the Supreme Court has granted certiorari and asked for the views of the Solicitor General's office, the court discovers that the office disagrees with the Federal Circuit's decision. Judge Rader noted that it would be helpful to the court to know this at the time the case is pending before the Federal Circuit, and queried whether and how to get the views of the Solicitor General when the government is not actually a party to most cases before the Federal Circuit. The panelists agreed that merely summarizing the parties' arguments on the merits did not make for an effective amicus brief; rather, it was more important to provide the organization's perspective on various consequences each party's arguments may have, or to develop arguments the parties did not address in their briefs. Judges Rader and Michel both agreed that an amicus brief that does not advocate one side or the other can nevertheless be very effective at giving the court the amicus' perspective on the law and the case. Interestingly, the Judges supported the submission of amicus briefs at the petition for rehearing stage, because that is a very important stage at which the court considers the state of the law and the merits of the case, and amici's perspective can be very helpful then.

Patrick Coyne explained the process for the AIPLA agreeing to file an amicus brief on a given topic, which takes at least six weeks in most cases if not more. He urged the audience to seek

the AIPLA's input early on in a case to give ample time for AIPLA to make its decision and draft its brief. He also explained that AIPLA will not discuss the position that it intends to take with a party before filing, nor will it give access to drafts of the brief.

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