

**PHILADELPHIA BAR ASSOCIATION
STATE CIVIL LITIGATION SECTION
MINUTES - QUARTERLY MEETING OF MAY 4, 2005**

The meeting was called to order at 12:30 p.m. by Section co-chair Ron Kovler. He introduced co-chair Rudy Garcia and commented on the full house present in the 11th Floor Conference Center for the featured topic of the meeting, "A Practical Perspective from the Team Leaders".

I. INTRODUCTION: HONORABLE WILLIAM MANFREDI

Ron Kovler introduced the Honorable William Manfredi, Supervising Judge of the Civil Section of the Philadelphia Court of Common Pleas. Judge Manfredi gave a brief history of the Day Backward/Day Forward Program. When it originated in 1992, there was a 26,000-case backlog and it took up to seven years to get to trial. Presently, there is no significant backlog and the most complex cases get to trial within 24 to 30 months.

Judge Manfredi described the current system as "event driven" and pointed out that the focus and activity of each judicial team varies with the age of its caseload. He also emphasized that the team leaders have different management styles, so that counsel should know their forum. The presentations of the judicial team leaders which followed underscored this observation.

Judge Manfredi introduced the team leaders and the number of cases and judges in each program:

<u>Judge</u>	<u>Program Year</u>	<u>Caseload No.& Age</u>	<u>Judges Assigned</u>
Hon. Jacqueline Allen	2005	1350 cases; 4 mos.	1
Hon. Arnold New	2004	3250 cases; 17 mos.	3
Hon. Sandra Mazer Moss	2003	986 cases; 29 mos.	4
Hon. Allan L. Tereshko	2002	329 cases; 41 mos.	5

Judge Manfredi stated that 14,000 cases were filed in 2004 in the Mass Tort/Complex Litigation Program, many brought by counsel from outside the Commonwealth seeking to take advantage of the efficiencies of the Philadelphia court system which have been recognized nationwide. He stated that, in late 2005, all judges will be dedicated temporarily to the Mass Tort Program in a concerted effort to reduce the caseload of that program, which currently consists predominantly of Fen-Phen cases. Judge Manfredi then turned the meeting over to the team leaders for their respective presentations.

II. HONORABLE ALLAN L. TERESHKO - 2002 PROGRAM

Judge Tereshko stated that his is the oldest active program, with about 300 cases, half of which are deferred. Of the 150 active cases, 100 are complex cases, 25 are standard track and the remainder on the expedited track. Since all of these cases are trial ready, Judge Tereshko prefers to provide a date certain for trial rather than use a pool approach.

The MIXX cases in this program have been stayed to date because of the insolvency. While Philadelphia courts have honored the stay, courts in other counties have not. He is trying to maintain flexibility regarding listings of these professional liability cases, which are the most problematic of his inventory. He has targeted completion of these cases by the end of 2005.

Most of the motions confronting Judge Tereshko's team are dispositive motions or motions in limine. Whenever possible, Judge Tereshko will decide summary judgment motions himself, since trial judges are only assigned a day or two in advance of trial.

III. HONORABLE SANDRA MAZER MOSS - 2003 PROGRAM

Judge Moss stated that her inventory consists of those cases filed in 2003, plus cases left over from programs prior to 2002. She organized her presentation around certain topics and tips she has regarding those topics:

A. Discovery

- The rule requiring a certificate of good faith does require counsel to confer regarding the discovery dispute and to make a serious effort to resolve it before seeking court intervention.
- There needs to be better communication between counsel regarding, e.g., setting of deposition dates and other scheduling issues.
- An emergency motion must involve a real emergency, i.e., something unforeseeable, not just an impending deadline.
- Counsel should not attempt to secure discovery under the guise of a motion for sanctions or some other motion allowed after the deadline.

B. Pretrial Conferences and Trial

- Judge Moss stated that each judge conducts the conference differently. Her focus is on trial scheduling issues, so that only counsel knowledgeable about the case should attend.
- Judge Moss will set a trial date pursuant to the agreement of counsel if it is concrete and reached while she is still able to accommodate such an agreed upon date. Avoiding trial date overloads is a major consideration.
- For pool cases, Judge Moss gives only overnight notice, not 24 hours' notice.
- She reiterated that if a date certain is required, counsel should make the request, but do so timely.

C. Petitions for Extraordinary Relief

- Grounds supporting this petition must be truly extraordinary, e.g., a recently-joined party which requires more discovery, serious illness or an unforeseen problem with expert availability.
- Put the most compelling reason for the requested relief in first sentence of the petition.
- Avoid requesting a change of the trial date if possible, but if that must be requested, explain why up front.
- When Judge Moss's Order says no further extensions will be granted, she really means it.

D. Settlement Conferences

- The conference should be attended by knowledgeable counsel, not just a "warm body."
- Defense counsel should bring the insurance adjuster to the conference whenever possible.
- Both counsel attending should have meaningful settlement authority.

IV. HONORABLE ARNOLD L. NEW - 2004 PROGRAM

Judge New stated that his case inventory of 3,000 cases requires an approach different from that of Judge Moss. He cannot schedule trials for a date certain; there are too many of them and too many variables, including the availability of judges and counsel, as well as the age of the case (the oldest

cases are given priority). Judge New stated that team leaders meet every Thursday afternoon to review the number of available judges and the cases ready for trial. Given the number of variables, it would be unfair for Judge New to give a date certain, because he probably would not be able to honor it.

Judge New is currently engaged primarily in conducting pretrial conferences. He schedules them for 20-30 minutes each. He reads all the pretrial memoranda and reports of judges pro tem. He places great importance upon the timely submission of the pretrial memo, and has Frank Checkovage contact counsel who have not submitted a pretrial memo by 15 days before the conference. He has sanctioned counsel who have failed to submit a pretrial memorandum or not done so until the day of the conference.

Judge New conducts discovery court for his program on Tuesdays. When reviewing preliminary objections and summary judgment motions, he reviews the docket for the case to determine if another judge has already ruled on an issue presented. He asks other judges on the team to assist him and tries to keep the same judge involved with a given case.

Because of the volume of cases currently in the program inventory, Judge New does not have the luxury of conducting settlement conferences, although the issue may be discussed at the pretrial conference if requested by counsel. Conversely, if an attorney tells him that a case is not going to settle and a settlement conference is a waste of time, he will not insist on one.

Regarding petitions for extraordinary relief, Judge New wants to see a full exposition of the reasons favoring relief. Movants must demonstrate diligent effort in conducting discovery in order to justify the award of relief. About 40% of cases include a motion for extraordinary relief. He does not favor requests for changes of a trial date, but allows that sometimes the request is justified, so that counsel should make the request if it is truly warranted.

V. HONORABLE JACQUELINE ALLEN - 2005 PROGRAM

The 2005 Program caseload is still relatively light, so for the time being, Judge Allen is the only judge assigned to the program. She is available to assist in cases involved in earlier programs and invites interested counsel to contact her when she sits in her Discovery Court on Mondays at 9:30 a.m. She will also make herself available to participate in conference calls with counsel to resolve disputes where it is unnecessary to create a record.

Judge Allen urged counsel to review the Civil Administration at a Glance booklet produced by court administration. Most of the protocols are there and counsel should be familiar with them. Charles Mapp mentioned that the new volume will be available in June 2005.

Judge Allen mentioned that she was trained by Judge Moss and follows her approach to handling cases in most respects.

VI. CONCLUSION OF PRESENTATION

The judges expanded upon the foregoing topics in response to inquiries from the audience. The Committee gave a resounding round of applause in appreciation for the judges' presentations.

VI. OTHER BUSINESS

Rudy Garcia presented the minutes of the January quarterly meeting, which were approved.

Because of the lateness of the hour, he dispensed with reports from the Section's committees, and instead referred everyone to the committees' minutes for details of all the great work that has been done to date. He also reminded everyone to watch for the committees' meeting notices for information on upcoming programs.

He mentioned the Section's continuing role in providing input to the Court regarding implementation of recommendations made in the highly complimentary report by the National Center for State Courts. He mentioned that the standard discovery proposed by the Compulsory Arbitration Committee has now been adopted by the Court. He also explained that the Court is considering a procedure which would allow counsel to obviate the need for a case management conference by submitting an acceptable proposed case management order in advance. Overwhelming support for that approach was confirmed by a show of hands.

He also announced that the Bar Association's new website will be launched around Labor Day and will be customizable by each member. Suggestions for content that would be useful to members of the Section may be sent to Rudy at his e-mail address: rgarcia@saul.com.

The co-chairs reminded the Committee that the next quarterly meeting will take place in September and advised that the December quarterly meeting will be a holiday party.

The meeting was adjourned at 1:40 p.m.

Respectfully submitted,

Melvin R. Shuster

Acting Section Secretary