

STATE CIVIL LITIGATION SECTION

Minutes of Quarterly Meeting

October 1, 2008

The third quarterly meeting of the Philadelphia Bar Association State Civil Litigation Section (ACLS@) was called to order by Co-Chair, Thomas Wilkinson, Esquire. An announcement was made regarding leadership positions with the Rules and Procedure Committee, the Arbitration Committee and the Medical Legal Committee, and Executive positions with the CLS. Tom Wilkinson also announced that on November 5, 2008, the Rules and Procedure Committee would discuss new rule changes and the proposed adoption of a rule similar to Federal Rule of Evidence 502. Finally, it was announced that on December 8, 2008, the CLS will hold its holiday reception Upstairs at Varalli, during which members of the Judiciary would be honored.

Chancellor A. Michael Pratt next addressed the Section. He applauded the work of the Sections and Committees of our Association, describing them as the most important thing the Bar Association does. He emphasized that we work as an integrated Bar and that we have the full support of the leadership of the Bar. Mike Pratt then spoke at length on diversity and the goal of inclusion in the legal profession regardless of race, gender, generation or sexual orientation. He commented that the Bar has made symbolic strides and challenged all of us to individually pay attention to diversity, as he put it: ATo value the qualities of everyone regardless of differences. Mr. Pratt also called upon the CLS members to be mentors, especially for young attorneys seeking to enhance their professional careers. He stressed that we must act as a shining example to assure diversity in the legal profession.

Tom Wilkinson then introduced special guest, Associate Justice Jane Cutler Greenspan. He summarized her educational background, extensive experience and distinguished career which has included a Clerkship with the Honorable Robert N. C. Nix, Jr., more than ten years as an Assistant District Attorney in Philadelphia where she served as Chief of the Domestic Violence Unit and Chief of Superior Court Appeals, Adjunct Professor at the University of Pennsylvania Law School, service on numerous committees, Chair of the Criminal Justice Section of the Philadelphia Bar Association and Common Pleas Court Judge from April 1997, where she presided over homicide cases, until nominated by Governor Ed Rendell for the Supreme Court seat vacated by Chief Justice Emeritus Ralph J. Cappy.

Justice Greenspan remarked that since her days as a Law Clerk in 1973, the way that the Justices prepare for oral argument has changed very dramatically. She attributed this heightened readiness, in part, to the present Court's streamlined responsibilities. The Supreme Court previously had direct appeal jurisdiction over all homicide cases, not just capital cases, and over all trust and estate cases, as well as appeals that came up through the Allowance of Appeal process. It was difficult for seven Justices to then process a caseload that mirrored today's Superior Court inventory. Presently, cases are already examined very carefully through the Allocatur process. Justice Greenspan explained: "AWe go into an argument with a pretty good idea of where we stand on a given case which becomes pretty important for the litigants in terms

of knowing that there is a lot of familiarity already with the case, so that in terms of approaching the argument, you don't have to feel like you are doing it from square one. You can come in there and actually have a pretty good idea that the Justices know where you're coming from. I think that is actually quite helpful." Justice Greenspan also noted that the Court immediately votes after the arguments. Because she is the Justice with the least seniority, she remarked that she votes first followed in order by the rest of the Justices based on seniority.

Justice Greenspan, as an appointed interim Justice, has agreed not to run in the next judicial election. Her term finishes on first Monday in January, 2010. She elevated to the Court on July 2, 2008 and will serve for eighteen months. She observed that Justice Fitzgerald had nine months on the Court. "The challenge is huge for interim Justices because I can actually sit on a case, have a preliminary vote on the case, and then if the majority opinion is not circulated until after I go off the Court, my vote doesn't count for anything. So you don't get an opportunity to actually have a say on what you have worked very, very hard on already.@ She expressed a degree of frustration because the process could preclude her and other interim Justices from getting their thoughts and opinions published on important issues.

Justice Greenspan explained that while Justice Baer sat in Family Court, and Justice McCaffery sat in Municipal Court, none of the Justices have her perspective as the only Justice right now that has had extensive trial court experience. Justice Greenspan believes that her perspective as a trial judge has provided her with a very unique approach on "not just the record, but also on how the litigants see their cases in both a legal and practical way." Justice Greenspan strongly feels that her extensive trial court experience has added a very important component to the dynamics of the Supreme Court.

After discussing recusal issues involving Supreme Court appointment of an out-of-county judge, Justice Greenspan discussed the quality of the Bar outside of Philadelphia County. She recently sat in Pittsburgh where she found that the advocates "were terrific. Who knew, that they were so good. This was really refreshing -- Philadelphia lawyers are not the only good ones,@ she jested as laughter resonated from the assembled members.

Because the Court is basically an all Allocatur Court, Justice Greenspan remarked that "we're seeing a lot of specialized lawyers in the Appellate arena. They really do know their stuff. It's very enjoyable." She noted that although Chief Justice Castille tends to move the advocates along, she prefers to hear and spend time on the arguments and in deliberation.

Justice Greenspan cautioned that lawyers should be aware of certain procedures. Because it is very hard to get a Petition for Allowance of Appeal granted, Justice Greenspan recommended that the litigants always seek reargument in the Superior or Commonwealth Court. She stated that it takes three Justices to obtain Allocatur in accordance with the Court's internal operating procedures. "The other reason to go for reargument over Allocatur is because we see ourselves as a policy court, not an error correcting court." In the absence of a policy issue, Justice Greenspan feels that error is best corrected by the Superior or Commonwealth Courts. "It is the policy of the Supreme Court to be a non-error correcting court.@ She advised that the Court

strives to instruct the entire Commonwealth, not just the litigants before it. Justice Greenspan explained that statistical analysis confirms that it is better to go for reargument than Allocatur. Out of 2,434 Allocatur petitions filed in 2007, only 106, a mere fraction, were granted by the Court.

Over the past three years, the total number of appeals has decreased largely due to a lack of statewide issues. The number of appeals in 2007 was 225, the granting of Allocatur was 106, and there were 31 capital case appeals filed, including habeas corpus and direct appeals. As to dispositions, although there was a slight decrease, there was an increase in the number of full opinions filed from 131 in 2006 to 174 opinions filed in 2007. Allocatur petitions have remained consistent with more filings in the Middle District as compared to Eastern and Western Districts.

Justice Greenspan also commented that the staff of the various Supreme Court Committees is being centralized in Harrisburg. She observed that the Court is very centralized, but expects that responsibilities will likely be delegated to other Justices in the future. Justice Greenspan stated her desire to serve as liaison to the Rules Committee given her substantial experience in the field.

The author of any Supreme Court opinion is determined by the Chief Justice, she said, who assigns a case to one Justice in the majority. "It tends to go to the writer of the Allocatur report if that person is in the majority." Justice Greenspan also observed that Chief Justice Castille tends to disburse the work in a very even fashion among all the Justices.

Finally, when ask about potential future openings on the Court, Justice Greenspan commented that there would not be a spot for quite some time because all Justices are in their early 60's or younger.

With expressions of gratitude, the meeting was concluded.

Respectfully submitted,

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Secretary, State Civil Litigation Section