

STATE CIVIL LITIGATION SECTION

Minutes of Quarterly Meeting March 12, 2008

The first quarterly meeting of the Philadelphia Bar Association State Civil Litigation Section ("CLS") was called to order by Co-Chair, Thomas Wilkinson, Esquire.

In attendance were the following members:

Nadeem Bezar; Tom Wilkinson; Bob Szostak; Rudy Garcia; Hon. Sandra Moss; Emmanuel Fashakin; Stephanie Rigternik; Justin Moriconi; David Grunfeld; David Prewitt; Stan Edelstein; Peter Schneider;; Edwin Smith; and Tom Hurd. Also in attendance were Vice Chancellor Scott Cooper and Areetha Carter.

Tom Wilkinson welcomed those in attendance and addressed the business of the CLS, including:

1. A call for new members and for members to make sure their email contact information on file with the Association is correct.
2. Announcement of the next meeting on June 11, 2008 with a speaker to be determined
3. 2008 Bench Bar Conference (9/19-21/08) Proposed CLS CLE Program to be review by Chancellor A Michael Pratt and Bench Bar Co-Chair, Molly Peckman, Esquire, including:
 - a. Conversation with the Team Leaders of the First Judicial District (proposed by Judge Moss)
 - b. Verdicts and Settlements in Philadelphia – *Blockbusters and Busts* (presented by a Trial Judge and leading attorneys for the plaintiff and defendant)

- c. E-Discovery – Digital Dangers, trends, sanctions, Federal decisional authority, anticipated trends in State Court (proposed by Rudy Garcia)
- d. E-Filing – hands on instruction session
- e. ADR – what you don't know and how it can hurt you (proposed by Lou Coffey)
- f. *My First Trial* – geared for young lawyers involving input from judges and a jury consultant
- g. Ethics CLE – presented by the Guidance Committee on (1) high tech issues including inadvertent disclosures and metadata with emphasis on responsibilities of recipient of confidential or privileged information; (2) Appellate Court ethical issues including the extent to which a trial judge can be properly criticized for apparent error or bias, citation of negative legal precedent, use of unpublished opinions and ghost writing

Tom Wilkinson then thoughtfully introduced the distinguished keynote speaker, Honorable D. Webster Keogh, appointed to the three year position of Administrative Judge of the First Judicial District by the Supreme Court on April 1, 2007.

Judge Keogh presented a compelling and comprehensive overview on the state of the First Judicial District, detailing several observations and trends in the Trial Division. All of Judge Keogh's remarks on the 2007 year in review have been podcast on the Bar Association website, the highlights of which are summarized as follows:

1. In 2007, there were 32,846 new filings, including arbitrations. For the year, there were 34,382 dispositions. Excluding arbitrations, 16,788 cases were concluded. Due to the Court's strong judicial leadership, on average, each judge disposed of 45 non-arbitration cases per month.

2. For 2007, the standing inventory of cases was 27,327, 42% of which were arbitration cases. The inventory was 3% down from 2006 (inventory in '06 was 28,112).
3. Commerce Court presided over 2% of the standing inventory, representing about 650 of the most complex purely commercial business matters. In 2007, the Commerce Program disposed of 754 cases, through early intervention, mediation, judges *pro tempore* and trial judges. As the “gatekeeper” for the Program, Judge Keogh made it clear that only commercial matters appropriate for the program are accepted into the Program. He was pleased to announce that the program has been quite successful and well received. Its rules and published opinions are accessible on the First Judicial District website. Judge Keogh observed that the Commerce Court has a very low reversal rate.
4. Judge Keogh next reported on the activities of the Complex Litigation Center in the areas of mass torts and class actions. Twenty-four (24) programs have been completed. He noted that the Phen-Fen diet drug inventory has been reduced to 23 remaining filings. Presently, hormone replacement litigation represents 60% of the mass tort cases or greater than 1500 cases. Judge Keogh explained that a new program was instituted to handle Advandia litigation (a drug used to treat type 2 diabetic patients where an increased risk of heart attack and heart related death has come to light in the past year). In all, the Complex Litigation Center disposed of 4287 cases.
5. In 2007, the Civil Trial Division had 335 jury trial verdicts and 252 non-jury verdicts. For Medical Malpractice cases, 73% of the verdicts were defense verdicts.
6. The compulsory Arbitration Program was acknowledged as one of the most successful in the country. Almost 50,000 cases were decided. In 2007, there were about 19,000 new filings and 17,594 dispositions. Judge Keogh noted that in September, 2006, the fee of the appointed arbitrators was increased for the first time in several years. The Arbitration

appeal rate is 37%, a ten year low. Judge Keogh remarked that under Rule 1311, it was expected that there would be an increase in the appeal rate. In fact, the opposite has occurred, for there has been a steady decline of appeals.

7. The Office of Civil Administration, through its Civil Motions Program, receives 50,000 motions or petitions each year. It is anticipated that electronic filing shall make the process easier and more efficient.
8. Technology is transforming the civil landscape in all aspects of legal practice. The High-Tech Courtroom 625 enables complex cases to be tried in less time. It has also proven to be an excellent facility for employee education and other development programs within the civil judicial system. The FJD Website is "award winning." With the Court's commitment to complete automation, Judge Keogh envisions access, convenience and ease of use for all citizens of the City and Commonwealth. E-filing will be rolled out by June, 2008. Preliminarily it will not involve discovery. For the first 6 months, e-filing shall be voluntary and involve only initial filings. Judge Keogh acknowledged with gratitude the efforts of Rudy Garcia in fostering the implementation of the e-filing system in Philadelphia.
9. There shall be no dramatic changes in judicial assignments. Judge Keogh made plain his view that he does not make change for the sake of change. However, the Judge confirmed that Judge Fox was reassigned from Family to Civil, as was Judge Rogers from Criminal. Day Forward, 2008, shall be led by Judge New. Day Forward, 2007 is headed by Judge Manfredi with Judges Panepinto and Smith
10. The new procedures for determining Preliminary Objections were also reviewed. Motions to Determine and Praecipes to Overrule are no longer used. The process shall be accomplished by one filing and response. The new rules are published in the Legal and online. Judge Keogh also mentioned the recent promulgation of new rules regulating the summary judgment process.

11. Judge Keogh reviewed numerous other responsibilities and programs under the direction of his office including, government and agency appeals, code enforcement, discovery, civil case management and dispute resolution centers and civil forfeiture matters, all of which are further detailed in the podcast of his presentation.
12. Finally, great appreciation was expressed over the relationship between the Section and the Bench. Judge Keogh also welcomed the continued participation of now Chief Justice Ronald D. Castille as liaison to the FJD. He commented that their similar working and leadership styles complement their efforts to achieve success in the intense management of cases. Judge Keogh stressed that Chief Justice Castille is very interested in overseeing a new family law building. He also noted the Judge O'Keefe and Judge Dougherty have outstanding and dynamic working relationships with the Chief Justice, a relationship that is shared between both branches of the judicial system.

Respectfully submitted,

Robert T. Szostak, Esquire
Secretary, State Civil Litigation Section