

STATE OF THE COMMERCE COURT

by

Lee Applebaum

On January 19, 2010, the “State of the Commerce Court” program was presented with a panel consisting of Administrative Judge Keogh, Supervising Judge Manfredi, and Commerce Case Management Program Judges Sheppard and Bernstein. The meeting took place in the Bar Association’s meeting center, with nearly every seat filled. The following are some, though not all, of the points discussed at this meeting.

Judge Keogh observed that the Commerce Program’s dispositions in 2009 was 887, up from 683 in 2008, a 30% increase. Filings also increased, with 685 filings in 2009 as compared to 595 in 2008. Judge Keogh stated that these increases speak volumes to lawyers and litigants belief in the Commerce Court.

Judge Keogh addressed his new direct administrative role in the Commerce Program. He thought it was important that the Administrative Judge be identified with the Commerce Program and that it signified the highest level of interest in the Commerce Program. He recalled that at the Commerce Program’s origin, Administrative Judge Herron was one of the Commerce Program Judges. He observed that this was not effecting a major change in the Commerce Program, e.g., the Administrative Judge had always been involved in what cases go into the Commerce Program; and noted that his role would be more procedural than substantive, though, if time permits, he would hope to be able to hear some Commerce cases. In light of the fact that each of the Commerce Program Judges has their own calendar, and each was in effect a team leader attending team leader meetings, his new role would eliminate the need to designate one of the three a team leader per se.

Judge Manfredi, who has returned to his role as Supervising Judge, provided an overview of all civil programs, including the Commerce Program. He addressed the dynamism and evolution in the Court since the early 1990s that has tackled a variety of challenges faced in the civil system, with great success and national notoriety. He observed that with e-filing, that dynamic process has continued.

Judge Sheppard, who has been a Commerce Judge since its inception on January 1, 2000, said what a pleasure it had been for him and told the Bar: “You people have been terrific.” He observed the essential role of the Judges Pro Tem in the Commerce Program’s success.

Judge Bernstein stated that it was time to consider expanding the Commerce Program’s jurisdiction to take in other governmental and commerce cases. He was not espousing an agenda or what cases should or should not come in, but observing the time was appropriate for considering whether this could be done. This subject came up again later in the meeting, in a question from the audience. Judge Keogh stated that the Court was always willing to hear from the Bar any suggestions concerning the Commerce Program’s jurisdiction, and the panel generally agreed that if the Bar, via the Section or Business Litigation Committee, wanted to

meet and discuss these issues amongst the Bar, and then present any ideas or recommendations to the Court, the Court would consider such ideas or recommendations.

The Panel observed that the Commerce Judges generally have individual clerks, but that there is also a staff of three permanently assigned law clerks to the Commerce Program, rather than to any one Judge. As a matter of practice, Judge Bernstein stated that while counsel should not be calling a Judge ex parte, there is no rule that counsel could not identify which of the Commerce Program's staff clerks was working on the case, and calling those clerks to follow up on appropriate matters.

In a change over years past, Judge Bernstein said that he is now happy to receive courtesy copies of filings.

On the issue of reply briefs, Judge Bernstein said they could be filed, but he would only consider them before he grappled with the decision. Judge Sheppard said this was basically his practice as well.

There was extensive discussion on the selection, role and use of Judges Pro Tem. The Judges plainly valued the JPTs. Topics included how to get "new blood" onto the JPT list, distribution of JPT assignments, some situations where those on the JPT list are turning down requests to serve as JPTs and the need for those listed as JPTs to be sure they are on the list to serve, and not merely to be listed for purposes of padding a resume.

Judge Bernstein asked Catherine Hart, the Commerce Program's Court Administrative Officer, to track how many of his cases settled through efforts attributable to JPTs. She concluded that the JPTs were involved in settling 65-70% of Judge Bernstein's cases that had been assigned to them.