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## Commerce Court: A Small Part of the Chief's Legacy

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# Commerce Court: A Small Part of the Chief's Legacy

*Hon. Christine A. Ward\**

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## I. PREFACE

I wrote the following short piece before Chief Justice Ralph Cappy unexpectedly passed away on May 1, 2009. The impact of the Chief's death reverberated throughout the Commonwealth and beyond. The sense of loss of this great man was felt by those people from all walks of life who were fortunate enough to have their lives touched by him, but not more so than by the number of lawyers and judges here in Allegheny County—and, perhaps, most of all, by the female members of the profession with whom he took the time to promote and mentor.

Reflecting back fondly on a life well lived, for me, personally, the Chief's passing meant—and will always mean—the loss of a mentor, advisor, friend, confidant, and adept Bench-Bar dancing partner.

Despite his incredibly busy schedule and many civic and professional commitments, the Chief remained kind and generous with his time to answer questions, lend advice, or give assistance to all those who asked. The Chief's door remained open: he never made you feel as if you were imposing upon him, and he consistently delivered his wise advice with a reassuring bit of humor.

The Chief's presence at the helm of the Supreme Court created very much a sense that all was well and would be taken care of. Even after leaving the bench for private practice, he still returned calls and made himself available to all those seeking his counsel.

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\* Judge, Court of Common Pleas of Allegheny County, Center for Commerce and Complex Litigation.

The sudden and tragic passing of the Chief left a void for those of us he mentored in both the law and in life. His support and promotion of women in the legal profession, and particularly women in the judiciary, will be a large and lasting part of his legacy. He is and will continue to be greatly missed.

## II. INTRODUCTION

In January of 2007, I received a call from Chief Justice Ralph Cappy, which was an extraordinary event in my life. My first thoughts were that I had done something wrong or that I was about to be asked to undertake some tedious committee assignment that no one else would accept. With trepidation, I said hello and listened as the Chief talked about Philadelphia's commerce court and the need for a commerce court in Allegheny County to adjudicate business and equity cases that could not be adequately handled by its current master calendar system. He thought that in Allegheny County, because Judge Wettick was already handling complex cases, it would make sense to create a court encompassing both the complex and commercial cases. The court would be known as the Commerce and Complex Litigation Center. As I listened to the Chief talk about the commerce court and the new Center, I wondered whether he needed me to write the proposal for the Center, or whether he simply needed research regarding caseloads, dockets, or Philadelphia's system.

Finally, the Chief explained that Judge Wettick was planning on taking senior status and would not run for retention. Accordingly, the Center would need a second judge. The Chief then asked if I was interested. It was as if I didn't hear him. I remember becoming speechless, and the Chief asking after a few moments, "Chris, Chris, are you still there?" Then, as I cleared my heart from my throat, I said eagerly, "Are you kidding? Of course, I would love that! That would be my dream job." He had already spoken with Judges James, Wettick, and Strassburger, and they were all in agreement about the establishment of the Center and with my assignment to work with Judge Wettick.

My assignment to the new commerce court was just one of the many instances of the Chief's support and promotion of women in the judiciary.<sup>1</sup> Although I had practiced for 20 years in the area of

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1. With respect to women judges in Allegheny County, one needs to recognize the importance of Chief Justice Cappy's support of Judge Cynthia Baldwin's appointment to the Pennsylvania Supreme Court and his support for the promotion of Judge Kate Ford

commercial litigation before taking the bench in 2003, there was some grumbling that a junior judge had been plucked from the Family Division and had been assigned to the commerce court. The Chief assured me, however, that I was perfect for the position and that I would do a great job. With his encouragement, in June of 2007, I began accepting commercial and complex cases and wrapping up my Family Division cases.

I am grateful to the Chief for the opportunity to preside over and assist in the development of Allegheny County's commerce court. In this article, I will report on the Center's experience in its first 18 months of operation. In order to better understand our experience, it may be helpful to review a brief history of modern-day commerce courts and the benefits they create.

### III. A BRIEF HISTORY OF COMMERCE COURTS

The roots of the modern-day commerce court can be traced to the early 1990s. At that time, displeasure among litigants and attorneys arose regarding state trial courts' master calendar systems through which several different judges made rulings at different stages of a case.<sup>2</sup> The feeling was that the system too often created significant disconnects between the judges and the cases and stunted the development of judicial expertise in business matters, which, in turn, led to "unpredictable, uninformed, and unreliable decisions."<sup>3</sup> Accordingly, lawyers advised their clients to file suit in other venues.<sup>4</sup>

Confronted with a mass exodus of commercial cases to other venues, several state courts began experimenting with separate commercial tracks within their general civil court dockets.<sup>5</sup> In 1993, New York City and Chicago became the first of the experimenters and instituted pilot programs through which individual judges were assigned to hear a body of business and commercial cases from start to finish.<sup>6</sup> Soon thereafter, similar commerce court programs were established in Rhode Island, Philadelphia,

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Elliot to President Judge of the Superior Court. Chief Justice Cappy was instrumental in the naming of Judges Donna Jo McDaniel and Kim Berkley Clark as Administrative Judges of their respective Criminal and Family Divisions, and the naming of Judge Kim D. Eaton as Supervising Judge of the Adult Family Division.

2. Lee Applebaum, *The "New" Business Courts*, 17 BUS. L. TODAY 13, 14 (Mar./Apr. 2008).

3. *Id.*

4. *Id.*

5. *Id.* at 13.

6. *Id.* at 14.

Las Vegas, Reno, and Boston.<sup>7</sup> The commerce court programs in these regions found great success and were eventually adopted permanently.

Today, the New York Commercial Division “is widely perceived as a viable and in many cases a preferable alternative for resolving business cases.”<sup>8</sup> Attorneys and litigants flock to the New York court because it provides “efficient, cost-effective, and timely processing of commercial cases,” as well as quality and predictable judicial decisions.<sup>9</sup> Similarly, in Las Vegas, veteran business and commercial attorneys have reported that “the consistency created in having a judge focused on business litigation provides them with a comfortable alternative to federal court.”<sup>10</sup> In North Carolina, lawyers based within the state, as well as those from adjacent states, now “actively seek assignment to the North Carolina Business Court [because of] the court’s [expertise], predictability, fairness, and impartiality.”<sup>11</sup>

#### IV. THE BENEFITS OF COMMERCE COURTS

When a court system adopts a commercial division, immediate efficiencies are created both for litigants and the court system itself. Complex commercial cases often create substantial discovery and motions practice because of the novel legal and factual issues involved, as well as the large amounts in controversy.<sup>12</sup> Removing these cases from the general docket and assigning them to judges accustomed to such cases frees general docket judges’ time and resources to deal with other important matters.<sup>13</sup> Additionally, business disruption can be avoided and costs to litigants can be reduced through active case management.<sup>14</sup>

Judicial expertise is an additional and significant benefit created by the commercial courts. A court that consistently hears business, corporate, and other commercial disputes can be expected to develop an expertise and knowledge base that allows it to make informed and logical decisions in an efficient manner.<sup>15</sup>

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7. Applebaum, *supra* note 2, at 13.

8. Mitchell L. Bach and Lee Applebaum, *A History of the Creation and Jurisdiction of Business Courts in the Last Decade*, 60 BUS. LAW. 147, 158 (2004).

9. *Id.*

10. *Id.* at 187.

11. *Id.* at 170.

12. *Id.* at 156.

13. Bach, *supra* note 8, at 153, 232.

14. *Id.* at 184.

15. Applebaum, *supra* note 2, at 16.

This experience and knowledge is especially important for plaintiffs seeking “temporary restraining orders and preliminary injunctions that call for the rapid address of often-[complex] legal matters.”<sup>16</sup>

If lawyers are confident that business and commercial disputes will be decided with “informed and deliberate reasoning,” they will encourage their clients to file suit within that court.<sup>17</sup> Thus, a city or state that has a commerce court in place is much more attractive to both new businesses looking to incorporate, and out-of-town or out-of-state businesses looking to relocate.<sup>18</sup>

## V. THE ALLEGHENY COUNTY EXPERIENCE

Since the Center’s creation in early 2007, utilization of it can only be described as robust. Many equity cases have been adjudicated, including requests for injunctions, claims in which accountings are sought, and requests for receiverships. Among other business and complex cases, the Center has also seen a number of shareholder derivative actions, minority shareholder disputes, and dissenting shareholder-rights and oppression cases. In addition, many cases seeking enforcement of restrictive covenants and protection of trade secrets have been resolved. Lawyers do not seem to have difficulty finding the Center, and they seem to appreciate having their clients’ matters managed by one judge.

Through active case management, the Center quickly and efficiently resolved several cases that had clogged the general docket for years. The case management system has also helped to reduce delay and expense for litigants by providing court intervention when necessary or productive. At the outset of the case, a case management conference is held, at which time the court works with counsel to establish timelines for discovery, dispositive motions, and trial. This provides lawyers and litigants the opportunity to negotiate timelines that best suit the case and their schedules.

Early judicial involvement encourages settlement; however, if the case does not settle at an early stage, the assignment to a single judge allows the court to move the case at an appropriate pace, while at the same time providing the attention the case requires. Routine motions and discovery disputes are resolved quickly and

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16. Bach, *supra* note 8, at 227.

17. Applebaum, *supra* note 2, at 16.

18. *Id.*

efficiently, while unique factual and legal issues are given the time and consideration they demand. An individual docket also allows the court the flexibility to hold conciliation conferences when the court feels they would be beneficial, thus saving litigants the significant costs associated with mediation.

Anecdotal evidence suggests that the Commerce and Complex Litigation Center has become a viable and even preferred forum for commercial litigation. Several attorneys have remarked to the court that they originally planned to file their action in federal court until the commerce court became available. This seems especially true among small-business litigants who can reap the efficiencies of active case management provided by the Center without the added expenses associated with federal court.

## VI. CONCLUSION

Justice Cappy recognized the need for judicial specialization in the area of business litigation in Allegheny County. By promoting the institution of the Commerce and Complex Litigation Center in Allegheny County, he has helped to create a supportive legal environment for businesses currently located in the area and new or relocating businesses contemplating establishment in Allegheny County. It was Justice Cappy's vision to create a center in Allegheny County that was equipped to handle the complex business disputes of the community. Through familiarity with the current challenging business environment and individualized case management, the Center will continue to strive to realize Chief Justice Cappy's vision and make the Commerce and Complex Litigation Center a continuing success.