

**IN THE COURT COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CIVIL
ADMINISTRATIVE DOCKET 1 of 2014**

IN RE: COMMERCE CASE MANAGEMENT PROGRAM

AND NOW, this 1st day of January, 2014, it is hereby **ORDERED** and **DECREED** that the following protocols shall apply to all civil cases within the Commerce Case Management Program on or after January 1, 2000:

Commerce Case Management Program:

Procedure for Disposition of Commerce Program Cases Filed on and after January 1, 2000

A Commerce Case Management Program ("Commerce Program") has previously been established within the Trial Division of the Court of Common Pleas (Administrative Docket 01 of 1999 and 01 of 2000 and 02 of 2003).

A. Organization

1. Judges. The Administrative Judge shall appoint four judges to the Commerce Program, one of whom shall be designated to serve as "*Coordinating Judge*" of the Commerce Program. The number of Commerce Program Judges may be adjusted from time to time by the Administrative Judge consistent with the caseload of the Program.

2. Filings & Listings. Upon consultation with the Administrative Judge, the Trial Division - Civil *Supervising Judge* and the Commerce Program Coordinating Judge shall establish procedures for maintenance of filings and listings in actions assigned to the Commerce Program with the goal of ease of access by the Commerce Program Judges and their staff, the parties and the public, Civil Administration.

B. Assignment of Cases Subject to Commerce Program

1. Cases Subject to Commerce Program. Notwithstanding anything to the contrary in General Court Regulation 95-2 (Day Forward Program) or any other General Court Regulation, and except as otherwise provided below in subsection 2, Jury, Non-Jury & Equity, and Class Action cases filed on or after January 1, 2000 shall be assigned to the Commerce Program if they are among the following types of actions:

- a. Actions relating to the internal affairs or governance, dissolution or liquidation, rights or obligations between or among owners (shareholders, partners, members), or liability or indemnity of managers (officers, directors, managers, trustees, or members or partners functioning as managers) of business corporations, partnerships, limited partnerships, limited liability companies or partnerships, professional associations, business trusts, joint ventures or other business enterprises, including but not limited to any actions involving

interpretation of the rights or obligations under the organic law (e.g., Pa. Business Corporation Law), articles of incorporation, by-laws or agreements governing such enterprises;

- b. Disputes between or among two or more business enterprises relating to transactions, business relationships or contracts between or among the business enterprises. Examples of such transactions, relationships and contracts include:
 - (1) Uniform Commercial Code transactions;
 - (2) Purchases or sales of businesses or the assets of businesses;
 - (3) Sales of goods or services by or to business enterprises;
 - (4) Non-consumer bank or brokerage accounts, including loan, deposit cash management and investment accounts;
 - (5) Surety bonds;
 - (6) Purchases or sales or leases of, or security interests in, commercial, real or personal property; and
 - (7) Franchisor/franchisee relationships.
- c. Actions relating to trade secret or non-compete agreements;
- d. "Business torts," such as claims of unfair competition, or interference with contractual relations or prospective contractual relations;
- e. Actions relating to intellectual property disputes;
- f. Actions relating to securities, or relating to or arising under the Pennsylvania Securities Act;
- g. Derivative actions and class actions based on claims otherwise falling within these ten types, such as shareholder class actions, but not including consumer class actions, personal injury class actions, and products liability class actions;
- h. Actions relating to corporate trust affairs;
- i. Declaratory judgment actions brought by insurers, and coverage dispute and bad faith claims brought by insureds where the dispute arises from a business or commercial insurance policy, such as a Comprehensive General Liability policy, and;

- j. Third-party indemnification claims against insurance companies where the subject insurance policy is a business or commercial policy and where the underlying dispute would otherwise be assigned to the Commerce Program, not including claims where the underlying dispute is principally a personal injury claim.

All of the above types of actions may involve individuals named as parties, so long as all other criteria are met and the essential nature of the litigation is a business dispute. For example, a dispute over a commercial loan may include individual guarantors as either plaintiffs or defendants, as the case may be, but such a lawsuit would still be a commercial dispute.

2. Cases Not Subject to the Commerce Program. The following types of matters are not to be included in the Commerce Program:

- a. Matters subject to Compulsory Arbitration in this Court or to the jurisdiction of the Municipal Court, including any appeals.
- b. Personal injury, survival or wrongful death matters.
- c. Individual consumer claims against businesses or insurers, including products liability and personal injury cases.
- d. Matters involving occupational health or safety.
- e. Environmental claims not involved in the sale or disposition of a business and other than those addressed in Commerce Program types (i) or (j) above.
- f. Matters in eminent domain.
- g. Malpractice claims, other than those brought by business enterprises against attorneys, accountants, architects or other professionals in connection with the rendering of professional services to the business enterprise.
- h. Employment law cases, other than those referenced in Commerce Program type (c) above.
- i. Administrative agency, tax, zoning and other appeals.
- j. Petition Actions in the nature of Change of Name, Mental Health Act, Appointment of an Arbitrator, Government Election Matters, Leave to Issue Subpoena, or to Compel Medical Examination.
- k. Individual, residential real estate and non-commercial landlord-tenant disputes.

1. Domestic relations matters, and actions relating to distribution of marital property, custody or support.
- m. Any matter required by statute, including 20 Pa. C.S. Chapter 7, §§ 711 & 713, to be heard in the Orphans' Court or Family Court Division of the Philadelphia Court of Common Pleas, or other matter which has heretofore been within the jurisdiction of the Orphans' Court or Family Court Division of this Court.
- n. Any criminal matter other than criminal contempt in connection with a Commerce Program action.
- o. Such other matters as the Court shall determine.

3. Assignments to Commerce Program. When submitting the initial filing electronically, the party commencing an action that meets the criteria for the Commerce Program shall choose "Commerce" as the Program type. The court's electronic filing system will automatically generate a "Commerce Program Addendum" and the filing party must check the boxes adjacent to the applicable type or types of action which result in the matter being assigned to the Commerce Program. A copy of the Civil Cover Sheet generated by the electronic system, including any Commerce Program Addendum, shall be served with the original process served on all parties.

All actions designated into the Commerce Program pursuant to the Commerce Program Addendum are hereby assigned to the Commerce Program and to the individual calendar of one of the Commerce Program Judges, according to a random procedure established by the Administrative Judge or the designee of the Administrative Judge. This assignment shall be noted on the Docket. All further filings in the matter shall state prominently in the caption and on any cover sheets that the matter is "ASSIGNED TO COMMERCE PROGRAM."

4. Disputes Arising From the Civil Cover Sheet Designation. If any party disagrees with the designation or lack of designation of a case into the Commerce Program, that party shall file and serve on all parties a Notice of Management Program Dispute, not exceeding three pages in length, as soon as practical. A copy of the Complaint or other filing commencing the litigation shall be attached to the Notice of Management Program Dispute. Any party opposing the Notice of Management Program Dispute may, but need not, submit a response thereto not exceeding three pages in length within seven days of service of the Notice. The management program dispute will be resolved by the Coordinating Judge of the Commerce Program.

If a Notice of Management Program Dispute is filed, a copy of that Notice shall be referenced in all motions and responses to motions filed by any party pending the resolution of the management program dispute.

C. Commencement of Action

All subject actions shall be commenced as provided in Pa. R.C.P. No. 1007. Philadelphia Civil Rule *205.2(b) shall be followed. As noted above, in all cases, not just those

designated into the Commerce Program, a copy of the Civil Cover Sheet, including any Commerce Program Addendum, shall be served with original process on all parties.

All jury demands shall be perfected in accordance with Pa. R.C.P. No. 1007.1 and Phila. Civ. R. *1007.1.

A party seeking emergency relief immediately upon commencing an action subject to the Commerce Program shall follow the procedure set forth in part D.6. below (Rules to Show Cause and Emergency Motions and Petitions).

D. Case Management Procedures

1. Authority Over Commerce Program Status: When there is a dispute as to whether the case is properly assigned to the Commerce Program, the decision will be made by the Coordinating Judge of the Commerce Program. If the Civil Case Manager conducting a case management conference or any party objects to the Commerce Program assignment, the Case Manager will forward the dispute to the Commerce Program Coordinating Judge.

2. Alternative Procedures Available: The assigned Commerce Program Judge, in his/her discretion may, upon application of any party or upon his/her own initiative, modify these case management procedures. Requests for changes in these procedures will be made by filing a Petition for Extraordinary Relief (which Petition calls for a ten-day response time).

3. The Case Management Conference: Typically, notice of a Case Management Conference ("CMC") will be sent to counsel and unrepresented parties sixty days after the action is commenced and scheduling the CMC for approximately ninety days after commencement. In certain circumstances, the CMC may be scheduled by the assigned Commerce Program Judge.

- a. Presiding Officer: Unless otherwise ordered, the CMC shall be conducted by a Civil Case Manager/Commerce Program Law Clerk designated by the Court, acting on behalf of the assigned Commerce Program Judge.
- b. Issues to be Addressed: The following subjects, along with other appropriate topics, such as service of process, venue, pleadings, discovery, possible joinder of additional parties, theories of liability, damages claimed and applicable defenses (see also Pa.R.C.P. No. 213.3), will be discussed.

(1) Means for Early Disposition

- a. Timing and potential forms of Alternative Dispute Resolution (ADR). The case manager will make available the list of Commerce Program Judges Pro Tempore (as provided by the Business Litigation Committee of the Philadelphia Bar Association).

- b. Scheduling pre-discovery dispositive motions, only if oral argument is needed. (Whether to hear oral argument is up to the Commerce Program Judge).
- c. Scheduling limited-issue discovery in aid of early dispositive motions. The Case Manager will advise counsel of the assigned Commerce Program Judge's day for hearing discovery disputes.

(2) Schedules and Deadlines

- a. Assignment to a Case Management Track and issuance of a Case Management Order ("CMO"), which will set forth a target trial date, deemed the earliest trial date pursuant to Pa. R.C.P. No. 212.1.
- b. A discovery plan and schedule based on the CMO date for the completion of discovery.
- c. Anticipated areas of expert testimony, timing for identification of experts, responses to expert discovery, exchange of expert reports as set forth in the CMO.

(3) Potential Use of a Commerce Program Judge Pro Tempore ("JPT")

- a. On stipulation of all parties or if the court deems appropriate, for supervision of discovery.
- b. For mediation.

Use of a JPT for purposes of discovery or mediation will not affect the deadlines set forth in the CMO, unless the assigned Commerce Program Judge allows an extension of those dates.

The assigned Commerce Program Judge may establish informal procedures to achieve expeditious resolution of discovery disputes and other non-dispositive issues. Prior to the CMC, it shall be the obligation of the parties to confer concerning all of the above matters, for the purposes of reaching agreements.

4. Case Management Order:

After the CMC, the Case Manager shall issue a Case Management Order ("CMO") setting forth projected dates for a Settlement Conference and for a Pretrial Conference (with Pretrial Statements typically to be filed in advance), and for Trial. The CMO will also address cut-off dates for completion of discovery, for the service of expert reports, and for the filing of motions.

Based upon the nature and complexity of the case, the Case Manager with input from the parties at the CMC shall assign the case to a track. The Commerce Program shall typically employ the following management tracks: Commerce Expedited (Target Trial Date within 13 months of filing) and Commerce Standard (Target Trial Date within 18 months of filing). Only exceptionally complicated cases should be designated Commerce Complex (Target Trial Date within two years of filing). In the latter instance, the Commerce Program Judge may schedule status conferences at six month intervals or at other times upon application of the parties, if appropriate.

The Commerce Expedited Track shall apply to matters in which minimal discovery is needed and legal issues are anticipated to be routine. Examples of such actions, in the absence of complicating factors, are actions relating to commercial loans, and simple contract, UCC and foreclosure matters. Other matters should presumptively be designated Commerce Standard. Actions in which preliminary injunctive relief is sought may be appropriate for any of the tracks, depending upon the circumstances.

5. Commerce Court Motions.

a. Motion Practice and Discovery Motions.

The Commerce Program Judge to whom the action is assigned will hear all pretrial motions, including discovery motions, except that, to the extent scheduling or other concerns so require, a Commerce Program Judge may make arrangements for certain discovery and other pretrial motions to be heard by another Commerce Program Judge. All motions shall be electronically filed. Procedures of the Discovery Court should generally be followed. In some instances, the Commerce Program Judge may direct further briefing of complex discovery motions. Any Notice of Management Program Dispute that is pending or is being filed contemporaneously with the motion filing, should be noted in the motion. Oral argument is at the discretion of the assigned Commerce Program Judge.

A Commerce Program Discovery List for each Commerce Program Judge shall be established so that discovery matters ordinarily will be heard by that Judge on a particular day of the week. Each Judge may also schedule argument or hearings on non-discovery motions on his/her discovery day, or at such other times as the Court deems appropriate.

b. Petitions for Extraordinary Relief.

A Petition for Extraordinary Relief must be filed whenever a party seeks an extension of a deadline imposed by a Case Management Order. Any party may seek relief from the time requirements by filing the Petition for Extraordinary Relief. This Petition must be electronically filed prior to the deadline that the party is seeking to change. Any adverse party has ten (10) days after the filing of the motion to file a response.

The Petition for Extraordinary Relief will be ruled on by the Commerce Program Judge assigned to the case. The party filing the Petition must include a proposed order that sets forth

the extension requested in thirty (30) day increments, as well as a copy of the current Case Management Order.

Counsels' agreement to extend deadlines within a Case Management Order is not a recognized basis for an extension. A movant must demonstrate extraordinary and unforeseeable circumstances justifying the deadline extension request. Requests for extensions of Court ordered deadlines should be utilized only as a last resort and with compelling reasons offered in support thereof.

6. Rules to Show Cause and Emergency Motions and Petitions. Rules to show cause in cases assigned to the Commerce Program shall be electronically filed. Upon acceptance of the filing, Civil Administration will forward it the assigned Commerce Program Judge for consideration.

Unless there is a dispute as to Commerce Program applicability, emergency motions or petitions in a newly filed action presented in a matter appropriate for assignment to the Commerce Program shall be referred to a Commerce Program Judge for disposition. If there is any dispute regarding Commerce Program applicability, that dispute shall be referred to the Commerce Program Coordinating Judge.

If the assigned Commerce Program Judge is unavailable, an emergency motion or petition in an action already assigned to the Commerce Program shall be heard by another Commerce Program Judge, if available, with any subsequent hearing referred back to the assigned Commerce Program Judge. If no Commerce Program Judge is available to hear an emergency motion or petition, such motion or petition shall be referred to a Judge assigned to Motion Court (or, if necessary, the Emergency Judge), with any subsequent hearing referred back to the appropriate Commerce Program Judge. An emergency motion heard by a Commerce Program Judge in a case that has not yet gone through the random assignment procedure shall be subject to that procedure prior to any subsequent hearing and the subsequent hearing shall be scheduled before the Commerce Program Judge assigned.

7. Settlement Conferences. A settlement conference with a Commerce Program JPT will be scheduled after pre-trial motions are decided. A settlement conference may be scheduled earlier in any case in which counsel agree that such a conference may be productive. Such a request shall be made in writing by letter to the assigned Commerce Program Judge.

Except as otherwise provided in Phila. Civ. R. *212.3 (Settlement Conferences --Non Jury Cases), Commerce Program Judges may assist the parties in reaching a fair and reasonable settlement or other resolution of the matter. To that end, the assigned Commerce Program Judge, in his or her discretion, may schedule one or more formal settlement conferences. The Commerce Program Judge may also encourage the parties to engage in settlement discussions and in any form of Alternative Dispute Resolution (ADR), including the assistance of a Commerce Program JPT, that may result in settlement, avoidance of trial or expeditious resolution of the dispute. Except upon order of the Court, the pendency of any form of ADR shall not alter the date for commencement of trial.

8. Pretrial Conference. A Pretrial Conference shall be held in all Commerce Program actions. Typically, the Pre-Trial Scheduling Order will require the filing of Pretrial Statements (Pa. R.C.P. No. 212.2) in advance of the Pretrial Conference. Prior to the Pretrial Conference, principal trial counsel shall confer on the matters set forth in Pa. R.C.P. No. 212.3, and attempt to reach agreement on any such matters.

Following the Pretrial Conference, the Commerce Program Judge shall enter a Trial Scheduling Order, identifying the date by which the matter should be prepared for trial, and, if applicable, the date to be placed into a trial pool or the date of any special listings. The Trial Scheduling Order may further provide specific dates, to the extent not already addressed in the Case Management Order, for such matters as:

- a. Exchange of proposed stipulations and filing of stipulations in writing to facts about which there can be no reasonable dispute;
- b. Pre-marking and exchanging copies of all documents or other exhibits to be offered in evidence at trial;
- c. Service and filing of written objections to any documents or other exhibits as to which a party intends to object at trial, together with the legal basis for such objections;
- d. Identification in writing of all deposition testimony, by page and line number, intended to be read into the record at trial, followed by counter-designations and objections to deposition designations;
- e. Exchange of trial briefs and proposed findings of fact and conclusions of law (nonjury) or requested points for jury charge (jury).

At such time prior to trial as may be fixed by the Court, it shall rule on all matters placed in issue under this procedure.

In addition, the Commerce Program Judge may establish procedures consistent with the requirements of each case to ensure close interaction with the parties in order to minimize trial time.

E. Commerce Program Judges Pro Tempore And Alternative Dispute Resolution

There shall be established in the Commerce Program, an Alternative Dispute Resolution program for Commerce Program actions, which may include, but is not limited to, mediation and the assistance of Commerce Program JPTs.

1. Panel of Commerce Program Judges Pro Tempore. The Commerce Program Coordinating Judge shall designate a panel of Commerce Program JPTs from among volunteers nominated by the Philadelphia Bar Association Business Law Section, Business Litigation Committee (“Committee”) and/or the Court, and recommended by

the Committee. In order to qualify as a Commerce Program JPT, one must be a licensed Pennsylvania attorney with no less than fifteen (15) years of experience in litigation or alternate dispute resolution (ADR), including a practice focused on the types of disputes described in section B.1. above (Cases Subject to Commerce Program), and shall have participated in a minimum of 10 hours of ADR training by a court-sponsored provider or certified CLE provider, or shall have participated as a neutral, JPT, or mediator in a minimum of 3 ADR proceedings, including but not limited to mediations, settlement conferences and private arbitrations, involving the types of disputes described in section B.1. above, prior to approval as a Judge Pro Tempore.

Commerce Program JPTs shall serve without charge for up to three hours for each case, exclusive of preparation time before a settlement conference or initial mediation session. Such preparation time likewise will not be compensable. After the JPT has devoted three hours of service free of charge to the assigned case, and upon agreement of the participating parties to continue the mediation or settlement conference beyond those three hours, the JPT shall be compensated at the rate of \$300 per hour (or at such higher rate as the Commerce Program Coordinating Judge shall set hereafter) for further work on the case. Unless otherwise agreed to by the participating parties, or upon further order of the Court, the obligation to compensate the JPT shall be borne equally among the parties. JPTs shall promptly invoice the parties for services and reasonable expenses for which they are entitled to be compensated. Persons may be added to or removed from the panel of JPTs as the Commerce Program Coordinating Judge may determine consistent with the qualifications above.

2. The Court may order a Commerce Program case to be assigned for Settlement Conference with a Commerce Program JPT who shall, on a date certain, hold a Settlement Conference which must be attended by: 1) all represented parties, unless they are excused by the JPT; 2) counsel knowledgeable about the case and with authority to settle; and 3) any unrepresented parties. If the JPT excuses represented parties from attending, they shall be available telephonically. All parties shall provide to the Commerce Program JPT prior to the Settlement Conference a fully completed Settlement Memorandum, in a form to be established by the Commerce Program Judges. The parties may also submit additional, confidential, materials to the JPT alone. The Commerce Program JPT on such a referral is not authorized to rule on any motions, but will attempt to facilitate a settlement between the parties. The JPT may report to the Commerce Program Judge assigned to the case the result of the settlement conference.

3. Mediation.

- a. Referral to Mediation and Selection of Mediator. Commerce Program cases may be referred to nonbinding mediation at the discretion of the Commerce Program Judge, who may make such referrals at the time of the Case Management Conference, at the Pretrial Conference referenced above, or at any other time. Where appropriate and whether or not mediation is pursued at an early stage of the litigation, the Commerce Program Judge has the discretion to refer cases to nonbinding mediation

at a later stage of the proceedings. The Court may permit the parties to choose the mediator from among the panel of Commerce Program JPTs, or agree to pay for a mediator not on the panel. The order of reference to mediation shall not stay or delay any scheduling dates, unless the Court specifically so orders.

- b. Conflicts of Interest. A mediator to whom a case is assigned must disclose to the parties and to the Court any apparent conflict of interest. Unless the mediator determines consistent with any applicable ethical requirements and guidelines that he or she should preside notwithstanding any such apparent conflict of interest and the parties and the Court agree that such mediator nevertheless shall preside, another mediator shall be selected.

- c. Confidentiality of Mediation. The order referring an action to mediation shall require that the mediator report to the Court the disposition of the mediation in accordance with a schedule as determined by the Court, under the guidelines below. The order shall also provide that all information received by the mediator as to the merits of the matter, including the submitted memoranda, shall remain confidential and not be reported or submitted to the Court by the mediator or the parties, except as necessary in a stipulation of settlement agreed to by the parties.

- c. Mediation Procedure. The first mediation session preferably shall be conducted within 30 days of the execution of the order of reference, unless the Court establishes a different schedule. At least ten days before the first session, each party shall deliver to the mediator a copy of its pleadings, any briefs filed in the action important to the mediation, and a memorandum in the form specified by the mediator setting forth that party's contentions as to liability and damages. The memorandum shall be served on all parties, but shall be marked "Confidential, for Mediation Only," and may not be used, cited, quoted, marked as an exhibit or referenced in any proceedings. The parties may also submit additional, confidential, materials to the JPT alone. Attendance at the first mediation session shall be mandatory, and the mediator may require, in addition to the appearance of the attorneys, the presence of the parties or their representatives with authority to settle. If the first session is successful, the settlement shall be reduced to a stipulation, and the mediator shall submit forthwith the stipulation, the notice of discontinuance and the report of disposition to the Court. The report of disposition shall be on a form prescribed by the Court Administrator.

- e. Report; Extensions. If the action is not settled upon completion of the first session, the mediator may schedule additional sessions on consent of the parties. However, at the end of the first session, any party or the mediator may terminate the mediation effort, and in that case the

mediator shall advise the Court forthwith that mediation has been terminated but shall not disclose the identity of any parties who terminated or did not terminate the mediation. Except as set forth below, subsequent sessions should be concluded within 15 days from the date by which the first session was to have been held according to the order of reference. The mediator shall report to the Court as to the outcome of the mediation session(s) no later than 20 days from the date by which the first session was to have been held according to the order of reference. If mediation cannot be concluded within 15 days from the date by which the first session was to have been held according to the order of reference, upon consent of all parties a 30-day extension of time to conduct further sessions may be granted by the mediator. If such extension is granted, the mediator shall report to the Court as to the success or lack of success of the additional sessions as soon as practicable but in any event no later than 5 days after the final mediation session.

This Order is issued in accordance with Pa.R.C.P. No. 239 and the April 11, 1986 Order of the Supreme Court of Pennsylvania, Eastern District, No. 55 Judicial Administration and shall become effective immediately. The original order shall be filed with the Civil Judicial Records Officer (formerly, *Prothonotary*) in a Docket maintained for Administrative orders issued by the Administrative Judge of the Trial Division, Court of Common Pleas of Philadelphia County, and shall be submitted to the Pennsylvania Bulletin for publication. Copies of the order shall be submitted to the Administrative Office of Pennsylvania Courts, the Civil Procedural Rules Committee, American Lawyer Media, The Legal Intelligencer, Jenkins Memorial Law Library, and the Law Library for the First Judicial District of Pennsylvania, and shall be posted on the website of the First Judicial District of Pennsylvania: <http://www.courts.phila.gov/regs>.

BY THE COURT

/s/ John W. Herron

**HONORABLE JOHN W. HERRON
Administrative Judge, Trial Division
Court of Common Pleas
Philadelphia County
First Judicial District of Pennsylvania**