

Is Philadelphia's Team Leader Approach Sowing Confusion?

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August 19, 2016

The team leader approach at the First Judicial District of Pennsylvania was instituted decades ago to help the court clear out a stifling backlog and keep the system running efficiently, but according to some lawyers, the system is beginning to show its age.

Although most attorneys noted that problems are bound to arise given the enormous volume of cases handled at the FJD each year, some reported that the team leader approach can lead to cursory reviews of motions, confusion about what arguments were dispositive or dismissed in a litigation, bad attorney behavior and relitigating issues on the eve of trial.

"I think you lose a lot of efficiency [because] each filing can get to a judge who has never heard of the case before," said one defense attorney who asked not to be named. "If I have a situation in which there's a particular issue that's come up early in the case and it goes to one judge, and then a month later, I could be starting from scratch before a new judge. It's frustrating for the judges because they don't want to be unprepared, but they don't have time to read all the briefs."

The team leader approach was first used when the court instituted the Day Backward program in the early 1990s, which cut a backlog of 27,000 cases down to about 5,000 in three years. The system was then adopted for the Day Forward program, which was implemented in 1995 to increase court efficiency in handling new cases.

Under the team leadership program, one team leader will receive cases throughout the year, and will be responsible for assigning judges to handle all the motions that are filed in those cases. The team leader will continue overseeing the cases until they are disposed of, often assigning judges on their teams to handle the trials. In many cases, while the team leader oversees the case throughout its lifetime, different judges will handle motions, or trial.

Not all attorneys agreed that there are any problems with the system, and some also said the difficulties are highly dependent on which judge is handling the case.

Kenneth F. Fulginiti of Duffy + Partners said the system in Philadelphia moves cases along more smoothly than in other jurisdictions. He also noted the approach has become a model for other systems that became mired in backlog.

"If you got a case management conference in 2014, you know when you're getting to trial in 2016," Fulginiti said. "It's an excellent system. It's not perfect. It's not going to please everybody in every case, but it's an excellent system."

But, of those critical of the system, one common theme was that the team leader approach may make it easier to get claims in front of a jury.

Attorneys said the standard for dismissing a case on preliminary objections is very high, and with judges handling so many cases, the default can become to simply let the case go forward. Attorneys also noted that allowing claims to go forward is much easier than denying them.

"You may have one judge ruling on summary judgment, who may or may not be a trial judge. If you have 50 motions, you don't have to try the case if it goes forward, but you do have to write an opinion if there's a grant," the defense attorney said.

A plaintiffs' attorney, who also asked not to be named, agreed, and said that, while the high caseload may be the root of the issue, the team leader approach shifts the judges' motivations and makes them less accountable for their decisions.

"The judges, their motivation is to clear a case from their desk, not to clear the docket," the plaintiffs' attorney said. "There's no accountability for any of that."

Another commonly-raised issue was that, with multiple judges handling one case, if a judge is not very clear about why a certain ruling was made, that decision can rear up again later in the litigation.

According to the plaintiffs' attorney, this can often happen when a judge simply grants or denies motions involving complex issues that involve multiple arguments. He said judges will occasionally simply write "granted" or "denied" on one of the party's suggested orders, occasionally without crossing out the relief the party sought.

"If it's a new judge [handling trial] how are they supposed to know what your rationale was?" the attorney said.

The confusion can lead to issues being relitigated, and new disputes can arise over the prior judge's rationale, which can lead to evidentiary fights on the eve of trial.

"You could say, 'Last year the discovery court ruled, such and such,' and the judge has no context about that. You can't go back and recreate it," the defense attorney said. "That's frustrating and you learn to understand that you may need to fight a lot of battles you've already fought."

The plaintiffs' attorney additionally said the team leader approach can affect the behavior of the lawyers since counsel would not feel the same pressure to act amicably, or work to resolve disputes when the judge handling motions will not be handling trial.

"You have to be really cautious in how you act, because it's the same judge over and over again ... People play games because you can," the plaintiffs' attorney said. "There's a lot more gamesmanship and frivolous [nonsense] that goes on."

However, according to judges at the FJD, the team leader approach is the only system capable of ensuring that the court does not return to the days of 27,000-case backlogs.

Court of Common Pleas Judge Mark I. Bernstein, who helped develop the team leader approach, said the court handles between 50,000 and 60,000 motions each year. Attorneys have criticized the system ever since it was first implemented, but without it, the court would be "chaos," he said.

"It would be years and years just to get the motions done," he said. "There's just no way of doing it but to assign it out to whoever has the availability."

Bernstein said team leaders often handle the more complex aspects of a case, such as venue or disqualification motions, and strive to ensure that one judge handles all related issues, even if a different trial judge has already been assigned. He said steps are taken to avoid having judges start from scratch on an issue, and the team leaders aim to keep consistency in how cases are handled.

Bernstein said he has seen some attorneys try to refile issues that have already been litigated, often attempting to disguise preliminary objection issues as motions in limine, but he said judges should be able to avoid ruling on improper issues.

Regarding the argument that preliminary objections and summary judgment motions do not always get as much attention, Civil Division Supervising Judge Idee Fox said she has heard complaints that the judges do not give enough reasoning as to why they made a particular decision.

However, she said many motions are routine, and a judge has likely already ruled on a similar issue more than 100 times that day. Including a full statement on the reasoning for dismissing a weak argument would unnecessarily tax court resources, and take away from the time the court could spend on more complex issues.

"To us it's so clear, it's like do we have to tell you," she said. "With the volume, that's difficult to try to do, but we try to do it on all the cases that are making a statement to the bar."

Despite the pros and cons, attorneys and judges both said that, given the volume, its likely the only system that could work.

"The system offers the benefits of efficiency and fairly standardized case management protocols. You get guidance right away. The downside is you just might not get as much attention as you would in another county or in the federal system," said Klehr Harrison Harvey Branzburg attorney Gaetano Piccirilli. "In some cases the balance works well. You can be a very happy lawyer one day, and an unhappy lawyer another."

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