

My Journey to the Commercial Division, A World Class Business Court

By Justice Elizabeth Emerson (Ret.)

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One of the great joys of my professional career is the 21 years that I spent as a Justice of the New York State Supreme Court Commercial Division. The work was challenging and required a great deal of creativity and effort and sometimes extraordinary patience, but the rewards were always beyond measure. It gave me the opportunity to be part of one of the world's best business courts and to work and to collaborate with outstanding practitioners and jurists. Having been there since the early days of the Commercial Division I also had the privilege of working with those such as Justice Judith Kaye and Bob Haig, whose efforts brought the concept to life and provided me with the opportunity to participate in establishing its rules and to shape its practices and to watch it grow and thrive to the point where it is now.



For the first six years of my 28 years on the bench, Suffolk County did not have a commercial division. I had often advocated for the creation of such a court in Suffolk County. I believed that Suffolk County had a thriving business community and the right demographics to support a dedicated business court. I also knew from my years in private practice that to compete Suffolk County needed to join its sister jurisdictions by establishing a sophisticated business-minded court that would use innovative techniques to resolve business disputes. When Justice A. Gail Prudenti became the Administrative Judge for Suffolk County, she clearly saw the need and the benefit, and she asked me to prepare a proposal for the creation of such a court. I will forever be grateful for that assignment. In October of 2002 the Suffolk County Commercial Division was created and I became the first Justice assigned to that Division. The Commercial Division is an extraordinary place to practice, and I believe that it is one of the crown jewels of the New York State Court system. It is an excellent place for young attorneys to learn commercial practice at the highest levels. The Justices, the Commercial Division Advisory Council and the various bar associations, most notably the Commercial and Federal Litigation Section of the New York State Bar Association, are constantly working to provide opportunities and to make it a welcoming and accessible place for all to practice. Certain recent examples include the project "If Not Now When" and the "Taking the Lead" program, both of which I have taken part in, and the many internship opportunities offered by all the Judges within the Division.

A brief summary of my legal career and my path to the bench might help to explain my enthusiasm for the Commercial Division. It is safe to say that my career path took a number of unexpected twists and turns and that I was presented with a number of unexpected opportunities that led me to the work that I really loved. That is why I encourage all lawyers, especially new lawyers, to keep an open mind when considering the type of practice that you intend to pursue.

I decided that I would become a lawyer around the age of 12. Looking back, I am not sure why. I did not know any lawyers and I knew very little about what they did. I knew so little that I believed that you needed to go to law school in New York if you wanted to practice in New York City (which I did). It was that belief which after graduating from Boston College led me to Syracuse University College of Law. I was indeed fortunate as I received an excellent legal education and interacted with professors who took a personal and genuine interest in my career. At their urging I worked in London with a firm of solicitors and obtained a summer position at the U.S. Attorney's office for the District of Columbia. I also competed as a member of the National Appellate Team and became a teaching assistant for legal writing and research. All of these opportunities were immensely valuable and set me firmly on the path to becoming a litigator.

Upon graduation I accepted an offer to become a first-year associate at White & Case. White & Case was then, and is now, an excellent law firm with practices across many disciplines. At the time first-year associates were required to rotate through three of the main departments. I was so sure that I wanted to be a litigator that I took the unusual step of requesting to be excused from this rotation and to be assigned directly to the litigation department. My request was granted and from that moment I focused exclusively on litigation matters. Due to the high level of the practice, I worked with and learned from some of the best commercial litigators. I did not always realize it, but my assignments gave me the chance to be part of and to work on some truly cutting-edge matters. As the firm's litigation practice started to slow and corporate work began to grow, the corporate group asked that I be reassigned to that department. When advised of this transfer and having no insight into corporate work, I was blissfully unaware of the challenge this would present. Imagine my surprise to find myself as a soon-to-be third-year associate assigned to matters that seemed to have originated in a totally

different world, that spoke a different language, operated by different rules, required different tasks and abided by different customs. Even client relationships and interactions proved to be different. Again, I was fortunate to work with and to learn from some of the best in the business and I soon found that I relished the work.

Eventually my love of the corporate transactional practice caused me to make a significant mid-career switch moving from White & Case to Shearman & Sterling. At that time this was an unusual thing to do as lawyers did not move between firms as they do now. Although White & Case felt like home and I truly enjoyed the work there, I wanted to broaden my experience and focus on a particular type of international finance. At the time the international financial sector was gearing up for the next round of country debt restructuring, principally in Central and South America. Shearman & Sterling had previously represented the Bank Steering Committee established to work with several countries in this region and was set to do so again. Generally, the term bank steering committee referred to a group of the leading global banks and also included the World Bank and the IMF, which would conduct negotiations with the sovereign nations and help shape the structure of the instruments that would be offered to participating institutions as part of the restructuring process. While this would be a comprehensive restructuring of the dollar denominated debt of these developing nations, matters related to important private sector restructurings in these countries were also a part of the overall series of transactions that the parties expected to complete. Finally, this process helped to create a number of innovative environmental projects known at the time as “Debt for Nature” swaps. With this in mind I took the opportunity to move to Shearman & Sterling, and I had the opportunity to work on and to be responsible for parts of many of these extraordinary matters. As country debt and related matters came to a close, I expanded my practice by working on many different deals representing a variety of different domestic and international clients including banks, investment banks, and Fortune 500 companies across different sectors such as entertainment communications, manufacturing and other similar industries. In 1992 I was elected to the partnership of Shearman & Sterling, making me one of the few woman partners of the firm.

My time both as an associate and a partner at Shearman & Sterling was exciting and extremely professionally rewarding. Again, I had the chance to work with some of the best lawyers in the world. The work, particularly the country debt and the merger and acquisition work, was extremely demanding. It required long hours and lots of travel, often on short notice. The concept of remote work or work-life balance did not exist. Email was not really in use and documents had to be physically produced and distributed around the world. Part-time work was not widely available, and it

did not exist for partners of the firm whose responsibilities were great. There were still relatively few women particularly on the corporate side either as practitioners or as clients. It was still common to be the only senior woman on a deal and sometimes the only woman in the room. More than once I was asked to make coffee or a photocopy when I was in fact the partner in charge.

It was when I decided to start a family that the difficulty of maintaining a transactional practice and a family life became apparent. It was at this time in my life that my name was put forward for a seat on the New York State Supreme Court. I was indeed fortunate to have been offered this opportunity and I gratefully accepted the nomination to appear on the ballot. This was a contested election, so I was required to embark on a campaign throughout the 10th Judicial District (a district that stretched from Montauk to the border of Queens). I was one of the six candidates elected, and on January 1, 1996, I began my first term as a state Supreme Court Justice. I was 38 at the time, making me one of the youngest Justices and one of the few women on the bench in Suffolk County. Having the opportunity to become a Supreme Court Justice allowed me to continue to practice in an area that I loved but to do so with a degree of control that was at the time not available in the deal world. Again, I will always be grateful for this opportunity.

Although I have enjoyed all aspects of my judicial career, I have truly enjoyed my time in the Commercial Division. As I have written before, this assignment allowed me to use many of the skills that I learned in the corporate world, such as problem solving and creative thinking to resolve issues that arise in litigation. Often when conferencing a case with counsel I advocated for an approach to problem solving that combined the method of negotiation used in the corporate world which expanded possibilities and allowed for creativity with the features of conventional litigation which provided structure and necessary answers to important or threshold questions. Combining these processes often created opportunities that were not possible when simply relying on one or the other. It is this feature of the Commercial Division that sets it apart. I have seen how important it is for New York to maintain its status as one of the great financial capitals of the world. To do so it must have a business court that supports and sustains the financial community. When I taught in an MBA program, I often began my lecture on the judicial system with a quote attributed to Jack Welsh, the well-known former CEO of General Electric, where he stated that you cannot have a strong economy without a strong and independent court system. I agree wholeheartedly with this premise, and I would assert that the Commercial Division more than fills this role. I would encourage young practitioners, particularly women, to explore the many rewarding opportunities to practice in the Commercial Division.