

# Initial Report of the Working Group on Appellate Practice



Produced by the Appellate Practice Working Group of the  
Commission to Reimagine the Future of New York's Courts  
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Commission to Reimagine the Future of New York’s Courts

Working Group on Appellate Practice

Initial Report

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## I. Executive Summary

Historically, the Court of Appeals and the four Departments of the Appellate Division of the Supreme Court have operated with a great deal of independence, due in large part to their establishment as separate entities under the Constitution of the State of New York and their diverse dockets.<sup>1</sup> As the Unified Court System (UCS) became increasingly reliant on technology to administer justice, the autonomous nature of these appellate courts gradually resulted in a patchwork of technological infrastructure. Although this system served the courts and the public well for decades, the increasing complexity and importance of technology—accentuated by the Covid-19 pandemic—has brought the distinct ways in which these courts function into stark relief.

The public deserves a court system with information technology that is easily navigable, efficient, adaptable, and secure. Accordingly, the Appellate Practice Working Group has set as its top priority the establishment of a robust and uniform technological infrastructure for the appellate courts. Fundamentally, the goal is to bring each court to a baseline of technological readiness, efficiency, and cybersecurity, and to permit the appellate courts' information technology systems to more easily communicate with one another and with those of the trial courts. Moreover, in keeping with the recommendations of the Online Courts Working Group, the Appellate Practice Working Group similarly envisions a modern public-facing technological infrastructure (e.g., website, e-filing portal) that is more consistent throughout the State. Thankfully, a great deal of this work is already underway.

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<sup>1</sup> See NY Const, art VI, §§ 2-4.

The Working Group has met with UCS’s technology experts and devised the below recommendations, coupled with notations on the courts’ status as to the various metrics, where available. The leadership of each Court has committed to meeting this baseline as soon as possible, and in accordance with the short-term and long-term timeframes set forth below. The Working Group’s view is that the technological needs of the courts are paramount, and the next step—aside from implementation of the recommendations herein—is to hear from appellate practitioners as to what other changes would be beneficial, such as amendments to the rules of appellate practice. First and foremost, however, the Working Group has determined that improving the efficiency and cybersecurity of the State’s highest appellate courts by creating a robust and (to the extent possible) uniform technological infrastructure, while respecting the constitutional separation of those courts and their individual needs, is of primary importance.

## II. Overview of Technological Enhancement Goals for New York's Appellate Courts

### A. Short-term Goals

1. Transition to Virtual Court model (providing all essential services to public without in-person operations) as needed during Covid-19 pandemic. Equip essential staff for remote-work capabilities. Stand ready to transition from virtual to in-person operations and vice versa. Status: complete.
2. Enhance staff training for technological literacy. Conduct technology training for staff, which can be recorded and distributed for viewing at staff's convenience. Coordinate with DOT to take advantage of existing training materials. Status: ongoing.
3. Devise and disseminate best practices regarding the use of technology in appellate courts, including by partnering with the UCS Division of Technology (DOT) to comply with existing statewide technology standards and approval processes and to leverage hardware and software licensing already owned by UCS. Status: ongoing.
4. Improve public use of and access to appellate courts.
  - a) Implement portable electronic device policy to permit use of devices to aid attorneys/litigants during arguments. Status: complete.
  - b) Transition to full e-filing of all case types. Status: nearly complete, depending on court.
  - c) Livestream oral arguments and other proceedings (e.g. admission ceremonies for new attorneys). Status: complete.
  - d) Ensure reasonable accommodations for disability access. Status: complete.
5. Upgrade hardware, such as servers and supporting network infrastructure. This includes moving away from locally maintained servers and locally stored data, leveraging hardware and software at DOT or in the government-approved (FedRAMP-authorized) cloud.<sup>2</sup> Status: ongoing.
6. Conduct inventory of equipment (e.g., computers, printers, scanners, monitors) and assess needs of judges and staff. Status: to be completed by Jan. 1, 2021.

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<sup>2</sup> See General Services Administration, FedRAMP, <https://www.fedramp.gov> [accessed Nov. 23, 2020].

7. Upgrade software as follows:

<b>Software</b>	<b>Status</b>
<p>Microsoft Teams <i>Videoconferencing software for intra-office use and during virtual proceedings</i></p>	<p>Deployment for office use will be completed by Jan. 1, 2021. Limited use at present for livestreaming/broadcasting virtual proceedings, such as attorney admission ceremonies and oral arguments of appeals.</p>
<p>Microsoft Word <i>Transition from WordPerfect</i></p>	<p>Deployment for office use will be completed by Jan. 1, 2021. Use of Word excludes functions that require Case-Management System integration in some Appellate Division Departments.</p>
<p>OneDrive <i>Cloud Storage</i></p>	<p>Deployment for personal office use is done on a case-by-case basis.</p>
<p>Upgrade or Transition from Older/Unsupported Software <i>An important step from a cybersecurity standpoint</i></p>	<p>Identifying older and unsupported software will be completed by March 31, 2021.</p>
<p>Case-Management Systems <i>Ensure adequate systems are in place; upgrade systems to improve efficiency</i></p>	<p>Completed. Installed Case-Management Systems are on Support and Maintenance Mode – minimal development or feature enhancements. Courts using Voyager Systems are in contract negotiations for developing future feature enhancements.</p>
<p>Establish Online System for Attorney Requests of Certificates of Good Standing <i>Improving efficiency of Committees on Character and Fitness</i></p>	<p>A single statewide system is in late stages of development and will be launched by March 31, 2021.</p>
<p>Establish Statewide Online System for Mental Health Legal Services</p>	<p>A single statewide system is under development and will be live by June 30, 2021.</p>
<p>Establish Statewide Online System for Attorney Grievance Committees</p>	<p>Evaluating requirements for developing a single statewide system will be complete June 30, 2021.</p>

8. Verify and enhance cybersecurity as follows:

<b>Cybersecurity Feature</b>	<b>Status</b>
Two-Factor Authentication	Deployment for office use will be completed by Jan. 1, 2021.
Identify and Address Security Vulnerabilities <i>Upgrades and patch management to combat cybersecurity threats (e.g., viruses, malware, ransomware)</i>	Ongoing. Review provided reports with DOT Cybersecurity and Desktop Management Teams to ensure compliance. Address identified critical threats immediately. Ensure compliance quarterly.
Security Awareness Training Program for Staff	Ongoing. Continuous targeted course offerings. Complete identified training sessions by provided deadlines. Ensure compliance quarterly.

## **B. Long-term Goals**

1. Establish a single appellate case-management system for the Court of Appeals and all Departments of the Appellate Division to ensure integrity of data and efficiency for sharing and/or passing along case data. The single case-management system must be adaptable to ensure that it can be tailored to capture case data of the diverse appellate dockets of the Court of Appeals and the Departments of the Appellate Division.
2. Improve NYSCEF/e-Filing.
3. Update court websites using a common interface, providing a cohesive user experience.
4. Prepare for future crises (e.g. pandemics, disasters), by ensuring cloud storage of all data in government-approved, FedRAMP-authorized cloud and remote-work capabilities of all essential staff (status: completed during Covid-19 pandemic). Coordinate with DOT for distribution of necessary software/licensing and hardware purchasing (if necessary).
5. Conduct surveys of appellate courts nationwide to determine best practices.
6. Invite experts and visionaries to speak/present to Working Group on the future of appellate courts.



### III. Conclusion

The future of New York’s court system, including its appellate courts, will depend on a revitalized and more uniform technological infrastructure. The Covid-19 pandemic has accelerated the process of modernization, as it required a forward-thinking approach to serving the public with limited in-person operations, leading to the creation of Virtual Court models. Fortunately, every appellate court was able to quickly “virtualize” its operations for the safety of employees, attorneys, and litigants, without sacrificing its ability to serve the public and deliver justice.

To be sure, there is often reluctance to changing with the times, especially in the legal profession. Nonetheless, the Working Group believes that the courts’ “virtualization” in response to the pandemic has largely benefited the judiciary and has put the UCS on solid ground to continue moving forward. In fact, the court system likely will not (and should not) go back precisely to the way things were. Rather, the pandemic motivated the courts to implement and expand systems—such as remote-work capabilities, e-filing, and virtual court proceedings—that were sorely needed.

Building on that progress and innovation, we envision a court system that will be more responsive, efficient, and secure than ever before, while recognizing that human beings are social creatures who will continue to benefit from face-to-face interaction. The key is to hybridize technology and in-person operations to ensure both the timely and humane administration of justice.

Now that the Working Group has set forth its goals for technological development at the appellate level, we will advance to investigating what substantive changes to appellate practice would benefit the courts, practitioners, and the public.

## IV. Acknowledgements

The Working Group would like to thank the following DOT experts for their consultation and guidance:

Christine Sisario, Director of Technology

Sheng Guo, Program Manager of the Courtroom Modernization Initiative

Jeffrey Carucci, Director of E-filing

## V. Composition of Appellate Practice Working Group

### Commission Members

*Hon. Rolando T. Acosta, Presiding Justice of the Appellate Division, First Department (Chair, Appellate Practice Working Group)*

*Hon. Ariel E. Belen, JAMS Mediator & Arbitrator; retired Associate Justice of the Appellate Division, Second Department & Administrative Judge of the Supreme Court, Kings County*

*Hon. Anthony Cannataro, Administrative Judge, Civil Court of the City of New York & Justice of the New York Supreme Court*

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*Hon. Madeline Singas, Nassau County District Attorney*

### Additional Working Group Members

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Hon. Anthony Cannataro

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