

THE NEW YORK STATE JUDICIAL INSTITUTE



APPELLATE JUDGES
SEMINAR * 2024

AGENDA

June 25, 2024 - June 27, 2024



1000 ISLANDS HARBOR HOTEL
CLAYTON, NEW YORK



DAY 1

Tuesday, June 25, 2024

7:30 am - 8:25 am **Registration and Breakfast**

8:25 am - 8:30 am **Welcome**

Hon. Shirley Troutman, New York State Court of Appeals

8:30 am - 9:30 am **Judicial Independence, Judicial Accountability, and the Public Trust Nexus**

Introduction: Hon. Shirley Troutman, New York State Court of Appeals

Faculty: Trevor W. Morrison, Professor & Dean Emeritus, New York University School of Law (presenting remotely),

Jesse Rutledge, Vice President of Public Affairs, National Center for State Courts

This session will focus on the intersection of the separation of powers, judicial independence, and the accountability necessary for such independence; and how strategies to improve public trust and confidence today can support separate, independent, and accountable courts into the future.

9:35 am - 11:15 am **The Roles of the Advisory Committee on Judicial Ethics and the Commission on Judicial Conduct**

Introduction: Hon. Shirley Troutman, New York State Court of Appeals

Faculty: Hon. Margaret T. Walsh (ret.), Co-Chair, Advisory Committee on Judicial Ethics, Hon. Lillian Wan, Co-Chair, Advisory Committee on Judicial Ethics,

Laura L. Smith, Esq., Chief Counsel, Advisory Committee on Judicial Ethics,

Robert H. Tembeckjian, Esq., Administrator & Counsel, Commission on Judicial Conduct

The Advisory Committee on Judicial Ethics was formed to help New York State's judges and justices adhere to the Rules Governing Judicial Conduct. The Commission on Judicial Conduct's objective is to enforce the high standards of conduct set for judges. Representatives from the Advisory Committee and the Commission will discuss the distinct purposes, powers, and procedures of these very different entities.

11:15 am - 11:25 am **Break**

11:30 am - 12:45 pm **The Art of Judicial Collaboration**

Introduction: Hon. Shirley Troutman, New York State Court of Appeals

Faculty: Hon. John V. Centra (ret.), Appellate Division, Fourth Department, Hon. Carmen Beauchamp Ciparick (ret.), New York State Court of Appeals,

Hon. Randall T. Eng (ret.), Appellate Division, Second Department,

Hon. Robert S. Smith (ret.), New York State Court of Appeals (presenting remotely)

In this session, several former jurists from the Court of Appeals and Appellate Division will explore effective formal and informal ways to reach appellate decisions.



DAY 1

Tuesday, June 25, 2024

12:45 pm - 1:55 pm

Lunch

2:00 pm - 3:30 pm

Demystifying AI and AI's Impact on the Law and Courts

Introduction: Hon. Cynthia S. Kern, Appellate Division, First Department

Faculty: Maura R. Grossman, Research Professor, David R. Cheriton School of Computer Science, University of Waterloo

This session will provide an overview of artificial intelligence (AI) and generative AI (GAI). Among other topics, the speaker will discuss what AI is and how it works, the positive and negative impacts AI can have on the law and courts and some evidentiary and ethical considerations. The faculty will also provide a tutorial on deepfakes and discuss effective practices that courts can adopt to co-exist with this powerful technology.

3:30 pm - 3:40 pm

Break

3:45 pm - 5:00 pm

Judicial Security

Introduction: Hon. Cynthia S. Kern, Appellate Division, First Department

Faculty: Chief Michael Magliano, UCS Department of Public Safety, Major Kevin Scherer, UCS Department of Public Safety

This session will focus on the security concerns of appellate judges. The speakers will discuss the Judicial Security Guidelines, judicial threats, financial security, inappropriate communications, and judicial protection. Recent legislative measures will also be discussed.

5:45 pm - 8:00 pm

Dinner

6:45 pm - 6:50 pm

Greetings From the Presiding Justice of the Fourth Department

Hon. Gerald J. Whalen, Presiding Justice, Appellate Division, Fourth Department



DAY 2

Wednesday, June 26, 2024

7:30 am - 8:25 am

Sign in and Breakfast

8:30 am - 10:00 am

The Art of Judicial Writing

Introduction: Hon. Christine M. Clark, Appellate Division, Third Department

Faculty: Jonathan R. Nash, Robert Howell Hall Professor of Law, Emory University School of Law

During this session, participants will focus on the considerations applicable when deciding to craft separate opinions. The topics covered will include the ways disagreement can arise, the decision to ration dissent, the different audiences for separate opinions, and crafting separate opinions with an eye toward maintaining collegiality and judicial legitimacy. The speaker will examine these issues in a context that often generates disparate thinking among judges: the applicability of analogous federal and state constitutional provisions.

10:00 am - 10:10 am

Break

10:15 am - 11:15 am

A Conversation with Justice Stephen G. Breyer

Introduction: Hon. Christine M. Clark, Appellate Division, Third Department

Faculty: Hon. Stephen G. Breyer (ret.), Supreme Court of the United States (presenting remotely) Hon. Caitlin Halligan, New York State Court of Appeals

In this session, the Honorable Stephen G. Breyer, former Associate Justice of the Supreme Court of the United States, will discuss his recently published book "Reading the Constitution: Why I Chose Pragmatism, Not Textualism," in conversation with the Honorable Caitlin Halligan, Associate Judge of the New York Court of Appeals.

11:15 am - 11:25 am

Break

11:30 am - 1:00 pm

The Neuroscience of Appellate Decision-Making: Accuracy, Excellence, and Equity

Introduction: Hon. Mark C. Dillon, Appellate Division, Second Department

Faculty: Kimberly Papillon, Esq.

In this interactive session, participants will explore emerging research in neuroscience showing how Appellate Court judges and justices reason through and review cases. Brain imaging studies will be used to explain how the standard of review can affect our neurophysiologic reactions. fMRI studies will be used to reveal why information in the record can activate specific parts of the neuroanatomy. The session will also explore how trial judges determine credibility, intelligence, threat, and competence in a diverse society. Finally, the session will identify ways to increase fairness guided by science.



DAY 2

Wednesday, June 26, 2024

1:00 pm - 2:00 pm

Lunch

2:00 pm - 3:30 pm

**The Neuroscience of Appellate Decision-Making:
Accuracy, Excellence, and Equity Continued**

Faculty: Kimberly Papillon, Esq.

3:30 pm - 3:40 pm

Break

3:45 pm - 5:15 pm

Appellate Issues in New York Civil Practice

Introduction: Hon. Mark C. Dillon, Appellate Division, Second Department

*Faculty: Patrick M. Connors, Albert & Angela Farone Distinguished Professor in
New York Civil Practice, Albany Law School*

This session will explore New York civil procedure issues that are likely to come before the appellate courts, and identify issues where there looks to be a conflict in the Departments. It will also address some rather surprising applications and interpretations of appellate caselaw.

5:45 pm - 7:00 pm

Dinner



DAY 3

Thursday, June 27, 2024

7:15 am - 8:10 am

Sign in and Breakfast

8:15 am - 10:00 am

Forensic DNA Admissibility and Advances

Introduction: Hon. Stephen K. Lindley, Appellate Division, Fourth Department

*Faculty: Hon. Joseph J. Maltese, Appellate Division, Second, Department,
Dr. John M. Butler, National Institute of Standards and Technology,
Dr. Michael D. Coble, University of North Texas Health Science Center,
Donald M. Thompson, Esq., Easton Thompson Kasperek Shiffren, LLP*

This session will examine how advancements in the science of DNA have impacted the law. The speakers will discuss several topics, including the evolution of DNA admissibility in New York State courts, forensic DNA science and its development, familial searching and genetic genealogy, and experiences in recent DNA cases.

10:00 am - 10:10 am

Break

10:15 am - 11:30 am

The Art of Oral Argument

Introduction: Hon. Stephen K. Lindley, Appellate Division, Fourth Department

*Faculty: Hon. Jenny Rivera, New York State Court of Appeals,
Hon. David B. Saxe (ret.), Appellate Division, First Department (presenting remotely),
Terry A. Maroney, Robert S. and Theresa L. Reder Chair in Law, Professor,
Vanderbilt University Law School*

This session will provide general tips and suggestions for managing and getting the most out of oral arguments. Among other topics, the speakers will explore the art of questioning advocates in a manner to effectively elicit responses to questions asked at oral argument. The use of hypotheticals in questioning will also be discussed. Further, the speakers will examine the role of emotion in judicial behavior, judicial temperament, and decision-making.

11:30 am - 11:35 am

Stretch Break

11:40 am - 1:00 pm

Today's Supreme Court: The Decisional Impact of Its 6-3 Composition

Introduction: Hon. Stephen K. Lindley, Appellate Division, Fourth Department

Faculty: Vincent M. Bonventre, Jackson Distinguished Professor of Law, Albany Law School

This session will examine significant U.S. Supreme Court decisions since the 2020-2021 term (when Justice Barrett replaced Justice Ginsburg on the Court).

1:00 pm

Lunch (boxes available) and Safe Travels