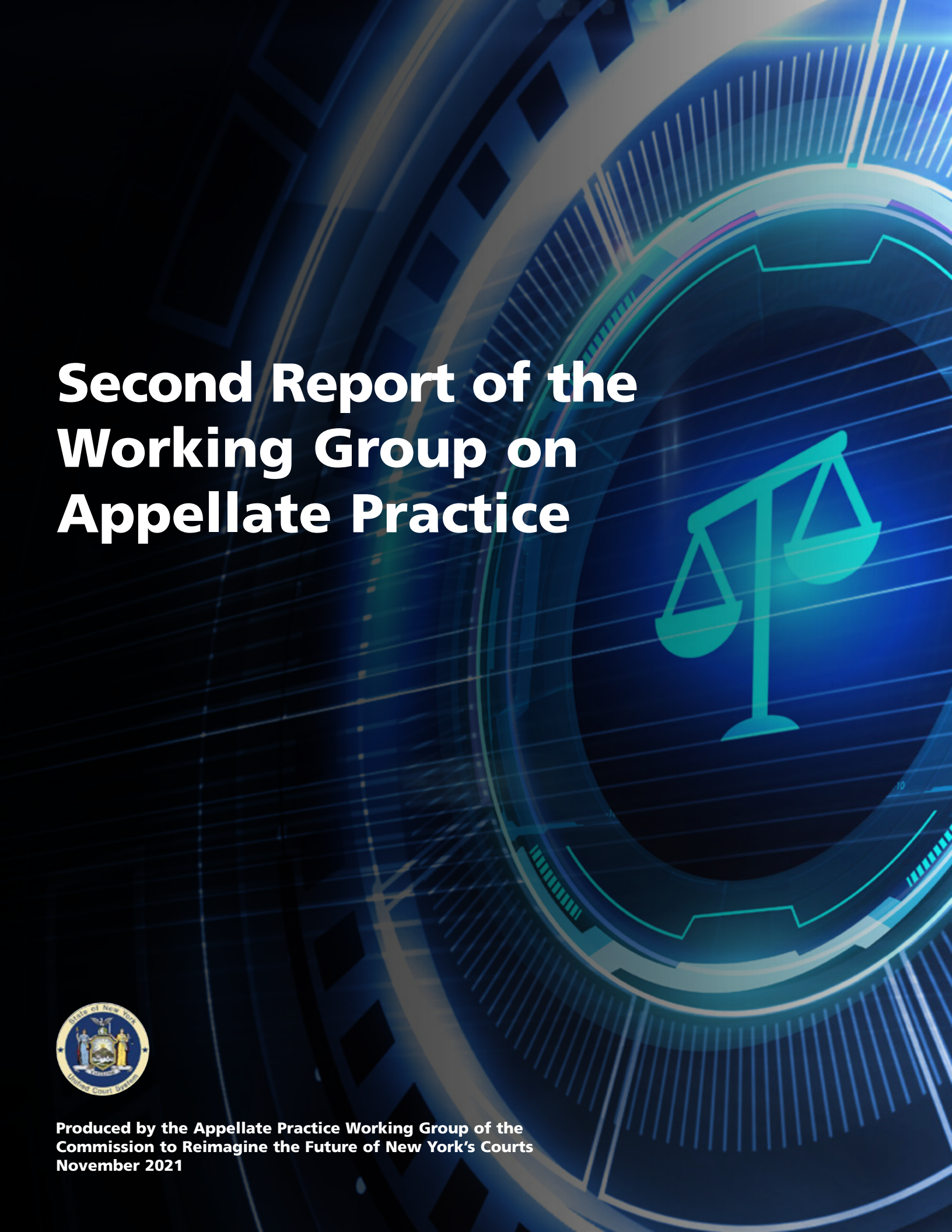

Second Report of the Working Group on Appellate Practice

Produced by the Appellate Practice Working Group of the Commission to Reimagine the Future of New York's Courts
November 2021

Commission to Reimagine the Future of New York's Courts

Working Group on Appellate Practice

Second Report

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I. Executive Summary

In its Initial Report, the Working Group on Appellate Practice established "goals for technological development at the appellate level" and set out to explore "substantive changes to appellate practice [that] would benefit the courts, practitioners, and the public" (Commission to Reimagine the Future of New York's Courts, Initial Report of the Working Group on Appellate Practice at 8 [Dec. 2020] [hereinafter Initial Report). To that end, the Working Group has since heard from several experts, including civil and criminal appellate practitioners, the manager of the UCS Office of Record Production, Family Court administrators, and appellate printers.

These discussions provided valuable insight into several issues affecting appellate practitioners, litigants, and the courts themselves. A refrain frequently heard from practitioners is that appellate courts should increase efficiency and reduce delays. Particularly with regard to criminal appeals, we have heard reports of significant delays in assigning appellate counsel and compiling the appellate record, which can result in an appellant needlessly spending additional time incarcerated. As set forth in the Working Group's Initial Report, technology can and should be leveraged to improve coordination among the courts (from the trial level to the appellate level), increase efficiency, and reduce or eliminate delays wherever possible. Additional changes, such as increasing uniformity among the Departments of the Appellate Division, would do much to reduce inconvenience and, in general, make the appellate process less burdensome for practitioners and litigants.

Following those discussions, and with the perspective that the court system is ultimately to be of service to the public, the Working Group makes the recommendations presented below.

II. Discussion and Recommendations

A. Leverage Technology to Increase Efficiency and Reduce Time and Expense of the Appellate Process

As discussed in our Initial Report, technology has become increasingly vital to the functioning of the court system over the last few decades. That is why we concluded that "creating a robust and (to the extent possible) uniform technological infrastructure . . . is of primary importance" (Initial Report at 3). Updates on our initial technological goals may be found in Section II.E of this report.

Technology has also become a significant component of modern life. Thus, as some of the presenters pointed out in our hearings, the courts should focus on utilizing technology to reduce inconvenience and improve the "appellate experience" of practitioners and litigants, as well as to enhance the efficiency of the courts themselves.

In the Initial Report, the Working Group "envision[ed] a modern public-facing technological infrastructure (e.g., website, e-filing portal) that is more consistent throughout the State" (Initial Report at 2). Several practitioners with whom we met requested the same.

Accordingly, we make the following recommendations (with explanations of our reasoning following each).

1. <u>Create a comprehensive, integrated e-filing system that extends from the inception of a case through the appellate process.</u>

One of the presenters described using four separate e-filing systems in New York. Those systems are not integrated, and some are merely "filing systems," not "docketing systems," meaning that attorneys and litigants can only file items rather than view and retrieve the items they or other parties have already filed.

Ideally, the Working Group envisions an e-filing and docketing system that begins at the trial level, is integrated—or can communicate—with appellate e-filing systems, and permits e-filing of all types of documents (e.g., transcripts, emails to/from a court, charging documents, exhibits; for physical pieces of evidence, photographs that accurately reflect the items could be taken and certified by the courtroom clerks). All documents and evidentiary items should be automatically uploaded to the e-filing system as they are presented in a case, and parties to an action should be able to view and download items that have already been added to the online case file.

If the various trial and appellate systems cannot be fully integrated and, instead, can only be made to communicate with one another through a secure connection (a "digital handshake"), the user interface should be designed so that it appears to the public as a single system. Using that system, perfecting an appeal in the Appellate Division could be made more seamless. An attorney or litigant taking an appeal should be able to simply select, once the appeal is assigned a case number by the trial court, those materials that comprise the record on appeal, and submit them to the appellate court in order to perfect the appeal. One attorney described this as similar to online shopping, with an "add to cart" (or, more appropriately, "add to appellate record") function that would allow the attorney or litigant to select the items they wish to include before clicking "submit" to file the appeal.

Once the items are selected for submission, they should be consolidated into a single electronic file (e.g., a PDF) as an appellate record or appendix that conforms to court requirements, so that the end product looks essentially the same as current hard-copy submissions. This will likely require a technical solution on the part of the courts,

to ensure that the e-filing system produces a final document in electronic format that comports with court rules.

2. Transition to complete e-filing in all case types at the appellate level, with submission of a minimal number of hard copies of the briefs and record on appeal.

As set forth in the Initial Report, e-filing should be expanded to all case types and made more uniform throughout the state (this has largely been accomplished in some appellate courts). Some practitioners have expressed frustration over having to submit hard copies of the record in cases that require e-filing. At present, to compile the record on appeal, practitioners or litigants must download items from NYSCEF, forward them to the appellate printing company, and pay to have them filed at the Appellate Division. According to the practitioners, the current system can be unnecessarily burdensome and costly.

On the other hand, many judges and court attorneys still prefer to read hard copies, and courts are required to retain copies of filed documents. In addition, as some of the appellate printers noted, hard copies provide a fail-safe option in the event that courts fall victim to cybercrimes, such as ransomware attacks.

Therefore, the Working Group has determined that it is reasonable for appellate courts to require the submission of two hard copies for the time being. To implement this change, and if hard copies are eventually eliminated entirely, court rules and, perhaps, statutes would need to be amended (e.g., pertinent sections of the CPLR and Judiciary Law).

3. Develop a user-friendly, uniform way to access appellate dockets and receive notifications about case-status (e.g., when oral arguments are scheduled).

Several practitioners explained that they typically learn from the appellate printers, not the courts, when their appeals will be heard. Appellate courts should directly advise counsel—ideally, via notifications from the e-filing website—as to which term an appeal is calendared, and the specific date that the appeal will appear on the day calendar. This would improve the appellate experience because counsel would no longer have to rely on a "middle entity" to know when their case is scheduled.

4. Continue to employ virtual court proceedings, but not as the default format.

Virtual oral arguments, despite their shortcomings—for example, as one practitioner described, they have less solemnity and formality than in-person arguments—have served a very useful function during the COVID-19 pandemic and should continue to be used where appropriate, albeit not as a routine substitute for in-person arguments (unless public health concerns so dictate). There is a tradeoff where virtual arguments are concerned: It is often more convenient for clients and lawyers (they need not travel across the state or country to attend arguments), but, as one practitioner put it, it is much harder to assess judges' body language or their reactions to an argument via video.

Nevertheless, many appellate attorneys routinely appear in all four Departments of the Appellate Division, covering the entire geographic region of New York State. In an effort to minimize the cost and travel time associated with court appearances, attorneys should be given the option to either appear in-person or appear virtually, only if good

cause is shown. If necessary, a court's day calendar could be divided into an in-person segment and a virtual segment.

Whenever virtual arguments are utilized, audio and video should be used, rather than audio-only. To the extent possible, virtual proceedings should replicate in-person proceedings; for example, all parties should be visible during the proceedings and able to see one another and the judge(s). Additionally, the appellate courts should standardize their public-facing virtual courtrooms, so that the livestreamed proceedings appear uniform. Lastly, courts should stand ready to enable hybrid (i.e., simultaneous virtual and in-person) proceedings, to allow one or more of the parties to appear remotely; this would maximize flexibility in the event of weather or public health emergencies and would not compel parties to rest on their papers, or delay the outcome of a matter, if some or all parties are unable to appear in-person.

5. Permit or require hyperlinking and bookmarking in briefs.

Some courts already have rules addressing hyperlinking of cited sources and bookmarking (linking tables of contents to the relevant sections) in electronic documents, as it increases efficiency not only for judges but opposing counsel as well. The Second Department requires bookmarking and hyperlinking, while the First Department currently requires bookmarking and permits hyperlinking to primary authorities on a voluntary basis.

Although some practitioners have described hyperlinking as time-consuming and cumbersome for attorneys assembling briefs, the Working Group's view is that requiring it will result in greater efficiency for the courts and, consequently, for litigants whose appeals may be decided more expeditiously.

6. Develop a uniform policy for the Appellate Division regarding which category of cases (civil and/or criminal) are to be heard on submission only.

At present, each Department of the Appellate Division has local rules on the types of cases that are automatically granted time for oral argument, rather than being decided solely on submission of the briefs and record. For example, Sex Offender Registration Act appeals and criminal appeals arguing that the sentence was excessive are generally granted oral argument time in the First Department, but not in the Fourth Department (*compare* 22 NYCRR § 1250.15(c) [*available at* https://www.nycourts.gov/courts/AD1/Practice&Procedures/rules.shtml#1250.15] *with* 22 NYCRR § 1000.15(d)(2) [*available at* https://www.nycourts.gov/courts/ad4/Clerk/Part1000-LocalPracticeRules.pdf]).

For practitioners who regularly handle appeals in all four Departments, the disparate rules appear to be arbitrary and, at times, unfair.

7. Consider fast-tracking certain interlocutory appeals.

Interlocutory appeals can significantly delay the outcome of a case; in some cases, they may be used as a dilatory tactic, even when there are no substantive issues to be appealed. Accordingly, at least one presenter suggested that appellate courts "fast track" interlocutory appeals, so that they may be heard and decided swiftly and remitted to the trial courts for further proceedings.

However, interlocutory appeals comprise a substantial percentage of the appellate courts' calendars; in some courts, interlocutory appeals constitute more than half of the court's docket. This makes it difficult, from a practical standpoint, to "fast-

track" all interlocutory appeals as doing so would exacerbate the delay of appeals from final orders, many of which the courts are statutorily mandated to prioritize.

In order to address the delays to final disposition in cases where interlocutory appeals are taken, the First Department plans to launch a pilot program in January 2022 in which the perfection timeframe for certain types of interlocutory appeals would be reduced from six to four months. This accelerated perfection timeframe would apply to interlocutory appeals in commercial cases in which the only issues are related to discovery disputes.

B. Issues Particular to Criminal Appellate Practice

The institutional criminal defense providers (the institutional providers) with whom the Working Group met highlighted several issues that affect criminal appellate practice in New York. In some jurisdictions, there are significant delays assigning appellate counsel and obtaining transcripts and other materials necessary to create the record on appeal. Such delays are arguably more harmful in criminal as opposed to civil cases, because a person's freedom is at stake.[1] The arduous process of gathering the materials needed is, as the institutional providers put it in a letter to the Working Group, "needlessly time-consuming and frustrating . . . and can lead to the appeal being heard on less than the full record."

The institutional providers identified several key problems, all of which they propose could be addressed by creating a "comprehensive and integrated electronic filing system" that would connect a case, and provide electronic access to all filings, from

[1] Notably, civil practitioners have not complained to the Working Group about difficulties perfecting appeals due to challenges obtaining transcripts.

inception through to the court of last resort. (As noted above in Section II.A.1, the Working Group agrees.)

First, the institutional providers note that there are needless delays in assigning appellate counsel. In some jurisdictions, such as the First and Second Departments, it often takes up to six months after sentencing to assign appellate counsel. This process could be greatly accelerated (at least in the First and Second Departments) if trial lawyers—in cases where their clients have been permitted to proceed as a "poor person" after a finding of indigency—regularly moved the trial court to determine indigency at sentencing; if the trial court grants the motion, the defendant would be assigned appellate counsel without having to make a *de novo* motion at the appellate court for "poor person relief" (*see* CPL § 380.55).[2]

Another cause of significant delay, according to the institutional providers, is the difficulty assigned appellate counsel have accessing trial-level minutes and transcripts, which are essential to compiling the appellate record. Although court reporters have a standard requiring that they complete production of transcripts within 90 days after receipt of an appellate order to prepare and file the transcripts, that standard is frequently not met. And once the transcripts are completed, they are transferred from

[2] CPL § 380.55 was enacted in 2016, but it appears that many trial lawyers and judges are either unaware of it or rarely utilize it. More training through Continuing Legal Education courses may be needed. In addition, the Legislature has taken another step to streamline the process with the passage of S1279/A5689, an amendment to CPL § 380.55, which provides that the "appellate court shall presume the defendant eligible for assignment of counsel without further proof of eligibility and, thereby, issue an Order assigning such counsel, if counsel provides a sworn representation that the defendant continues to be eligible for assignment of counsel." If the bill is signed by the Governor and enacted, the attorney's representation should become regular practice and incorporated in or attached to the Notice of Appeal so that it is not overlooked. An affirmation by defense counsel should be permitted. The new law will solve the problem of delay in this area only if it is easy for defense counsel to do what it requires.

point to point in hard copy, furthering delays (thankfully, UCS's Division of Technology is already working on a solution to this particular issue).[3]

As the institutional providers noted in their letter,

> Throughout New York City, institutional providers typically do not receive minutes within six months of assignment and not infrequently are still awaiting minutes more than 18 months after assignment . . . . Even longer delays may occur due to retirements of court reporters; retired reporters may take their notes with them and may – or may not – cooperate in getting the minutes transcribed. In the First . . . and Second Departments, all of the institutional providers report awaiting records in many cases more than two years after assignment – meaning that we have not yet received a single transcript relevant to the appeal.[4]

Moreover, depending on the jurisdiction, institutional providers must request transcripts from the appeals bureau of Supreme Court, county clerk, or county court clerk, which sends the transcripts to the Appellate Division, which then sends them to assigned counsel. This meandering process is unnecessarily complex and may lead assigned counsel to perfect the appeal on an incomplete record. Compare this to the federal courts' online PACER system, which has been in operation for decades, and through which nearly instantaneous access to transcripts is provided in most criminal

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[3] Other materials are similarly difficult to obtain. For example, exhibits are kept by the parties once a trial ends, and prosecutors' offices may inadvertently lose or misplace People's exhibits before the appellate process is complete. The institutional providers add that "[g]etting defense exhibits is also often either slow or impossible and depends on accurate record keeping and file retention by trial counsel. Even court exhibits are not always kept as part of the court file." Other court files that are transferred via hard copy are susceptible to misplacement, or may be incomplete because their compilation (i.e., which materials are added to the file) depends on the judgment of court clerks.

[4] In the Third Department, although assignment of counsel can take longer than in the downstate appellate courts due to a shortage of 18b panel attorneys, the process of obtaining minutes and transcripts is typically much faster (perhaps because staff in the appellate court make efforts to expedite the process if they become aware that it is taking longer than four months for assigned counsel to obtain the necessary materials).

cases (the parties receive the daily copy right away and can obtain the minutes a few weeks later via the PACER system).

The delays described by the institutional providers are unacceptable. The institutional providers reason that (1) an integrated e-filing system, (2) greater oversight and accountability for court reporters, and (3) requiring that minutes, transcripts, and other materials be promptly uploaded to an e-filing system accessible to all parties would do much to ameliorate this situation.

We agree. Accordingly, as noted in Section II.A.1, *supra*, we recommend the creation of a comprehensive and integrated e-filing system to connect cases from inception through the appellate process, and that such a system should permit electronic access to all filings and other materials for all parties in a case. Exceptions could be made for particularly sensitive materials or in sealed matters. Moreover, as discussed in greater detail in Section II.D, *infra*, it is essential that the court system create and enforce reasonable standards for court reporters, providing adequate oversight and accountability.

C. Issues Particular to Family Appellate Practice

Although New York has a long and distinguished tradition of leadership in providing quality legal service to our most vulnerable citizens—our children—there has been an alarming decrease in the number of lawyers choosing to serve on attorneys for children (AFC) panels statewide. For example, in the First Department, the number of panel AFCs has declined more than 22% from 2014 to 2019; in the Second Department, AFCs have declined 5% overall from 2010, the decrease being more severe in the most populous counties, e.g., Nassau County (12%) and Queens County (10%); in the Third

Department, AFCs declined 55% from 2010 to 2018 (and, notably, county panel liaison representatives reported that only one-half of existing panel members in their counties regularly take assignments); and in the Fourth Department, AFCs have declined approximately 10% in the past five years (several rural counties do not have sufficient numbers of AFCs to accept assignments).

This decrease is expected to continue, seriously endangering New York's legacy and affecting the service provided to children in Family Court. The AFC advisory committees have reported that it has become very difficult to recruit new panel members. At the same time, the complexity of the cases in which AFC panel members are involved has increased. Additionally, because the number of experienced AFCs available to accept cases has declined, the remaining AFCs are burdened with excessive caseloads. These excessive and increasingly complex caseloads increase the risk that AFCs will be unable to give sufficient attention to each client. Further attrition of panel attorneys actively taking assigned cases will result in an even greater strain upon the entire assigned counsel system.

Furthermore, the decrease in AFCs affects the administration of justice in Family Court. In some counties, discretionary appointments in custody and visitation cases are simply not made, leaving children unrepresented. In other counties, the Family Court must resort to assignment of out-of-county attorneys, which creates additional travel expense. Given the large geographic size of the many counties in the Third and Fourth Departments, this is often very significant, not only in dollars, but in wasted judicial resources.

Further consequences of the shortage of AFCs include the following:

1. Repeated delays in court appearances and hearings occur, because AFCs are often on trial elsewhere. This compromises the families who must endure longer waiting periods before the administration of justice can run its course. It also complicates the tasks of all attorneys in a case in assuring the presence and cooperation of witnesses.
2. It has become increasingly difficult to secure assigned counsel to staff intake days in the First and Second Departments. This jeopardizes the justice system's ability to comply with legal mandates and makes it more difficult to expedite court review of many cases, including those involving child abuse and neglect, and juveniles held in custody.
3. Petitioners in domestic violence cases in Family Court—in need of immediate relief and unable to wait for the availability of counsel—must proceed *pro se* and make critical decisions, some potentially affecting their safety and their children's safety, without legal advice.
4. There has been an overall reduction in the number of experienced AFCs. This affects not only the outcome of cases but also the length of cases (i.e., cases that would have been settled earlier by more skillful counsel are not, thus requiring consumption of more judicial resources and time before such cases reach disposition).

The Working Group acknowledges pending litigation over the compensation rates for panel attorneys (*New York County Lawyers Association v. State of New York*, Index No. 156916/2021, Supreme Court, New York County) and, accordingly, refrains from opining on the particular issues in that case. Nevertheless, we do recognize that

something must be done to augment the number of competent panel attorneys, particularly those who serve as AFCs.

In addition, the number of court reporters in the New York City Family Court has declined in recent years. As Administrative Judge Anne-Marie Jolly explained in a letter to the Working Group, "[t]he current inadequate number of court reporters requires the Family Court to over-rely on mechanical recording of proceedings (by FTR [For the Record]) which often returns partially inaudible recordings resulting in incomplete transcriptions with missing words and phrases." This can lead to extraordinary delays in appeals from Family Court; if crucial portions of transcripts are inaudible, the Appellate Division may need to remit the matter to the Family Court for a reconstruction hearing to complete the record. It may be a year or more from the initial Family Court decision to the final disposition at the Appellate Division, and circumstances may have changed significantly (e.g., a child involved in the matter may have reached the age of majority, members of the family may have moved, etc.).

Judge Jolly further noted that "the turnaround time for obtaining transcripts from court reporters is quicker than for obtaining them from FTR recordings." Accordingly, as set forth in Section II.D below, we recommend increasing court reporters and reducing reliance on FTR in Family Court.

D. Consider Increasing Staffing, Training, and Oversight of Court Reporters

As explained above, accessing minutes and transcripts is one of the major causes of delay, particularly in criminal appeals. This appears to be largely due to inadequate staffing, training, and oversight of court reporters.

Michael DeVito, himself a former court reporter, has managed the UCS Office of Record Production since its creation in 2017. The Office is charged with, *inter alia*, overseeing court reporters and maintaining their staffing levels. He reported to the Working Group that there has been a significant decline in court reporters statewide since 2017; the number of Senior Court Reporters (the title of reporters required in superior courts from which transcripts to the Appellate Division originate) has declined from 600 in 2017, to 595 in 2019, to 510 as of October 18, 2021, a loss of 90 reporters.[5]

According to Mr. DeVito, OCA's past staffing guidelines recommended a "modest surplus ratio" of court reporters to judges; he specified that the ideal ratio of Senior Court Reporters to Supreme and County Court Justices is 1.25:1, to ensure that there are enough reporters to transcribe court proceedings when needed, while accounting for contingencies such as sick leave, vacations, and retirements. However, as of June 16, 2021, the current ratio stands at approximately .85:1 (there are only 510 Senior Court Reporters to 600 superior court judges[6]). This dearth of reporters all but ensures delays in creating and obtaining transcripts.

In addition, Mr. DeVito reported that few court reporters in New York State courts are trained in "real-time transcription," the instantaneous conversion of a reporter's stenotype into English. Most reporters in federal courts have such training. At a hearing or trial, real-time transcription allows the judge and the lawyers to view the transcript as the proceeding is unfolding. That is now the standard in federal courts, but

[5] The total number of court reporters (including Senior Court Reporters) has declined from approximately 1,100 court reporters prior to 2017 to 801 as of October 2021, a loss of nearly 300 reporters.

[6] This does not include judges in acting superior court capacity, whose court records also affect the appellate process.

not in New York State courts. Of course, a real-time transcript is not perfect, but it is a serviceable draft. A good real-time reporter can proof a draft and convert it to an official transcript in relatively short order.

Lastly, there appears to be inadequate oversight of court reporters, further contributing to delays. Many court reporters, who are overworked because of the staffing deficit, are unable or simply fail to meet the standard of completing a transcript within 90 days from receipt of an appellate order, but there is little consequence for failing to do so. As Mr. DeVito pointed out, "[w]hile we must be cognizant of budgetary concerns, we must also bear in mind there is a direct correlation between reduction in staff and [transcript] production efficiency."

In light of the issues raised above, the Working Group recommends the following:

1. The court system should employ enough Senior Court Reporters to reach the ideal ratio of such reporters to superior court judges in New York (1.25:1). This would require hiring nearly 200 additional reporters to total 750 Senior Court Reporters for the approximately 600 Supreme/County Court Justices around the state. At the very least, UCS should hire enough reporters to return to a "modest surplus" of court reporters to judges.
2. Similarly, increase the number of Court Reporters who work in Family Court, where For the Record (FTR) recording equipment—which creates an automated transcript of court proceedings—is used more frequently. While FTR is useful, the transcript quality obtained from electronically recorded proceedings is not near that of a court reporter. As Mr. DeVito proposed, UCS should consider redeploying FTR equipment from the Family Courts to the city civil courts, where

transcript requests number far fewer, and redistributing the court reporters from city civil courts to the Family Courts.

3. Consider training all court reporters in real-time transcription. Perhaps more study is needed to address these questions: Should New York require that all new reporters be real-time trained? Should there be a pay differential to compensate real-time reporters for their greater skill and to incentivize others to become real-time trained? Should appellate lawyers be able to order a real-time transcript (at a lower price than an official transcript) to determine if there is an issue worthy of appeal? Real-time transcription is now state-of-the-art, but it is a skill that few New York State court reporters employ.
4. Require e-filing of all transcripts in NYSCEF. As an alternative to NYSCEF, an Electronic Document Delivery System (EDDS) was piloted in Kings County during the pandemic for e-filing of transcripts. As Mr. DeVito explained to the Working Group, appeals bureaus within the City of New York currently receive and compile completed transcripts for criminal matters. The process of compiling hard-copy transcripts is labor intensive and time consuming. Allowing e-filing of transcripts in criminal appeals would accelerate the process by making the appellate transcript instantly available to all parties.

As Mr. DeVito pointed out, EDDS has been utilized successfully by Kings County for appellate purposes in criminal appeals since the beginning of the pandemic. At the trial court level, court reporters can and have produced electronic transcripts (.pdf format) at the attorney's request, yet no other borough in NYC has had the occasion to utilize e-filing of transcripts for appeals. Kings County's successful experience with EDDS for appellate purposes may be adapted

for use by the remaining boroughs. However, a more ideal method for purposes of uniformity would be to use NYSCEF for all e-filing of transcripts, statewide; the Office of Record Production is currently piloting e-filing of transcripts via NYSCEF in upstate courts. E-filing of transcripts would greatly improve the appellate process and give wider access to all parties associated with an appeal.

5. Consider creating a rule requiring trial judges to order daily copy for all felony trials. Almost all criminal cases result in appeals. At present, some, but not all, trial judges order daily copy from court reporters. (Many trial lawyers also order daily copy of critical portions of the trial.) For a trial judge, the availability of daily copy facilitates prompt review of trial issues and avoids the need to have the court reporter search through their notes if the jury seeks a readback. If the judge has ordered daily copy, the transcript is complete when the trial is concluded. Of course, further study may be needed to determine the cost of implementing such a rule.
6. To further aid court reporters, trial judges should require lawyers to provide court reporters with a list of names and uncommon words that are likely to be said during a proceeding. A court reporter works from a dictionary, and adding new words to the dictionary ahead of time facilitates the production of a transcript.
7. Improve oversight capabilities of the Office of Record Production by creating a deputy position to assist the manager (currently, the agency is staffed solely by the manager, Mr. DeVito) and a modest salary increase for supervisory Principal Court Reporters. As Mr. DeVito reported, the supervision and management of court reporting services is both complex and varied, depending greatly upon local

court needs and structure. He suggested that more efficient utilization of staff and more effective oversight may be achieved by modifying the management structure of court reporter operations to mirror that of other court titles. Furthermore, the supervising title of Principal Court Reporter is only one pay grade above that of the staff they supervise, and the Office of Record Production lacks a deputy position to assist with the many aspects of overseeing a large and complex operation. As Mr. DeVito indicated, a modification in salary grade structure and the creation of a deputy position would greatly improve the oversight necessary to improve transcript production efficiency and its impact upon the appellate process.

8. Increase accountability for court reporters; create reasonable standards and hold reporters accountable to them.

E. Update on Technological Goals

In the Initial Report, the Working Group outlined several goals for technological enhancement of the appellate courts. An update on some of those goals that had not previously been completed may be found below. Other short- and long-term goals remain ongoing.

1. Short-term Goals
    - Update software and applications to ensure uniformity and standardization across the four Departments of the Appellate Division and the Court of Appeals.

- Establish Online System for Attorney Requests of Certificates of Good Standing (to improve efficiency of Committees on Character and Fitness).
    - Status: Completed. Since Feb. 16, 2021, nearly 28,000 Certificates of Good Standing have been issued electronically. All certificates and letters are in a standardized, uniform format and language.

2. Long-term Goals

- 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.
    - Status: Ongoing. OCA Division of Technology (DoT) will continue to collaborate with all Departments of the Appellate Division and the Court of Appeals to determine the best approach for a uniform system.

- Improve NYSCEF/e-Filing.
    - Status: Ongoing. As outlined in this report, a significant amount of coordination with several departments and multiple teams will be required to implement the suggested changes through all court types. DoT will collaborate with all necessary departments to ensure appellate requirements for the new/enhanced system are met.

- Update court websites using a common interface, providing a cohesive user experience.
    - Status: Ongoing. The National Center for State Courts has been recruited to evaluate UCS's current web presence, provide analysis of website design, provide recommendations on the new design, and conduct surveys. A contract is pending.

III. **Conclusion**

The recommendations outlined in this report are aimed at enhancing efficiency, improving the appellate experience for practitioners and litigants, and reducing or eliminating unnecessary delays in administering justice in New York's appellate courts. Among the most common legal maxims is that "justice delayed is justice denied." The Working Group has learned that the appellate process is too often delayed, particularly in criminal cases due to the challenges appellate lawyers experience between sentencing and the perfection of a defendant's appeal. Too many defendants languish in jail while their appellate attorneys seek transcripts or exhibits that may prove their clients' innocence or, at least, their entitlement to a new trial.

New Yorkers who do business in our courts deserve an appellate process that is efficient, easy to understand, and inexpensive. The Working Group on Appellate Practice is hopeful that this report has charted a course to better achieve those goals.

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        - Madeline Alvarez, Executive Vice President
        - Soroya Brantley, Senior Paralegal
    - Dick Bailey Service, Inc.
        - Lynn Baily (CEO)
        - Bill Baily (COO)

V. Composition of Appellate Practice Working Group

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