

REMOTE JUDGING SURVEY: ACCESS AND USE OF TECHNOLOGY

FIRST REPORT - JANUARY 2021



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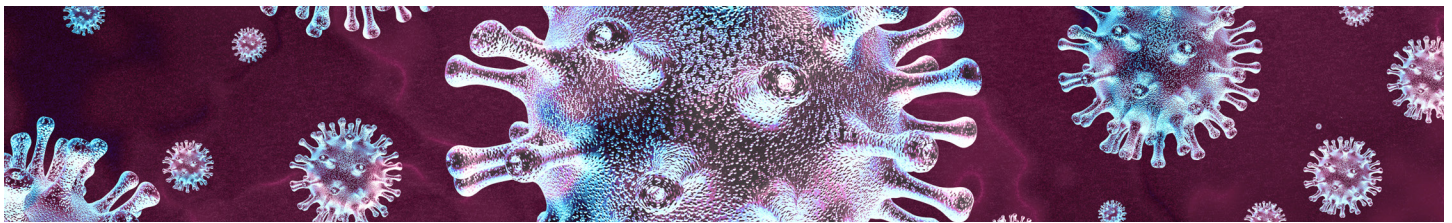
INTRODUCTION

The COVID-19 pandemic has severely disrupted litigation in New York State. With New York's physical courthouses forced to close, the Judiciary unexpectedly having to hear emergency court appearances remotely, and lawyers not in their offices, the justice system in New York was severely affected.

Operational, logistical and technological challenges the New York Unified Court System ("UCS") encountered prevented the Judiciary from pivoting immediately to a full remote platform in the wake of the COVID-19 shutdown. In light of the need to understand how a judicial system can better improve its ability to appropriately shift to remote operations seamlessly and efficiently, the Technology Working Group ("Working Group") of the Commission to Reimagine the Future of New York's Courts ("Commission") designed a survey ("Survey") for distribution to all New York judges, including Town and Village Justices, and to their judicial staffs to inquire about their use of technology to perform their work remotely.

The Working Group designed the Survey to be anonymous, as indicated by the accompanying email drafted by the co-chairs of the Working Group, Mark A. Berman of Ganfer Shore Leeds and Zauderer LLP and Sharon M. Porcellio of Bond, Schoeneck & King, PLLC. However, the Survey was sent from a UCS email address to ensure that neither Respondents nor their computer filters would confuse the Survey for "spam," and thus deleted, ignored or not opened. To instill confidence that the Survey would be anonymous, the Survey did not include any questions that would identify Respondents' judicial district.¹

UCS, through its intranet, emailed the Survey to 9,064 email addresses on August 20, 2020. Fourteen hundred and fifty-five Surveys bounced back as sent to incorrect/out-of-date email addresses or to individuals no longer associated with the UCS. As such, 7,609 Surveys were actually received by operative email addresses. The Survey remained open until September 16, 2020, for a total of 28 days. The Survey was publicized, and multiple reminders were sent in an effort to increase the response rate. 3,591 Respondents started the Survey (which took an average of 14 minutes to complete), and 1,911 Respondents completed the Survey, resulting in a response rate of approximately twenty-five (25) percent.²



¹ Nevertheless, anecdotally, the Working Group has heard concerns that some judges still had about the anonymity of the Survey.

² For purposes of transparency concerning the results, we note that implicit in any survey sent digitally and seeking digital responses is that a certain percent of recipients are not sufficiently comfortable with technology to respond electronically. Further, the Survey was sent during the pandemic, when many of the recipients were not in their judicial chambers and were working remotely (and not necessarily even from home), without necessarily having appropriate mobile technology to be able to respond. Thus, the data collected should be viewed in light of these factors.

The data were aggregated and analyzed over a period of two months with the assistance of two analysts from the UCS. In the Survey, judges were defined to include judges, justices, magistrates, referees and judicial hearing officers (collectively, “Judges”). Law clerks, court attorneys and law secretaries (collectively’ “Court Attorneys”) were grouped together, and the Survey included a category entitled “Non-Lawyer Staff.” Survey results were analyzed by court type and role (e.g., Judge, Court Attorneys or Non-Lawyer Staff), where appropriate.

The chart below indicates the breakdown of Respondents by court type and the role of each Respondent:

Court Type	Respondent’s Title					Court Attorney	Non Lawyer Staff	No Answer	Grand Total
	Judge	Referee	Magistrate	JHO					
Appellate	23					101	6	2	132
City	57					21	17	1	96
County	42					40	39	2	123
Court of Claims	21					17	18	2	58
District	20	1				5	2		28
Family	65	33	6			80	34	4	222
NYC Civil	37					28	2		67
NYC Criminal	27					31	1	1	60
Supreme	170	51		1		295	81	3	601
Surrogates	11	13				29	12		65
Town and Village	247					1	137	13	398
N/A		7				8	2		17
Unknown	4					1	5	34	44
Grand Total	724	105	6	1		657	356	62	1,911

The results of the Survey will be presented in three reports. This first report (“Report”) will address Respondents’ access to and use of Secondary Devices for working remotely (as used in the Survey, this term refers to a desktop, laptop, iPad, other tablet and/or cell phone, whether personal or UCS issued) and “Mobile Devices” (Secondary Devices other than desktops), various UCS software platforms, and whether Respondents are using the Secondary and Mobile Devices in a secure manner.

The second report will address Respondents’ comfort level in using technology to conduct virtual judicial proceedings and how such technology is used in proceedings, as well as issues related to digital recording of proceedings, court reporters and translators. This second report will also touch upon chambers and courtroom technology.

The third report will focus on the data provided by the Town and Village Respondents. As explained below, they overwhelmingly possess UCS-issued laptops. Thus, the issues they face are different from those of the other Respondents.

The Working Group acknowledges that the Structural Innovations Working Group of the Commission is working on issues relating to universal statewide e-filing. This report, however, will briefly address issues related to judicial perspectives on “paperless” filings as evidenced by certain data collected by the Survey, as this issue is critical to the ability of lawyers and the Judiciary to operate remotely.

EXECUTIVE SUMMARY



The data reveal that Secondary Devices and Mobile Devices that enable Respondents to work remotely have permeated the UCS. Nevertheless, the number of members of the judicial branch using Mobile Devices is far from adequate to permit the Judiciary to effectively and efficiently administer justice on a remote basis.

The Survey indicates that various types of Mobile Devices are being used by UCS personnel to work remotely and to conduct virtual court appearances. The Survey responses reveal that too many Respondents use their own *personal* Mobile Devices, rather than court-issued Mobile Devices to conduct court business. Reliance on *personal* devices, of any type, to conduct

court business needs to be strongly curtailed to the greatest degree possible as the UCS has no control over those devices, and the security of those devices cannot be assured. Respondents do not appear to be properly protecting their personal devices through generally accepted security features, such as multi-factor authentication, which puts court-related work at considerable risk. In addition, Respondents' installation of “apps”³ on their Secondary Devices could compromise court-related communications and work stored on them.

The Survey also reveals that many Court Attorneys have not been provided with UCS-issued Mobile Devices, which likely has had and will continue to have, an adverse effect on the speedy and efficient administration of remote justice.

The Survey did not seek recommendations from Respondents as to the type of Mobile Device that they would like UCS to provide. However, to make Respondents more mobile and to be able to work remotely, UCS should consider providing Respondents with laptops or tablets that have docking stations, which would enable Respondents to travel with a single computer and to be able to use that same laptop securely in chambers and remotely.⁴

³ An app, short for application, is a downloadable, specialized software program often used on mobile devices.

⁴ Respondents would be able to have a large computer monitor in chambers and to use the laptop's smaller screen when working remotely. Over time, adoption of this technology should save UCS money as there would be no need for a Respondent to have two computers and replacement of the aging computers that Respondents currently use in chambers would not be necessary.



Respondents universally indicated that they would like: (i) a feature that would allow them to securely sign an order electronically without having to physically print it out and without actually having to sign it or use a stamped signature, and (ii) use a program that would allow them to mark up and sign a PDF document that already had been e-filed, without having to print it out and rescan the document.

The Survey also evidences that seventy-seven (77) percent of Respondents indicated that they would use a Mobile Device that allowed them to write or draw on the screen, and eighty-six (86) percent of Respondents would use a device that had a touch screen.

As for the use of “paper” by the Judiciary, few judges request that attorneys convert a legacy non-e-filed case to an e-filed one when they appear before the court. This should change. Most Respondents still require a hard-copy working set of motion papers. Only a small percentage of Respondents had a “paperless” part. When “non-paperless” parts were asked if they would like to become “paperless,” thirty-five (35) percent answered in the affirmative. The practice of requiring paper submissions and paper working copies of motions needs to be curtailed if the Judiciary is to be able to operate proficiently and efficiently while working remotely.

UCS employees need to be able to both scan and print remotely from home, and the Survey indicates that the Judiciary has not been provided with sufficient printers for those who are unable or unwilling to become fully “paperless” when working remotely. Scanning functionality could easily be provided that would allow for scanning from a Mobile Device. Further, there is too much reliance on the use of faxes to communicate between the Judiciary and attorneys. Such technology is antiquated and does not provide for efficient remote communications.

UCS needs to ensure that their personnel receive appropriate Mobile Devices in order to effectively work remotely and that they receive the necessary training to ensure that Mobile Devices and information management systems are used properly, effectively, and securely.

JUDICIARY’S USE OF SECONDARY DEVICES FOR REMOTE WORK

Fifty (50) percent of Respondents use a *personal* non-UCS-issued desktop computer at home to conduct court business remotely. For the reasons set forth below, Respondents need to use UCS-issued Mobile Devices to conduct court work. The Working Group understands that it will take time before all Judges and Court Attorneys will receive UCS-issued Mobile Devices.

COURT-ISSUED MOBILE DEVICES GENERALLY



The Survey first sought to identify the availability of Secondary Devices to the Respondents, whether UCS-issued devices *or* personal devices, and which types of devices were used to conduct court business.⁵

The data revealed that fifty-two (52) percent of all Respondents possessed a Mobile Device issued by the UCS (e.g., a laptop, tablet and/or cell phone), and, as further discussed below, fifty (50) percent of them indicated they used them to conduct court business remotely.

This fifty (50) percent increased to sixty-nine (69) when Non-Lawyer Staff and Court Attorneys are excluded for all court types, meaning that Court Attorneys did not have or use UCS-issued Mobile Devices to perform court business. This number is likely based on the fact that Court Attorneys are not traditionally issued a UCS Mobile Device to the same degree as Judges. As such, Court Attorneys are forced to use their own personal Secondary Devices to conduct court business or, alternatively, be unable to perform their work remotely, which does not promote a secure and effective remote judicial system.

The Survey also collected information on the use of Mobile Devices to conduct court business remotely. Traditionally, Mobile Devices are offered only to Judges and senior managers.

With respect to Judges, and excluding Town and Village Justices,⁶ the Survey indicated that eighty-two (82) percent of them have a Mobile Device issued by the UCS, and eighty (80) percent of them use the Mobile Devices for court business.

USE OF *PERSONAL* DEVICES TO CONDUCT COURT BUSINESS

The data showed that forty-two (42) percent of all Respondents used their own devices to conduct court business remotely. For example, fifty-eight (58) percent of Appellate Division Respondents, fifty-six (56) percent of Family Court Respondents, and forty-eight (48) percent of Supreme Court

⁵ With very few exceptions, UCS employees are issued a desktop computer for use in their primary work location. However, the devices discussed in this Report refer specifically to Mobile Devices used to conduct work remotely, as well as to more easily move between the courtroom and chambers.

⁶ We note that each Town and Village Justice is provided with a laptop with recording capacity.

Respondents used *personal* devices to conduct court business. On the other hand, sixty-eight (68) percent of Town and Village Respondents do *not* use personal devices, but rather used UCS-issued devices to conduct court business, which is consistent with their being issued UCS laptops.

Further, only twenty-nine (29) percent of Court Attorneys had UCS-issued devices to conduct business remotely. As such, they have had to rely upon their *personal* devices to conduct court business with sixty (60) percent of Court Attorneys doing so using their *personal* devices, including their own desktop computers.

PASSWORD PROTECTION OF DEVICES AND OTHER DATA SECURITY PROTECTIONS

Security was another important area of inquiry of the Survey. Eighty-two (82) percent of Respondents use a Secondary Device to conduct court business. That raises concerns about the potential lack of security of those devices. The protection of court information can easily be compromised on personal Secondary Devices by not having passwords, misplaced laptops and cell phones, carelessness with thumb drives (small external storage drives), and inadequate cloud security. For example, ninety-eight (98) percent of Respondents who used UCS-issued cell phones to conduct court business indicated that their phones were password protected. Eighty-two (82) percent of Respondents who used a thumb drive to copy information reported that they do not know how to encrypt it. This presents a security issue as thumb drives are easily misplaced or lost. Three (3) percent of Respondents stored court work on their non-password protected personal Secondary Device. Seventy (70) percent of Respondents who used non-UCS cloud accounts to store information indicated that their accounts did not require multi-factor authentication.⁷



⁷ Multi-factor authentication is an electronic authentication method in which a computer user is granted access to a website or application only after successfully presenting two or more pieces of evidence (or factors) to an authentication mechanism.

Using work devices for personal use is another security concern. Eighteen (18) percent of Respondents' family members, including children, have access to their UCS-issued or *personal* devices on which they conduct court business. Almost half of the Respondents, forty-six (46) percent, have installed "apps" on their Mobile Devices, which might access, or in the event of a hack of the "app," compromise court-related information stored on the Respondents' devices. Additionally, fifty-one (51) percent of Respondents conduct personal business on the same devices they use for court business.

The Survey results further indicate that antivirus protection on personal Secondary Devices, or the lack thereof, is another concern. UCS has developed standards to protect against viruses. Antivirus software is installed on all UCS-issued devices and the UCS Office 365 environment has additional built-in security protection for email and cloud-based documents. Comparatively, thirty-one (31) percent of those who used a *personal* device to conduct court business did not have antivirus software. Yet, twelve (12) percent of Respondents indicated that they sent court documents from their private email addresses. This makes the courts' computer system vulnerable to hacking attempts and raises privacy concerns. For these reasons, the use of personal devices should be limited as much as possible.

JUDGING REMOTELY

REMOTE PROCEEDINGS AND OPINION DRAFTING

Eighty-one (81) percent of all Respondents and eighty-three (83) percent of the Respondent Judges (when Non-Lawyer Staff are excluded) used their UCS-issued or personal Mobile Devices to conduct court appearances and/or to draft orders and/or decisions remotely.

Eighty-nine (89) percent of Respondents indicated that they would use a feature that would allow them to securely sign an order electronically without having to physically print it out and without actually having to sign it or use a stamped signature. Further, eighty-eight (88) percent indicated that they would use a program that would allow them to mark up and sign a PDF document that already had been e-filed, without having to print it out and rescan the document.

PAPERLESS FILING

As noted above, the Structural Innovations Working Group is addressing issues regarding statewide e-filing. The Survey, however, inquired about Judges' practices regarding "paper" submissions whether or not the court required e-filing. Forty-six (46) percent of the Respondents required e-filing.

Twenty-five (25) percent of the Respondents request that attorneys convert a legacy non-e-filed case to an e-filed one when they appear before the court. In addition, fifty-seven (57) percent of Respondents still require a hard copy working set of motion papers to be submitted.



The Survey further revealed that twenty (20) percent of Respondents utilized a “paperless” part. When “non-paperless” parts were asked if they would like to become paperless, thirty-five (35) percent answered in the affirmative. Fifty-nine (59) percent of Family Court Respondents indicated they were “paperless.”

While the Working Group understood that the requirement for “paper” may reflect Respondents’ personal preferences in conducting court business, such a requirement is not transferable to a remote judicial environment. Such practice prevents a court from conducting business, diminishes its effectiveness, and slows down the administration of justice.

REMOTE PRINTING, SCANNING AND FAXES



Although Judges may have devices that permit them to work from home, only sixty-two (62) percent can scan documents from home and only eighty-three (83) percent can print from home. These percentages inhibit judicial officers from working effectively and efficiently in a remote environment, especially those Judges who are not fully “paperless” and need to print out documents remotely in order to operate comfortably.

Sixty-seven (67) percent of all Respondents (and ninety-five (95) percent of Town and Village Respondents), use faxes to

communicate with attorneys. This outdated practice should be strongly curtailed if the judicial system is to work remotely. To the degree possible, UCS employees and attorneys should only use one means to communicate electronically. Although the UCS could allow faxes directly into a computer, rather than to a physical facsimile machine that can break or jam and may need attendance, email would provide an easier and more efficient means to send group communications and for group recipients to communicate between and among themselves.

RECOMMENDATIONS REGARDING REMOTE JUDGING

The most obvious conclusions from the Survey results are that the UCS Judges and Court Attorneys need to be issued and should be required to use UCS-issued Mobile Devices in order to work remotely, effectively, and securely.

The failure to provide Court Attorneys with Mobile Devices is a roadblock to the effective and speedy administration of justice.

The Survey does not recommend the type of device that the UCS might provide its personnel but notes that laptops or tablets with docking stations would make the Judiciary more nimble to work remotely in different settings. Further, seventy-seven (77) percent of Respondents indicated that they would use a device that allows them to write or draw on the screen, and eighty-six (86) percent of Respondents would use a device that has a touch screen.

Respondents are seeking software that could make them more efficient when working remotely. To accommodate this request, scanning functionality should be provided to all Respondents for remote judging, as well as printers, if required by those who are unable (yet) to work without “paper.” The practice of faxing should be curtailed, and court parts need to have an email address that is monitored frequently by a Court Attorney. Important issues may be raised by attorneys leaving a message on a chambers voicemail system that may not be monitored when courts are operating remotely. Therefore, an email for court parts is needed, for among other reasons, to avoid this situation and to allow for group communications to be sent and for group recipients to be able to communicate between and among themselves.

Critically, UCS personnel should not be relying upon their *personal* devices to conduct court business as they are not sufficiently secure, are “hackable,” and could compromise UCS information and other personnel’s devices. *Personal* devices cannot easily be updated and patched by the UCS. Cybersecurity issues state-wide need to be supervised by UCS’s Division of Technology and Court Research, albeit implemented district-wide, in order to ensure that proper security protocols are followed on all of the *personal* devices of the Judiciary and their staff.



In addition, if UCS employees maintained separate Mobile Devices for court business and personal business and communicate using only their OCA email addresses through the UCS platforms, and store work-related documents only on the UCS systems, security would be enhanced. Finally, there would be no reason to provide a family member access to a solely work-related device and there would be no reason for non-court related “apps” to be installed on them.

UCS personnel need to comply with UCS’s admonitions not to use *personal* devices and *personal* emails to communicate about court-related business. This is an issue when judges and their staffs are working remotely from home and other places and it needs to be reinforced through educational efforts.

The continued use of “paper” court submissions needs to be reduced over time if the UCS is going to be effective and efficient when working remotely.

Lastly, technology training is needed to educate UCS personnel on the efficient and secure use of Mobile Devices and case and data management features and platforms that UCS has and will implement. The training should be required at the judicial district level, but the curriculum needs to be developed by the UCS’s Division of Technology and Court Research to ensure that it remains current and consistent throughout the State.

TECHNOLOGY WORKING GROUP

THE TECHNOLOGY WORKING GROUP IS COMPOSED OF:

Working Group Chairs:

Mark A. Berman, (*Co-Chair*), Partner, Ganfer Shore Leeds & Zauderer LLP

Sharon M. Porcellio (*Co-Chair*), Member, Bond, Schoeneck & King, PLLC

Working Group Members:

Robert J. Ambrogi, *Partner, Journalist, Media Consultant and Blogger*, Law Offices of Robert J. Ambrogi and Law Sites Blog and LawNext Podcast

Michael DeVito, *Manager, Office of Record Production*, Office of Court Administration Division of Professional and Court Services

Hon. David Otis Fuller, *Village Justice of Tuckahoe*, Partner, Bosworth, Gray & Fuller and Past President, New York State Magistrate's Association

Maura R. Grossman, *Research Professor and Principal*, University of Waterloo and Maura Grossman Law

Scott L. Malouf, *Partner*, Law Offices of Scott L. Malouf

Mary C. McQueen, *President*, National Center for State Courts

Jack Newton, *Chief Executive Officer*, Clio

James M. Paulino II, *Partner*, Goldberg Segalla

Jeroen Plink, *Chief Executive Officer*, Clifford Chance Applied Solutions

Edward A. Steinberg, *Partner*, Leav & Steinberg, LLP

Patrick Turner, *Vice President, Associate General Counsel*, CBS Corporation

Ari Ezra Waldman, *Professor of Law and Computer Science*, Northeastern University School of Law and Khoury College of Computer Science

REMOTE JUDGING SURVEY: ACCESS AND USE OF TECHNOLOGY

FIRST REPORT

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Produced by the Technology
Working Group of the
Commission to Reimagine the
Future of New York's Courts.

