

ABOUT THE COURT

AN OVERVIEW OF THE APPELLATE TERMS

The Appellate Terms in the Second Department are comprised of two separate courts, authorized by Art. 6, § 8 of the New York State Constitution and established by the Appellate Division. One court serves the 2nd, 11th and 13th Judicial Districts (Kings, Queens and Richmond Counties), and the other the 9th and 10th Judicial Districts (Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Dutchess Counties). Each of the two Appellate Term benches consists of five Supreme Court justices serving pursuant to the appointment of the Chief Administrative Judge of the State of New York with the approval of the Presiding Justice of the Appellate Division, Second Department. The courts share a common non-judicial staff pursuant to 22 NYCRR §730.1(e).

The Appellate Terms hear appeals from the Civil and Criminal Courts in Kings, Queens and Richmond Counties in New York City, from the City and Justice Courts in the 9th & 10th Judicial Districts, and from the District Courts in Nassau and Suffolk Counties. The Appellate Term for the 9th & 10th Judicial Districts also hears civil appeals from the County Courts in those districts (with the exception of SORA cases). Additionally, the Appellate Terms hear and determine motions, orders to show cause, and applications interposed pursuant to CPLR 5704 (b), most of which are emergency in nature and require immediate disposition. While serving the 10 counties comprising the Second Judicial Department, which covers urban, suburban and rural environments, the courts serve a diverse population of more than 10 million people (more than half of the population of the state) and are presented with a wide spectrum of legal issues.

Practice before the Appellate Terms of the Second, Eleventh and Thirteenth Judicial Districts and Ninth and Tenth Judicial Districts is governed by the Rules of Supreme Court, Appellate Term, Second Department (22 NYCRR Parts 730, 731 and 732). Relevant statutes include article 17 of the New York City Civil Court Act, Uniform District Court Act, Uniform City Court Act, Uniform Justice Court Act, and article 55 of the CPLR.

HISTORY

The Appellate Terms in the Second Department have their roots in the State's Constitutional Convention of 1894. The Constitution recognized that there should be an Appellate Division of the Supreme Court in the four judicial departments. The State Constitution conferred upon the Appellate Divisions the responsibility of hearing appeals in matters emanating from the Supreme Court. Additionally, the Appellate Division became the intermediate appellate court for appeals from some local courts. To discharge

its latter responsibility, the Appellate Division in the First and Second Departments sought to provide for Appellate Terms. Section 1344 of the Code of Civil Procedure was enacted (L 1895, ch 946; L 1902, ch 515; L 1914, ch 349; L 1915, ch 623), and the Municipal Court Act was amended (L 1902, ch 580, § 310, as amended by L 1910, ch 538). The latter statute provided that appeals from the Municipal Court of the City of New York might be taken to the Supreme Court and be heard by such justice or justices as the Appellate Division shall direct, "provided, however, that" the Appellate Division in the Second Department could direct that they be heard "before three other justices designated by it and to be known as the Appellate Term in the Second Department" (*Leach v. Auwell*, 154 App Div 170,171).

At the outset, the Appellate Division would assign three justices from the Supreme Court to serve on the Appellate Term "from month to month" (*Problems Relating to Judicial Administration and Organization*, New York State Constitutional Convention Committee 1938, Albany: J.B. Lyon Co., Printers, 1938 vol IX, at 102). It was observed that "[b]y 1914 the Appellate Terms, having functioned well as intermediate appellate tribunals since their creation, were considered a fixed institution" (*ibid*). However, it was recommended by the Committee on the Judiciary, that "[t]o further relieve the Appellate Divisions in the First and Second Departments, your Committee proposes to increase the number of justices assignable to the Appellate Terms from three to five, and to give those branches of the court greater effectiveness by making the assignments for periods of one year" ("State of New York In Convention," Document No. 42, August 13, 1915). The purpose was to permit the Appellate Term "to develop into a more harmonious working body than is possible under the present system" (*Problems Relating to Judicial Administration and Organization*, *supra*, at 103).

A report to the Legislature dated January 24, 1922, noted that the Appellate Terms "have functioned satisfactorily, disposing promptly of a constantly increasing mass of litigation" ("Legislative Document [1922] No. 37," State of New York Judiciary Constitutional Convention of 1921, Albany: J.B. Lyon Co., Printers, 1922). The report further read, "These tribunals are in largest measure the only appellate tribunal known to the majority of the residents of the Greater City of New York. It is contemplated that the provision in new section 4, now submitted, will not only remove any possible constitutional doubt as to the authority to constitute Appellate Terms, but will tend to make them more dignified and efficient branches of the Supreme Court Although the convention was convinced that these Appellate Terms must be permanent parts of the Supreme Court in the First and Second Departments, it is nevertheless provided that the several Appellate Divisions may suspend or discontinue them should this become advisable by reason of any substantial diminution in the number of appeals to either court; but this is not thought to be likely to happen. The present recommendation is in accord with a similar amendment proposed by the convention of 1915 except that it was then proposed to constitute these terms permanent constitutional courts and to leave no

discretion in the several Appellate Divisions as to their continuance or discontinuance" (*ibid*).

In 1925, the Appellate Term was given constitutional recognition (Gibson, Ellen M., *New York Legal Research Guide*, Buffalo: William S. Hein & Co., Inc., 1988, at 124). (NY Const, art VI, § 8).

Until January 1968, there was only one Appellate Term held in the Second Department, comprised of five Supreme Court Justices from both New York City (i.e., Kings, Queens or Richmond Counties) and the suburban counties (Nassau, Suffolk, Westchester, Putnam, Dutchess, Rockland or Orange) sitting together as part of the three-justice Bench at any given calendar call. Effective January 2, 1968, the Appellate Division established separate Appellate Terms for the Second and Eleventh Judicial Districts in the city and for the Ninth and Tenth Judicial Districts in the suburban counties (22 NYCRR 730.1) with each Appellate Term comprised of five Supreme Court Justices. It remains this way today.