

PEOPLE, PROGRAMS AND PERSPECTIVES AROUND THE NEW YORK STATE COURTS



E-Filing—The Future is Here

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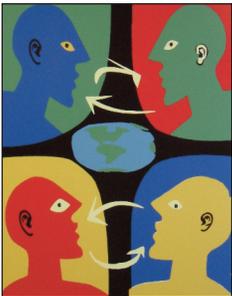
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On the Job: Court Reporters

They sit in front of a small machine and type with a rapidity that is daunting. They generally remain impassive no matter what they hear. Although they may appear to be part of the scenery, court reporters are among the most important players in a courtroom—creating the official record of all court and legal proceedings.

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Court Celebrations

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Welcome to Focus on the Courts— featuring stories that keep you up to date on new initiatives, events and opportunities in and around the New York State courts. Look for rotating features in the coming weeks and months.

E-Filing—The Future is Here



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cient online case filing system, while troubleshooting daily calls and emails from attorneys and court users statewide.

Ten years ago the pilot program for an e-filing system that could alleviate the burden on the system—resulting from the flood of paper generated by court cases— was born. “We directly involved the clerks, the courts and the county clerks in the process of developing e-filing so that we could create a system that complements and mirrors what we do in paper, but does it with greater ease and expediency,” explained Carucci.

E-filing reached a milestone in September, 2009 when new legislation established a pilot program for mandatory e-filing in certain jurisdictions for specific kinds of cases,* and allowed for the expansion of a permanent consensual program without the need for periodic legislative approval.

“The legislature has really given us permission to move forward,” said Carucci. “E-filing is here and now.”

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York, said of the new legislation: “It has garnered the support of the bar as a democratizing technology that levels the playing field between large firms and solo and small-firm practitioners.”

For instance, a solo practitioner in upstate New York, without paralegal support, has the ability to file motion papers in New York County Supreme Court, pay the motion fee to the New York County Clerk, serve the papers on the other participating parties—all with just a few clicks of the mouse—and then receive notice of a decision via email.

With an estimated 100 million pieces of paper filed in new cases in New York State every year, e-filing reduces the cost of storage and virtually eliminates the loss of documents. The system also provides for document security by giving the filer the option of protecting sensitive documents from public view outside the courthouse.

Documents can be filed and served at the convenience of counsel—any time and from anywhere—and the case file is always accessible to counsel of record. The new legislation also advances the courts' green initiative. In a system that last year saw its caseload soar to more than 4.6 million filings, e-filing has enormous potential to reduce paper filing and storage.

Regular users—primarily lawyers and their staffs—report overwhelmingly positive experi-

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ences. “Before the existence of e-filing, filing tax certiorari petitions involved copious amounts of photocopying and two trips to the county clerk’s office,” said attorney Eric Weiss, a partner at Tuchman Korngold Weiss Lippman & Gelles in New York City. “Now, the entire process is completed without leaving the office, resulting in time saved, less aggravation and a positive environmental impact.”

The process is seamless, according to Cathy Wettlaufer, a partner at Hiscock & Barclay in Buffalo. She chaired a committee appointed to test e-filing in the Surrogate’s Court in Erie County. As a trusts and estates attorney who regularly uploads hundreds of documents a year, she lauds the results. “We now have 24/7 filing opportunities, no longer have to take up staff time going to court to file, and as soon as a new document is filed by another party in the case, we receive a notice and copy of it electronically,” she said.

“In fact,” she added, “when we have to file in a court that does not yet have e-filing, it can be a time-consuming, cumbersome process.”

During the past year, there has been a revamping of the program software so that screens and forms are even more accessible, as well as ADA- (Americans with Disabilities Act) compliant. New screens more pleasing to the eye and more user-friendly were rolled out in January of this year. Mandatory programs began in February (for Commercial Division cases) and in March (for tort cases). On June 1, all contract cases, regardless of amount, are mandatory in Westchester and all case types other than matrimonial, election law, Article 78 and mental hygiene cases are mandatory in Rockland County.

The E-filing Resource Center offers free CLE (Continuing Legal Education) training every week, and with a large enough group, will provide on-site training at law offices. For help in e-filed cases and to arrange a date for training, please call 646-386-3610 or email newyorkef@courts.state.ny.us. To e-file, go to nycourts.gov/efile.

**Substantial commercial cases in New York County Supreme Court; tort and commercial cases in Westchester County Supreme Court; and, with the approval of the country clerk, in one or more classes of cases (with the exception of matrimonial actions, election law proceedings, Article 78 proceedings, or proceedings brought under the Mental Hygiene Law) in the Supreme Court of Livingston, Monroe, Rockland and Tompkins counties.*

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Stars Shine at Juror Appreciation Day

Late night host Jimmy Fallon broke into an expansive chorus of “I Believe I Can Fly;” news anchor Connie Chung recounted the tale of her broken ankle, the result of a recent fall in a pothole in Central Park; actress Juliana Margulies remembered her grandmother, one of the first women to graduate from law school in New York in 1924. All are New Yorkers and had been summoned for jury duty in the past year.

They and other well-known members of the New York community, including TV host and actress Kelly Ripa, actress America Ferrara and fashion designer Ralph Lauren gathered at the Norman

Goodman Jury Room at 60 Centre Street to celebrate Juror Appreciation Day 2010, and laud the importance of jury duty in the judicial process.

The audience included the New Heights Academy Charter School’s 11th grade microeconomics class.

Legendary news anchor Tom Brokaw, another participant, called the essence of law “the ability to be tried by a jury of your peers.” Elizabeth Hasselback, a host of “The View,” urged the assembled students to remember to be “a friend in justice.” Actress Stephanie March who plays Alexandra Cavett on Law & Order SVU often films the series in chambers at 60 Centre Street. “In real life,” she commented, “the system works only as well as its participants.”

Margulies, who played nurse Carol Hathaway in the long-running ER and now is starring in the hit TV series The Good Wife said, “The judicial system is something we can only respect, and in order to do that, we have to show up.” She conceded that the process can sometimes be tedious, but we must remember that “someone’s life is at stake.”

“We should look at it as a privilege instead of a burden. It’s unbelievably fascinating and you can learn amazing things,” she added.

Norman Goodman is the longest serving County Clerk in statewide history, surpassing Augustus Van Cortlandt. During Goodman’s tenure, since 1969, 3.5 million jurors have been summoned in New York County.



Late night talk show host Jimmy Fallon and legendary newsman Tom Brokaw at New York County’s Juror Appreciation Day
Photo Credit: Rick Kopstein, New York Law Journal.

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Mediation Settlement: An Alternative Solution

“Litigants who go through mediation leave our courts feeling satisfied because they have helped to shape their own settlements,” said Fern Fisher, Deputy Chief Administrative Judge for New York City Courts. She introduced a roundtable discussion held at the Brooklyn Mediation Center on the benefits and challenges of mediation for the tenth annual Mediation Settlement Day. It was one of many events held to raise awareness of the mediation programs available in New York State.

Mediation, a form of “Alternate Dispute Resolution” (ADR), allows litigants to resolve their disputes without the intervention of a judge or jury. ADR includes a variety of alternative processes that are less formal and less adversarial than ordinary court proceedings. In mediation, a neutral party with intensive training facilitates communication so that litigants can essentially settle the dispute between themselves. Mediators are not empowered to decide outcomes, and are not permitted to give any legal advice.

Difficult Conversations in a Safe Place

The roundtable discussion in Brooklyn included key staff from Safe Horizon, one of the largest community dispute resolution centers (CDRCs) in the country, which works in partnership with the New York State court system. Contributor Michele Kirschbaum, director of the Safe Horizon Brooklyn mediation program, believes that “mediation is a safe place to have a difficult conversation.” Those “conversations” come under the heading of custody and visitation disputes, divorce proceedings, tenant noise complaints, harassment and consumer-market issues.

Mediation is confidential; nothing shared in a session is admissible as testimony or evidence in any court proceeding, which gives participants a strong sense of security and trust in the process. Services are offered free or at a reduced fee at CDRCs in many courthouses and communities.

“What we’re looking for is for both parties to leave satisfied, and in the court system that’s a challenge,” said panel contributor Small Claims Court senior court clerk Vince DeMaria. Because litigants feel empowered, settlements are usually lasting. “The end result is fewer return customers,” he said.

Andrew Lewis, mediation services coordinator for the Civil Court of New York City, steers cases to appropriate community dispute resolution centers. New York City courts have contracts with providers throughout the five boroughs. “In most instances if parties try mediation and can’t reach an agreement, they have not lost the right to pursue it in civil court, so there’s no downside to attempting mediation first, or even on a parallel track to civil court litigation.”



The kick-off celebration for Mediation Settlement Day included speakers from left to right: Dan Weitz, Statewide ADR Coordinator, Margaret L. Shaw, Frontline Champion Award recipient, Ken Andrichik, Director of Mediation and Strategy for the Financial Industry Regulatory Authority (FINRA) Dispute Resolution and New York City Police Commissioner Raymond W. Kelly.

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However, if domestic violence (DV) is present, mediation is not a viable option. Sometimes DV may not be perceived as such by the parties if there is no physical contact but there is coercion or verbal abuse in the relationship. “If one of the parties is exhibiting fear for their physical safety or experiencing emotional bullying, they obviously cannot be fully participatory,” commented Alex Carter, associate clinical professor at Columbia Law School and director of the mediation program there.

High Success Rate

Last year 38,658 cases were screened for mediation statewide. Among those 21,307 resulted in mediation and other dispute resolution processes.

Even in those cases that did not directly result in a stipulation or settlement, the mediators made it much easier for either the court attorney or the judge to settle the case. “It’s not a failure if an agreement doesn’t come out of the process,” said Lewis.

“I can’t even count how many times I have started a mediation with both parties saying, ‘we’re not going to settle this,’ said panelist, Brooklyn Law School associate professor of Clinical Law Mary Jo Eyster, also a trained mediator active in the New York City Civil Court. “But once they’re in the mediation room, they are able to sit down and have a productive discussion and even reach an agreement. As a mediator, you have to differentiate between what is real and what is emotional posturing.”



Landmarks throughout the state, including Niagara Falls (above), Albany Law School and the Mid-Hudson Bridge, were lit in blue to help raise awareness about mediation.



Staten Island Ferry Terminals (as well as the Whitehall and Manhattan Ferry Terminals) displayed the following message- “Involved in a Conflict? Try Mediation. Learn More about Mediation at www.nycourts.gov/adr.”

“Sometimes what happens is that five minutes after the mediation is over, you get a settlement as a judge, which doesn’t mean the mediator didn’t do his or her job,” said another panelist, New York City Housing Court Judge John Stanley. “It’s because the mediators did their jobs so well that the parties are ready to solve the problem. Something is unburdened. Light is shed on the dark.”

Another roundtable contributor, Devin Cohen, a Civil Court judge in Brooklyn, described mediation as process-driven. Judge Cohen began as a mediator as a Brooklyn Law School student 17 years ago and mediated pro bono for 15 years before becoming a judge. “You’re not just listening,” he said, “but modeling behavior. If you model being a good listener, you get better results. You develop trust and that trust gives you more credibility to resolve the dispute, while providing people with the tools that keep them from having to take their next dispute to litigation.”

Mediation Settlement: An Alternative Solution

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Interested in becoming a mediator?

Training for potential CDRC mediators, offered several times a year, includes a 30-hour instructive program followed by a ten-week apprenticeship in which trainees work in small groups with experienced mediators—engaging in role play and observing and co-mediating cases. A video evaluation is the final step for approval and certification. Volunteers include attorneys, homemakers, retirees, law school students and other community members. To find out more about how you can become a mediator or how to get your case mediated, go to www.nycourts.gov/adr.

To find out more about mediation and other dispute resolution processes go to <http://www.nycourts.gov/ip/adr/Publications.shtml#AnnualReport>.

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COURT CELEBRATIONS

Black History Month

One of the “everyday people” who paved the path for many who have come after him, recently retired Chief Clerk William Etheridge was honored in a stirring tribute at the Supreme Court rotunda at 60 Centre Street. It was one of the many celebrations held in New York State’s courts commemorating Black History Month.

Ernest Owens, a member of the Tribune Society praised Etheridge as a “bandleader for diversity.” The Tribune Society is an organization of African-Americans and other minority judicial and non-judicial court personnel, whose main objective is to improve the administration of justice and ensure equal opportunity for all who work in or are served by the New York State Unified Court System.



Presentation of the Colors at the Black History Month. Celebration in the Supreme Court House Rotunda

Photo Credit: Rick Kopstein, New York Law Journal.

Among the distinguished speakers at the event were Fern Fisher, Deputy Chief Administrative Judge for New York City Courts and William F. Kuntz III, bar leader and senior member of the New York City Civilian Complaint Review Board. Kuntz, a leading educator and scholar, reminded the gathered assembly that “the price of freedom remains eternal vigilance, which is the role of the judiciary.” The New York State Court Officers’ Ceremonial Unit performed a presentation of the colors, which formally introduces and retires the flags in a carefully choreographed and moving sequence.

Women’s History Month



From left to right Deborah Kaplan, co-chairperson of The Gender Fairness Committee, New York County, Supreme Court, Civil Term; Michelle Gonsieski, Recipient of the Women’s History Month Distinguished Service Award; John Werner, Chief Clerk & Executive Officer, Supreme Court, Civil Branch

Renowned feminist author Phyllis Chesler was the keynote speaker at the annual women’s history month celebration at the Supreme Court, Civil Branch. Her topic, honor killings, is one which Dr. Chesler has worked passionately to expose throughout the last decade. What distinguishes so-called honor killings is their barbaric ferocity. “Mere rumors of inappropriate behavior or someone who simply wants to choose her own husband” can be the instigating factors. She spoke of the ongoing struggle for these and other women’s rights as “central to western civilization and the greatest battle of the 21st Century.”

The Women’s History Month Distinguished Service Award was presented to Michelle Gonsieski. She was chosen by the Gender Fairness Committee of the Supreme Court for her work in an area of the courts long the province of males: facilities management. Gonsieski’s responsibilities include the landmark 60 Centre Street, 80 Centre Street, 111 Centre Street and 71 Thomas Street. She oversees all renovations, maintenance and relocations in these four essential and complex facilities.

National Adoption Day Brings New Families Together



Family Court Judge Martha Walsh Hood presided over the celebration of National Adoption Day at the Onondaga Family Court in upstate New York on November 20th. On one morning, adoptions of 54 children from ten months to 18 years old were finalized by ten judges.

“It’s always a joy to have a child find a family,” said Amy Cimino, the adoption clerk for the Onondaga Family Court in Syracuse, New York. She and Judge Hood were instrumental in organizing one of the many tributes across New York State and the country which honored and celebrated adoptive families and children.

Teenager Tavaréz Bradley spoke at the upstate event about being adopted later in life—recounting his long journey through foster care—and the great satisfaction of finally finding security in a home with his current adoptive father. He emphasized the tremendous life change he has experienced since becoming part of a permanent home, even though he is no longer a young child.

Currently there are 463,000 children in the foster care system across the U.S.; 114,000 of these children await adoption. In Central New York, 341 children are freed for adoption, which means their birth parents’ rights have been terminated or parents have surrendered their children to the care and custody of adoption agencies.

Since 2000, more than 30,000 children have had their adoptions finalized on National Adoption Day. In 2010, 4,800 foster care children across 50 states found permanent homes on this day.

National Adoption Day is an opportunity for courts to open their doors and finalize adoptions of children from foster care. Since 2000, more than 30,000 children have had their adoptions finalized on National Adoption Day. In 2010, 4,800 foster care children across 50 states found permanent homes on this day.

To find out more about how you can find a child in New York State waiting to be adopted, visit www.ofcs.state.ny.us/adopt/.

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On the Job: Court Reporters



They sit in front of a small machine and type with a rapidity that is daunting. They generally remain impassive no matter what they hear. Although they may appear to be part of the scenery, court reporters are among the most important players in a courtroom—creating the official record of all court and legal proceedings.

For 40 years, Ross Upshaw, the recently retired principal court reporter for the Supreme Court, Civil Term, in Manhattan, was at the center of it all. He began his career at the Department of Motor Vehicles working with hearings on suspended licenses, moved to Criminal Court and finally to Supreme Court in 1990.

When Upshaw first began in the early '70s, the state-of-the-art equipment was the Stenorette, a reel-to-reel electronic recorder similar to a Dictaphone. Reporters dictated verbatim notes made on their stenotype machines into a microphone, which were then transcribed. If errors were found, entire pages usually had to be retyped.

By the late '80s, the CAT system (computer-aided transcription) had become the prevalent method for transcribing court proceedings. CAT allows court reporters to record directly to a CD-ROM, but still requires review and final transcription.

Court reporters build up their own dictionaries, over the years, to facilitate the process of transcription. If, for instance, they are assigned to a malpractice case that deals with the eye or the brain and requires a unique vocabulary, they incorporate words that come up repeatedly, making shorter work of recording and transcribing.

In decades past, court reporters worked with typists through the night to get expedited transcripts to attorneys and judges. Now, they work in a relay system, taking down testimony for 45 minutes on the CAT system and then leaving the courtroom to type their own notes, while a new reporter enters the courtroom to continue the process of recording the proceedings.

“Real time” reporting, which appears directly on the monitor the court reporter is working on, allows the hearing impaired (who are assigned individual court reporters) to serve as jurors. It also allows for attorneys in back offices to receive testimony live via email or Bluetooth so they can do instant research on cases and re-strategize. Real time is not considered the official record, however, as it is not always completely accurate.

“You see the worst side of humanity and the best,” said Upshaw of the range of cases he heard over the years. “The biggest challenge is not letting the courtroom get out of your control so you are not getting a good solid record, because this is someone’s day in court, and you are the record. If you don’t get it, it’s almost like it never happened. You realize what an important job you have.”

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