

LEAVEWORTHY



The Newsletter of the NYSBA Committee
on Courts of Appellate Jurisdiction

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A reminder to our readers: *Your contributions of ideas and articles for this semi-annual publication are welcome. Please send your submissions to CTSAPP@nysba.org.*

The opinions expressed herein are those of the authors or article subjects only and do not reflect the official position of the New York State Bar Association or the Committee on Courts of Appellate Jurisdiction.

New Unified, But Not Uniform, Practice Rules of the Appellate Division

By Hon. Denise Hartman



The Presiding Justices of the four Departments of the Appellate Division have announced new unified Practice Rules of the Appellate Division, codified at 22 NYCRR Part 1250. The unified Practice Rules took effect September

17, 2018; the former rules of practice for each Department were repealed effective at the close of business September 16, 2018. The unified Practice Rules bring unprecedented uniformity to

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many of the practices and procedures of the four Departments, but appellate practitioners must be aware that significant local differences remain that reflect the unique needs, history, and culture of each Department. The good news is that variations are much more transparent. Some variations are expressly set forth in the unified Practice Rules themselves. Others are provided in the individual Department's new local rules, also effective September 17, 2018, which are keyed into the numbering system of the unified Practice Rules for ease of use, much like the Federal Rules of Appellate Procedure.

The Committee on Courts of Appellate Jurisdiction had long been concerned that the many, often subtle, differences between the practice rules of the Departments of the Appellate Division were causing needless difficulties for appellate lawyers. The Committee formed a subcommittee, which included seven experienced appellate attorneys, a former Appellate Division clerk, a current Appellate Division justice and a former Appellate Division justice, to study the variations in each Department's rules and make recommendations about whether and to what extent they could be harmonized. The subcommittee enlisted the goodwill of the clerks of each Department to serve as consultants during the project. The subcommittee's efforts culminated in a comprehensive "Report on Appellate Division Rules," with a side-by-side comparison of the rules along with recommendations for unified practice rules. In 2014, the full Committee on Courts of Appellate Jurisdiction adopted the subcommittee's report as its own. And in April 2014, the NYSBA's Executive Committee approved the Committee's Report on Appellate Division Rules and submitted it to the Chief Judge of the Court of Appeals and the Presiding Justices of the four Departments.

The Committee's Report on Appellate Division Rules caught the attention of Chief Judge DiFiore, and she referred to the report in her 2016 "Excellence Initiative." Soon thereafter, the Presiding Justices of the four Departments took on the task of unifying the appellate practice rules. In May 2017, citing the Committee's Report, the Office of Court Administration published proposed unified Practice Rules for public comment. On December 12, 2017, the Presiding Justices of the four Departments issued a joint order promulgating unified Practice Rules in their final form. And by joint order dated June 29, 2018, the Presiding Justices codified the unified Practice Rules in newly created Part 1250.

The new Practice Rules apply to all matters commenced

in the Appellate Division, transferred to the Appellate Division, or appealed to the Appellate Division on or after September 17, 2018. The new rules also apply to pending cases, unless applying the new rules would result in substantial prejudice to a party or be manifestly unjust or impracticable.

The new Practice Rules are comprehensive and reorganized by topic into a simplified regulatory framework. They establish common terminology and set forth unified rules governing confidentiality and sealing, case management, motion practice, methods and time limits for perfecting appeals, form and content of briefs, records and appendices, oral argument, and issuance of decisions. They also include unified rules governing criminal appeals, appeals from Family Court and special proceedings, original proceedings initiated in the Appellate Division, and transferred proceedings. Some of the more notable changes set forth in the new Practice Rules are highlighted below.

Perfection Rules

Perhaps the most impactful change brought about by the rules is that in all Departments, the deadline for parties to perfect their appeals or transferred proceedings has been shortened from nine months to six months of the date of the notice of appeal, order granting leave to appeal, or transfer order. Extensions of up to 90 days are permitted by letter request or stipulation, and after that only by motion. Gone are the Third and Fourth Departments' 60-day "soft" perfection rules, and the First, Third and Fourth Departments' 9-month "hard" perfection rules. Also gone are the pitfalls caused by nuanced differences in the Departments' rules concerning when the perfection time limits began to run – e.g., the date of the notice of appeal in the First, Second and Third Departments, or the date the notice of appeal was served in the Fourth Department.

Respondents' briefs are due 30 days after service of appellants' briefs, with additional time if the appellant's brief is served by mail. Respondents may request extensions of 30 days upon letter request or stipulation. Reply briefs are due 10 days after service of respondent's brief, again with additional time if served by mail and extensions of 10 days upon letter request or stipulation. An important change lies in the treatment of cross appeals. If a respondent cross appeals, the appellant/cross-respondent will now have a full 30 days to file their briefs in all Departments. No longer will cross-respondents be faced with the hardship of the 10-day deadline for reply briefs as they previously had been under the Third Department former rules. Uniformity is

not complete, however, as the First Department's long-entrenched term system continues to set outside time limits for filing respondents' and reply briefs.

Copies of Briefs, Records and Appendices

Another big-picture change is the number of hard copies of briefs, records, and appendices that must be filed. In many ways, the new Practice Rules complement the Appellate Division's uniform e-filing rules, which are codified at 22 NYCRR Part 1245 and went into effect on March 1, 2018. While the new e-filing rules are being phased in, the unified Practice Rules require one original, five hard copies, and one digital copy of the brief, record and appendix in most appeals. And parties now need to serve only one hard copy of their brief, instead of two required under the former rules of some Departments. Previously, each Department varied considerably about the number of originals and copies needed to be filed, requiring litigants to file 2 originals and between 7 and 10 copies of each document in most cases.

Form and Content Rules

Form and content rules for briefs, records, and appendices are now standardized in all Departments. Recognizing that most filings are now prepared by word-processing software, the new Rules limit the length of briefs by word count, not page count. Appellants' and respondents' briefs may not exceed 14,000 words, and reply briefs are limited to 7,000 words. The new Rules also prescribe font sizes: 14-point font for text and a minimum 12-point font for footnotes if a proportional typeface is used, such as Times New Roman; and 12-point font for text and 10-point font for footnotes if a monospaced typeface is used, such as Courier. In all Departments, parties may now include as addenda decisions, statutes, ordinances, regulations and similar materials not readily available. Once again, the form and content rules for briefs are not entirely uniform. Under the unified Practice Rules, appellants in First and Second Departments ordinarily must attach to their briefs their CPLR 5531 statement, and where perfected on the original record, copies of the appealed order or judgment, the decision, if any, and the notice of appeal. At the other end of the State, the Fourth Department, by Local Rule, will continue its unique practice – unique at least in the New York appellate courts – to require its color-coded brief covers.

Records and Appendices

The Practice Rules regarding records and appendices are also nearly uniform in all Departments. The unified Practice Rules outline four different methods a party

may use to perfect an appeal: (1) on the full record; (2) by the appendix method; (3) on the original record in specific kinds of cases, and (4) by agreed statement in lieu of the record. Again, some local variations remain, reflecting longstanding practices in the various Departments, which are embedded in the unified Practice Rules. In the First and Second Departments, appellants are required to subpoena the original record from the court of original instance. In the Fourth Department, appellants are responsible for filing a hard copy of the original record if the appeal is being heard on the original record. In the Third and Fourth Departments, appellants must file a digital copy of the complete record if the appendix method is used.

Oral Argument

Oral argument rules are also generally uniform. In all Departments, the parties must request oral argument on the cover of their briefs, listing the name of the person arguing in the upper right corner. But the unified Practice Rules authorize appellants to reserve time for rebuttal only in the First and Third Departments. The Second and Fourth Departments, on the other hand, have chosen to continue their longstanding practice of prohibiting rebuttal. In addition, the Fourth Department has promulgated a Local Rule placing constraints on the number of persons who may argue for one side.

Motions

Finally, motion practice across the four Departments has been simplified and standardized. In all Departments, motions are returnable on 10:00 a.m. on any Monday, upon sufficient notice prescribed by CPLR 2103. Motion papers must be filed no later than one week before the return date. Responsive papers must be filed by 4:00 p.m. on the Friday preceding the return date and served as prescribed by CPLR 2214(b). Cross motions must be returnable on the same return date, served personally, electronically, or by overnight delivery, and filed three days before the return date. Reply papers are not permitted. The unified Practice Rules permit one adjournment of the return date, on written consent of the parties filed no later than 10:00 a.m. on the return date, for a period of 7 or 14 days, unless otherwise authorized or directed by the court. The Rules do not permit oral argument of motions unless interim relief is requested or otherwise authorized by the court. One further note about motions for reargument: in all Departments, such motions must be made within 30 days of service of the appellate court's order, the same time constraint for motions for leave to appeal. Previ-

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MEET THE PRESIDING JUSTICES – PART I

In this winter issue of *Leaveworthy*, we introduce and honor the Presiding Justices of the Third and Fourth Departments of the Appellate Division.¹

Justice Garry: Bringing the Best Forward

Eric Greenhill & Catherine Graziose²



Our interview with Presiding Justice Elizabeth Garry began in the halls of the Robert Abrams Building for Law and Justice—the home of the State of New York Supreme Court, Appellate Division Third Judicial Department. Presiding Justice Garry joined us after meeting with a hiring panel she now leads—one of the many tasks she has assumed since her appointment

as the 16th Presiding Justice of the Third Department on January 1, 2018 by Governor Andrew Cuomo. Although Justice Garry has been a member of the Court for nine years, and continues to hear individual cases, she is now also responsible for the administrative oversight of the Third Department. In addition to determining appeals, the Appellate Division also provides administrative oversight for four areas: the attorneys for children who appear in family court proceedings on trials and appeals; the Attorney Grievance Committee; the committee on Character and Fitness; and the Mental Hygiene Legal Service.

Justice Garry's pride in the Court is clear. "Do you know who the man in this photo is?" asked Justice Garry as we walked past a photo of a former Presiding Justice. It was clear from her enthusiasm that her predecessor had been an influential role model, someone whom Justice Garry looked up to and deeply respected. When we entered her chambers, Justice Garry shared with us a map of New York, designating the judicial districts, and pointed out the areas the Third Department encompasses. We learned during our tour of the Court that Justice Garry is passionate about the New York legal system and the appellate legal process. She brought this same enthusiasm to our interview, and was gracious enough to share her with us her thoughts on diversity in the legal profession and her approach to her work.

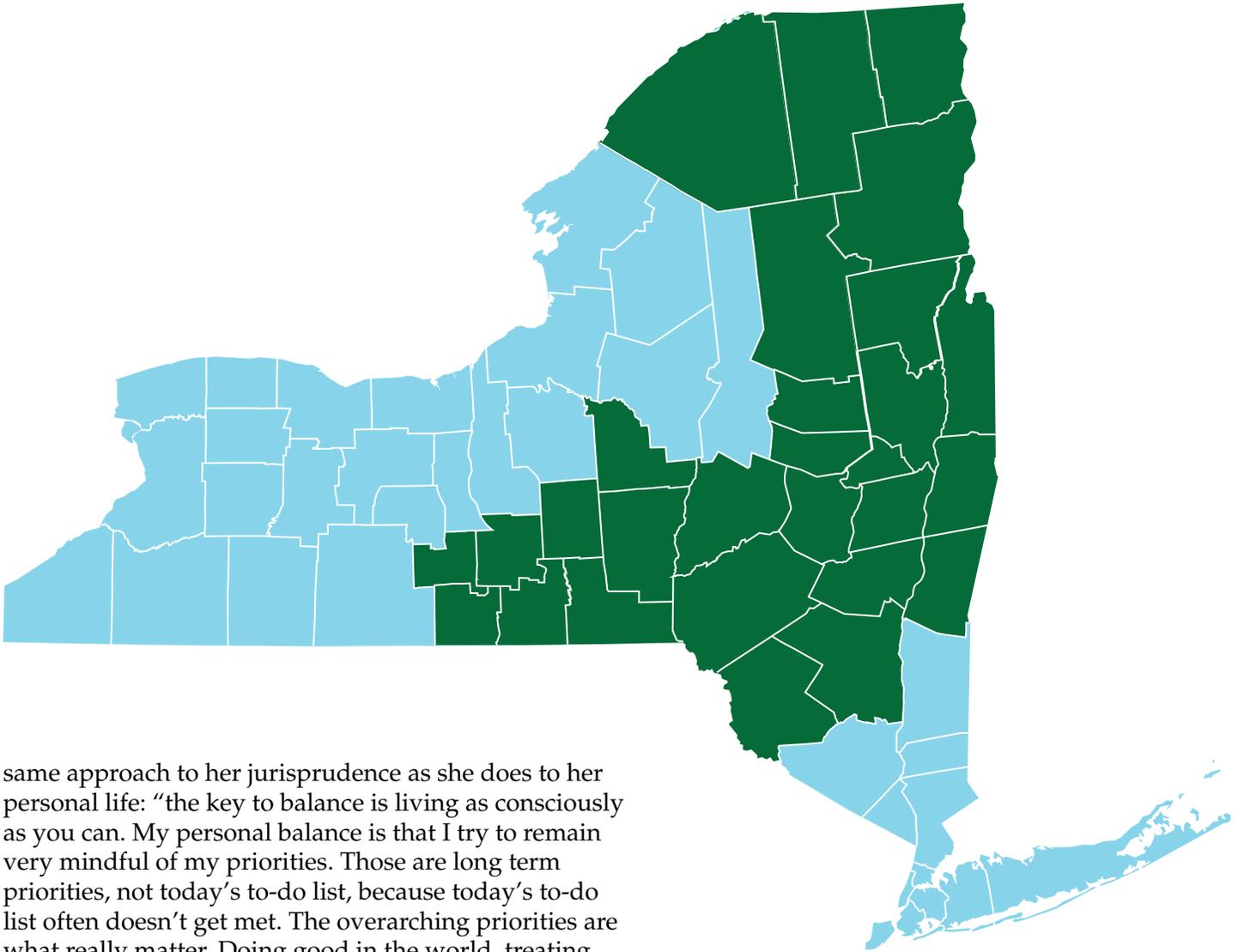
Our discussion began with a conversation about Justice Garry's approach to diversity in the legal profession: "It is critical that we look at diversity across a whole host

of spectrums, in order to adhere to what social science shows is the best means of decision making. And that is to gather diverse voices and to make sure that they are in an environment in which they are heard . . . As appellate judges I believe that is something we, as a whole, are attentive to, and I am certainly personally attentive to it . . . Diversity matters. And not because of the subjective self that you bring to something, but because the best decisions are made when you get a variety of perspectives and a variety of voices." She added that an exciting aspect of being a judge is the adherence to impartiality, because as a judge you are constantly learning and training yourself to not be subjective in your review.

Justice Garry incorporates a diversity-focused perspective into her analysis of the law by valuing each individual approach to interpretation of a legal issue, while also maintaining the overall point of this interpretation: justice. "We do not operate in the law in a world of opinion. It is much more like science, in that it takes an examination and an analysis. You have to ground your opinions in actual substance. Legal analysis is not what you may tend to think or opine about something. It is about, 'here is how this particular system operates,' and then 'here is how the facts and situation fit within that structure.'"

This led us to explore how diversity can be balanced with impartiality within the legal profession and how she personally approaches this issue. "Of course we may each hold personal opinions or come from unique and different backgrounds. The key is to take a moment to reflect, because each and every one of us is hard-wired for certain responses. And in fact, such a level that they are unavoidable. The challenge and excitement comes from consciously separating 'this is what I think' from 'this is what I will do or say.'"

We also asked Justice Garry how she is able to balance her personal life with her professional life. It was with this question, that we were afforded the chance to see just who Justice Garry really is. Justice Garry takes the



same approach to her jurisprudence as she does to her personal life: “the key to balance is living as consciously as you can. My personal balance is that I try to remain very mindful of my priorities. Those are long term priorities, not today’s to-do list, because today’s to-do list often doesn’t get met. The overarching priorities are what really matter. Doing good in the world, treating people in ways that you want to be treated, and taking care of yourself and the people you love--these are the big things, and my daily actions should fit into these priorities. There is a lot of little stuff, and if you keep focused on the big goals it is easier to not get worked up over small issues.”

Justice Garry values a holistic approach—not just to the study and interpretation of the law, but to life itself. She shared her own personal mantra: “Bring the best forward.” She strives to answer the underlying question of “how can I effect the most positive change in this world, in the limited time that I have, while also staying true to myself and the profession.”

Justice Garry has identified her goal in life as doing as much good in the world as possible. She analytically evaluates her life and her daily interactions by taking a step back from the situation and looking at how each

problem or obstacle of her day-to-day life fits into her *raison d’etre*. It is with this mindset that Justice Garry is able to be the best Presiding Justice she can be. She enters the courthouse each day with the goal of hearing each and every issue impartially. We are exceptionally fortunate to have Justice Garry as the Presiding Justice because we know that she is unequivocally in pursuit of justice for all.

1. Look for interviews with the First and Second Department Presiding Justices in our next issue.
2. Eric Greenhill is a third-year student at Albany Law School and Catherine Graziose is a second-year student at Albany Law School. Thank you to Eric and Catherine for interviewing Justice Garry and many thanks to Justice Garry, a graduate of Albany Law School, for continuing to mentor and support Albany Law School students.

Ready to Serve on Day One – An Interview with Justice Whalen

Timothy P. Murphy



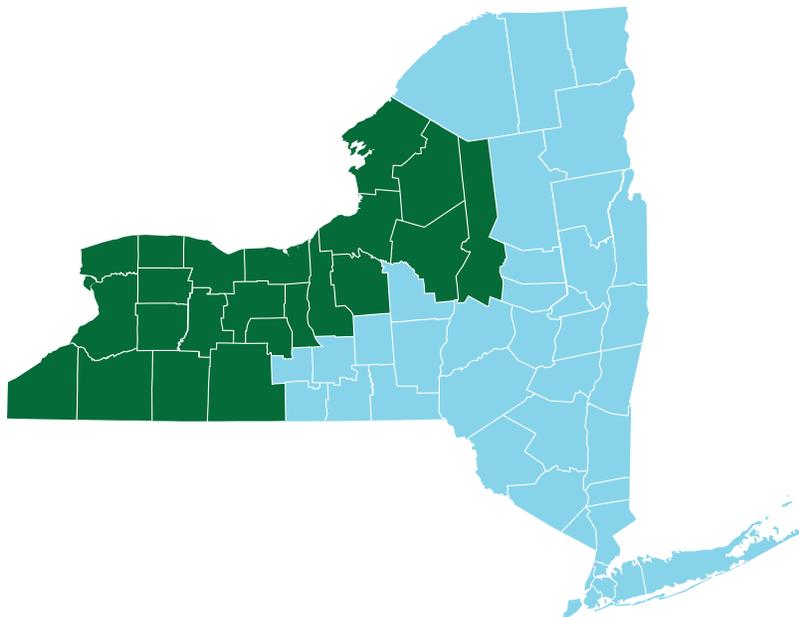
Gerald J. Whalen, the nineteenth Presiding Justice of the Rochester-based Fourth Judicial Department, may personify Western New York as well as anyone working in the law. His Buffalo chambers are in the Larkin Building, located in an up and coming section of downtown Buffalo. His court, like the neighborhood which houses

his local chambers, has been going through a bit of a Renaissance over the last several years. New shops and businesses can be found in the area surrounding Justice Whalen's modest, but stylish, office. And, like the court itself, progress undoubtedly is in the air.

In 2016, Governor Andrew Cuomo appointed Justice Whalen, a lifelong Buffalonian, to one of the most important positions in our state's judiciary the presiding justice of the Fourth Department. I had the pleasure of sitting down with Justice Whalen this past August. We discussed his personal journey in becoming an appellate judge, the achievements of the Court, some areas where more progress is expected, as well as Justice Whalen's vision for the local bar. Diversity, technology and ethics were a big part of our discussion.

TM: The administrative responsibilities and obligations of a presiding justice of the appellate division are daunting to say the least. They include serving on the Administrative Board of the Courts with the other presiding justices and the Chief Judge, as well as overseeing multiple programs and departments, hundreds of employees and a vast geographical section of our state. How does one approach such a job?

GW: I am enjoying this job very much. But when I was asked by the Governor to be Presiding Justice, the only managerial experience I had at that point was being a partner in several law firms, including *Williams Stevens McCarville & Frizzell*, and *Hiscock & Barclay*. I was involved in, among other things, human resource decisions, lease negotiations, budgetary issues, as well as supervising summer interns and permanent associates. But those experiences were a mere drop in the bucket compared to the challenges in this position. There is always going to be a learning curve when you walk into a job of this magnitude. As with private practice, you have your list of things to do each day. But then the phone rings and certain fires must be put out.



It is similar in this job, but on a much greater scale. I am so lucky to have the high level of experienced, capable people around me that I do. Our former Clerk of the Court, Fran Cafarell, among others, was essential in my transition. She was thoughtful and patient with me, as was everyone here. Taking over the reins from Justice Henry Scudder was smooth because of the operation he ran and the incredible staff around him.

TM: You have gone through a number of transitions in your legal career, from trial attorney to trial judge, from trial judge to appellate judge, and from associate appellate justice to presiding justice. Which one was your most challenging, and why?

GW: I have to say going from a trial to an appellate judge was the most challenging. Collectively arriving at decisions, interacting with my colleagues on such weighty issues and the great volume of cases are simply life changing. Without our excellent staff, we appellate judges could not do this work at the level of excellence required. Our present Clerk of the Court, Mark Bennett, has been superb in succeeding Fran Cafarell. I have been blessed with law clerks who are dedicated to our court's mission, work long hours and somehow show up for work each day with energy and enthusiasm. Perhaps however the most important component in transitioning into this position was my conversations with old friends who had previously served on this Court, including Justices Eugene Pigott and Leo Fallon. I like to think of Justice Pigott as an older brother and Jus-

tice Fallon as a father figure in the law. They gave me a glimpse behind the curtain that allowed me to see what I was getting into.

TM: When you were a partner with the Buffalo firm, then known as *Hiscock & Barclay*, you were a member of its diversity committee. I have also heard you speak publically about the importance of this issue in the law, both in terms of its implementation, as well as recognizing that our competence as a profession is elevated by greater diversity. Explain your motivation for feeling so strongly on this topic, as well as the steps the Court has taken during your tenure to attempt to make progress.

GW: I honestly believe that our court system is better off where there is a diversity of opinions, attitudes and thoughts as we approach the often complicated issues before us. There is an old photograph that hangs in my Rochester chambers, which was handed down to me from Justice Pigott, who received it from former Presiding Justice Delores Denman. It is a photo of the NYS Court of Appeals Courtroom circa 1890 with members of the bench and a group of attorneys congregating. Only white males are in the photograph. How diverse was the thinking of that particular group of individuals depicted in that court setting? I can only guess that Presiding Justice Denman hung that photo as a reminder of where we were and where we need to go. We have certainly come a long way, but there is a long way to go still. I took over following excellent administrations run by Justices Scudder and Pigott before him. But there is still progress to be made. So I decided to hire a very talented person, Lenora Foote-Beavers, who, among other responsibilities, is the court's lead person in hiring and recruiting for our staff. I met Lenora through my involvement as an alumnus at Canisius College in Buffalo. Her responsibilities include reaching out to the community and to students to help increase diversity in the court system. Lenora's deep involvement in the Franklin H. Williams Judicial Commission, an organization founded in part by former Justice Samuel Green, is evidence of her dedication in this important area.

TM: What has been your proudest accomplishment since taking over in 2016 as presiding justice?

GW: Aside from our diversity initiative, there are a number of things that our team here has accomplished. Following the leadership of Chief Judge Janet DiFiore's *Excellence Initiative*, we are addressing the length of time that it takes appeals to be perfected. This has always been a challenge for the appellate courts, both in civil and criminal matters. Our initiatives include tightening up time frames for handling criminal assignments,

while providing excellent supervised representation. Private law firms have been very cooperative in that regard. We have also taken steps to assure that there is training for private counsel to handle attorney grievance matters. The transparency that exists now as a result of the oral arguments being streamed online is another important step. The reaction from the bar has been very positive. And as we've already discussed, we are proud of our initiatives involving diversity in our court operations, but there is clearly much more we can accomplish in that area.

TM: There are a lot of administrative changes happening across the state with appellate practice, including the new unified appellate rules and e-filing. What is your take on the transition coming up for practitioners?

GW: One of the great aspects of the new statewide rules is the idea that a practitioner may handle appellate matters across the state without missing a beat. This is an initiative inspired by the state bar association which is consistent with the Chief Judge's *Excellence Initiative*. The efforts by our clerk, Mark Bennett, and the clerks of the other Judicial Departments have been tremendous in preparing both the Court and the practitioners for these changes. I anticipate the appellate practitioners will take to e-filing and the new unified rules very well.

TM: You were a member of the Character and Fitness Committee for the Eighth Judicial District for ten years, leading up to you becoming an appellate judge. I would imagine that you gave a similar speech to the soon-to-be attorneys coming through. Now, having participated in countless attorney grievance matters as an appellate judge addressing attorneys who have made unfortunate choices in their practice, when you speak to newly-minted attorneys do you say anything different? Has your approach to providing guidance on the practice of law changed?

GW: No, it hasn't. One of the things that I try to point out to new attorneys is that I have known many great attorneys in my career, but they are not always good business people. I was in private practice for a long time. I understand the stresses of having to run the business. Young attorneys usually do not consider this aspect of practicing law, but they should. Law firms will often just put out the latest fire without fixing the underlying business model problem. And this is where issues often come up. We have also made great strides in recent years in addressing alcohol, substance abuse, and depression among members of the bar, but there is still work to do in this area as well.

TM: What judges, past or present, have influenced you in your career, including those who may have inspired you in your decision to become a judge?

GW: Becoming a judge was not on my radar early on in my career. I really enjoyed being a trial attorney. But there are so many judges that have had a tremendous impact on me, both professionally and personally. I had the pleasure of spending much of my early career, almost a decade, in fact, with *Offermann, Fallon, Mahoney & Cassano* in Buffalo. There I became close with Leo Fallon (who eventually became an Associate Justice in the Fourth Department), Dave Mahoney (who became a Supreme Court Justice) and Eugene Pigott (who became a Presiding Justice of the Fourth Department and an Associate Judge of the NYS Court of Appeals). My relationships with these fine lawyers and jurists have been invaluable in my professional development; they were and are role models to me. Historically, the writings of Judges Oliver Wendell Holmes, Louis Brandeis, Felix Frankfurter and especially Robert Jackson, have been an inspiration to myself and countless other judges on the bench.

TM: After Justice Scalia passed away, it was widely reported how close a relationship he shared with Justice Ginsberg, an intellectual opponent of his in many court decisions. Obviously there was a mutual respect between these two colleagues, despite their differences in legal philosophy. How important is collegiality among the members of this Court, particularly in light of the unique working environment that makes up an appellate court?

GW: It's extremely important. And in our Court, the level of collegiality is very high. For instance, members of the Court work very hard to remain respectful with each other in our internal communications as we deliberate on pending appeals. We may disagree on certain points, but we are not interested in showing each other up as we seek to reach a fair, and of course, correct result. As a court and staff, we really do act as a family. The judges have dinner together regularly and we enjoy each other's company.

TM: On October 25th of this year, the Court heard oral arguments sitting in Jamestown at the Robert H. Jackson Center and conducted a CLE for the practitioners. How did this event come about and do you intend on continuing the "Have Gavel, Will Travel" project that Judge Pigott started several years back when he was presiding justice?

GW: We have utilized the Jackson Center before for a CLE presentation and it went well. Gregory Peterson of *Phillips Lytle*, a founding member of the Center, was instrumental in making this event possible. Mark Bennett spent countless hours getting things ready for the event. I believe the facility also plans to host moot court sessions in the future. Part of the reason behind Judge Pigott's "Have Gavel, Will Travel" project was to periodically hold court in a different part of the department in order to make the live oral arguments available to a wide range of people. We will be traveling to Syracuse in 2019 to honor our colleague Justice Brian DeJoseph's last year on the bench.

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ously, the 30-day period began to run from the date of the appellate court order in the First Department and no time constraint for reargument motions existed at all in the Third Department.

This article has addressed only some of the most important changes ushered in by the new unified Practice Rules, and only some of the vestigial practice rules retained by each Department. Overall, the rules have been simplified and unified. Where the rule variations among the Departments are not express in the unified Practice Rules themselves, the standardized numbering system allows for easy tracking of each Department's local rules, much like the Federal Rules of Appellate Procedure and each Circuit Court of Appeals' local

rules. The prudent practitioner would be wise to read over both the new unified Practice Rules and the new Local Rules carefully when proceeding with an appeal in the Appellate Division.

The new Practice Rules of the Appellate Division are available at 22 NYCRR Part 1250. The new Local Rules, which replace the old comprehensive rules for each Department, are now more limited to reflect variation, are keyed into the new Part 1250 rules, are available at 22 NYCRR Part 600 (First Department), Part 670 (Second Department), Part 850 (Third Department), and Part 1000 (Fourth Department).

Pro Bono Attorney Andrew Goldberg Wins for Disabled Client

You are all familiar with the Pro Bono Appeals program of the Committee on Courts of Appellate Jurisdiction, but you may not appreciate the breadth of the work we do. One recent case, *Joan F. v. Commissioner of Social Security*, was an appeal to the Northern District of New York from a denial of disability benefits.

Joan F., almost 50 years old who attended college for three years and worked as a desk clerk/cleaner and driver, was found by an administrative law judge (ALJ) to suffer from the following severe impairments: psychological and physical disabilities; back, head, and neck impairments; anxiety, panic disorder, and depression; degenerative disc disease; carpal tunnel syndrome; restless leg syndrome; and hypertension. In spite of this finding, her application for disability benefits was denied because the impairments did not “meet[] or medically equal[]” the severity of impairments listed in a Social Security schedule. She had a “residual functional capacity” to engage in “light work,” although the ALJ recognized limitations on what she could actually do. In concluding that there were jobs available in the national economy that Joan F. could perform, the ALJ relied on the testimony of a Vocational Expert. The denial was affirmed in an administrative appeal. An appeal to the federal court followed. Joan F. was represented by pro bono counsel Andrew Goldberg, who has offices in Manhattan.

Appeals from such determinations are not easy to win. The district court does not employ *de novo* review but

employs a “substantial evidence” test. If there is substantial evidence, the court must sustain the finding even if there is substantial evidence supporting the applicant’s position and the court’s own analysis of the evidence differs from the Commissioner’s. And to be considered disabled, the applicant must establish “an inability to engage in any substantial gainful activity”; the impairments must be of “such severity as to prevent engagement in any kind of substantial gainful work which exists in the national economy.”

Andrew Goldberg was able to persuade the district judge that the ALJ’s reliance on incomplete MRI reports was “troubling” since the ALJ relied on those reports when he concluded that Joan F.’s disabilities did not meet a listing on the schedule. He was also able to overcome the obstacle that Joan F. did not press this evidentiary claim on her administrative appeal and it even appears that Joan F.’s lawyer who appeared before the ALJ failed to make sure that complete records were submitted.

As a result of Andrew Goldberg’s advocacy, the magistrate judge granted Joan F.’s motion for judgment on the pleadings and denied the Commissioner’s motion for judgment on the pleadings. The case was remanded to the Commissioner.

A great result in a difficult, complicated case. Congratulations Andrew!

CCAJ 2019 APPELLATE PRACTICE CLE SCHEDULE SAVE THE DATES:

ALBANY – NEW YORK STATE BAR ASSOCIATION
April 4, 2019

LONG ISLAND – Uniondale MARRIOTT
April 5, 2019

NEW YORK CITY – CONVENE
March 29, 2019

ROCHESTER – ROCHESTER AIRPORT MARRIOTT
March 22, 2019

WESTCHESTER – WESTCHESTER MARRIOTT
April 15, 2019

FREE Online Training Session VIA Skype for Business
ONE HOUR E-FILING TRAINING

Provided by
New York State Courts
E-Filing Resource Center

Learn how to e-file documents from your office
or personal computer

These one hour sessions will be held:

January 23, 2019

February 20, 2019

March 27, 2019

PRE-REGISTRATION REQUIRED

Please go to this website: www.nycourts.gov/efile

Click on the "Register for Training" link. An email with an access link to the online session will be sent to your registered email address prior to that training date.

This is a general class that offers no CLE credit



Meet the Judges of the Court of Appeals

CCAJ chairs Cheryl Korman and Tim Murphy and past CCAJ chair Alan Pierce facilitated a committee-sponsored CLE program at Fordham Law School on October 1st. The program provided an introspective look inside the Court and was designed for attorneys who perform appellate work or want to learn more about appellate practice. Topics included court statistics, brief writing, oral arguments, amicus filings and when to dissent.



Pictured: Alan Pierce, Cheryl Korman, Tim Murphy



The panel judges: Hon. Paul Feinman, Hon. Rowan Wilson, Hon. Michael Garcia, Hon. Jenny Rivera

DID YOU KNOW?

The Court of Appeals has amended its Rules of Practice relating to amicus curiae relief. Rule 500.23, as amended, requires the proposed amicus to indicate if a party, a party's counsel, or any other person or entity contributed to the preparation or funding of an amicus brief.

Rule 500.12 was also amended to specify that reply briefs by amicus curiae are not permitted.

The rule amendments became effective May 16, 2018.

STATED PURPOSE

COMMITTEE ON COURTS OF APPELLATE JURISDICTION

Formed: June 1, 1968

The Committee on Courts of Appellate Jurisdiction shall be charged with the duty to observe and consider the administration of justice in the courts of appellate jurisdiction and it shall make recommendations to the Committee on judicial administration for the improvement thereof.



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