

**COUNCIL OF APPELLATE LAWYERS**

**STATE APPELLATE COURT STRUCTURE**

|  |   |
|--|---|
| <b>STATE:</b><br>New York  | <b>PERSON SUBMITTING REPORT:</b><br>Nicholas Tishler<br>David A.F. Lewis  |
| <b>FIRST LEVEL OF APPELLATE COURT</b>  |   |
| <b>Court's name</b>  | Appellate Division of the Supreme Court: divided into First (New York), Second (Brooklyn), Third (Albany), and Fourth (Rochester) Departments   |
| <b>Total number of justices</b>  | Number fluctuates due to the particular needs of each court. The First and Second Departments have about 15-20 justices while the Third and Fourth have 10 each.  |
| <b>Number on panels for oral argument</b>  | Panel assignments vary by Department, but normally there are five judges per panel. Four judges constitute a quorum and three are needed for a decision.  |
| <b>Jurisdiction discretionary or mandatory</b>   | Jurisdiction over final orders is broad in scope. Any non-final order that involves some part of the merits or affects a substantial right is generally appealable as a matter of right. Some, however, are not appealable and must be obtained by motion. Each department handles these differently. |
| <b>If discretionary, standard (e.g. "important to the jurisprudence of the state")</b> | N/A   |
| <b>Jurisdiction (criminal, civil, or both)</b>   | Both: The Appellate Division functions as four distinct courts overseeing the judicial department in which it is located. Each department has its own set of rules and practices.   |
| <b>Oral argument discretionary or allowed as of right</b>                              | Each department has its own rules on what may be argued. First Department: 22 NYCRR § 600.11(f); Second Department: 22 NYCRR § 670.20; Third Department: NYCRR § 800.10; Fourth Department: NYCRR § 1000.11   |

|   |  |
|---|--|
| <b>Geographical coverage - number of courts and whether their coverage is statewide or district-wide</b>  | Appellate Division functions as four distinct courts overseeing the judicial department in which it is located.  |
| <b>Opinions published — some, all, or none (if some, estimate percentage)</b><br><b>Note whether unpublished opinions may be cited, and if so, whether they are binding or merely persuasive.</b> | All of the opinions of the four appellate departments are published.   |
| <b>Bound by precedent of which other courts</b>   | Court of Appeals   |
| <b>Opinions are binding precedent on which other courts</b>   | The opinion of one department is not binding on another appellate department. The opinion is considered advisory and will be accepted only for its persuasive value in a different appellate department. |
| <b>Other unique characteristics of the system</b>   |  |

| <b>SECOND LEVEL OF APPELLATE COURT</b>   |   |
|--|---|
| <b>Name</b>  | Court of Appeals  |
| <b>Total number of judges</b>  | A 7-Each judge is appointed for a fourteen-year term and retirement is mandatory at age 70.   |
| <b>Number who sit on oral argument panel</b>   | 7   |
| <b>Jurisdiction (criminal, civil, or both)</b>   | Both  |
| <b>Jurisdiction discretionary or mandatory; if discretionary, give standard (e.g., “important to the jurisdiction”)</b>  | The Court of Appeals is the court of last resort in New York. It reviews only questions of law. With narrow exceptions, it does not review questions of fact or discretion. |
| <b>Opinions published — some, all, or none (if some, estimate percentage) Note if unpublished opinions may be cited, and if so, whether they are binding precedent or merely persuasive.</b> | All opinion are published   |
| <b>Geographical coverage — if divided into districts, give number of districts and whether their coverage is statewide or only district-wide.</b>  | State-wide  |
| <b>Bound by precedent from which other courts</b>  |   |
| <b>Opinions are binding precedent on which other courts</b>  | All courts of New York  |
| <b>Other unique characteristics of the system</b>  | Oral argument is routine, but not mandatory. No oral argument is heard in cases that have been selected for Sua Sponte Examination of Merits under 22 NYCRR § 500.4.        |

**INFORMATION SUBMITTED BY (put address, phone numbers, email, etc.):**

Nicholas Tishler  
1917 Mayfair Road  
Niskayuna, NY 12309-5428  
(518) 372-1357  
[appealsusa@aol.com](mailto:appealsusa@aol.com)

David A.F. Lewis  
One Broadway, Suite 600  
Cambridge, MA 02142  
(617) 621-1551  
[info@appellateconsultant.com](mailto:info@appellateconsultant.com)

s:\appell\pendery\council of appellate lawyers\chart for web site.doc