



Court Restructuring for New York State

Why does New York waste \$600 million per year on the most “archaic and bizarrely convoluted court structure in the country?”

Problem

Other states have modernized their court systems in recent years, but New York is decades behind, not having made changes to the Judiciary Article in our constitution since 1962.

New York has eleven separate trial courts (the Court of Appeals, the Supreme Court Family Court, Surrogate’s Court, the Court of Claims, etc.) This means individuals, families and businesses often have to litigate the same case simultaneously in multiple courts with overlapping jurisdiction. For instance:

- For families facing divorce, custody issues and accusations of domestic violence, they would have to litigate separate cases in the Supreme Court, Family Court and a criminal court, telling their same stories over and over to completely different judges.
- When a state and non-state actor are parties in a personal injury, malpractice or commercial dispute, the case must be litigated in both the Supreme Court and the Court of Claims.
- In the case of an orphaned child, proceedings must occur in both the Surrogate’s and the Family Courts.

In addition, the appellate courts were divided into 4 Districts with a constitutionally limited number of justices. These Districts had roughly equal populations in the 1890s, when the system was devised. However, things have changed. Now the Second District represents about half the state’s population and handles half of the state’s caseload, leaving it woefully short of resources.

All this redundancy and inefficiency clogs our court system, delays justice, is a nightmare to administer, and costs the state over \$500 million per year in waste in 2007 dollars, as determined in [a study from that year](#). Given the inflation rate over the last ten years, the total would now be \$600 million.

Solution

We need a new constitutional amendment restructuring the court system. All these separate courts must be consolidated into a single court system, as California has, or a two-tiered court system as proposed by the [Special Commission on the Future of the New York State Courts](#), which was appointed by Chief Judge Judith Kaye. In addition, a new Fifth Appellate Department should be created. A more

rational, efficient system can save the state hundreds of millions while providing more effective and timely justice.

Fast Facts

- Current Chief Judge Janet DiFiore, as part of her Excellence Initiative, created a Task Force that will work in 2017 [“to identify reforms, for consideration by the Legislature](#), toward streamlining the court system’s byzantine structure (comprising multiple levels of trial courts) and otherwise enhancing the New York Courts’ efficiency and accessibility.”
- “There is simply no reason why the people and businesses of New York State should have to suffer any longer with the most backward and inefficient court structure in the nation.” – [Special Commission on the Future of New York State Courts](#), 2007.
- “...our extraordinarily complex and stratified, trial court structure severely handicaps the state’s ability to deliver on the state constitution’s crucial commitment to assuring that “[n]o person shall be deprived of life, liberty or property without due process of law.” – Daniel Feldman and Marc Bloustein, [“New York’s Broken Constitution.”](#)
- “The present court structure undermines court efficiency, impedes public access, makes litigation more expensive, and seriously hampers our ability to serve the public effectively.” – Jonathan Lippman, former Chief Judge of the New York State Court of Appeals, [“Court Reform in New York State.”](#)
- “Concerns about an overburdened, underfinanced court system have nagged with increasing urgency across New York City. The number of felony cases citywide that exceed the courts’ own guidelines for excessive delay — 180 days in most felony cases — has more than doubled since 2000, even as the total number of felony cases has dropped by nearly a quarter.” –[“Faltering Courts, Mired in Delays,”](#) The New York Times, April 13, 2013.

History

The existing court system in New York is a [“vestige of a nineteenth century](#) patchwork in which a variety of idiosyncratic courts were allowed to proliferate despite overlapping and inconsistent jurisdictions.”

The court system in New York was little changed from colonial times until the Constitutional Convention of 1846. The Supreme Court served no fixed term in office. There were a small number of judges who rode the court circuit, visiting different locations every few months. [“In effect, each judge](#) was himself

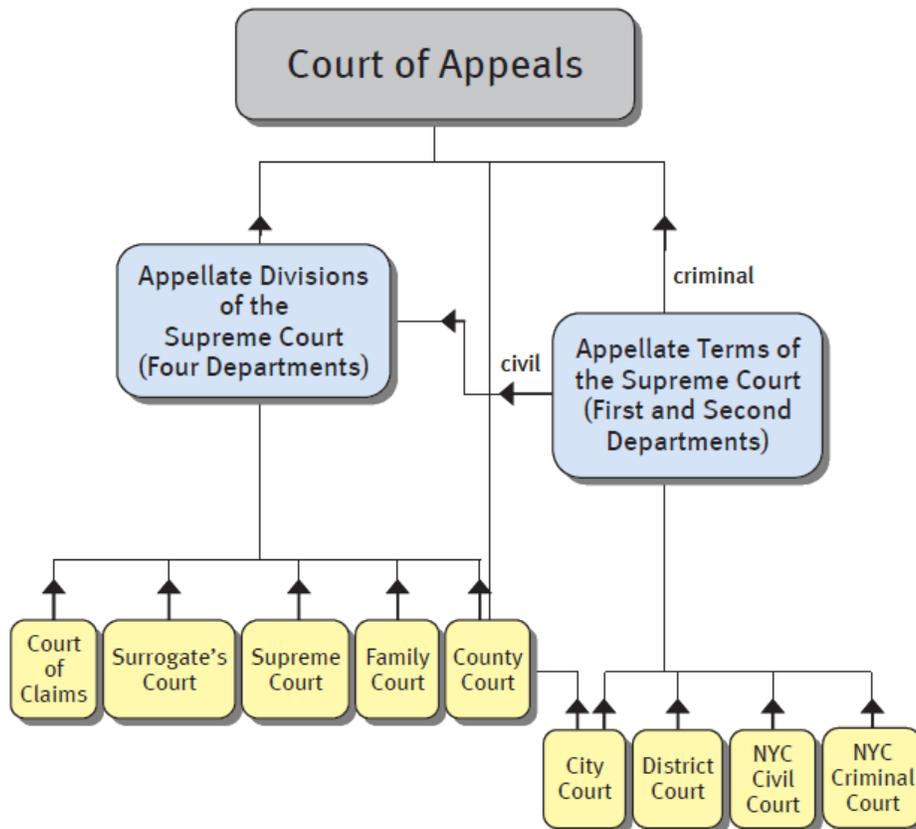
an institution with substantial, if not really unlimited, authority to determine the rules of legal practice before his court. Also, each judge generally had the final word in controversies before him as there was little in the way of an appellate court structure.”

This informal structure was designed for a broad, rural citizenry, but by the 1840’s, the state was changing, developing significant urban areas. The 1846 Convention increased the number of Supreme Court judges from 3 to 32, and the court was given statewide status. The existing lesser courts were also given constitutional status, and the beginnings of a two-tiered Appellate system was established. So rather than a restructuring of a decentralized court system that was a holdover from colonial times, the 1846 Convention expanded and legitimated it.

In the 1894 Convention, a few changes were made to this system, including the dividing the appellate courts of the state into four geographic judicial departments of roughly equal population.

Such a decentralized system with multiple courts was not prepared to handle the larger populations, increasing urbanization, and exploding reliance on the courts to settle economic disputes. So the Constitution was amended in 1962 with a new Article VI in an attempt to overhaul court administration and funding. Article IV also limited the number of Supreme Court justices to 1 per every 90,000 residents. **The structure of the court has not changed since that time:**

NEW YORK: CURRENT STRUCTURE



From: [A Court System for the Future](#)

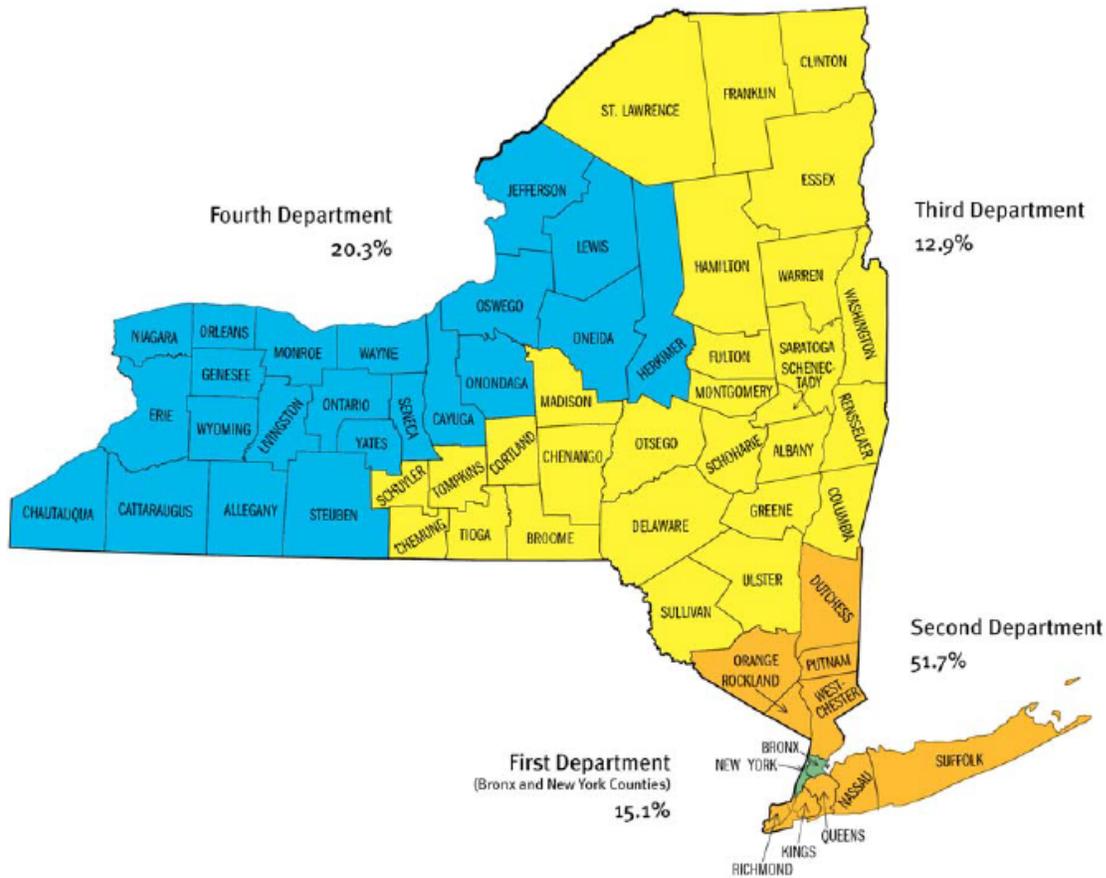
As mentioned previously in the Problem section, this morass of separate courts means that the same case may play out in separate courts with separate judges at the same time. In fact, this is a common occurrence in New York State.

Although the number of Supreme Court justices can grow along with the population, there has been an explosion of commercial and civil litigation in New York City that is unrelated to population size. For decades now, New York City has been woefully and permanently short of Supreme Court justices. So justices from other courts are temporarily assigned to the Supreme Court – for years. *These “Acting Supreme Court Justices” now make up half the Supreme Court justices serving in New York City.*

Supreme Court justices are supposed to be elected, but many of these temporary justices were appointed, so the purpose of electing Supreme Court justices is now frequently negated.

Even worse, dividing the state into four geographic departments in 1894 has created additional problems for the appellate courts:

Judicial Departments Population Breakdown



From: [A Court System for the Future](#)

With the growth of New York City, the Second Department now represents half the population. The result has been to reduce the number of judges presiding in each case and to greatly increase the time it takes for cases to be resolved.

Article VI also included a feature for the Appellate division, where the Governor can designate Justices to serve on the Appellate Court. Currently, two-thirds of Appellate Justices in the Second Department were assigned this way. The result, according to "[A Court System for the Future](#)," is that "...these additional justices serve for indefinite, effectively permanent terms, while the justices who occupy the constitutionally provided seats on the court serve for five-year terms and must seek re-designation after their terms conclude."

In 2007, [the Special Commission on the Future of New York State Courts](#) was created to examine the court system, recommend reforms, and do an economic valuation of the costs of the existing system. They determined that New York has "an inefficient and wasteful system that causes harm and heartache

to all manner of litigants, and costs businesses, municipalities and taxpayers in excess of half a billion dollars per year.” Since that time, nothing has changed except inflation – a more accurate number is now over \$600 million per year.

Parchment

Article VI, Section 1

Unified Court System; Organization; Process

a. There shall be a unified court system for the state. The state-wide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction, as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The unified court system for the state shall also include the district, town, city and village courts outside the city of New York, as hereinafter provided.

b. The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be courts of record.

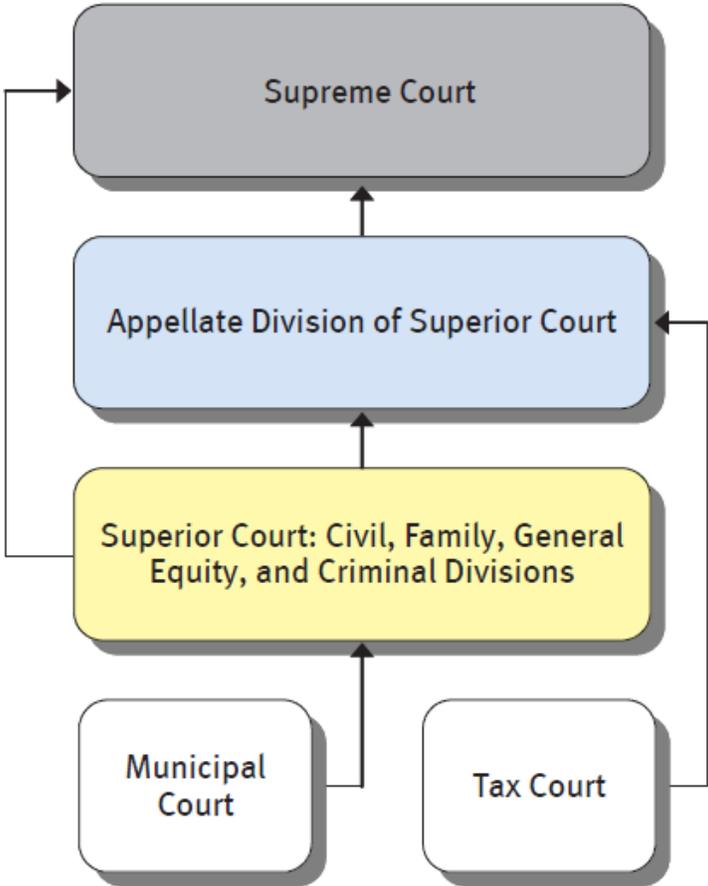
c. All processes, warrants and other mandates of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court may be served and executed in any part of the state. All processes, warrants and other mandates of the courts or court of civil and criminal jurisdiction of the city of New York may, subject to such limitation as may be prescribed by the legislature, be served and executed in any part of the state. The legislature may provide that processes, warrants and other mandates of the district court may be served and executed in any part of the state and that processes, warrants and other mandates of town, village and city courts outside the city of New York may be served and executed in any part of the county in which such courts are located or in any part of any adjoining county.

Other States

New Jersey

Prior to 1947, New Jersey had seventeen different courts. A profound restructuring of the court occurred in 1947, resulting in this still current structure:

New Jersey's Current Structure



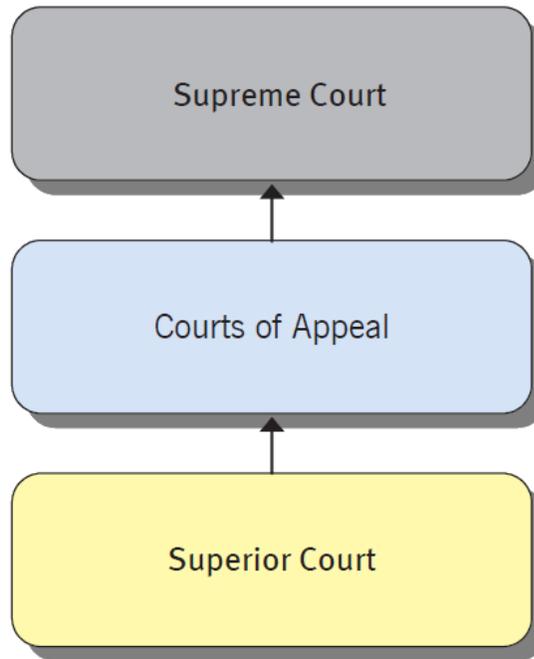
From: [A Court System for the Future](#)

As a result, New Jersey's court system "[became a national model for court reform and administrative strength,](#)" and is considered "[among the simplest and most efficient in the nation.](#)"

California

In 1998, California voters passed a constitutional amendment that provided for voluntary unification of the separate courts in each county to become a single countywide court system. By January, 2001, all the counties in the state voted to unify. The following is the state's current structure:

California's Current Structure



From: [A Court System for the Future](#)

According to a [study](#) of the unification of the California Court System, the results of restructuring have been:

- Greater cooperation and teamwork between the judiciary, other branches of government, and the community.
- More uniformity and efficiency in case processing and more timely disposition of cases.
- Enhanced opportunities for innovation, self-evaluation and re-engineering of court operations.
- More coherence to the governance of the courts and greater understanding by other branches of government and the public.
- Courts becoming a unified entity and speaking with one voice in dealings with the public, county agencies, and the justice system partners.
- Greater public access and an increased focus on accountability and service.

Resources

[“The Budgetary Impact of Trial Court Restructuring,”](#) New York State Unified Court System, February 2002.

[“Court Reform in New York State,”](#) by Jonathan Lippman, The Public Policy Forum, May 17, 2005.

[“Court Restructuring, Economic Development, and the State of New York Courts,”](#) by Dan Gross, Government Reform, February 15, 2012.

[“A Court System for the Future: A Report by the Special Commission on the Future of the New York State Courts,”](#) February, 2007.

[“Faltering Courts, Mired in Delays,”](#) by William Glaberson, The New York Times, April 13, 2013.

[“New Jersey Courts: Historical Overview,”](#) State of New Jersey.

[“New York’s Broken Constitution,”](#) Peter J. Galie, Christopher Bopst, [Gerald Benjamin](#) (Editors), SUNY Press, 2016.

[“A Short History of the New York State Court System,”](#) By Marc Bloustein, The State University of New York, September, 1987.

[“Analysis of Trial Court Unification in California, Final Report,”](#) by Mary Anne Lahey, Ph.D., Bruce A. Christenson, Ph.D. Robert J. Rossi, Ph.D., September 28, 2000.