

# Appellate Courts

## Staffing & Functional Adaptations to the Pandemic

A Pandemic Resource from CCJ/COSCA

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During March 2020, with COVID-19 spreading throughout all 50 states and the declaration of a national emergency, much of the economy and all branches of state governments began shutting down or suspending a variety of services while devising alternative methods of conducting ongoing operations. State appellate courts were no exception as many courthouses were closed to the public as well as to most judges and staff. Appellate court leadership, in concert with state court administrators, acted quickly and adroitly by developing alternatives that would enable the work of the courts to continue.

While not as publicly visible as the widespread shift by appellate courts to remote oral arguments, changes in workplace configuration, staff job assignments, remote working capabilities, internal communication and collaboration methods, supervisory techniques and a host of other adaptations impacted judges and all appellate court staff members. In some instances, these adaptations were built on extending technological capabilities that were already available but not fully utilized; others are based on implementing applicable CDC guidelines to protect the health and safety of employees and court users.

In June 2020, the RRT's PPP Appellate Courts Working Group circulated questionnaires to a sample of state supreme court and intermediate appellate court clerks to gather information and insights into these staffing-related actions. The sample courts were selected to match states represented in the Working Group membership. As such, these results provide a limited snapshot of staffing and functional adaptations and may not be fully representative of all appellate courts across the nation. This document provides a summary of the responses provided by six state supreme courts and six intermediate appellate courts.

The responding courts were the supreme courts in Florida, Idaho, Indiana, Louisiana, South Carolina and Washington; the intermediate appellate courts were in Florida (4<sup>th</sup> District Court of Appeal), Indiana, Louisiana (5<sup>th</sup> Circuit Court of Appeal), South Carolina and Washington (Divisions 1 and 3).

A summary of the emergency staffing and functional adaptations taken by the responding courts and related "key takeaways" are described below.

## EMERGENCY PLANNING

During the early stages of the pandemic, the appellate courts developed plans regarding remote operations and the continuation of appellate operations. However, nine of the twelve responding courts indicated that such plans were revised at least once as circumstances required.

*Key Takeaway: It is essential that appellate courts develop and periodically reassess plans for emergency operations in the event of an emergency whether that be a pandemic, natural disaster or periods of civil disorder. It is also critical to realize that plans made in good times will likely need to be revised one or more times when the circumstances of an emergency make themselves known.*

## CLERK'S OFFICE & PUBLIC SERVICES

The courts generally reduced on-site staffing to a skeleton group (usually a rotating cast of clerks although many courts indicated that judges, justices and administration staff also worked on-site, at least occasionally) to process certain types of work that couldn't be done remotely. While the types of tasks that could only be completed on-site varied among the courts, they usually included collecting and processing mail or hard copy filings, monitoring phones, scanning documents, etc. Some courts allowed hard copy filings to be deposited in a secured drop box or hand-delivered to security staff while others allowed clerical staff to accept them directly. Most of the courts already had an electronic filing system in place and experienced a noticeable increase in its use. While the South Carolina courts did not have an e-filing system when the public health emergency commenced, within two weeks the Supreme Court and the Court of Appeals implemented a functional e-filing process for attorneys utilizing Microsoft OneDrive. They also created a dedicated email address to receive filings, enabling attorneys and self-represented litigants to submit documents electronically.

Most clerk's office staff members, however, began working remotely. To make this happen, appellate courts were tasked with providing judicial branch equipment such as computers and monitors that would enable clerks to connect with case management, e-filing and other systems. Often, clerks working remotely did not have scanners or a high-speed Internet connection at their homes. As a result, certain aspects of the filing process and document management were not fully completed until the clerk rotated into the courthouse or the task was transferred to on-site clerks.

*Key Takeaway: Courts with a more advanced technical infrastructure (processes, equipment, training, etc.) in place before the pandemic had an easier transition to remote operations. For example, the Indiana Supreme Court seemed to have an easier time than others because nearly all staffers had been provided with laptops and received training for conducting work remotely. Staff in other courts lacked optimal laptop setups and/or training on remote processes and had to work through a learning curve.*

## JUDICIAL CHAMBERS & LEGAL STAFF

Central staff attorneys and judicial chambers staff primarily worked remotely in most of the responding courts. Because it was more common prior to the pandemic for judges and legal staff to occasionally work remotely and because these employee groups typically have little or no public contact, this did not require the same degree of planning and coordination that was necessary for clerk's office staff. In some courts however, remote chambers and legal staff did require clerical support in order to provide an electronic trial court record on appeal or other case-related materials if they were not available through the case management or e-filing systems.

Organizational issues with respect to maintaining a collaborative environment and collegial relationships among judges, chambers staff and central staff attorneys were not specifically addressed in this questionnaire. These issues, especially regarding remote working arrangements over extended timeframes, will be addressed in detail through subsequent studies conducted over the next several months.

## IMPACTS ON WORKLOAD & EFFICIENCY

Provisions of the various emergency orders that affected the business of the appellate courts typically included one or more extensions of the time periods related to filing documents and either postponing or cancelling scheduled oral arguments. Our questionnaire asked whether these provisions affected the appellate court workload and output in three key functional areas:

1. Filing of new appeals/original proceedings
2. Case review by chambers/central staff attorneys/judges & justices
3. Opinion preparation & circulation

The responses indicate that new filings were affected heavily while case review and opinion preparation were only slightly affected. Note that all courts did not respond in all areas.

Workload Impact	Not Affected	% Not Affected	Somewhat Affected	Greatly Affected	% Affected	Unsure/ N/A	Total
Filing of new appeals or original proceedings	2	16.7%	7	3	80.0%	0	12
Case reviews by chambers staff/central staff/judges & justices	8	72.7%	2	1	27.3%	0	11
Opinion preparation & circulation	9	81.8%	2	0	18.2%	0	11

***Key Takeaway:** A clearer picture on the volume of appellate filings is likely to emerge in coming months as extended periods for filing return to normal and trial courts ramp up their case disposition rates. Appellate courts should watch these developments carefully and respond as circumstances warrant.*

Key Takeaway: While new appellate filings remain low, appellate courts can continue to efficiently review and decide cases, reducing pending case inventory while preparing for expected caseload increases as the pandemic subsides.

The questionnaire also inquired whether there was a noticeable change in efficiency, for better or worse, in similar functional areas. The responses indicate that, in most of the responding appellate courts, there was either no change in efficiency or that efficiency had improved; a small number of respondents indicated that efficiency had gotten worse or that they were unsure. Note that all courts did not respond in all areas.

Process Efficiency	No Change	Yes - Better	% No Change or Better	Yes - Worse	% Worse	Unsure	% Unsure	Total
Processing filings and public service duties	4	3	58.3%	4	33.3%	1	8.3%	12
Case review by legal staff / judges & justices	8	1	75.0%	1	8.3%	2	16.7%	12
Opinion drafting	9	0	81.8%	1	9.1%	1	9.1%	11

We also noted that nine of the twelve responding courts said that they did experience a learning curve resulting in an initial loss of efficiency; of those nine courts with a learning curve, eight reported that efficiency had improved over time and one reported that it had “somewhat improved.”

#### SATISFACTION WITH REMOTE WORKING ARRANGEMENTS

We also inquired about the respondent’s perception as to the degree of satisfaction among various groups with respect to remote working arrangements. The responses indicate that all employee groups were satisfied or very satisfied with no suggestion of dissatisfaction. Note that all courts did not respond in all groups.

Perceived Degree of Satisfaction	Not at all satisfied	N/A Unsure	Neutral	Somewhat satisfied	Satisfied	Very satisfied	% Satisfied & Very Satisfied	Total Responses
Clerks' Office	0	1	1	2	4	4	67.7%	12
Central staff attorneys	0	1	0	1	5	4	81.8%	11
Chambers staff	0	1	0	1	5	4	81.8%	11
Judges/Justices	0	1	4	0	1	5	54.5%	11
Admin. staff	0	1	0	0	4	3	87.5%	8

With the perceived high degree of satisfaction by among judge & justices and all employee groups, most responding courts anticipated that remote working arrangements would continue at the current level or a reduced level for several months or possibly until the pandemic is officially ended. Seven of the twelve courts anticipated that remote working arrangements may continue to be available in the future at a reduced level.

*Key Takeaway: Appellate courts have traditionally consisted of tasks that were almost exclusively done onsite in the courthouse. Because technological applications have been employed more widely by the courts, many essential functions of court business have been conducted remotely. Based on the responses collected, these functions have been done efficiently and most judges and staff are satisfied with the arrangements. While the data reported here does not address all of the issue inherent in remote work, it appears reasonably likely that at least some appellate functions will be done remotely in the future on a more regular basis.*