COURT OF APPEALS OF THE STATE OF NEW YORK

2018 Annual Report of the Clerk of the Court

2018
Annual Report of the Clerk of the Court to the Judges of the Court of Appeals of the State of New York

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Clerk of the Court

Court of Appeals

Table of Contents

Foreword

Introduction 1

The Work of the Court 2

Appeals Management 3

Screening Procedures 3

Normal Course Appeals 3

Alternative Track Appeals 4

Promptness in Deciding Appeals 4

The Court's 2018 Docket 5

Filings 5

Dispositions 5

Appeals and Writings 5

Motions 5

CPL 460.20 Applications 6

Review of Determinations of the State Commission on Judicial Conduct 6

Certifications Pursuant to Rule 500.27 6

Petitions for Waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law 7

Court Rules 7

Administrative Functions and Accomplishments 8

Court of Appeals Hall 8

Clerk's Office 8

Information Technology 9

Court of Appeals Website 9

Court of Appeals Public Access and Search System (Court–PASS) 9

Public Information Office 10

Office for Professional Matters 10

Table of Contents

Central Legal Research Staff **10**
Library **11**
Continuing Legal Education Committee **11**
Security Services **11**
Management and Operations **12**
Budget and Finance **12**
Expenditures **12**
Budget Requests **12**
Revenues **12**
Year in Review: Decisions **14**
Annual Events **33**
Appendices **38**

Honorable Janet DiFiore

Chief Judge

Foreword

March 2019

As reflected in the pages of this Annual Report, the Court of Appeals in 2018 once again decided a broad range of important and novel constitutional, statutory and common law issues. From civil rights, contracts, criminal law and family law to public housing, partnerships and secured transactions, the matters heard by our Court have profound consequences not only for the parties in a given appeal but for the well-being of New York's communities and economy.

As we carry on our daily work of hearing oral arguments and conferencing and deciding thousands of motions and appeals, my colleagues and I are grateful for the outstanding support we receive from our dedicated legal and administrative support staff. Led by our Clerk of the Court, John Asiello, they bring exceptional competence and professionalism to their duties and deserve much of the credit for the promptness and high quality of the Court's work product.

In November 2018, the Court of Appeals returned to its earliest roots. We held session in the City of Kingston, on the very site where our State's highest court first convened in 1777, with John Jay serving as New York's first Chief Judge (before going on to become the first Chief Justice of the Supreme Court of the United States). My colleagues and I relished the opportunity to immerse ourselves in the Court's history and — facilitated by our alumnus Albert M. Rosenblatt — interact with dozens of students from area high schools and colleges who attended oral argument. Our ability to make the work of the Court of Appeals accessible and transparent to the public, and to our young people in particular, continues to be enormously important and satisfying to each one of us.

After looking back on the work of our institution in 2018, I know that I speak for my colleagues in stating how privileged and fortunate we are to have the opportunity to serve on the Court of Appeals and work together in a collegial setting to develop a strong and predictable body of law that guides the lives of our citizenry and the continued growth and development of our great State.

The Judges and staff of the Court of Appeals look forward to 2019 and another year dedicated to achieving excellence in the delivery of justice.

2018

Annual Report of the Clerk of the Court to the Judges of the Court of Appeals of the State of New York

Introduction

In some respects, 2018 was a return to stability for the Court of Appeals. It was the first calendar year since 2011 that began and ended with the same seven Judges comprising the bench of the Court of Appeals. There were, however, several retirements of members of the staff after long and valuable service to the Court.

Cynthia McCormick, who served for many years as the Court's Director of Management and Operations, handling the important areas of human resources, budget and business, and communicating on such matters with other offices inside and outside the judiciary, retired after a total of nearly 29 years of Court service. Several administrative assistants also retired. Lisa Cleary, administrative assistant to the Court's Central Legal Research Staff, served the Court for more than 32 years; Inez Tierney, who was Judge Albert M. Rosenblatt's secretary when he was a member of the Court and subsequently worked in the Office for Professional Matters, served the Court for nearly 20 years; and Suzanne Kane, administrative assistant in the Court's Business Office, served the Court for more than 10 years.

I thank Cindy, Lisa, Inez and Suzanne for their significant contributions to the Court. I also echo the Chief Judge's sentiment that our managerial and administrative staff continue to serve the Court, and the public, with dedication and a common goal of excellence.

As reflected in this report, the work of the Court and its staff remained steady in 2018. As explained more fully on page 7, the Court's Rules of Practice were amended with respect to amicus submissions. Rule 500.23 now requires proposed amicus to provide information on entities contributing to proposed amicus briefs. In addition, Rule 500.12 was amended to clarify that replies by amici are not permitted. The Court's Rules related to the Admission of Attorneys and the Licensing of Legal Consultants were amended as to the Skills Competency Requirement and as to the form of supporting documents to be submitted with certain applications.

The format of this year's Annual Report, divided into five parts, follows the format of the 2017 report. The first section is a narrative overview of matters filed with and decided by the Court during the year. The second part describes various functions of the Clerk's Office, and summarizes administrative accomplishments in 2018. The third section highlights selected decisions of 2018. The fourth part covers some of the Court's 2018 notable events. The fifth part consists of appendices with detailed statistics and other information.

The Work of the Court

The Court of Appeals is composed of its Chief Judge and six Associate Judges, each appointed by the Governor to a 14-year term. The primary role of the Court of Appeals is to unify, clarify, and pronounce the law of New York State.

The State Constitution and applicable jurisdictional statutes provide few grounds for appeals as of right; thus, the Court hears most appeals by its own permission, granted upon civil motion or criminal leave application. Appeals by permission typically present novel and difficult questions of law having statewide importance or involve issues on which the holdings of the lower courts of the state conflict. The correction of error by courts below remains a legitimate, if less frequent, basis for this Court's decision to grant review. The Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

In addition to appellate jurisdiction, the State Constitution vests the Court of Appeals with power to answer questions of New York law certified to it by a federal appellate court or another state's court of last resort. Also, the Court of Appeals is the exclusive forum for review of determinations by the State Commission on Judicial Conduct.

The Judges of the Court collectively decide all appeals, certified questions, proceedings to review determinations of the State Commission on Judicial Conduct, and motions. Individually, the Judges decide applications for leave to appeal in criminal cases and emergency show cause orders. For most appeals, the Judges receive written and oral argument and set forth the reasons for their decisions in written opinions and memoranda.

The Court sits in Albany throughout the year. During these sessions held in Albany, oral argument is heard in the afternoon and the Court meets in conference in the mornings to discuss the argued appeals, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters.

In 2018, the Court and its Judges disposed of 3,635 matters, including 136 appeals,* 1,180 motions and 2,319 criminal leave applications. A detailed analysis of the Court's work follows.

* This number includes final determinations on Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Appeals Management

Screening Procedures

The jurisdiction of the Court is narrowly defined by the State Constitution and applicable statutes. After filing a notice of appeal or receiving an order granting leave to appeal to this Court, an appellant must file a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all filed preliminary appeal statements for issues related to subject matter jurisdiction. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issues identified. After the parties respond to the Clerk's inquiry, the Clerk may direct the parties to proceed to argue the merits of the appeal or refer the matter to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court. The Rule 500.10 screening process is valuable to the Court, the bar, and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

In 2018, 80 appeals were subject to Rule 500.10 inquiries. Of those, 53 appeals were dismissed sua sponte (SSD) or transferred to the Appellate Division. Seventeen inquiries were pending at year's end.

Normal Course Appeals

The Court determines most appeals "in the normal course," meaning after full briefing and oral argument by the parties. In 2018, 104 appeals were decided in the normal course. In these cases, copies of the briefs and record material are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. Each appeal argued or submitted is assigned by random draw to one member of the Court for reporting to the full Court.

Following oral argument or submission of an appeal, the appeal is conferenced by the full Court. In conference, the Judges are seated clockwise in seniority order around the conference table. The reporting Judge speaks first on the appeal, followed by the other Judges in reverse seniority order (the most junior Judge speaks after the reporting Judge). Draft writings are circulated to all Judges for review and consideration. After further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next scheduled session of the Court.

Alternative Track Appeals

The Court also employs the alternative track of sua sponte merits (SSM) review of appeals pursuant to Rule 500.11. Through this SSM procedure, the Court decides appeals on written submissions without oral argument, saving the litigants and the Court the time and expense associated with the filing of bound briefs and oral argument. As with normal course appeals, the parties' submissions are available through the Court's Public Access and Search System (Court-PASS) and Court Rules permit amicus curiae participation.

Parties may request SSM review. A case may be placed on SSM review if, for example, it involves narrow issues of law or issues decided by a recent appeal. As with normal course appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes and are conferenced and determined by the entire Court.

Of the 231 appeals filed in 2018, 26 (11.3%) were initially selected to receive SSM consideration, a decrease from the percentage so selected in 2017 (20.9%). Eighteen were civil matters and 8 were criminal matters. One appeal initially selected to receive SSM consideration in 2018 was directed to full briefing and oral argument. Of the 136 appeals decided in 2018 on the normal course or on the SSM procedure, 32 (23.5%) were decided upon SSM review (22.5% were so decided in 2017). Twenty-one were civil matters and 11 were criminal matters. One civil appeal on SSM review was withdrawn. Eleven matters remained pending on SSM review at the end of 2018 (8 civil and 3 criminal).

Promptness in Deciding Appeals

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2018, the average time from argument to disposition of a normal course appeal was 36 days; for all appeals, the average time from argument or submission to disposition was 29 days.

The average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 14 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 8 months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release of a decision in a normal course appeal (including SSM appeals tracked to normal course) was 459 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16(a) for failure to perfect, the average was 160 days.

The Court's 2018 Docket

Filings

Two hundred thirty-one (231) notices of appeal and orders granting leave to appeal were filed in 2018 (248 were filed in 2017). One hundred eighty-four (184) filings were civil matters (compared to 202 in 2017), and 47 were criminal matters (compared to 46 in 2017). The Appellate Division Departments issued 24 of the orders granting leave to appeal filed in 2018 (13 were civil, 11 were criminal).

Motion filings remained steady in 2018. During the year, 1,238 motions were submitted to the Court, compared to the 1,237 submitted in 2017. Criminal leave application filings increased in 2018. In 2018, 2,406 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 2,275 assigned in 2017. On average, each Judge was assigned 344 such applications during the year.

Dispositions

Appeals and Writings

In 2018, the Court decided 136 appeals (86 civil and 50 criminal, compared to 80 civil and 62 criminal in 2017). Seventy-five (75) of the 136 appeals were decided by signed opinions, 2 by per curiam opinions, 45 by memoranda and 14 by decision list entries. Eighty-two (82) dissenting opinions and 30 concurring opinions were issued.

Motions

The Court decided 1,180 motions in 2018, a small decrease from the 1,196 decided in 2017. Of the 926 motions for leave to appeal decided in 2018, 3.3% were granted, 72.8% were denied, 23.9% were dismissed, and less than .5% were withdrawn. Thirty-one motions for leave to appeal were granted in 2018. The Court's leave grants covered a wide range of subjects and reflect the Court's commitment to grant leave in cases presenting issues that are of great public importance, are novel, or present a split in authority among the Appellate Division Departments.

The average period of time from return date to disposition for civil motions for leave to appeal was 63 days, while the average period of time from return date to disposition for all motions was 55 days.

CPL 460.20 Applications

Individual Judges of the Court granted 36 of the 2,319 applications for leave to appeal in criminal cases decided in 2018. One hundred fifty-three (153) applications were dismissed for lack of jurisdiction and 2 were withdrawn. Four of the forty-nine applications filed by the People were granted. Of the 178 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, one was granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court. The period during which such applications are pending includes several weeks for the parties to prepare and file their written arguments. In 2018, on average, 61 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

Review of Determinations of the State Commission on Judicial Conduct

The Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this State with a crime punishable as a felony. In 2018, pursuant to Judiciary Law § 44(8), the Court suspended two judges with pay, accepted the removal determinations of the Commission regarding those judges, and removed them from office. The court suspended a third judge with pay after the judge was charged with a crime punishable as a felony.

Certifications Pursuant to Rule 500.27

Rule 500.27 provides that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state, that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. The Court first decides whether the certification should be accepted and, if the Court accepts a certified question, the matter is treated similarly to an appeal. In 2018, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 30 days. The average period from acceptance of a certification to disposition was 10 months.

The Court answered two certified questions in 2018. One of those questions was accepted in 2017 and one was accepted in 2018. At the end of 2018, two questions that were accepted in 2018 remained pending.

Petitions for Waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law

In 2018, the Court decided 259 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a slight decrease from the 270 petitions decided in 2017. Petitions typically are decided four to eight weeks after submission.

Court Rules

Effective January 24, 2018, the Court's Rule for the Skills Competency Requirement for Admission (Rule 520.18) was amended to correct a citation error and clarify the timing requirements for LL.M. students seeking to satisfy this admission requirement with an apprenticeship.

Effective May 16, 2018, the Court's Rules of Practice relating to amicus curiae relief (Rule 500.23) were amended to require that proposed amicus 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.

Effective July 11, 2018, the Court's Rules for the Admission of Attorneys and Counselors at Law (Rules 520.10[b][1] and 520.12) and its Rules for the Licensing of Legal Consultants (Rule 521.2[c]) were amended to permit (1) applicants for admission on motion to submit a certificate of good standing from an admitting authority, rather than from the clerk of the highest court; (2) the submission of an affirmation rather than an affidavit as to the good moral character of an applicant for admission; and (3) applicants seeking to be licensed as legal consultants and who submit certain supporting documents in a language other than English to provide an English translation of those documents that is either duly authenticated or includes a statement by the translator setting forth the translator's qualifications and certifying that the translation is accurate.

Administrative Functions and Accomplishments

Court of Appeals Hall

Court of Appeals Hall at 20 Eagle Street has been the Court's home for 101 years. The classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery, and the State Supreme Court. On January 8, 1917, the Court of Appeals moved from the State Capitol into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004 — the latter including two additions to the building faithful to its Greek Revival design — produced the architectural treasure the Court inhabits today.

The Building Manager oversees all services and operations performed by the Court's maintenance staff and by outside contractors at Court of Appeals Hall.

Clerk's Office

Clerk's Office staff respond — in person, by telephone, and in writing — to inquiries and requests for information from attorneys, litigants, the public, academics, and court administrators. Given that practice in the Court of Appeals is complex and markedly different from that in the Appellate Division, the Clerk's Office encourages such inquiries. Members of the Clerk's Office staff also regularly participate in, and consult on, programs and publications designed to educate the bar about Court of Appeals practice.

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Criminal Leave Applications Clerk, several secretaries, court attendants, and clerical aides perform the many and varied tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical information about the Court's work, assisting the Court during conference, and preparing the Court's decisions for release to the public. The Court's document reproduction unit handles most of the Court's internal document reproduction needs, as well as reproducing decision lists and slip opinions for release to the public. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, tracking and distributing all briefs, records, exhibits, and original court files. During the Court's sessions, the court attendants also assist the Judges in the courtroom and in conference.

Information Technology

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Chief Management Analyst, assisted by a LAN Administrator, a PC Analyst, and a Senior Associate Computer Applications Programmer. These operations include all software and hardware used by the Court and a statewide network connecting the remote Judges' chambers with Court of Appeals Hall. The Department also maintains a hands-on help desk to assist employees with hardware and software issues as they arise. Training on software and hardware is provided as needed, either within the Court or via outside agencies. Maintenance calls to the help desk were estimated at 3,400 for the year.

The Department is also responsible for the upkeep of three websites: an intranet website, the Court's main internet site, located at http://www.nycourts.gov/ctapps, and the Court-PASS website, located at http://www.nycourts.gov/ctapps/courtpass. Over 1,034,459 visits were recorded to the main internet site in 2018, averaging 2,834 visits per day. The Court-PASS site recorded 767,563 visits in 2018.

Court of Appeals Website

The Court's comprehensive website (http://www.nycourts.gov/ctapps) posts information about the Court, its Judges, its history, summaries of pending cases and news items, as well as recent Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments. Since January 2010, these webcasts have been preserved in a permanent archive on the website to allow users to view the arguments at their convenience. Since September 2012, transcripts of oral arguments are also available on the website, and are archived there as well. The website provides helpful information about the Court's practice — including its Rules, civil and criminal jurisdictional outlines, court forms, session calendars, and undecided lists of argued appeals and civil motions — and provides links to other judiciary-related websites.

Court of Appeals Public Access and Search System (Court-PASS)

The Court of Appeals Public Access and Search System (Court-PASS) is the method for submitting records and briefs in digital format on appeals to the Court of Appeals, and offers universal online access to publicly available documents through a searchable database (www.nycourts.gov/ctapps/courtpass). Anyone may search or browse the Court-PASS database free of charge, and may view or download briefs and records in civil and criminal appeals. The docket function of Court-PASS contains a snapshot of frequently requested information for all undecided appeals, including the due dates set for filings on appeals, scheduled dates of oral argument, and attorney contact information.

Public Information Office

The Public Information Office distributes the Court's decisions to the media upon release and answers inquiries from reporters about the work of the Court. For each session, the office prepares descriptive summaries of cases scheduled to be argued before the Court. The summaries are posted on the Court's website.

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public — from schoolchildren to members of the bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors.

Office for Professional Matters

Special Projects Counsel manages the Office for Professional Matters. A Court Analyst provides administrative, research, and drafting support for the office. Special Projects Counsel drafts reports to the Court on matters relating to (1) attorney admission and disciplinary cases, (2) petitions seeking waiver of certain requirements of the Court's Rules for the Admission of Attorneys and Counselors at Law and the Rules for the Licensing of Legal Consultants, (3) proposed rule changes relating to admission and licensing rules, and (4) other matters regarding the admission and regulation of attorneys in New York.

The office responds to written and telephone inquiries related to the Court's admission rules, reviews submissions from U.S. law schools seeking approval of courses as satisfying the requirements of the Court's rules, and prepares certificates of admission upon request.

Central Legal Research Staff

Under the supervision of the Judges and the Clerk and Deputy Clerk of the Court, the Central Legal Research Staff prepares reports on civil motions and selected appeals for the full Court's review and deliberation. From December 2017 through December 2018, Central Staff completed 1,042 motion reports, 77 SSD reports, and 17 SSM reports.

Attorneys usually, but not invariably, join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed during part or all of 2018 were graduates of Albany, American University, Brooklyn, Cornell, CUNY, Notre Dame, Ohio State University, St. John's University, Syracuse University, Touro, University of California (Irvine), University of Maryland, Western New England, and Wake Forest University law schools. Staff attorneys hired for work beginning in 2019 represent the following law schools: Albany, University at Buffalo, Cornell, Northeastern University, and Syracuse University.

Library

The Chief Legal Reference Attorney and a Senior Court Analyst provide legal and general research and reference services to the Judges, their law clerks, and the Clerk's Office staff. The Library staff continued to refine the accuracy of the court library inventory database and catalog, and are involved in a digitization project.

Library staff co-presented two continuing legal education programs on online legal research and internal legal research at the orientation for new Judges' clerks and Central Staff attorneys.

Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee meets on an as-needed basis and issues credit for suitable programs it and its affiliates plan. In 2018, the CLE Committee provided seven programs — including new staff training and orientation — totaling 14 credit hours. Attorneys also attended classes offered by the New York Supreme Court, Appellate Division, First and Third Departments; Albany Law School; the Second Circuit Judicial Council; the New York State-Federal Judicial Council; the New York State Bar Association; and the Historical Society of the New York Courts. These programs accounted for over 33 additional credit hours of live and webcast programming.

Effective August 1, 2018, the Court's Accredited Provider status was renewed upon approval by the New York State Continuing Legal Education Board.

Security Services

The Court Security Unit provides for the safety, security, and protection of judicial staff, court personnel, and the public who visit the Court. The Chief Security Attendant, with the assistance of the Deputy Chief of Security, supervises the Court Security Unit, which consists of Senior Security Attendants and Court Building Guards. The attendants are sworn New York State Court Officers who have peace officer status.

The Security Unit conducts a variety of security functions, including magnetometer/security screening for the visiting public. Other functions include judicial escorts, security patrols, video monitoring, and providing a security presence in the courtroom when Court is in session.

Management and Operations

The Director of Court of Appeals Management and Operations, aided by two Court Analysts, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll document preparation, voucher processing, benefit program administration, and annual budget request development.

Budget and Finance

The Director of Court of Appeals Management and Operations is responsible for initial preparation, administration, implementation, and monitoring of the Court's annual budget. The proposed annual budget is reviewed by the Clerk and Deputy Clerk before submission to the Judges of the Court for their approval.

Expenditures

The work of the Court and its ancillary agencies (the New York State Law Reporting Bureau and the New York State Board of Law Examiners) was performed within the 2018-2019 fiscal year budget appropriation of $1.85 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

Budget Requests

The total request for fiscal year 2019-2020 for the Court and its ancillary agencies is $1.85 million for non-personal services. Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2019-2020 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

Revenues

In calendar year 2018, the Court reported filing fees for civil appeals totaling $17,010 and for motions totaling $27,850. The funds were reported to the State Treasury, Office of the State Comptroller, and Office of Court Administration pursuant to the Court Facilities Legislation (L 1987, ch 825). Additional revenues were realized through miscellaneous collections ($2,895.64). For calendar year 2018, revenue collections totaled $47,755.64.

ACKNOWLEDGMENT

Although submitted to the Court under the name of the Clerk, the Annual Report is a joint effort of Court staff who provide numerical data, narrative content, graphics, editing, and proofreading necessary for its production. In conveying my appreciation to each member of the staff who contributed, I thank especially Ann Byer, Cynthia Byrne, Julianne Claydon, Susan Dautel, Heather Davis, Lori Drumm, Lisa Drury, Margery Corbin Eddy, Hope Engel, Antonio Galvao, Bryan Lawrence, Rachael MacVean, Marissa Mason, Amanda Ross-Carroll, Stephen Sherwin, and Margaret Wood.

The Annual Report is but one example of the extraordinary service the staff provides to the Judges of the Court, the bar, and the public throughout the year. The staff is to be commended for recognizing that such public service is both a privilege and a responsibility. A complete list of the Court's nonjudicial staff appears in Appendix 2.

Finally, I acknowledge the individuals in the Office of Court Administration and throughout the Unified Court System who continue to provide expert assistance to the Judges and staff of the Court of Appeals. I thank in particular Laura Weigley for her assistance, again this year, in the publication of this report.

Year in Review: Decisions

Below is a summary of significant 2018 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues decided by the Court each year.

ADMINISTRATIVE LAW

Matter of DeVera v Elia (32 NY3d 423)

This dispute centered on the meaning of Education Law § 3602-ee (12), which allows charter schools to provide state-funded pre-kindergarten programs and specifies that "all . . . monitoring, programmatic review and operational requirements" remain the "responsibility of the charter entity." The New York City Department of Education (DOE), supported by the State Education Department, argued that the statute allowed DOE to exercise oversight authority over charter school pre-kindergarten programs. In particular, DOE asserted that it was authorized to set contractual requirements for the program run by Success Academy — a charter school providing a pre-kindergarten program with state funds administered by DOE. Rejecting DOE's position, the Court held that the plain text and statutory structure of the Education Law give charter entities the exclusive responsibility for day-to-day operational requirements for state-funded pre-kindergarten programs run by charter schools.

Garcia v New York City Dept. of Health & Mental Hygiene (31 NY3d 601)

The Court held that the New York City Board of Health acted within the parameters of its legislatively-delegated powers and did not violate the separation of powers doctrine when it promulgated a rule mandating that children between the ages of 6 months and 59 months attending city-regulated child care or school-based programs receive annual influenza vaccinations. The Court explained that Administrative Code § 17-109 delegates to the Board the power to produce, collect, and preserve vaccines, add provisions to the health code to most effectively prevent the spread of communicable diseases, and "take measures . . . for general and gratuitous vaccination" (Administrative Code § 17-109 [a], [b]). The Court determined that, in light of this legislative mandate, the flu vaccine rule did not violate the separation of powers doctrine under *Boreali v Axelrod* (71 NY2d 1 [1987]). The Court also held that the flu vaccine rule was not preempted by state laws governing mandatory vaccinations of school children because the rule did not conflict with state law insofar as the Public Health Law does not restrict the authority of municipalities to mandate additional vaccinations if otherwise authorized by law to do so. Further, the mandatory vaccination field was not preempted, as evidenced by the legislature's historical enactment of the substance of Administrative Code § 17-109 and repeated recognition of the Board's independent vaccination requirements.

Matter of LeadingAge N.Y., Inc. v Shah (32 NY3d 249)

This appeal involved a separation of powers challenge to regulations promulgated by respondent Department of Health limiting executive compensation and administrative expenditures by certain health care providers receiving state funds. Applying the four-factor analysis set forth in *Boreali v Axelrod* (71 NY2d 1 [1987]), the Court held that promulgation of regulations known as the "hard cap" — which limited the percentage of state-funded covered operating expenses that a provider could

allocate to administrative expenses to 15% and prohibited use of state funds for annual executive compensation greater than $199,000 — did not exceed the authority granted the Department in the enabling legislation relating to the provision of state-funded healthcare. The hard cap regulations were directly tied to the Department's broad statutory mandate to ensure the efficient use of state funds for quality medical care for the public and were not arbitrary and capricious because, following reports of excessive executive compensation in the industry, it was not irrational for the Department to implement regulations directing state funds towards services while permitting waivers on a case-by-case basis upon a showing that higher executive compensation or administrative expenses are necessary to ensure quality services. The so-called "soft cap" regulation — which, with exceptions, limited executive compensation regardless of funding source — ventured beyond the bounds authorized under the cited enabling legislation. Because the regulation attempted to direct how a provider uses private funds, it was insufficiently tethered to the Department's mandate to ensure the efficient use of state funds for quality care, especially as no claim was made that high executive income negatively impacted quality of care.

BRIDGES

Town of Aurora v Village of E. Aurora (32 NY3d 366)

There are two general methods by which a village may assume control over a bridge under Village Law §§ 6-604 and 6-606. First, a village may assume control over a bridge by following the procedures outlined in Village Law § 6-606 requiring a resolution of the board of trustees or an agreement with the Town, both of which are subject to a permissive referendum. Alternatively, a village may be found to control a bridge under Village Law § 6-604 if the village supervised and controlled such bridge in 1897. A village may not be found to have legal control over a bridge merely because it exclusively constructed such bridge, absent compliance with either Village Law §§ 6-604 or 6-606.

CIVIL PROCEDURE

Andino v Mills (31 NY3d 553)

Plaintiff, a New York City police officer, was injured in the line of duty, and placed on accident disability retirement (ADR). She subsequently recovered tort damages for her injury as well. According to CPLR 4545 and *Oden v Chemung County Indus. Dev. Agency* (87 NY2d 81 [1995]), damages recovered for personal injury must be offset by any recovery from a collateral source covering the same category of loss. The Court held that, here, ADR benefits operated as a replacement for plaintiff's lost earnings and pension. The Court therefore remitted the case to the trial court to recalculate the appropriate tort award, offsetting ADR benefits against damage awards for plaintiff's future lost earnings and future lost pension.

Forman v Henkin (30 NY3d 656)

The Court was asked to resolve a dispute concerning disclosure of the social media account of a plaintiff in a personal injury action. As a result of injuries in a fall from a horse, plaintiff — who claimed to have previously enjoyed an active lifestyle, reflected on her Facebook account — alleged that she had become reclusive and had difficulty using a computer. Based on these allegations, defendant sought

disclosure of plaintiff's "private" Facebook account. Rejecting plaintiff's argument that parties seeking access to such records should be required to surmount a heightened standard, the Court held that requests for disclosure of social media records are governed by the same rules applicable to any other disclosure request and, thus, such records are generally discoverable if reasonably calculated to produce relevant materials. Accordingly, courts addressing disputes over the scope of social media discovery should make a case-by-case determination of whether relevant material is likely to be contained in an online account and should issue tailored orders aimed at avoiding disclosure of irrelevant material.

Paramount Pictures Corp. v Allianz Risk Transfer AG (31 NY3d 64)

This case required the Court to determine the preclusive effect of a prior federal judgment. In an earlier federal action, judgment was entered in favor of Paramount Pictures Corporation — the defendant in that action. Paramount subsequently initiated a state court action. The defendants in the state action — the plaintiffs in the prior federal action — moved to dismiss, contending that Paramount's claim was barred by res judicata because it should have been asserted as a counterclaim in the parties' earlier federal suit. The Court agreed, determining that Paramount's claim was sufficiently related to the claims litigated in the parties' earlier federal case so as to bar its assertion in a subsequent action.

Rodriguez v City of New York (31 NY3d 312)

The Court held that in a personal injury action, an injured plaintiff seeking partial summary judgment on the issue of a defendant's liability does not bear the double burden of establishing a prima facie case of the defendant's liability and the absence of his or her own comparative fault. Even if the defendant has raised an issue of fact regarding the plaintiff's comparative negligence, a plaintiff's comparative negligence is not a complete defense to the action. Rather, the plaintiff's comparative negligence is relevant only to the mitigation of the plaintiff's damages and should be pleaded and proved by the defendant. In so holding, the Court examined the plain language of CPLR 3212 (governing summary judgment motions) and the plain language and legislative history of codified comparative negligence principles (CPLR article 14-A).

CIVIL PROCEDURE — STATUTE OF LIMITATIONS

Contact Chiropractic, P.C. v New York City Tr. Auth. (31 NY3d 187)

In January 2001, a nonparty sustained personal injuries in a motor vehicle accident involving a bus that was owned by defendant and on which the nonparty was a passenger. Plaintiff subsequently provided health services to the nonparty for the personal injuries she sustained in that accident, and the nonparty assigned to plaintiff her right to recover first-party benefits from the self-insured defendant. The claims, bills, and no-fault verification forms that plaintiff submitted to defendant between March and August 2001 went unpaid and, in 2007, plaintiff commenced this action seeking reimbursement for outstanding invoices. Defendant moved to dismiss the complaint on the ground that plaintiff failed to commence the action within the three-year period of limitations established in CPLR 214 (2) for suits to recover upon a liability created or imposed by statute. In opposing the motion,

plaintiff contended that CPLR 213 (2)'s six-year period of limitations for an action based upon a contractual obligation or liability governed this case. The Court sided with defendant, reasoning that because the source of plaintiff's claim was wholly statutory, the three-year period of limitations in CPLR 214 (2) controlled this matter.

Deutsche Bank Natl. Trust Co. v Flagstar Capital Mkts. (32 NY3d 139)

In an action involving residential mortgage-backed securities, the Court adhered to its prior decision in *ACE Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc.* (25 NY3d 581 [2015]) holding that a cause of action for breach of representations and warranties concerning the mortgage loans accrues upon the effective date of those representations and warranties. The trustee contended that the case was distinguishable from *ACE* based on contract language stating that a cause of action arising from a breach of the representations and warranties would not accrue until certain specified events had occurred. The Court held that this accrual clause did not create a substantive condition precedent because it did not create a condition to defendant's performance under the contract. The Court further concluded that if the accrual clause was intended by the parties to delay accrual of a breach of contract cause of action until the specified events occurred, the accrual clause could not be enforced in that manner. If so interpreted, it would mean that the parties agreed, before the contract had been breached, to postpone accrual of a breach of contract cause of action to a future date uncertain. The Court held that the accrual clause could not be enforced in this way because it would violate New York law and public policy.

Lohnas v Luzi (30 NY3d 752)

In this medical malpractice action, plaintiff sought damages for injuries allegedly sustained as a result of defendant's negligent care and treatment throughout the course of the parties' seven-year doctor-patient relationship. Defendant moved for partial summary judgment dismissing the suit to the extent it alleged malpractice that was barred by the applicable 2½ year statute of limitations. On appeal, the Court determined that summary judgment was properly denied, reasoning that plaintiff had raised triable issues of fact concerning whether the continuous treatment doctrine tolled the limitations period. The Court explained that plaintiff's injury was a chronic, long-term condition which both plaintiff and defendant understood to require continued care. The Court further noted that a gap in treatment longer than the statute of limitations is not per se dispositive of a defendant's claim that the statute has run.

People v Credit Suisse Sec. (USA) LLC (31 NY3d 622)

In this action commenced by the New York Attorney General, the primary issue was which statute of limitations governs a Martin Act claim (General Business Law art 23-A), a statutory cause of action with common law antecedents. The Attorney General filed suit in 2012 against Credit Suisse Securities (USA) LLC and its affiliates pursuant to the Martin Act, alleging defendants engaged in fraudulent and deceptive acts in issuing and marketing residential mortgage-backed securities to investors in 2006 and 2007. After exploring the Martin Act's history

and legislative evolution, the Court concluded that the Act expanded liability for "fraudulent practices" to encompass wrongs beyond those cognizable at common law. The Court rejected arguments that the six-year limitations period of either CPLR 213 (8) (actions based on fraud) or CPLR 213 (1) (actions having no specified limitations period) applied. The Court held that the three-year limitations period of CPLR 214 (2) applied (actions that would not exist but for statute).

CIVIL RIGHTS LAW

Lohan v Take-Two Interactive Software, Inc. (31 NY3d 111)

Defendants develop, market, and distribute video games, including the commercial hit "Grand Theft Auto V" (GTAV) game. GTAV is an action-adventure game set in a fictional location intended to evoke parts of the Southern California area. One of the events in the game involves a character named "Lacey Jonas," who describes herself as a "really famous" "actress slash singer" and the "voice of a generation." Two other parts of the game contain images of a woman clad, respectively, in summer and beach attire and sporting accessories including sunglasses and a cell phone. According to plaintiff, who describes herself as a figure "recognized in social media" and as "a celebrity actor" regularly depicted in traditional media for the past 15 years, the Jonas character and the subject images misappropriated her portrait, voice, and persona. The Court agreed that a computer-generated image may constitute a portrait within the meaning of Civil Rights Law §§ 50 and 51, but concluded that the amended complaint was properly dismissed because the subject images are not recognizable as plaintiff.

CIVIL SERVICE — RETIREMENT AND PENSION BENEFITS

Matter of Kelly v DiNapoli; *Matter of Sica v DiNapoli* (30 NY3d 674)

Petitioners first responders did not establish that their injuries were caused by sudden, unexpected events that were not risks inherent in their ordinary job duties; thus, they could not be awarded accidental disability retirement benefits. An injury-causing event is accidental when it is sudden and unexpected because it is not a risk of the work performed. A petitioner need not prove that a condition was not readily observable or could not have been reasonably anticipated in order to demonstrate entitlement to benefits. However, when the precipitating cause of injury is a risk inherent in the work performed — as when a police officer is injured responding to report of injury during life-threatening weather conditions, and a firefighter is exposed to toxic fumes when responding to an emergency medical call — that event cannot be characterized as unexpected.

CONSTITUTIONAL LAW

Clement v Durban (32 NY3d 337)

The Court concluded that the security for costs provisions set forth in CPLR 8501 (a) and 8503 do not unduly burden nonresidents' fundamental right to access the courts in violation of the Privileges and Immunities Clause, article IV, section 2 of the Federal Constitution. The Court reasoned that sections 8501 (a) and 8503 impose marginal, recoverable security for costs on only a limited class of nonresident plaintiffs who do not otherwise qualify for poor persons' status, and thus do not impinge upon nonresident plaintiffs'

reasonable and adequate access to the courts. This holding comports with guidance from the United States Supreme Court and decisions from this Court, as well as a nearly uniform body of decisions from state courts across the country with respect to their analogous statutes.

CONTRACTS

Kolchins v Evolution Mkts., Inc. (31 NY3d 100)

Documentary evidence proffered by defendant on its motion to dismiss pursuant to CPLR 3211 (a) (1) failed to refute conclusively the breach of contract claims asserted by plaintiff, a former employee. The Court concluded that, based on all of the documentary evidence put forward by defendant in support of its motion — including e-mail correspondence between plaintiff and defendant's CEO — a reasonable fact-finder could determine that the parties entered into a new employment contract.

CORRECTION LAW

People v Diaz (32 NY3d 538)

Upon his conditional release from Virginia state prison in 2015, defendant was required to register under that state's Sex Offender and Crimes Against Minors Registry Act for the 1989 shooting of his 13-year-old half-sister. The issue before the Court was whether, upon moving to New York after his release, defendant was required to register under this state's Sex Offender Registration Act (SORA) pursuant to Correction Law § 168-a (2) (d) (ii), which includes under the definition of a registrable "sex offense" a "felony in any other jurisdiction for which the offender is required to register as a sex offender in the jurisdiction in which the conviction occurred." The Court held that, because section 9.1-902 of Virginia's registration act classified defendant's crime as a "murder" against a minor, it did not require him to "register as a sex offender" within the meaning of SORA and, thus, he was not required to register as a sex offender in New York.

People v Francis (30 NY3d 737)

The guidelines to determine reoffense risk promulgated by the State Board of Examiners of Sex Offenders included youthful offender adjudications as part of an offender's criminal history factors, notwithstanding that a youthful offender adjudication is not a conviction and the purpose of the youthful offender statute is to spare youths the stigma of a criminal conviction. Analyzing the Sex Offender Registration Act's mandate to the Board as well as the youthful offender statute, the Court determined that the statutes do not prohibit the Board's consideration of youthful offender adjudications for the limited purpose of accurately assessing an offender's risk level.

CRIMINAL LAW

People v Aleynikov (31 NY3d 383)

Defendant worked at Goldman Sachs as a computer programmer, updating the firm's high-frequency trading software. He had access to the source code but was not permitted to remove a copy of the code from the firm's network or to email such code to himself. On defendant's last day of employment at Goldman, he surreptitiously uploaded a large quantity of Goldman's high-frequency trading source code to a remote server in Germany. He then downloaded the source code to his home computer and placed parts of the code in a repository to which he had access through his new employer.

Based on these acts, a jury found defendant guilty of unlawful use of secret scientific material (Penal Law § 165.07). However, the trial court set aside the jury's verdict, reasoning that defendant had not made a "tangible reproduction or representation" of the source code, within the meaning of section 165.07, because the copies he made could not be touched. The Court upheld defendant's conviction, interpreting "tangible" more broadly to mean "material" or "having physical form" and contrasting the immaterial quality of the source code itself with the physical nature of its copies.

People v Bailey (32 NY3d 70)

During a cross-examination in which defense counsel used a racial epithet to try to contextualize the assault, a juror stood up and professed her objection to the language being used. Codefendants objected to the trial court's refusal to hold a *Buford (see People v Buford*, 69 NY2d 290 [1987]) inquiry into the juror's ability to render an impartial verdict. In holding that defendant failed to preserve such an objection, the Court held that since one codefendant's counsel's objection may undermine another's strategy, CPL 470.05 (2) requires each defendant to preserve the issue. Additionally, the Court held that defense counsel's request for a mistrial did not preserve the issue of whether a *Buford* inquiry was required.

People v Crespo (32 NY3d 176); *People v Silburn* (31 NY3d 144)

In these two appeals, the Court addressed a defendant's constitutional right of self-representation, applying the three-prong test set forth in *People v McIntyre* (36 NY2d 10 [1974]). Under *McIntyre*, a defendant may invoke the right to proceed pro se where: (1) the request to proceed pro se is timely and unequivocal; (2) the right to counsel has been knowingly and intelligently waived; and (3) defendant has not engaged in conduct that would prevent the trial from proceeding in a fair and orderly fashion. In *Silburn*, the Court held that the defendant's request to proceed pro se was equivocal because it was a request for dual representation, predicated on continuing to receive the assistance of his attorney as standby counsel. The Court held that, where a defendant remains equivocal about the request for self-representation after the trial court properly advises him that the right to represent oneself includes the waiver of the right to an attorney and advises defendant that hybrid representation will not be permitted, additional colloquy on the request to proceed pro se is not constitutionally required. In *Crespo*, the timeliness of defendant's request to proceed pro se was at issue as the unequivocal request was made prior to opening statements, but after 11 jurors had already been selected and sworn. Observing that a request to proceed pro se is timely if made before the trial commences and the CPL establishes that a jury trial begins with "the selection of the jury," the Court held that the defendant's request to proceed pro se was properly denied as untimely.

People v Cummings (31 NY3d 204)

The Court reversed a trial court decision to admit a statement under the hearsay excited utterance exception where the record contained no evidence from which a trier of fact could reasonably infer that the statement was based on the personal observation of the declarant. The case involved a 911 phone call in which a

declarant could be heard faintly in the background purportedly identifying the shooter in a murder. The declarant was never identified. The Court concluded that the fact that a declarant is unidentified does not make an excited utterance inadmissible per se, for the hearsay exception to apply, facts must exist from which a reasonable trier of fact could infer that the declarant personally observed the incident. Here, such facts did not exist, and the exception did not apply. The Court further ruled that the error was not harmless because the unidentified declarant's statement was the only identification evidence, and other evidence of guilt was not overwhelming.

People v Grimes (32 NY3d 302)

The Court held that the extraordinary writ of error coram nobis, which requires a predicate constitutional violation, cannot extend a defendant's time to file a discretionary leave application for a second -tier appellate review despite counsel's failure to file the leave application. The Court held there were no state constitutional grounds to abrogate the legislatively imposed time limitation — applicable to all defendants represented or not, rich or poor — to the specific remedy provided for improper attorney conduct in failing to file a timely criminal leave application. In *People v Andrews* (23 NY3d 605 [2014]), the Court had previously determined, based upon federal analysis, that such a rule does not deprive a defendant of any constitutional rights under the Federal Constitution. In *Grimes*, the Court found New York State law and interest was consonant with the federal analysis in the context of a constitutional right to representation by counsel in application for leave to grant a second-tier review.

People v Myers (32 NY3d 18)

Defendant waived his right to be prosecuted by indictment by a grand jury and pleaded guilty to third-degree burglary as charged in the superior court information. He signed a waiver, under oath, in open court, with counsel present at the signing. The court did not conduct an oral colloquy regarding the written waiver, which stated that defendant was aware that he was waiving the right to grand jury indictment otherwise guaranteed by the Constitution, that he did so voluntarily, and that he had discussed the facts of the case and the meaning of the waiver with his attorney. In addressing whether the State Constitution requires an oral colloquy to accompany a criminal defendant's written waiver of the right to be prosecuted by indictment by a grand jury, the Court held that defendant's waiver was sufficient. A 1974 amendment to the Constitution allows a defendant to waive the right to a grand jury indictment where that waiver is "evidenced by written instrument signed by the defendant in open court in the presence of his or her counsel" (NY Const, art I, § 6). Although the better practice is for a court to elicit — as in the relevant model colloquy — a defendant's understanding of the right being waived, the Constitution does not mandate that a written waiver is necessarily ineffective without an oral colloquy on the record. That requirement differs from that accompanying the waiver of the right to a jury trial, which requires the "approval of a judge."

People v Odum (31 NY3d 344)

In this case, the Court affirmed the

decisions of the lower courts that, where a breathalyzer test is not administered in accordance with the requirements of Vehicle and Traffic Law § 1194, the test results are inadmissible. Although there is no constitutional right to avoid submitting to a breathalyzer test, section 1194 provides a statutory right to decline to take the test and places limits on the authority of the police to administer the test absent voluntary consent. Those limits include the requirement that the test be performed within two hours after arrest. There was record support for the finding of the lower courts that defendant's consent was involuntary because it resulted from an inaccurate warning by police that evidence of his refusal to take the test would be admissible at trial where the refusal was made more than two hours after arrest.

People v Parker (32 NY3d 49)

This appeal presented a suppression issue and a jury note issue. In determining that there was record support for the finding that the police officers were justified in stopping and searching defendants based on the totality of the circumstances, the Court noted that defendants were observed on private property in the early morning hours, leaving the scene of a robbery in progress, carrying bags, and immediately turning and running or walking briskly upon the police officers' request to stop and answer questions. As to the jury note issue, the Court concluded the trial court failed to adequately inform counsel of the contents of two substantive jury notes in violation of CPL 310.30. The Court reaffirmed that the onus is on the trial court to create a record of having provided counsel with notice, and speculation that an off-the-record discussion occurred between the court and counsel may not be used to fill in gaps in the record. Moreover, the Court rejected the argument that remitting to the trial court for a reconstruction hearing is a permissible remedy because, as the Court has previously made clear, "where the record does not establish compliance with CPL 310.30, the sole remedy is reversal and a new trial."

People v Roberts (31 NY3d 406)

Interpreting New York's identity theft statute, the Court was faced with the question whether the People may establish that a defendant "assumes the identity of another" by proof that the defendant used another's personal identifying information, such as that person's name, bank account, or credit card number. The Court determined that the requirement that a defendant assume the identity of another is not a separate element of the crime of identity theft, but that a defendant assumes the identity of another by using another's personal identifying information. As such, the People do not bear the burden of establishing independently both a defendant's use of protected information and assumptive conduct.

People v Suazo (32 NY3d 491)

As a matter of first impression, the Court held that a noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation is entitled to a jury trial under the Sixth Amendment. The Court reasoned that deportation is a penalty of the utmost severity that is frequently more injurious to noncitizens than periods of six months or less of imprisonment. The Court rejected the People's claim that deportation could not be considered a penalty for purposes of the Sixth Amendment right to a jury trial analysis because it is technically a civil

collateral consequence of a conviction. In that regard, the Court reiterated that deportation is uniquely intertwined with the criminal justice process and is often a virtually unavoidable consequence of a state conviction. The Court also held that the federal nature of the penalty of deportation does not remove it from the Sixth Amendment analysis of the right to a jury trial in a state prosecution, explaining that federal imposition of deportation as a consequence of a state conviction reflects a national determination that the misconduct underlying the conviction violates social norms and stirs community outrage to such a degree that deportation, a serious penalty, is warranted.

People v Tiger (32 NY3d 91)

The Court held that, where a defendant has been convicted pursuant to a constitutionally obtained guilty plea, an independent claim of actual innocence does not lie to support a motion to vacate the conviction as unconstitutionally obtained under CPL 440.10 (1) (h). The Court observed that CPL 440.10 sets forth the specific grounds upon which a defendant can make a postconviction motion to vacate a judgment of conviction including claims due to constitutional violations of the right to counsel, fraud, duress and prosecutorial misconduct. The only statutory basis for asserting a claim of actual innocence after the entry of a guilty plea is found in CPL 440.10 (1) (g-1), under which a defendant must establish that the results of post-conviction DNA testing demonstrate a substantial probability that the defendant was actually innocent of the offense for which he or she was convicted. By contrast, a claim that a conviction should be overturned based on newly discovered evidence only applies to a guilty verdict obtained after trial under CPL 440.10 (1) (g). Based upon the comprehensive nature of the statutory scheme governing post-conviction relief and the finality that must be accorded to guilty pleas, the Court rejected the argument that defendants, represented by counsel, who enter voluntary guilty pleas in accordance with constitutional protections, can collaterally attack the conviction with an independent claim of actual innocence under CPL 440.10 (1) (h).

People v Wallace (31 NY3d 503)

Penal Law § 265.03 (3) provides that a person is guilty of felony criminal possession of a weapon when such person possesses any loaded firearm. However, such possession constitutes only a misdemeanor "if such possession takes place in such person's home or place of business." The Court held that because "place of business" is a uniform phrase also used in Penal Law § 400.00 (the licensing statute), the "merchant or storekeeper" qualifier for the "place of business" phrase in the licensing statute must be equally applied to the exception in Penal Law § 265.03. Consequently, for purposes of Penal Law § 265.03 (3), the exception encompasses a person's "place of business," when such person is a merchant, storekeeper, or principal operator of a like establishment, but not an employee.

People v Wiggins (31 NY3d 1)

The 16-year-old defendant was charged with murder in the second degree, among other crimes, for shooting another teenager during an argument. After his arrest in May 2008, defendant spent over six years awaiting trial until he eventually pleaded guilty in September 2014. Analyzing the factors set forth in *People v Taranovich* (37 NY2d 442 [1975]), the Court concluded

that defendant's constitutional right to a speedy trial had been violated. The Court acknowledged that the charged crime was serious. It concluded, however, that the People's unsuccessful, multi-year attempt to secure the cooperation of a codefendant did not justify the extraordinary delay, because the People may not indefinitely delay a defendant's trial in order to pursue evidence that would strengthen their case. Defendant was incarcerated for the entirety of the six-year pretrial delay. In addition, the Court presumed that defendant was prejudiced by the delay, reiterating that lengthy pretrial incarceration may prejudice a defendant in ways that go beyond specific impairment to the defense.

People v Wilson (32 NY3d 1)

In this case, the Court examined whether the evidence was legally sufficient to support defendant's conviction for depraved indifference assault under Penal Law § 120.10 (3). Defendant argued that the evidence was insufficient because (1) he intentionally inflicted the injuries on his victim, and therefore could not have possessed the requisite mens rea and (2) one-on-one crimes generally are not charged under a depraved indifference theory. Rejecting defendant's first argument, the Court noted that proof of an intent to inflict serious physical injury does not necessarily preclude a finding of depraved indifference in assault cases, as a defendant may intend one result (i.e., serious physical injury) while recklessly creating a grave risk that a different, more serious result (i.e., death) would ensue. With respect to defendant's second argument, the Court rejected defendant's contention that depraved indifference assault must fit into one of the narrow circumstances in which one-on-one killings may be charged as depraved indifference murder. The Court noted that depraved indifference assault differs from depraved indifference murder insofar as an intent to cause serious physical injury does not necessarily negate a depraved indifference to human life. Accordingly, the Court held that depraved indifference assault should not be constrained to the exceptions to the rule against charging depraved indifference murder in one-on-one killings.

CRIMINAL LAW — SENTENCING AND PUNISHMENT

Matter of Gonzalez v Annucci (32 NY3d 461)

Petitioner, who was an inmate in a state correctional facility, was subject to the residency requirements of the Sexual Assault Reform Act (SARA) based upon the sex offense of which he had been convicted and the fact that his victim was less than 14 years old. As a mandatory condition of his supervisory release, petitioner was prohibited from residing within 1,000 feet of school grounds. Prior to petitioner's conditional release date, the Board of Parole imposed a special condition requiring him to propose a SARA-compliant residence for investigation and approval by the New York State Department of Corrections and Community Supervision (DOCCS). Due to petitioner's failure to propose an appropriate residence, he remained incarcerated until his maximum expiration date and was then transferred to a residential treatment facility (RTF) as a condition of his postrelease supervision. Correction Law § 201 (5) requires DOCCS to "assist" inmates on or eligible for community supervision "to secure employment, educational or vocational training and housing." Petitioner

commenced this article 78 proceeding contending, among other things, that DOCCS failed to meet its statutory burden to assist him in locating SARA-compliant housing. He further asserted that the difficulty of proposing compliant housing was amplified because he was subject to the same restrictions as other inmates while residing in the RTF and because there is a dearth of SARA-compliant housing for indigent persons in New York City, where he sought to return. The Court held that DOCCS met its statutory obligation to provide petitioner with assistance in identifying appropriate housing. In particular, petitioner was able to propose 58 residences, which were investigated by DOCCS. The agency also affirmatively identified at least two housing options for petitioner and contacted other agencies and providers on his behalf, ultimately resulting in his successful placement in a SARA-compliant facility.

People v Hakes (32 NY3d 624)

The Court held that sentencing courts may require defendants, as a condition of probation, to pay for the costs associated with wearing an alcohol monitoring bracelet because payment is part and parcel of satisfaction of the condition itself. Since its enactment in 1965, Penal Law § 65.10 has authorized a variety of conditions of probation, such as pursuing a course of study, obtaining psychiatric treatment, participating in a substance abuse program or motor vehicle accident prevention course. These conditions of probation concomitantly require defendants to pay certain costs or recurring fees. The costs attached to any one of these conditions were never overtly stated by the legislature, but rather understood as implicitly necessary to satisfy the condition itself. The condition here is no different and, to the extent any costs could be considered to have a punitive or deterrent effect, that effect is dwarfed by the explicit goals of Penal Law § 65.10 (4) (authorizing electronic monitoring) — to protect the public from alcohol-related offenses while assisting a defendant's rehabilitation during the probationary term.

People v Teri W. (31 NY3d 124)

The Court held that a juvenile offender convicted of a sex offense constituting a Class E felony was still subject to a sentence of 10 years' probation applicable to Class E sex offense felonies notwithstanding the youthful offender statute. When the youthful offender statute was enacted in 1971, the Penal Law did not differentiate among the class E felonies. The legislature over the decades has carved out various designations, and, as relevant here, lengthened the term of probation for misdemeanor and felony sex offenses from the five-year term applicable to other, "undesignated" Class E offenses. The Court rejected the argument that the legislature, when creating the differentiation among class E felonies — and specifically when establishing a 10-year probationary sentence for felony sex offenders — did not intend to change the probationary period for youthful offenders who committed a felony sex offense, but meant to retain the five-year period applicable to undesignated class E felonies. The longer period of probation applied to youthful sex offenders was fully compatible with the youthful offender statute, which provides other benefits for youthful sex offenders: not registering

them as sex offenders, imposing only Class E sentences, and granting trial judges the power to terminate even the longer period of probation.

DAMAGES

E.J. Brooks Co. v Cambridge Sec. Seals (31 NY3d 441)

Answering a certified question from the Second Circuit Court of Appeals, the Court had to determine whether, under New York law, a plaintiff who asserts claims of misappropriation of a trade secret, unfair competition, and unjust enrichment can recover damages measured by the costs the defendant avoided due to its unlawful activity. Because under New York common law, compensatory damages must return the plaintiff, as nearly as possible, to the position it would have been in had the wrongdoing not occurred, but do no more, the Court answered the question in the negative. In an action based on a theory of unfair competition, a plaintiff may not elect to measure its damages by the defendant's avoided costs in lieu of its own losses; in trade secret actions, damages are measured by the losses incurred by the plaintiff; and in unjust enrichment claims, a plaintiff may not claim the costs that the defendant avoided due to its unlawful activity in lieu of the plaintiff's own losses, as compensatory damages.

FINANCE, BANKING AND CREDIT

Expressions Hair Design v Schneiderman (32 NY3d 382)

Answering a certified question from the Second Circuit concerning General Business Law § 518, the Court held that a merchant, when posting the price of an item, complies with the statute if and only if the merchant posts the total dollars-and-cents price charged to credit card users. General Business Law § 518 governs the practice in which merchants that are charged credit card transaction fees offer discounts to customers who pay by cash. The statute, enacted in 1984, was modeled on federal legislation that had recently lapsed. The federal law permitted merchants to offer a differential between the cash price and credit card price of an item, provided they displayed the total credit card price in dollars-and-cents form. In that way, consumers paying by credit card would immediately apprehend the actual price. The federal law was violated if the merchant displayed the lower cash price in dollars and cents without doing the same for the credit card price. The Court, citing legislative history, held that General Business Law § 518 was intended to replicate the prohibitions in the defunct federal statute. Therefore, a single-sticker pricing scheme, which requires consumers to engage in an arithmetical calculation to figure out the total dollars-and-cents credit card price, is prohibited by the statute. The Court further observed that the statute did not forbid merchants from describing the difference in price to customers as a "surcharge" or "extra cost" attributable to credit card transaction fees.

HEALTH — MEDICAID REIMBURSEMENT PAYMENTS

West Midtown Mgt. Group, Inc. v State of N.Y., Dept. of Health, Off. of the Medicaid Inspector Gen. (31 NY3d 533)

The Court held that the State Office of the Medicaid Inspector General (OMIG), an independent office within the Department of Health charged with reclaiming improperly expended Medicaid funds, was entitled to recover the full amount of Medicaid overpayments made to petitioner

as determined in OMIG's final audit report (FAR) conducted pursuant to the Department of Social Services Regulations (18 NYCRR) article 519. Although the FAR and an accompanying cover letter informed petitioner that it could settle the audit by repaying a "lower confidence limit amount," petitioner had not sought to settle for the specified lower amount within 20 days, nor request an administrative hearing within 60 days to challenge the full amount at issue (Social Services Law § 145-a [2]; 18 NYCRR 519.7). There was no merit to petitioner's claim that because two subsequent notices of withholding referred to the lower amount as the "balance due," it was entitled to believe that OMIG would only withhold the lower amount. The FAR and its executive summary clearly stated that if petitioner failed to settle at the lower amount, OMIG would commence withholding and "liquidate the lower confidence limit amount . . . *not barring any other remedy allowed by law*" (emphasis added). The regulations did not require the notices to state the total amount OMIG would seek to withhold. Further, the administrative and court proceedings clearly showed that petitioner was aware of the full amount OMIG would seek to reclaim.

INSURANCE

Keyspan Gas E. Corp. v Munich Reins. Am., Inc. (31 NY3d 51)

On this appeal involving long-tail insurance claims, the Court considered whether it is the insured or the insurer who bears the risk in a pro rata allocation for periods of time during which insurance coverage was unavailable to the insured. The Court held that the unavailability rule is inconsistent with the policy language triggering pro rata allocation, contravenes reasonable expectations of the average insured, and would effectively provide insurance coverage for times during which no premiums were paid. Consequently, the Court rejected the unavailability rule and held that an insured bears the risk for gaps in coverage even when coverage was not available on the market.

LANDLORD AND TENANT — RENT REGULATION

Altman v 285 W. Fourth LLC (31 NY3d 178)

Under the Rent Stabilization Law, a rent-stabilized apartment is subject to certain statutory rent increases, including a 20% increase upon the vacancy of a two-year lease. Rent Stabilization Law § 26-504.2 (a) also provides that a rent-stabilized apartment will be deregulated when it reaches a legal regulated rent of $2,000. The question presented in this appeal was how to determine when the $2,000 deregulation threshold had been met for the subject apartment — whether it should be based upon the legal regulated rent at the time the prior tenant vacated the apartment or whether the 20% vacancy increase should be included in the calculation. Based upon the plain language of the statute and the clear legislative intent, the Court concluded that the 20% vacancy increase should be included when calculating the legal regulated rent.

Matter of Brookford, LLC v New York State Div. of Hous. & Community Renewal (31 NY3d 679)

The Court held that pursuant to the Rent Regulation Reform Act of 1993, the New York State Division of Housing and

Community Renewal (DHCR) rationally determined that income reported on a joint tax return filed on behalf of an occupant and non-occupant of a housing accommodation may be apportioned to determine the occupant's individual annual income for purposes of the rent control law. Although Rent Control Law § 26-403.1 characterizes annual income as the federal AGI (adjusted gross income), the statute further provides that total annual income is calculated as the "sum" of the annual incomes of all those "who occupy the housing accommodation as their primary residence." Therefore, when a resident jointly files a personal income tax return with a spouse who does not live in the rent-regulated housing accommodation, that individual may segregate items of the nonresident spouse so that those amounts will not be included in any income determination.

LIBEL AND SLANDER

Stega v New York Downtown Hosp. (31 NY3d 661)

Plaintiff, a medical scientist employed by a hospital, chaired its Institutional Review Board, which oversaw clinical trials of products regulated by the Food and Drug Administration (FDA). She was paid for assisting an oncologist in developing the protocol and patent application for a clinical trial. When the oncologist applied to the Board for approval of the study, plaintiff recused herself from the deliberations and voting but answered Board members' questions about the study. The Board approved the trial, but it went awry and interpersonal conflicts developed. Hospital authorities charged plaintiff with violating its conflict of interest policy and her employment was terminated. Plaintiff submitted a complaint to the FDA, and in this context the hospital's acting chief medical officer told an FDA inspector that plaintiff had "channeled" funds to a bank account associated with her home address, that she had told the oncologist, in effect, that she controlled the board, and that the board was "tainted" because of plaintiff's involvement. The chief medical officer's statements were published in an FDA report, and plaintiff commenced this defamation action. Relying on *Toker v Pollak* (44 NY2d 211 [1978]) and distinguishing *Rosenberg v MetLife, Inc.* (8 NY3d 359 [2007]), the Court held that the chief medical officer's statements were not protected by absolute immunity, because that privilege extends from judicial to quasi-judicial proceedings only when procedural safeguards enable the defamed party to contest what is said against him or her. Qualified immunity adequately encourages candor in statements to FDA investigators.

MUNICIPAL CORPORATIONS

Matter of Waite v Town of Champion (31 NY3d 586)

Pursuant to General Municipal Law article 17-a, residents of the Town of Champion passed an elector-initiated referendum to dissolve the Town of Champion Fire Protection District (CFPD). Accordingly, the Town Board developed a dissolution plan, replacing the CFPD with two fire protection districts, covering the same geographic territory as the old CFPD. Residents of the Town brought suit, alleging that the Town Board failed to comply with its obligation under General Municipal Law § 786 (1) to "accomplish and complete the dissolution" of the CFPD and sought instead to subvert the will of the voters. The Court disagreed, finding that the Town Board had appropriately dissolved the CFPD and had

exercised a separate, independent power, under Town Law § 170, to create the two new fire protection districts.

PARENT, CHILD AND FAMILY

Matter of Lacee L. (Stephanie L.) (32 NY3d 219)

Petitioners argued that the New York City Administration for Children's Services (ACS) failed to make "reasonable efforts" towards family reunification, as required by Family Court Act § 1089, because ACS violated the Americans with Disabilities Act's (ADA) mandate that governmental agencies make "reasonable accommodations" to ensure disabled persons have access to their services (42 USC § 12131 [2]). The Court held that although ACS must comply with the ADA, this case did not present an instance to determine if the ADA's "reasonable accommodations" standard required more than the Family Court Act's "reasonable efforts" standard. Noting that the parent in this case eventually received all the requested services, even if with some delays, the Court agreed with Family Court's ruling that ACS's actions met a minimum threshold for reasonableness.

PARTNERSHIPS

Congel v Malfitano (31 NY3d 272)

Defendant owned a minority interest in a partnership that operated a shopping mall. The partners agreed in writing that the partnership would "continue until it is terminated as hereinafter provided" and that it would dissolve upon "[t]he election by the Partners to dissolve the Partnership." In 2006, defendant wrote to his partners: "I hereby elect to dissolve the Partnership and by this notice the Partnership is hereby dissolved," citing Partnership Law § 62 (1) (b), which states that a partner may unilaterally dissolve a partnership, without violating the partnership agreement, if "no definite term or particular undertaking is specified" therein. The other partners, taking the position that defendant had dissolved the partnership by operation of law, but wrongfully so, continued the business under Partnership Law § 69 (2) (b). The partnership's executive committee commenced a breach of contract action, seeking a declaration that defendant had wrongfully dissolved the partnership, as well as damages pursuant to Partnership Law § 69 (2) (a) (II). As the partnership agreement set out the methods of dissolving the partnership in accordance with the agreement, the wrongfulness of defendant's dissolution could be decided without recourse to Partnership Law § 62 (1) (b) or the Court's recent decision in *Gelman v Buehler* (20 NY3d 534 [2013]). The statute does not apply when, as here, the partners clearly intended that the dissolution methods in the agreement were the only methods whereby the partnership would properly dissolve, and that unilateral dissolution would breach the agreement.

PUBLIC AUTHORITIES

Connolly v Long Is. Power Auth. (30 NY3d 719)

In these actions, plaintiffs alleged that their real and personal property was destroyed by fire as a result of the negligent failure to preemptively de-energize the Rockaway Peninsula prior to or after Hurricane Sandy made landfall. Defendants Long Island Power Authority (LIPA), Long Island Lighting Company (LILCO), and National Grid Electric Services, LLC (National Grid) moved to dismiss the complaints on the ground that LIPA was protected by the doctrine of governmental

function immunity, and that LILCO and National Grid were entitled to the same defense. The Court concluded that defendants failed to establish that the challenged action, or failure to act, was governmental. In reaching that conclusion, the Court rejected defendants' claim that the magnitude of the disaster, alone, rendered LIPA's actions governmental as a matter of law.

PUBLIC HOUSING

Matter of Aponte v Olatoye (30 NY3d 693)

The New York City Housing Authority (NYCHA) denied petitioner "remaining family member" (RFM) status with regard to his late mother's apartment, which he had moved into three years prior to her death in order to care for her through her advanced dementia. The Court held this determination was not arbitrary and capricious, as petitioner did not have permanent permission to live with his mother in her one-bedroom apartment. The two requests that had been submitted for petitioner to be granted permanent permission were denied because his presence would have violated occupancy rules for overcrowding. A person lacking permanent permission to reside in an apartment is not eligible for RFM status. NYCHA's rules do allow for a live-in home-care attendant as a temporary resident, even if the grant of permission would result in "overcrowding," and petitioner was, in effect, afforded temporary residency status. Although NYCHA could have adopted a policy that encourages people to care for elderly relatives by giving them a succession priority over others, the Court held that it could not be said on the record that its adoption of a different policy, prioritizing children in need and persons facing homelessness when allocating its insufficient stock of public housing, was arbitrary or capricious.

PUBLIC OFFICERS AND EMPLOYEES

Matter of Lemma v Nassau County Police Officer Indem. Bd. (31 NY3d 523)

The issue in this appeal was whether the Nassau County Police Officer Indemnification Board acted irrationally or contrary to law when it revoked a prior defense and indemnification determination in favor of a police officer. General Municipal Law § 50-l provides for defense and indemnification of police officers for civil damages, including punitive damages, arising out of a negligent act or tort committed while in the proper discharge of duties and within the scope of employment. Petitioner maintained that, by authorizing indemnification for punitive damages, the legislature must have meant to protect officers even when they engaged in willful misconduct and, as such, it was not necessary that the officer's actions be "proper" but only that they occur while the officer was engaged in police work. The Court disagreed, concluding that petitioner's proffered interpretation impermissibly read the word "proper" out of the statute and that, by including that term, the legislature meant to permit the Board to consider the propriety of the officer's actions in determining whether defense and indemnification was appropriate. Because the legislature left the operative word undefined, it gave the Board substantial latitude to determine, on a case by case basis, whether an officer's conduct was "proper" under the circumstances presented. Here, where the record supported the Board's finding that petitioner concealed information that extended the pretrial detention of an

innocent person, its conclusion that the officer's conduct was not "proper" was neither irrational nor contrary to law and, thus, must be sustained.

RECORDS — FREEDOM OF INFORMATION LAW

Matter of Abdur-Rashid v New York City Police Dept. (31 NY3d 217)

In response to targeted Freedom of Information Law (FOIL) requests by two individuals who, despite never having been arrested or charged with a criminal offense, sought copies of any "investigative or surveillance" records relating to them, the New York City Police Department (NYPD) denied the request, invoking the law enforcement and public safety exemptions and declining to confirm or deny the existence of responsive materials. The issue before the Court was whether such a response — comparable to a "Glomar" response recognized under the federal analogue to FOIL (*see Phillippi v Central Intelligence Agency*, 546 F2d 1009 [DC Cir 1976]) — was permissible under FOIL. Under the unique circumstances presented here, the Court concluded that the NYPD had sustained its burden of establishing a factual basis not only for its claim that any responsive documents were exempt from FOIL disclosure but also for its refusal to disclose whether responsive documents in fact existed. There are occasions when an agency cannot acknowledge the existence (or non-existence) of requested materials without revealing information that is itself protected under a FOIL exemption, such as whether a specific individual or organization is being investigated or surveilled. Thus, where necessary to give full effect to the law enforcement and public safety exemptions, the NYPD's response neither confirming nor denying the existence of the investigative or surveillance records sought was compatible with FOIL and the policy underlying those exemptions, which is to provide the public access to records without compromising a core function of government — the investigation, prevention and prosecution of crime.

Matter of New York Civ. Liberties Union v New York City Police Dept. (32 NY3d 556)

In this Freedom of Information Law (FOIL) dispute, petitioner, the New York Civil Liberties Union, sought disclosure of certain New York City Police Department disciplinary records covered by Civil Rights Law § 50-a. The Court rejected petitioner's contention that compliance with Civil Rights Law § 50-a is unnecessary where officer-identifying information is adequately redacted. The Court reasoned that the requested disciplinary records were quintessential personnel records protected from disclosure by Civil Rights Law § 50-a, as they could be used for purposes of harassing or embarrassing officers. Because Civil Rights Law § 50-a permits disclosure of protected records only in the context of an ongoing litigation, the documents were not disclosable in the context of petitioner's FOIL request. Additionally, the Court reaffirmed its prior cases (*Matter of Short v Board of Mgrs. of Nassau County Med. Ctr.*, 57 NY2d 399 [1982]; *Matter of Karlin v McMahon*, 96 NY2d 842 [2001]) holding that the FOIL exemption at issue, Public Officers Law § 87 (2) (a), contains no statutory authorization for redaction, and therefore redacted disclosure could not be compelled. The Court noted that

petitioner's policy arguments were properly directed to the Legislature.

SECURED TRANSACTIONS

Cortlandt St. Recovery Corp. v Bonderman (31 NY3d 30)

The issue in this appeal was whether a contract provision authorized an indentured trustee to sue on behalf of noteholders for fraud-related claims. The Court interpreted the plain meaning of the contract as authorizing the trustee to pursue any available remedy to enforce the noteholders' rights "based on any viable theory of recovery in order to secure repayment upon the event of a default on the debt to noteholders." Plaintiff's complaint was sufficient to overcome a motion to dismiss, as the factual allegations made in the complaint supported the claim that defendants were liable for repayment and interest on the notes.

SOCIAL SERVICES LAW

Matter of Anonymous v Molik (32 NY3d 30)

Three sexual assaults, committed by the same resident, occurred within a six-month period at petitioner's residential health care facility. The Justice Center for the Protection of People with Special Needs, acting pursuant to Social Services Law § 493, required petitioner to undertake certain remedial measures to correct the systemic problems that led to the attacks. The Court held that the Justice Center acted within its statutory authority. Specifically, the Court determined that a "concurrent finding" under Social Services Law § 493 (3) (b) — that "a systemic problem caused or contributed to the occurrence of the incident" — amounts to a substantiated finding of abuse or neglect, thereby enabling the Justice Center to implement corrective action to remediate deficient facility conditions, regardless of whether a particular responsible employee is identified.

TAXATION

White v Schneiderman (31 NY3d 543)

Tax Law § 471 requires Indian retailers on reservation land to prepay the tax on cigarette sales to individuals who are not members of the Seneca Nation of Indians. Plaintiffs, a member of the Seneca Nation and a convenience store located on Seneca lands, asserted that enforcement of Tax Law § 471 was inconsistent with the Buffalo Creek Treaty of 1842 and with Indian Law § 6. Rejecting plaintiffs' claim, the Court explained that, while the Buffalo Creek Treaty and Indian Law § 6 prohibit the government from assessing taxes on reservation lands, Tax Law § 471 did not operate as a tax on Indian retailers because the ultimate liability is borne by the non-member consumer.

2018 Annual Events

State of Our Judiciary

On February 6, 2018, Chief Judge Janet DiFiore delivered the State of Our Judiciary at Court of Appeals Hall. The Chief addressed Criminal Justice Reform, the Opioid Crisis, the New York City Housing Court, Families and Children, Civil Justice Reform, and Access to Justice. The Chief Judge also provided a Progress Report on the Excellence Initiative.

Law Day

Separation of Powers

On May 1, 2018, the Court celebrated Law Day. The 2018 theme was: "Separation of Powers." The celebration included remarks from Chief Judge DiFiore, Solicitor General Barbara Underwood, and New York State Bar Association President Sharon Stern Gerstman.

Above: Chief Judge DiFiore, center, and left to right, New York State Bar Association President Sharon Stern Gerstman, Solicitor General Barbara Underwood and Chief Administrative Judge Lawrence K. Marks.

Law Day

Judith S. Kaye Service Awards

As part of the Law Day ceremony, Chief Administrative Judge Lawrence K. Marks recognized outstanding Unified Court System employees with Judith S. Kaye Service Awards for Community Service and Acts of Heroism.

Above: Chief Judge DiFiore and Judge Marks with the Judith S. Kaye Service Award recipients at Court of Appeals Hall.

Oral Argument at Ulster County Courthouse

Court of Appeals Convenes in Kingston, New York

On November 15, 2018, the Court of Appeals heard oral arguments at the Ulster County Courthouse. The Court of Appeals' visit was one of a series of events marking the 200-year anniversary of the rebuilding of the historic Kingston courthouse. The visit provided students and others from Ulster County and nearby the opportunity to get a close-up view of New York's highest court at work.

Right: Ulster County Courthouse, Kingston, New York.

Below: Hon. Albert M. Rosenblatt, Retired New York State Court of Appeals Associate Judge, speaks about the history of the Ulster County Courthouse and the Court of Appeals before oral argument.

Oral Argument at Ulster County Courthouse

Court of Appeals Convenes in Kingston, New York

Students from Wallkill Senior High School, New Paltz High School, John A. Coleman Catholic High School, Marist College, Kingston High School, The Mount Academy, Kingston Catholic School, and Hudson Valley Pathways Academy attended oral argument.

Appendices

Appendix 1

Judges of the Court of Appeals

Appendix 2

Nonjudicial Staff and Personnel Changes

Appendix 3

Appeals Decided by Jurisdictional Predicate (2018)

Appendix 4

Appeals Analysis (2014-2018)

All Appeals — Civil and Criminal

Civil Appeals — Type of Disposition

Criminal Appeals — Type of Disposition

Appendix 5

Civil Appeals Decided by Jurisdictional Predicate (2014-2018)

Appendix 6

Criminal Appeals Decided by Jurisdictional Predicate (2014-2018)

Appendix 7

Motions (2014-2018)

Appendix 8

Criminal Leave Applications (2014-2018)

Appendix 9

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2014-2018)

Appendix 10

Office for Professional Matters (2014-2018)

Judges of the Court of Appeals

Chief Judge

Hon. Janet DiFiore

Associate Judges

Hon. Jenny Rivera

Hon. Leslie E. Stein

Hon. Eugene M. Fahey

Hon. Michael J. Garcia

Hon. Rowan D. Wilson

Hon. Paul G. Feinman

Nonjudicial Staff

Name	Title
Alessi, Samantha*	Senior Court Attorney
Allen, James A.	Court Attorney
Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Asiello, John P.	Clerk of the Court
Augustyn, Adam	Court Attorney
Bailey, Anna	Law Clerk to Judge Garcia
Bakowski, Amanda*	Law Clerk to Judge Wilson
Barile, Robert	First Assistant Building Superintendent
Benjamin, Jared	Law Clerk to Judge Feinman
Bessette, Bryan P.	Senior Court Attorney
Bielawski, Julia Smead	Assistant Consultation Clerk
Boden, Sean	Court Attorney
Boyd, J'Naia*	Senior Court Attorney
Braunlin, Whitney E.*	Senior Court Attorney
Brizzie, Gary J.	Assistant Building Superintendent I
Buccella, Alina	Senior Court Attorney
Byer, Ann	Secretary to the Court of Appeals
Byrne, Cynthia D.	Criminal Leave Applications Clerk
Bystryn, Alexander*	Law Clerk to Chief Judge DiFiore
Calvay-Benedetto, Patricia	Secretary to Judge Wilson
Chest, Wesley	Senior Associate Computer Applications Programmer
Chung, Rachel A.	Law Clerk to Judge Wilson
Claydon, Julianne	Chief Legal Reference Attorney
Cleary, Lisa M.*	Principal Stenographer
Corcos, Caroline R.*	Senior Court Attorney
Costa, Gary Q.	Senior Court Building Guard
Coughlin, Monica	Secretary to Chief Judge DiFiore
Couser, Lisa A.	Senior Clerical Assistant
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Senior Clerical Assistant
D'Angelo, Nicholas	Law Clerk to Chief Judge DiFiore
Dach, Jonathan*	Principal Law Clerk to Judge Wilson

* As of January 1, 2019, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Nonjudicial Staff

Dautel, Susan S.	Assistant Deputy Clerk
Davis, Heather A.	Deputy Clerk of the Court
Donnelly, William E.	Senior Assistant Building Superintendent
Drumm, Lori	Principal Stenographer
Drury, Lisa	Special Projects Counsel
Ebersole, Lisa*	Senior Law Clerk to Judge Wilson
Eddy, Margery Corbin	Chief Court Attorney
Engel, Hope B.	Consultation Clerk
Figueroa, Milagros	Principal Stenographer
Fulham, Kerry*	Senior Law Clerk to Chief Judge DiFiore
Gadson, Ronald	Deputy Chief Security Attendant
Galvao, Antonio	Counsel to Chief Judge DiFiore
Gannon, Rebecca	Law Clerk to Judge Rivera
Garcia, Heather A.	Senior Security Attendant
Gerber, Matthew	Senior Security Attendant
Gilbert, Marianne	Principal Stenographer
Golebiowski, Jacob	Senior Local Area Network Administrator
Guenthner, Franklin	Assistant Law Clerk to Judge Feinman
Groschadl, Laura A.	Principal Law Clerk to Judge Fahey
Haas, Tammy L.	Principal Assistant Building Superintendent
Halsey, Trevor	Senior Court Attorney
Hanft, Genevieve*	Principal Law Clerk to Judge Garcia
Hartnagle, Mary C.	Senior Custodial Aide
Herd, Julia	Senior Principal Law Clerk to Judge Feinman
Hickey, Meaghan	Assistant Court Analyst
Holman, Cynthia M.	Principal Stenographer
Hosang-Brown, Yanique	Management Analyst
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.	Principal Stenographer
Johnson, David P.*	Senior Court Attorney
Joseph, Anna*	Law Clerk to Judge Rivera
Kaiser, Warren	Senior PC Analyst

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Nonjudicial Staff

Kane, Suzanne M.*	Principal Stenographer
Kearns, Ronald J.*	HVAC Assistant Building Superintendent
Kenny, Krysten	Principal Law Clerk to Judge Stein
Kimball-Stanley, David C.	Law Clerk to Judge Wilson
Kinkle, Jeffrey*	Senior Law Clerk to Judge Rivera
Klubok, Gregory J.*	Senior Court Attorney
Kong, Yongjun	Principal Custodial Aide
Lane, Brian C.	Senior Court Building Guard
LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
LeBow, Matthew	Deputy Chief Security Attendant
LeCours, Lisa A.	Executive Assistant to Chief Judge DiFiore
Levin, Justin	Principal Court Attorney
Logarajah, Shiva H.	Law Clerk to Judge Garcia
Lynch, Michael L.*	Law Clerk to Judge Feinman
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Chief Motion Clerk
Maller-Stein, Rebecca	Law Clerk to Judge Feinman
Martino, Regina*	Secretary to Judge Stein
Mason, Marissa K.	Senior Court Analyst
Mayo, Michael J.	Building Manager
Minerley, Stephanie B.	Court Attorney
McCormick, Cynthia A.*	Chief Management Analyst
McDonnell, Abel	Law Clerk to Judge Rivera
McLaughlin, Tess M.	Assistant Law Clerk to Judge Garcia
Mechanick, Chase H.*	Law Clerk to Judge Feinman
Minniefield, Matthew E.	Senior Court Attorney
Moore, Travis R.	Senior Security Attendant
Muller, Joseph J.	Senior Security Attendant
Mulyca, Jonathan A.	Senior Clerical Assistant
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore
Ohanian, Edward J.	Law Clerk to Judge Stein
Oken, Lindsey	Principal Law Clerk to Judge Garcia

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Nonjudicial Staff

O'Rourke, Joseph	Assistant Law Clerk to Judge Stein
Parr, Henry	Law Clerk to Judge Rivera
Pasquarelli, Angela M.	Senior Services Aide
Pastrick, Michael	Senior Principal Law Clerk to Judge Fahey
Radley, Kelly	Principal Custodial Aide
Rodriguez, Steven	Court Building Guard
Roe, Jennifer L.	Senior Court Building Guard
Rosenblum, Noah*	Law Clerk to Judge Rivera
Ross-Carroll, Amanda	Director Court of Appeals Management & Operations
Rutbeck-Goldman, Ariela	Court Attorney
Shain, Aliya	Court Attorney
Sherwin, Stephen P.	Deputy Chief Court Attorney
Shevlin, Denise C.	Senior Security Attendant
Somerville, Robert	Senior Court Building Guard
Spencer, Gary H.	Public Information Officer
Struebing, Jake*	Assistant Law Clerk to Judge Garcia
Tierney, Inez M.*	Principal Court Analyst
Torres, Samuel	Senior Security Attendant
Turon, Kristin L.*	Stenographer
VanDeloo, James F.	First Assistant Building Superintendent
Vogele, Jessica	Senior Court Attorney
Waithe, Nelvon H.	Senior Court Building Guard
Warenchak, Andrew R.	Principal Custodial Aide
Warren, Melisande H. Johnson	Senior Court Attorney
Webley, Alec	Law Clerk to Judge Wilson
Welch, Joseph H.	Court Analyst
Welch, Mary K.	Secretary to Judge Fahey
Wilson, Mark	Senior Court Building Guard
Wilson, Michele	Senior Custodial Aide
Wisniewski, James J.*	Senior Court Attorney
Wood, Margaret N.	Assistant Deputy Clerk
Yalamas, George C.	Chief Security Attendant

* As of January 1, 2019, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Personnel Changes

APPOINTMENTS

Allen, James A.	Court Attorney, Central Staff
Augustyn, Adam	Court Attorney, Central Staff
Barile, Robert	First Assistant Building Superintendent
Boden, Sean	Court Attorney, Central Staff
Chung, Rachel A.	Law Clerk to Judge Wilson
D'Angelo, Nicholas	Law Clerk to Chief Judge DiFiore
Drumm, Lori	Principal Stenographer
Gadson, Ronald	Deputy Chief Security Attendant
Gannon, Rebecca	Law Clerk to Judge Rivera
Guenthner, Franklin	Assistant Law Clerk to Judge Feinman
Hickey, Meaghan	Assistant Court Analyst
Kimball-Stanley, David C.	Law Clerk to Judge Wilson
Logarajah, Shiva H.	Law Clerk to Judge Garcia
Maller-Stein, Rebecca	Law Clerk to Judge Feinman
Mason, Marissa K.	Senior Court Analyst
McDonnell, Abel	Law Clerk to Judge Rivera
McLaughlin, Tess M.	Assistant Law Clerk to Judge Garcia
Minerley, Stephanie B.	Court Attorney, Central Staff
O'Rourke, Joseph	Assistant Law Clerk to Judge Stein
Parr, Henry	Law Clerk to Judge Rivera
Ross-Carroll, Amanda	Director Court of Appeals Management & Operations
Rutbeck-Goldman, Ariela	Court Attorney, Central Staff
Shain, Aliya	Court Attorney, Central Staff
Webley, Alec	Law Clerk to Judge Wilson

PROMOTIONS

Bessette, Bryan P.	Senior Court Attorney, Central Staff
Brizzie, Gary J.	Assistant Building Superintendent I
Buccella, Alina	Senior Court Attorney, Central Staff
Couser, Lisa A.	Senior Clerical Assistant
Culligan, David O.	Senior Clerical Assistant
Donnelly, William E.	Senior Assistant Building Superintendent
Halsey, Trevor	Senior Court Attorney, Central Staff
Holman, Cynthia M.	Principal Stenographer
Mayo, Michael J.	Building Manager
Minniefield, Matthew E.	Senior Court Attorney, Central Staff
Mulyca, Jonathan A.	Court Analyst
Vogele, Jessica	Senior Court Attorney, Central Staff
Warren, Melisande H. Johnson	Senior Court Attorney, Central Staff

Personnel Changes

COMPLETION OF CLERKSHIPS, RESIGNATIONS, RETIREMENTS AND TRANSFERS

Alessi, Samantha	Senior Court Attorney, Central Staff
Bakowski, Amanda	Law Clerk to Judge Wilson
Boyd, J'Naia	Senior Court Attorney, Central Staff
Braunlin, Whitney E.	Senior Court Attorney, Central Staff
Bystryn, Alexander	Law Clerk to Chief Judge DiFiore
Cleary, Lisa M.	Principal Stenographer
Corcos, Caroline R.	Senior Court Attorney, Central Staff
Dach, Jonathan	Principal Law Clerk to Judge Wilson
Ebersole, Lisa	Senior Law Clerk to Judge Wilson
Fulham, Kerry	Senior Law Clerk to Chief Judge DiFiore
Hanft, Genevieve	Principal Law Clerk to Judge Garcia
Johnson, David P.	Senior Court Attorney, Central Staff
Joseph, Anna	Law Clerk to Judge Rivera
Kane, Suzanne M.	Principal Stenographer
Kearns, Ronald J.	HVAC Assistant Building Superintendent
Kinkle, Jeffrey	Senior Law Clerk to Judge Rivera
Klubok, Gregory J.	Senior Court Attorney, Central Staff
Lynch, Michael	Law Clerk to Judge Feinman
Martino, Regina	Secretary to Judge Stein
McCormick, Cynthia A.	Chief Management Analyst
Mechanick, Chase	Law Clerk to Judge Feinman
Rosenblum, Noah	Law Clerk to Judge Rivera
Struebing, Jake	Assistant Law Clerk to Judge Garcia
Tierney, Inez M.	Principal Court Analyst
Turon, Kristin L.	Stenographer
Wisniewski, James J.	Senior Court Attorney, Central Staff

Appeals Decided by Jurisdictional Predicate (2018)

Basis of Jurisdiction: All Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	7	7	1	0	0	15
Permission of Court of Appeals/Judge thereof	37	21	3	0	0	61
Permission of Appellate Division/Justice thereof	33	17	2	0	0	52
Constitutional Question	2	0	0	0	0	2
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	2	0	0	0	0	2
Other	0	0	0	0	4	4
Totals	81	45	6	0	4	136

* Includes final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Appeals Decided by Jurisdictional Predicate (2018)

Basis of Jurisdiction: Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	7	7	1	0	0	15
Permission of Court of Appeals	19	9	3	0	0	31
Permission of Appellate Division	20	10	2	0	0	32
Constitutional Question	2	0	0	0	0	2
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	2	0	0	0	0	2
Other	0	0	0	0	4	4
Totals	50	26	6	0	4	86
Basis of Jurisdiction: Criminal Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Permission of Court of Appeals Judge	18	12	0	0	0	30
Permission of Appellate Division Justice	13	7	0	0	0	20
Totals	31	19	0	0	0	50

* Includes final determinations of Rule 500.27 certified questions and proceedings seeking review of determinations of the State Commission on Judicial Conduct pursuant to Judiciary Law § 44(8).

Appeals Analysis (2014-2018)

All Appeals — Civil and Criminal	2014	2015	2016	2017	2018
Civil	61% (144 of 235)	55% (112 of 202)	52% (118 of 225)	56% (80 of 142)	63% (86 of 136)
Criminal	39% (91 of 235)	45% (90 of 202)	48% (107 of 225)	44% (62 of 142)	37% (50 of 136)

Civil Appeals — Type of Disposition	2014	2015	2016	2017	2018
Affirmed	37%	44%	54%	47%	58%
Reversed	38%	33%	30%	33%	30%
Modified	9%	10%	7%	10%	7%
Dismissed	1%	1%	1%	1%	0%
Other*	15%	12%	8%	9%	5%

Criminal Appeals — Type of Disposition	2014	2015	2016	2017	2018
Affirmed	54%	63%	67%	63%	62%
Reversed	33%	31%	28%	34%	38%
Modified	9%	3%	3%	1.5%	0%
Dismissed	4%	2%	2%	1.5%	0%
Other*	0%	1%	0%	0%	0%

* E.g., Judicial conduct matters; Rule 500.27 certification.

Civil Appeals Decided by Jurisdictional Predicate (2014-2018)

	2014	2015	2016	2017	2018
Appellate Division Dissents	9% (14 of 144)	8% (9 of 112)	12% (14 of 118)	21% (17 of 80)	17% (15 of 86)
Permission of Court of Appeals	38% (53 of 144)	46% (51 of 112)	45% (54 of 118)	30% (24 of 80)	36% (31 of 86)
Permission of Appellate Division	29% (42 of 144)	29% (33 of 112)	27% (32 of 118)	33% (26 of 80)	37% (32 of 86)
Constitutional Question	5% (7 of 144)	4% (5 of 112)	6% (7 of 118)	5% (4 of 80)	2.5% (2 of 86)
Stipulation for Judgment Absolute	0.70% (1 of 144)	0% (0 of 112)	0% (0 of 118)	1% (1 of 80)	0% (0 of 86)
CPLR 5601(d)	1% (2 of 144)	3% (3 of 112)	1% (1 of 118)	1% (1 of 80)	2.5% (2 of 86)
Supreme Court Remand	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)
Judiciary Law § 44*	1% (2 of 144)	2% (2 of 112)	2% (2 of 118)	1% (1 of 80)	2.5% (2 of 86)
Certified Question (Rule 500.27)**	16% (23 of 144)	8% (9 of 112)	7% (8 of 118)	8% (6 of 80)	2.5% (2 of 86)
Other	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)

* Includes Judicial conduct matters.

** The 2014 to 2016 numbers include decisions accepting certifications.

Criminal Appeals Decided by Jurisdictional Predicate (2014-2018)

	2014	2015	2016	2017	2018
Permission of Court of Appeals Judge	82% (75 of 91)	81% (73 of 90)	75% (80 of 107)	70% (43 of 62)	60% (30 of 50)
Permission of Appellate Division Justice	18% (16 of 91)	19% (17 of 90)	25% (27 of 107)	30% (19 of 62)	40% (20 of 50)

Motions (2014-2018)

	2014	2015	2016	2017	2018
Motions Submitted for Calendar Year	1293	1395	1183	1237	1238
Motions Decided for Calendar Year*	1300	1378	1232	1196	1180
Motions for Leave to Appeal	934	1051	910	920	926
Granted	72	57	17	38	31
Denied	662	750	689	718	674
Dismissed	193	237	199	164	221
Withdrawn	7	7	5	6	4
Motions to Dismiss Appeals	5	13	4	6	3
Granted	1	4	3	2	1
Denied	4	9	1	4	2
Dismissed	0	0	0	0	0
Withdrawn	0	0	0	0	0
Sua Sponte and Court's Own Motion Dismissals	96	84	96	94	101
Total Dismissals of Appeals	97	88	99	96	102
Motions for Reargument of Appeal	34	27	29	24	27
Granted	0	0	0	0	0
Motions for Reargument of Motion	54	61	72	57	59
Granted	0	0	0	0	1
Motions for Assignment of Counsel	64	70	46	36	29
Granted	64	70	46	36	29
Legal Aid	15	15	5	4	6
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	170	219	184	238	244
Granted	12	6	3	6	5
Denied	0	0	1	0	1
Dismissed	158	213	180	232	238

* Because more than one relief request may be decided under a single motion, the total number of decisions by relief requests is greater than the total number of motions decided.

Motions (2014-2018)

	2014	2015	2016	2017	2018
Motions for Amicus Curiae Relief	155	122	117	112	92
Granted	152	118	114	106	89
Motions to Waive Rule Compliance	0	1	0	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	9	6	8	6	5
Granted	9	6	7	3	4
Motions for Leave to Intervene	0	0	0	1	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	22	36	29	32	39
Granted	3	2	1	0	1
Denied	3	3	2	1	2
Dismissed	16	31	26	31	36
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	13	13	22	16	17
Granted	11	12	21	16	17
Motions to Strike	11	3	5	3	0
Granted	4	1	1	1	0
Motions to Amend Remittitur	0	0	0	0	0
Granted	0	0	0	0	0
Motions for Miscellaneous Relief	17	20	30	21	23
Granted	2	2	2	3	2
Denied	12	10	17	7	2
Dismissed	3	8	11	11	19
Withdrawn	0	0	0	0	0

Criminal Leave Applications (2014-2018)

	2014	2015	2016	2017	2018
Total Applications Assigned	2100	2338	2211	2275	2406
Total Applications Decided*	2090	2201	2497	2244	2319
Granted	81	91	33	25	36
Denied	1843	1868	2230	2042	2128
Dismissed	154	231	221	172	153
Withdrawn	12	11	13	5	2
Total People's Applications	47	51	66	65	49
Granted	11	7	10	7	4
Denied	29	35	48	52	42
Dismissed	2	2	2	5	2
Withdrawn	5	7	6	1	1
Average Number of Applications Assigned to Each Judge**	325	391	358	374	344
Average Number of Grants for Each Judge	12	13	5	4	5

* Includes some applications assigned in previous year.

** The averages take into account periods during which there were fewer than seven Judges available for assignment of criminal leave applications.

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2014-2018)

	2014	2015	2016	2017	2018
Total number of inquiry letters sent	73	77	57	80	80
Withdrawn on stipulation	1	1	1	0	4
Dismissed by Court	48	44	44	49	50
Transferred to Appellate Division Sua Sponte	9	3	1	4	3
Appeals allowed to proceed in normal course (a final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	8	5	3	8	6
Jurisdiction retained — appeals decided	0	0	1	2	0
Inquiries pending at year's end	7	25	7	17	17

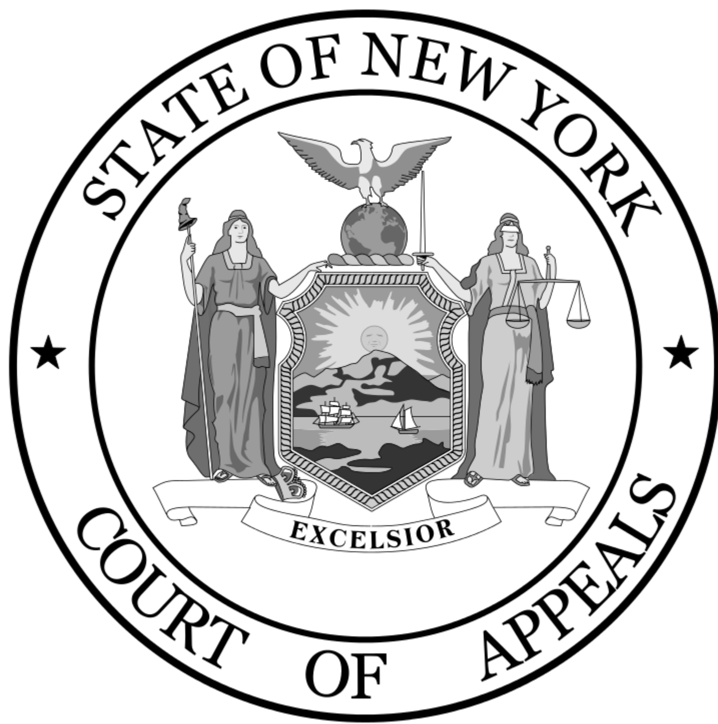
Office for Professional Matters (2014-2018)

	2014	2015	2016	2017	2018
Attorneys Admitted*	10,748	8,868	8,423	8,203	8,750
Registered In-House Counsel	100	94	135	162	133
Certificates of Admission	142	94	123	98	133
Clerkship Certificates	3	0	6	2	3
Petitions for Waiver**	361	334	314	270	259
Written Inquiries	71	72	98	75	78
Disciplinary Orders***	2,172	557	611	3,551	471
Name Change Orders	803	842	850	981	917

* The Office of Court Administration maintains the Official Register for Attorneys and Counselors at Law (*see* Judiciary Law § 468).

** Includes correspondence to law schools reviewing their J.D. and LL.M. programs under Rules 520.3 and 520.6.

*** The 2014, 2016 and 2017 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (*see* Judiciary Law § 468-a).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