

2019

ANNUAL REPORT OF THE CLERK OF THE COURT OF APPEALS



2019

Annual Report of the Clerk of the Court of Appeals



Judges of the New York State Court of Appeals

John P. Asiello  
Clerk of the Court

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**Honorable Janet DiFiore**  
**Chief Judge**  
**Foreword**  
**March 2020**

This Annual Report summarizes the work of the New York Court of Appeals in 2019, including significant decisions affecting the people, economy and government of our state.

We are fortunate to live in a society where even the most difficult and contentious disputes are resolved peacefully in our courts. Public trust and confidence in the work of the courts is the reason that our decisions and orders are respected and honored by litigants, lawyers and the public at large.

As reflected in this report, the Judges and professional staff of our Court are dedicated to earning the public's confidence by maintaining a high standard of operational and decisional excellence. In 2019, the Court continued its proud tradition of promptly calendaring, hearing and resolving all of our appeals. The average time from oral argument to disposition of a normal course appeal was a mere 38 days. I am grateful to my colleagues for their scholarship in advancing the jurisprudence of our state, and for their diligence in promptly resolving the many hundreds of appeals and motions that come before us each year.

Of course, we are well aware that the success of our institution, and the quality and efficiency of our work product, rest on the foundation of the Court's legal and administrative team, led so ably by Clerk of the Court John Asiello, who has created a culture of competence and professionalism at the Court. We are most grateful for his leadership and for the efforts of our staff in faithfully serving the public.

Our entire Court looks forward to the year ahead and to the opportunity we have to build on the tradition of excellence that has long been the hallmark of the New York Court of Appeals.

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2019  
**Annual Report of the Clerk of the Court to the Judges of  
the Court of Appeals of the State of New York**

**Introduction**

In 2019, the Judges of the Court and members of its staff continued the Court's proud tradition of excellence in serving the public. In addition to working diligently to dispose of matters that shape the law in New York, the Court continues to remain dedicated to preserving the architectural heritage of historic Court of Appeals Hall. 2019 saw the first significant construction project at the Court since completion of the 2002-2004 renovation project. Major changes were made to the Court's parking garage and parking deck adjoining the Court. The project, managed by the State Dormitory Authority and the Office of Court Administration Office of Facilities Planning in cooperation with Court staff, was completed over the summer months with no disruption of Court operations.

As for personnel changes in 2019, Marissa Mason was promoted to Principal Law Librarian. In the Clerk's Office, Susan Dautel retired after more than 20 years of dedicated service to the Court, including most recently as an Assistant Deputy Clerk in the appeals department for more than 15 years. After clerking for Associate Judge Leslie E. Stein, Edward Ohanian joined the Clerk's Office as an Assistant Deputy Clerk. Clerk's Office attorneys, who routinely provide helpful information to the bar and public by responding to telephone inquiries and correspondence regarding practice before the Court, furthered their efforts to provide such assistance to members of the bar by participating in Continuing Legal Education Programs on New York Appellate Practice sponsored by the New York State Bar Association. During 2019, Deputy Clerk Heather Davis, Assistant Deputy Clerk Margaret Wood, Chief Motion Clerk Rachael MacVean and I served as panelists for such programs.

The Court's Rules for the Admission of Attorneys and Counselors at Law were amended in two respects in 2019. Effective May 22, 2019, Rule 520.18 was amended regarding the manner in which applicants for admission on examination establish their compliance with the Skills Competency Requirement. Rule 520.10 was amended, effective September 18, 2019, to allow the State Board of Law Examiners to accept fee payments by credit card.

The format of this year's Annual Report, divided into five parts, follows the format of the 2018 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 2019. The third section highlights selected decisions of 2019. The fourth part covers some of the Court's 2019 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 2019, the Court and its Judges disposed of 3,697 matters, including 108 appeals,\* 1,096 motions, and 2,493 criminal leave applications. A detailed analysis of the Court's work follows.

\* This number includes 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 2019, 80 appeals were subject to Rule 500.10 inquiries. Of those, 62 appeals were dismissed sua sponte (SSD) or transferred to the Appellate Division. Sixteen 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 2019, 83 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 is assigned by random draw to one member of the Court for reporting to the full Court.

Following oral argument 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 234 appeals filed in 2019, 37 (15.8%) were initially selected to receive SSM consideration, a slight increase from the percentage so selected in 2018 (11.3%). Twenty-two were civil matters and 15 were criminal matters. Four appeals initially selected to receive SSM consideration in 2019 were directed to full briefing and oral argument. Of the 108 appeals decided in 2019 on the normal course or on the SSM procedure, 25 (23.1%) were decided upon SSM review (23.5% were so decided in 2018). Fourteen were civil matters and 11 were criminal matters. Two civil appeals on SSM review were withdrawn. Fifteen matters remained pending on SSM review at the end of 2019 (7 civil and 8 criminal).

### **Promptness in Deciding Appeals**

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2019, the average time from argument to disposition of a normal course appeal was 38 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 13 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 7 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 439 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 254 days.

## **The Court's 2019 Docket**

### **Filings**

Two hundred thirty-four (234) notices of appeal and orders granting leave to appeal were filed in 2019 (231 were filed in 2018). One hundred eighty-eight (188) filings were civil matters (compared to 184 in 2018), and 46 were criminal matters (compared to 47 in 2018). The Appellate Division Departments issued 30 of the orders granting leave to appeal filed in 2019 (18 were civil, 12 were criminal).

Motion filings decreased slightly in 2019. During the year, 1,182 motions were submitted to the Court, compared to the 1,238 submitted in 2018. Criminal leave application filings remained steady in 2019. In 2019, 2,408 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 2,406 assigned in 2018. On average, each Judge was assigned 344 such applications during the year.

### **Dispositions**

#### **Appeals and Writings**

In 2019, the Court decided 108 appeals (60 civil and 48 criminal, compared to 86 civil and 50 criminal in 2018). Sixty-four (64) of the 108 appeals were decided by signed opinions, 37 by memoranda, and 7 by decision list entries. Fifty-nine (59) dissenting opinions and 17 concurring opinions were issued.

#### **Motions**

The Court decided 1,096 motions in 2019, a slight decrease from the 1,180 decided in 2018. Of the 843 motions for leave to appeal decided in 2019, 2.1% were granted, 75.9% were denied, 21.8% were dismissed, and less than .5% were withdrawn. Eighteen (18) motions for leave to appeal were granted in 2019. 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 78 days, while the average period of time from return date to disposition for all motions was 69 days.

### **CPL 460.20 Applications**

Individual Judges of the Court granted 34 of the 2,493 applications for leave to appeal in criminal cases decided in 2019. One hundred eighty-eight (188) applications were dismissed for lack of jurisdiction and 6 were withdrawn. Fifteen (15) of the 75 applications filed by the People were granted. Of the 152 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, none were 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 2019, on average, 56 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 2019, pursuant to Judiciary Law § 44 (8), the Court suspended one judge with pay after the judge was charged with a crime punishable as a felony. The Court suspended another judge with pay based on a determination of the State Commission on Judicial Conduct recommending that the judge be removed from office. Two judges were suspended without pay based on their guilty pleas to felony crimes. Finally, the Court removed a judge who had previously been suspended by the Court when that judge's conviction became final.

### **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 2019, the average period from receipt of initial certification papers to the Court's order accepting or rejecting review was 17 days. The average period from acceptance of a certification to disposition was 8.5 months.

The Court answered three certified questions in 2019. Two of those questions were accepted in 2018 and one was accepted in 2019. At the end of 2019, two questions that were accepted in 2019 remained pending.

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

In 2019, the Court decided 322 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a significant increase from the 259 petitions decided in 2018. Petitions typically are decided four to eight weeks after submission.

### **Court Rules**

Effective May 22, 2019, the Court's Rule for the Admission of Attorneys and Counselors at Law (Part 520, Rule 520.18) was amended to change the manner in which applicants for admission on examination establish their compliance with the Skills Competency Requirement for Admission via law school certification of credit acquisition (Rule 520.18 [a] [2]). The amended rule provides that the certification need not list the courses or non-credit bearing summer employment completed by the applicant; certification by the law school that the applicant has satisfied the requirement will suffice.

Effective September 18, 2019, the Court's Rule for the Admission of Attorneys and Counselors at Law (Part 520, Rule 520.10) was amended to allow the New York State Board of Law Examiners to accept fee payments by credit card.

## **Administrative Functions and Accomplishments**

### **Court of Appeals Hall**

Court of Appeals Hall at 20 Eagle Street has been the Court's home for over 100 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 3,500 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 1,074,183 visits were recorded to the main internet site in 2019, averaging 2,942 visits per day. The Court-PASS site recorded 483,323 visits in 2019.

## **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](http://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, which 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 2018 through December 2019, Central Staff completed 998 motion reports, 72 SSD reports, and 18 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 2019 were graduates of Albany, Brooklyn, Cornell, CUNY, Northeastern University, Notre Dame, St. John's University, Syracuse University, Touro, University at Buffalo, University of California (Irvine), Western New England University, 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. Staff attorneys hired for clerkships beginning in 2020 will represent the following schools: Albany, Northeastern University, University at Buffalo, and Vermont.

## **Library**

The Principal Law Librarian and a Senior Law Librarian provide legal and general research and reference services to the Judges, their law clerks, and the Clerk's Office staff. During 2019, the Librarians assessed print material subscriptions for cost savings, completed a digitization project, and continued to expand the in-house databases that provide full-text access to the Court's internal reports, bill jackets, and other research materials.

The Principal Law Librarian presented at the annual CLE-certified orientation for Judges' clerks and Central Staff attorneys. In October, the Principal Law Librarian gave a presentation about the work of the library for a group of law librarians as part of the 2019 Annual Meeting of the Association of Law Libraries of Upstate New York.

## **Continuing Legal Education Committee**

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, New York State Law Reporting Bureau, and New York State 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 2019, the CLE Committee provided 10 programs totaling 16.5 credit hours. Attorneys were also provided with information on CLE programs offered by the New York Supreme Court, Appellate Division, Third Department; Albany Law School; the New York State Judicial Institute; the New York State-Federal Judicial Council; the New York State Bar Association; the Historical Society of the New York Courts, and St. John's University School of Law. These programs accounted for over 48.5 additional credit hours of live and teleconference programming.

## **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 agency the New York State Law Reporting Bureau was performed within the 2019-2020 fiscal year budget appropriation of \$1.88 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

## **Budget Requests**

The total request for fiscal year 2020-2021 for the Court and the Law Reporting Bureau is \$1.72 million for non-personal services. Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2020-2021 illustrates the Court's diligent attempt to perform its functions and those of the Law Reporting Bureau economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

## **Revenues**

In calendar year 2019, the Court reported filing fees for civil appeals totaling \$12,280 and for motions totaling \$29,620. 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 (\$1,082.68). For calendar year 2019, revenue collections totaled \$42,982.68.

## 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, Zainab Chaudhry, Heather Davis, Lori Drumm, Lisa Drury, Margery Corbin Eddy, Hope Engel, Antonio Galvao, Bryan Lawrence, Rachael MacVean, Marissa Mason, Edward Ohanian, 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 2019 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues decided by the Court each year.

### ATTORNEYS

*Arrowhead Capital Fin., Ltd. v Cheyne Specialty Fin. Fund L.P.* (32 NY3d 645)

In *Schoenefeld v State of New York* (25 NY3d 22 [2015]), the Court held that Judiciary Law § 470 requires nonresident attorneys to maintain a physical office in New York in order to practice law in the State. In this case, the Court determined that the failure of a nonresident attorney to comply with this requirement at the time the attorney filed the complaint does not render that filing a nullity and, therefore, dismissal of the action is not required. Instead, the party may cure the Judiciary Law § 470 violation with the appearance of compliant counsel or an application for admission pro hac vice. Where further relief is warranted, the trial court has discretion to consider any resulting prejudice and fashion an appropriate remedy.

### CIVIL PROCEDURE – DISCLOSURE

*Matter of Plastic Surgery Group, P.C. v Comptroller of the State of N.Y.* (34 NY3d 507)

The Comptroller selected for audit certain claims paid to petitioner, a professional corporation engaged in the practice of plastic surgery, for services rendered to Empire Plan members. Petitioner is a nonparticipating provider with respect to that Plan, with a legal duty to collect patients' co-payments. The Comptroller sought to determine whether petitioner had routinely waived those out-of-pocket costs. The Comptroller served petitioner

with a subpoena duces tecum, pursuant to CPLR 2302 (a), which was not accompanied by written authorizations from the patients or any notice that such authorizations were required. Petitioner refused to comply, citing the patient authorization requirement of CPLR 3122 (a) (2), and commenced a special proceeding to quash the subpoena. The Court examined the history of CPLR 3122 (a) (2), including legislative memoranda referring to discovery, and held that the provision applies only to subpoenas duces tecum served pursuant to CPLR 3120, after the commencement of an action. Consequently, the patient authorization requirement does not govern the Comptroller's investigatory subpoenas duces tecum.

### CIVIL PROCEDURE – JUDGMENTS

*Pangea Capital Mgt., LLC v Lakian* (34 NY3d 38)

Defendant's ex-wife did not become a judgment creditor of defendant after their divorce decree awarded her a percentage of the proceeds resulting from the sale of real property purchased during the marriage. CPLR 5203 (a) states that priority in a contest between two or more judgment creditors over a parcel of real property is awarded to the first judgment creditor to docket his or her judgment in the county where the real property is located. Nevertheless, because both spouses have an equitable claim to marital assets as defined by Domestic Relations Law § 236, the division of those assets upon divorce does not transform one ex-spouse into the judgment creditor of another. Therefore, the Court held that ex-wife was not subject to the docketing requirements of CPLR 5203 (a), and plaintiff could not claim priority over her interest.

## CIVIL PROCEDURE – JURISDICTION

*Williams v Beemiller, Inc.* (33 NY3d 523)

The Court considered whether New York properly exercised its long-arm jurisdiction over defendant, a federally-licensed Ohio firearm merchant who sold a gun to an Ohio resident in Ohio, which was subsequently resold on the black market and used in a shooting in New York. Defendant did not maintain a website, had no retail store and did not advertise other than by posting a sign at his booth at Ohio gun shows. In a series of transactions in 2000, defendant sold guns to the buyer and his associates. The buyer indicated that he was in the process of becoming a federal firearms licensee and was acquiring inventory to open a gun shop in Ohio. The individual injured in the shooting commenced this personal injury suit against defendant in New York court. After extensive discovery, defendant moved for summary judgment for lack of personal jurisdiction. The Court held that the state could not exercise personal jurisdiction over defendant because he lacked minimum contacts with New York. Citing our precedent and that of the Supreme Court of the United States, the Court explained that minimum contacts requires more than “fortuitous circumstance” that a product sold in another state makes its way to New York through no effort of defendant; instead, defendants must purposefully avail themselves of the privilege of conducting activities within the state. On this basis, the Court concluded that the record was devoid of evidence that defendant intended to serve the New York market by selling a firearm to the Ohio buyer, even considering that the buyer told defendant

that he “wouldn’t mind” having a gun shop in Buffalo.

## CIVIL PROCEDURE – STATUTE OF LIMITATIONS

*Deutsche Bank Natl. Trust Co. v Barclays Bank PLC* (34 NY3d 327)

In this residential mortgage-backed securities (RMBS) case, plaintiff was the trustee for the relevant RMBS trusts. Plaintiff was also a resident of California, which has a four-year limitations period for breach of contract actions. CPLR 202, New York’s borrowing statute, provides that when a non-New York resident sues on a cause of action that accrued outside New York, the cause of action must be timely under the limitations period of both New York and the jurisdiction where the cause of action accrued. A cause of action typically accrues in the place of the injury. Plaintiff urged the Court to apply a multi-factor test to determine the place of the injury, and argued that under that multi-factor test, its causes of action accrued in New York. The Court rejected that approach and instead applied its traditional plaintiff-residence rule, which states that when an alleged injury is purely economic, the place of injury usually is where the plaintiff resides and sustains the economic impact of the loss. Although the Court did not foreclose the possibility that a different test might apply in another case to determine where the economic injury was sustained, the Court concluded that application of the plaintiff-residence rule in this case was appropriate and supported the goals of CPLR 202 – predictability and uniformity. Plaintiff’s actions were required to be timely under California law in order to satisfy CPLR 202 because plaintiff was a California resident and plaintiff’s causes of action accrued in

California. The Court further concluded that plaintiff's actions were not timely under California's four-year limitations period.

*Lubonty v U.S. Bank Natl. Assn.* (34 NY3d 250)

After defendant's predecessor-in-interest accelerated plaintiff's mortgage and commenced a foreclosure action, plaintiff declared bankruptcy, staying the action under federal bankruptcy law. After the stay was lifted, the action was dismissed as abandoned. The mortgage was subsequently assigned to defendant, and defendant commenced a foreclosure action. Plaintiff once again filed for bankruptcy, staying the action under federal bankruptcy law. After this stay was lifted, the foreclosure action was dismissed for insufficient service of process. Plaintiff then commenced an action to discharge the mortgage on the theory that, because six years had passed since defendant's predecessor-in-interest had initially accelerated the mortgage, any subsequent foreclosure action was time-barred. The Court held that the foreclosure action was not time-barred, because the bankruptcy stay qualifies as a "statutory prohibition" under CPLR 204 (a). The Court also held that the language of CPLR 204 (a) does not prevent a party from availing itself of the toll even where, at the time the stay was imposed, that party (or that party's predecessor-in-interest) had a pending action asserting the same claims.

*U.S. Bank N.A. v DLJ Mtge. Capital, Inc.* (33 NY3d 84)

The Court considered whether, under CPLR 203 (f), a complaint filed by the trustee of three residential mortgage-backed securities (RMBS) trusts could

relate back to a certificate holder's previously filed action. U.S. Bank National Association, in its capacity as trustee of three RMBS trusts sold and sponsored by DLJ Mortgage Capital, Inc., sought to sue DLJ for alleged violations of representations and warranties regarding the quality of the loans contained in the securitization trust instruments. The securitization instruments included mandatory remedial provisions, which prohibited the trustee from bringing an action for breach of the representations and warranties until it provided notice to DLJ and allowed DLJ an opportunity to cure or repurchase the allegedly non-compliant loans. The instruments also expressly barred certificate holders from pursuing actions to enforce the parties' agreements. Within the applicable six-year limitations period, a certificate holder filed a summons and notice claiming violations of the representations and warranties for each of the trusts. After the limitations period elapsed, the trustee notified DLJ of the alleged breaches and demanded DLJ cure or repurchase the non-compliant loans, in accordance with the sole remedy provisions. The trustee later filed a complaint alleging claims for all three trusts. The Court held that the trustee's complaint could not relate back to the certificate holder's timely action under CPLR 203 (f) because the certificate holder's pre-existing action was not valid. CPLR 203 (f) permits an amended pleading to relate back to an original pleading "unless the original pleading does not give notice of the transactions, occurrences, or series of transactions or occurrences, to be proved pursuant to the amended pleading." However, the provision applies only in those cases where a valid pre-existing action has been filed.

Under the parties' agreements, the certificate holder could not bring an action on behalf of itself, any other certificate holder, or the trustee. Thus, the certificate holder's action was properly dismissed, and there was no valid pre-existing action to which a claim in a subsequent amended pleading could relate back. The Court further concluded that the Trustee had not preserved its argument that it could refile under CPLR 205 (a) due to the certificate holder's timely commencement of the original action and did not address whether the trustee qualified as a "plaintiff" under that provision.

*U.S. Bank N.A. v DLJ Mtge. Capital, Inc.* (33 NY3d 72)

The Court addressed the applicability of CPLR 205 (a) where a plaintiff's initial action is dismissed for failure to comply with a contractual condition precedent to suit. U.S. Bank National Association in its capacity as trustee of a residential mortgage-backed securities (RMBS) trust sued DLJ Mortgage Capital, Inc., the sponsor and seller of the trust securitization, for alleged violations of representations and warranties regarding the quality of the loans contained in the trust. The agreements governing the trust barred the trustee from bringing an action for breach of the representations and warranties until it provided notice to the loan originator and allowed the originator ninety days to cure or repurchase the allegedly non-compliant loans. The trustee commenced a timely action, but did not comply with the mandatory notice and remedy provision. The Court held that the trustee's failure to comply with the notice and remedy condition precedent within the applicable statute of limitations did not foreclose refiling of its action for alleged breach of RMBS representations and

warranties pursuant to CPLR 205 (a). CPLR 205 (a) permits the refiling of a complaint within six months of a non-merits dismissal if the original complaint was timely. Citing cases holding that a suit may be refiled pursuant to CPLR 205 (a) despite a plaintiff's failure to comply with a condition precedent prior to the expiration of the statute of limitations, the Court concluded that the trustee's non-compliance did not render its action untimely or implicate the merits of its claims.

### COMMERCIAL LAW

*Ajdler v Province of Mendoza* (33 NY3d 120)

The United States Court of Appeals for the Second Circuit certified the following question for determination: "[i]f a bond issuer remains obligated to make biannual interest payments until the principal is paid, including after the date of maturity . . . do enforceable claims for such biannual interest continue to accrue after a claim for principal of the bonds is time-barred?" The Court answered in the negative, reasoning that, generally, it has viewed interest as incident to the principal as opposed to a separately enforceable debt. Similarly, because the bond issuer's obligation to pay post-maturity interest arises only upon the failure to timely repay the principal, that obligation is unenforceable absent a timely claim to recover the principal. The Court distinguished its recent decision in *NML Capital v Republic of Argentina* (17 NY3d 250 [2011]) on the basis that the action to recover principal in *NML Capital* was timely.

### CONSTITUTIONAL LAW — ZONING

*Town of Delaware v Leifer* (34 NY3d 234)

The Court rejected a property owner's First

Amendment challenges to zoning ordinances that prevented him from holding a three-day music festival on his land absent a special-use permit or variance. The Court observed that municipalities have “broad” zoning power and the relevant ordinances prohibiting the festival here – including a prohibition on using land in the zoning region for a “theater” – were content-neutral time, place and manner restrictions that satisfied the applicable intermediate scrutiny standard asking whether the restriction is “narrowly tailored to serve a significant government interest and leave[s] open ample alternative channels of communication.” The scheme did not ban protected forms of expression entirely but merely restricted the location within the Town where they could occur, in keeping with its weighty interest in regulating land use to preserve quality of life. The challenged ordinances were not substantially broader than necessary because – contrary to the property owner’s argument – they did not affect personal displays of music, drama or film consistent with residential use. The Court rejected the owner’s facial overbreadth challenge under the First Amendment and determined that the ordinances were not unconstitutionally vague as applied or on their face, as they afforded sufficient notice of the restricted land uses.

### **CORPORATIONS**

*Matter of Franklin St. Realty Corp. v NYC Ewvtl. Control Bd.* (\_\_NY3d\_\_)

Four corporations, the owners of five mixed use buildings in Brooklyn and Queens, advertised their common shareholder’s law practice on their buildings in violation of certain provisions of the Administrative Code of the City of

New York, which require those who hang signs on buildings be licensed to do so. The fines against the corporations were enhanced on the ground that the corporations were engaged in outdoor advertising business, which is defined as the business of making space on signs situated on buildings and premises within the City of New York “available to others.” Plaintiff corporations argued that their common shareholder and his law practice were not “others” within the meaning of the Code and that the corporations were being penalized for forming corporate entities for tax and liability purposes. The Court rejected these arguments, holding that the term “others” means distinct legal entities, the essential purpose of corporate ownership is to give corporations a separate legal existence from the natural persons who own them and, thus, the corporations were distinct legal entities from the lawyer and law practice advertised on their buildings.

### **CRIMINAL LAW**

*People v Brown* (33 NY3d 316)

The trial court did not err when it denied defendant’s request for a justification charge under Penal Law § 35.15 (2) (a) because defendant was the initial aggressor as a matter of law when he fatally shot his daughter’s boyfriend. To receive a justification charge, a defendant must believe that deadly force was necessary to avert an imminent use of deadly force and that belief must be reasonable. Additionally, a defendant is not justified in using deadly physical force if a defendant is the first person in the altercation who uses or threatens the imminent use of deadly physical force (the initial aggressor). The Court held that no reasonable view of the evidence would support a finding that

defendant was entitled to a justification defense – even viewing all evidence in his favor – because he drew a gun while arguing with an unarmed man who had not threatened any deadly physical force. The decedent had merely swiped or punched at the gun defendant wielded, a pedestrian show of physical force rather than a display of deadly physical force. Because defendant was the initial aggressor, the trial court properly denied his request for a justification charge.

*People v Cook* (34 NY3d 412)

Shortly after an attempted robbery and assault on a taxi driver in the Bronx, the victim identified defendant as the perpetrator and defendant was arrested. Defendant moved to suppress the victim's identification. During the resulting suppression hearing, after the People rested but before the suppression court had rendered a decision, the court reopened the hearing to allow the People to present additional evidence. The suppression court then denied defendant's motion to suppress and defendant was convicted after a jury trial. Defendant argued that the suppression court lacked discretion to reopen the suppression hearing once the People had rested based on *People v Havelka* (45 NY2d 636 [1978]) and *People v Kevin W.* (22 NY3d 287 [2013]). The Court disagreed, holding that the suppression court had discretion to reopen the hearing after the People had rested but before rendering a decision. The Court also held that the suppression court had not abused its discretion in reopening the hearing in this case.

*People v Diaz* (33 NY3d 92)

The Court considered whether a correctional facility's release to prosecutors

or law enforcement agencies of recordings of nonprivileged telephone calls made by pretrial detainees, who are notified that their calls will be monitored and recorded, violated the Fourth Amendment. The Court held that, given the government's weighty interest in ensuring institutional security and order, such detainees have no reasonable expectation of privacy in the content of those calls. Accordingly, they have no legitimate reason to think that the content of the recordings, like any other evidence lawfully discovered, would not be admissible at trial.

*People v Li* (34 NY3d 357)

Defendant, then a physician board-certified in anesthesiology and pain management, was accused of running a "pill mill" out of his Queens pain management clinic. After a jury trial, defendant was convicted of several crimes arising from that conduct, but he challenged only his conviction of two counts of manslaughter in the second degree on appeal to this Court. Those manslaughter counts were based on defendant's conduct in prescribing certain controlled substances to two patients, who later died of overdoses after ingesting drugs defendant had prescribed. Defendant first argued that, as a matter of law, he could not be convicted of any homicide offense for providing controlled substances resulting in an overdose death. The Court rejected that argument, holding that there was no basis to conclude that the legislature intended to exclude that particular class of conduct from the ambit of the homicide statutes. The Court rejected defendant's second argument that his conviction on the manslaughter counts was not supported by legally sufficient evidence, holding that the People presented legally sufficient evidence from



which a rational jury could have concluded both that defendant acted recklessly and that his conduct was a sufficiently direct cause of his patients' deaths.

*People v Lopez-Mendoza* (33 NY3d 565)

In a prosecution for rape, the limited record did not conclusively establish that defense counsel was ineffective based on counsel's alleged failure to review or comprehend the significance of surveillance video evidence contradicting defendant's grand jury testimony. Although the video evidence demonstrated the falsity of defendant's grand jury testimony, defendant failed to demonstrate that he was denied meaningful representation where the jury never learned of the grand jury testimony and defendant was never subjected to cross-examination with it. The Court held that because a defendant bears the ultimate burden of showing the absence of strategic reasons for a counsel's challenged actions, and evidence of such could be explored through a post-conviction proceeding brought under CPL 440.10, and the record was insufficient to make the showing in this case. The Court also held that it was harmless error to admit DNA evidence in violation of defendant's Sixth Amendment rights, where the sole issue at trial was consent, as to which the DNA evidence would be irrelevant.

*People v Mairena* (34 NY3d 473)

The Court reaffirmed that harmless error analysis applies to a trial court's error in failing to charge the jury in accordance with that court's pre-summation rulings on a defendant's charging requests. Although a defendant's right to present a summation of the evidence to the trier of

fact implicates the Sixth Amendment, short of a complete deprivation of the right to present a summation, the improper reversal of a prior charging ruling that impacts summation is subject to harmless error analysis. An error is harmless in a given case unless defense counsel's summation would have been materially affected by knowledge of the charge ultimately submitted to the jury.

*People v Mendoza* (33 NY3d 414)

The Court held that defense counsel's advancement of a jury nullification defense at trial did not amount to ineffective assistance of counsel. The evidence against defendant in this case was overwhelming. Specifically, defendant's identity as the perpetrator was captured on surveillance video, he admitted to the police that he was the person depicted in that surveillance footage and he made additional incriminating statements to his mother on a recorded telephone call from jail. As part of the defense strategy to attempt to convince the jury that the case had been overcharged, defense counsel conceded that defendant committed the crimes and that the case against him was "rock-solid." However, counsel also directed arguments as to why the burglary charges did not fit within the facts of the case. Although the Court has previously held that jury nullification is not a permissible defense, viewing this record as a whole, the Court concluded that defense counsel provided meaningful representation.

*People v Neulander* (34 NY3d 110)

A juror's deliberate deceit and deception when queried by the trial court and counsel about her conduct may have affected a substantial right of defendant

under CPL 330.30 (2), warranting reversal of the judgment convicting defendant of murder and evidence tampering. After sending and receiving hundreds of text messages about the trial, in violation of the trial court's explicit and repeated directives, the juror hid her misconduct, lied under oath, and tendered a false affidavit with doctored text message exchanges. Courts have an overriding responsibility to ensure the public's confidence in the fairness of trials, and the juror's disregard of the trial court's instructions and her subsequent dishonesty when her actions were called into question vitiated the premise that she was fair and impartial. Because the right to a fair trial is freestanding and even overwhelming proof of defendant's guilt cannot negate that right, the Court held that defendant was entitled to a new trial.

*People v Rouse* (34 NY3d 269)

Defendant was charged with, among other things, attempted murder in the second degree and criminal possession of a weapon in the second degree following an early-morning incident in which he fired a single gunshot at two people who were running away from him on a public street in the Bronx. At trial, in the absence of fingerprint and DNA evidence, the People's case against defendant rested nearly entirely on the identification of defendant as the shooter by two police officers who were nearby when defendant fired the gun. The trial court, however, did not allow defendant to explore multiple grounds for impeachment on cross-examination with respect to instances in which each officer may have made dishonest statements in the context of his employment. Echoing an observation made in *People v Smith* (27 NY3d 652 [2016]), the

Court "recognize[d] that, much as a lay witness may be subject to cross-examination with respect to acts of dishonesty not proven at trial, so too may a law enforcement witness be impeached through such questioning." Applying that rule in this case, the Court held "that the trial court abused its discretion as a matter of law and committed reversible error in refusing to permit defendant to cross-examine the two police officers central to this case in those areas involving officer dishonesty."

*People v Smith* (33 NY3d 454)

The Court reiterated that *People v Gonzalez* (68 NY2d 424 [1986]) set forth the conditions necessary to warrant a missing witness charge and a burden-shifting analysis to determine whether those conditions are met. Under the established analytical framework, the proponent of the charge initially must demonstrate certain requirements via a prompt request for the charge. However, the Court has never required the proponent of a missing witness charge to negate cumulativeness to meet the prima facie burden. The Court therefore rejected any lower court decisions placing the initial cumulativeness burden on the proponent of a missing witness charge. Because the People failed to rebut defendant's prima facie showing of entitlement to the missing witness charge, Supreme Court abused its discretion by declining to give the charge.

*People v Tapia* (33 NY3d 257)

The Court held that there was no abuse of discretion in the admission of a portion of a police officer's prior grand jury testimony as a past recollection recorded to supplement his trial testimony. The officer had retired at the time of trial and had no

independent recollection of the offense. The People established a proper foundation for a past recollection recorded – the officer, who had observed the offense, stated that he had testified truthfully and accurately at the grand jury when the incident was fresh in his mind, that he could not presently recall the subject of his testimony, and that reading the testimony did not refresh his recollection. In addition, given that the officer was present and testified at trial, there was no violation of either CPL 670.10 – governing the admissibility of former testimony when a witness is unable to attend the trial – or the Confrontation Clause.

*People v Thomas (Victor)* (34 NY3d 545)

In these appeals, defendants’ written waivers of the right to appeal contained mischaracterizations of the scope of the appellate rights waived as a condition of their plea bargains. The Court reinforced the principle that a waiver of the right to appeal is not an absolute bar to the taking of a first-tier direct appeal, and that several categories of appellate claims remain nonwaivable, due to larger societal interest in their correct resolution. Shorthand pronouncements of appellate rights waived, including imprecise or overbroad language used in appeal waivers, do not prevent their enforcement, so long as the totality of the circumstances reveals that a defendant understood the nature of the appellate rights being waived. In *Thomas*, the trial court’s oral colloquy, including its inquiry of defendant and resulting assurances on the record that he had ample opportunity to discuss with counsel the meaning of the appeal waiver and appellate rights he was surrendering, was sufficient to support a knowing and

voluntary waiver of his appellate rights, which was comprehensive and included his challenge to a pretrial suppression ruling. However, in the other consolidated appeals – where the trial court mischaracterized the appellate rights waived as encompassing not only an absolute bar to the taking of a direct appeal and the loss of attendant rights to counsel and poor person relief, but also all postconviction relief – it could not be certain from the record that defendants comprehended the nature of the appellate rights being waived and, thus, the appeal waivers in those cases were involuntarily made and not enforceable.

*People v Ulett* (33 NY3d 512)

Defendant was charged with murder for shooting the victim outside of an apartment building in Brooklyn, and the People failed to disclose a surveillance video that captured the scene at the time of the shooting, including images of the victim and a key prosecution witness. The Court held that, under *Brady v Maryland* (373 US 83 [1963]), the People’s failure to produce the video raised a reasonable probability that its disclosure would have produced a different result at defendant’s trial. Defendant could have used the video to impeach eyewitnesses, to pursue additional leads, and to advance alternative theories. Because the suppressed evidence was material, the Court granted defendant’s motion to vacate the judgment of conviction and ordered a new trial.

## **CRIMINAL LAW – SENTENCING AND PUNISHMENT**

*People v Thomas (Michael)* (33 NY3d 1)

The Court held that a defendant’s predicate offender status is not affected if

the defendant is subsequently resentenced on the predicate felony because the original sentence imposed thereon was illegal. The Court concluded that the operative language of the second felony offender statute turns on when “sentence upon such prior conviction [was] imposed” (Penal Law § 70.06 [1] [b] [ii]), not the date of any later resentence. The Court noted that the legislature’s intent was to punish recidivist offenders more severely because of their demonstrated refusal to reform their conduct after serving all or part of an earlier sentence.

### **ENVIRONMENTAL LAW**

*Matter of Adirondack Wild: Friends of the Forest Preserve v New York State Adirondack Park Agency* (34 NY3d 184)

In this CPLR article 78 proceeding, petitioners challenged a management plan created by the Department of Environmental Conservation (DEC), in consultation with the Adirondack Park Agency. DEC’s management plan permitted snowmobile use on a portion of a preexisting road as a one-mile link to a longer snowmobile corridor connecting two towns in the Adirondack Park. Petitioners asserted that the snowmobile link violated motor vehicle use restrictions contained in the Adirondack Park Master Plan (Master Plan), which they alleged governed here over a more permissive provision in the Wild, Scenic and Recreational Rivers System Act (Rivers Act) allowing existing land uses to continue as long as the use was not altered or expanded. The Court held that the Rivers Act’s existing land use exception governed, rejecting petitioners’ argument that the Master Plan’s more restrictive provisions triggered the Rivers Act’s conflict provision – which provides that in the event of a

conflict between the Rivers Act and “laws and constitutional provisions” under which the Park is administered, the more restrictive provision should apply. The Court reasoned that even assuming the Master Plan constituted a “law,” there was no conflict because, as recognized in both the Master Plan and the Rivers Act, DEC had exclusive jurisdiction and independent authority to approve motor vehicle use in the land at issue – state land in the Adirondack Park categorized as “Wild” under the Rivers Act. The Court further held that the DEC’s determination that the road’s use as a seasonal snowmobile trail was the continuation of an existing land use was rational because it relied on a DEC-commissioned report and supporting documents, including multiple affidavits from long-time residents and workers who used the road for decades.

### **FREEDOM OF INFORMATION LAW**

*Matter of Kosmider v Whitney* (34 NY3d 48)

The Court held that electronic copies of ballots cast in an election were protected from FOIL disclosure under Election Law § 3-222, which prohibits examination of “voted ballots” absent a court order or legislative committee direction during the first two years following an election. The Court reasoned that the plain text of section 3-222 evinces a clear desire that access to voted ballots be restricted to a specific procedure during the two-year period and there was no basis in the statute to conclude that electronic copies of ballots should be treated differently than paper ballots. The legislative history of the statute supported this conclusion, demonstrating that the legislature knew how to distinguish between paper ballots and electronic copies but did not do so in section 3-222. The Court rejected an

argument that electronic copies of ballots may be disclosed during the two-year period in the absence of a court order or legislative committee direction because they are not subject to tampering, explaining that the Election Law serves not only to prevent ballot tampering but also to promote ballot confidentiality, which extends to electronic copies.

## **INSURANCE**

*Nadkos, Inc. v Preferred Contrs. Ins. Co. Risk Retention Group LLC* (34 NY3d 1)

Insurance Law § 2601 (a) (6) provides that an insurer's failure to "to promptly disclose coverage pursuant to [Insurance Law § 3420] subsection (d)" may constitute an unfair claim settlement practice. The Court held that the reference to Insurance Law § 3420 (d) in Insurance Law § 2601 (a) (6) did not encompass Insurance Law § 3420 (d) (2), thus a general business practice of failing to promptly disclose coverage within the meaning of Insurance Law § 2601 (a) (6) does not include violations of the timely liability disclaimer requirement of Insurance Law § 3420 (d) (2). Unlike § 3420 (d) (1), which required insurers to disclose the extent of coverage to insureds, § 3420 (d) (2) imposed a requirement for disclaimers and was not intended to fall within Insurance Law § 2601.

## **INSURANCE – NO-FAULT AUTOMOBILE INSURANCE**

*Andrew Carothers, M.D., P.C. v Progressive Ins. Co.* (33 NY3d 389)

Plaintiff, a professional service corporation providing MRI services, closed after insurance companies stopped paying its claims. In collection actions filed by plaintiff, the carriers' principal defense was that plaintiff was controlled

by unlicensed nonphysicians in violation of Business Corporation Law §§ 1507 and 1508. The Court's 2005 decision in *State Farm Mut. Auto. Ins. Co. v Mallela* (4 NY3d 313 [2005]) held that an insurer may withhold payment for medical services, pursuant to 11 NYCRR 65-3.16 (a) (12), when there is willful and material failure to abide by licensing and incorporation statutes. Multiple witnesses testified that plaintiff's profits were funneled to two nonphysicians who owned companies that billed plaintiff inflated rates. Plaintiff requested a jury instruction on the traditional elements of fraud, including fraudulent intent, contending that *Mallela* allows insurers to withhold payments only in situations where the professional corporation's managers engaged in conduct "tantamount to fraud" (*Mallela*, 4 NY3d at 322). The Court held that a corporate practice demonstrating serious violation of the licensing and incorporation statutes may support a finding that the provider is not eligible for insurance reimbursement, without meeting the traditional elements of common law fraud. Nor is a jury required to evaluate the extent to which corporate misconduct approximates fraud.

## **LABOR – HOURS AND WAGES**

*Andryeyeva v New York Health Care, Inc.* (33 NY3d 152)

Plaintiffs sought certification of a class of home health care aides for alleged violations of the Labor Law based on their respective employer's failure to pay putative class members a required minimum wage for each hour of a 24-hour shift. Under a New York Department of Labor (DOL) wage order, plaintiffs' employers were required to pay the minimum wage "for the time an

employee is permitted to work, or is required to be available for work at a place prescribed by the employer.” DOL interpreted the wage order to require payment of the minimum wage for at least 13 hours of a 24-hour shift if the employee is allowed a sleep break of at least 8 hours – and actually receives five hours of uninterrupted sleep – and three hours of meal break time. The Court held that DOL’s long-standing interpretation of its wage order was rational and therefore entitled to deference. In reaching this decision, the Court noted that DOL’s interpretation was grounded in its specialized knowledge and experience of both round-the-clock work assignments and the home health care industry. While determining that plaintiffs were not entitled to payment of the minimum wage for each hour in a 24-hour shift if they received the requisite sleep and meal breaks, the Court remanded for consideration of additional grounds for class certification, including defendants’ alleged failure to adequately compensate home health care aides when they did not receive the minimum sleep and meal breaks.

#### **LANDLORD AND TENANT**

*159 MP Corp. v Redbridge Bedford, LLC* (33 NY3d 353)

The Court was asked to determine whether a commercial lease provision waiving tenants’ right to bring a declaratory judgment action related to lease terms was void as against public policy. After the building owner sent notices to the commercial tenants alleging defaults under the applicable leases, tenants commenced an action in Supreme Court seeking a declaratory judgment that they were not in default, as well as a

*Yellowstone* injunction, a judicially-developed mechanism preventing the owner from terminating the leases or commencing summary proceedings during the pendency of the declaratory judgment action (*First Natl. Stores v Yellowstone Shopping Ctr.*, 21 NY2d 868 [1968]). The Court held that a declaratory judgment waiver in the leases was enforceable to bar the action, reasoning that a contractual provision may be invalidated on public policy grounds only where the “deeply rooted” public policy in favor of freedom of contract is overridden by a “weighty,” countervailing public policy. The Court determined that any public interest in access to declaratory judgment actions was not so weighty that it could not be waived by a “clear and unambiguous” provision adopted in arm’s length negotiations over commercial leases, which left open other judicial avenues for adjudication of tenants’ rights. The Court also concluded that tenants’ inability to obtain a *Yellowstone* injunction as a result of the waiver did not render it unenforceable.

#### **LANDLORD AND TENANT – RENT REGULATION**

*Kuzmich v 50 Murray St. Acquisition LLC* (34 NY3d 84, cert denied \_\_ US \_\_)

The Court held that plaintiffs’ apartments – which were located in buildings receiving tax benefits pursuant to Real Property Tax Law § 421-g – were not subject to the luxury deregulation provisions set forth in the Rent Stabilization Law (RSL). The Court reasoned that Real Property Tax Law § 421-g (6), “by its clear terms, unquestionably subjects apartments in buildings receiving section 421-g tax benefits to rent stabilization under the

RSL regardless of any contrary provisions of the RSL that would otherwise result in deregulation,” with only one exception for cooperatives and condominiums that did not apply. The Court rejected defendants’ reliance on the luxury deregulation provisions themselves, declining the invitation to construe the legislature’s silence in one statutory scheme to override its clear intent, as plainly expressed, in another.

*Maddicks v Big City Props., LLC* (34 NY3d 116)

Defendants own and manage a real estate portfolio consisting of multiple apartment buildings in Manhattan. Plaintiffs alleged that defendants, in an attempt to extract extra value from those properties, engaged in “a clear pattern and practice of improper and illegal conduct” designed to inflate rents over and above the amounts defendants were legally permitted to charge. According to plaintiffs, that scheme to illegally inflate rents was accomplished in four ways, namely, by falsely reporting that the leases were rent-controlled; misrepresenting the costs of certain improvements to individual units; repeatedly failing to register rental information as required by law; and improperly escalating fair-market rents on apartments exiting rent-controlled status. Plaintiffs also alleged that those claims could be properly maintained as a class action. Defendants moved to dismiss the amended class action complaint, alleging that the class allegations failed as a matter of law inasmuch as they improperly bound four disconnected theories of malfeasance. The Court rejected that contention, noting that, although “[n]othing in the CPLR prevents a defendant from moving to dismiss a class action claim pursuant to

CPLR 3211,” the record did not support a conclusion that the claims for class relief should have been dismissed short of a judicial determination as to whether the prerequisites of CPLR 902 – which establishes factors courts must consider in determining whether an action may proceed as a class action – had been satisfied.

### **MENTAL HYGIENE LAW**

*Matter of Mental Hygiene Legal Serv. v Sullivan* (32 NY3d 652)

The Court considered whether Mental Hygiene Law articles 10, 29, and 47 mandate, upon a respondent’s request, the presence of assigned Mental Hygiene Legal Service (MHLS) counsel at treatment planning meetings for article 10 respondents placed in a Sex Offender Treatment Program at a secure treatment facility. The Court held that MHLS counsel is not entitled, as a matter of law, to be given an interview and an opportunity to participate in treatment planning simply by virtue of an attorney-client relationship with an article 10 respondent. The Court reasoned that, absent a clear intent in Mental Hygiene Law articles 10, 29, and 47 that MHLS counsel must always be given a role in treatment planning, such a mandate should not be judicially supplied.

*Matter of James Q.* (32 NY3d 671)

The issue presented by this appeal was whether Mental Hygiene Law § 33.13, which protects the confidentiality of patients’ clinical records maintained at facilities licensed or operated by certain state agencies, requires the automatic sealing of the entire court record of proceedings involving insanity acquittees suffering from dangerous mental disorders

within the meaning of CPL 330.20. CPL 330.20 governs the procedures that must be followed after an acquittal based on a defendant's lack of responsibility by reason of mental disease or defect. In contrast to the statutory sealing requirement pertaining to papers filed with the county clerk relating to "track two" acquittees – those who are mentally ill, but not dangerous – CPL 330.20 makes no reference to a sealing requirement for defendants with dangerous mental disorders – also known as "track one" acquittees. The Court held that, absent such a specific statutory condition, the confidentiality requirement in Mental Hygiene Law § 33.13 did not require the automatic sealing of the court records of track one acquittees. Instead, a case-specific analysis is required to determine whether all or part of a court record should be sealed.

#### **MUNICIPAL CORPORATIONS – LANDMARKS**

*Matter of Save America's Clocks, Inc. v City of New York* (33 NY3d 198)

In this CPLR article 78 proceeding, the Court held that New York City's Landmarks Preservation Commission's (LPC) decision to approve the redevelopment of 346 Broadway – a historic building in lower Manhattan that was previously designated as a landmark – was not irrational or affected by an error of law. After purchasing the building, the developer sought approval to convert it into private residences, requiring work on the building's clocktower and the mechanical clock housed therein. The LPC issued a certificate of appropriateness authorizing the developer to, among other things, limit public access to the clocktower and electrify the clock.

Rejecting petitioners' challenge to the certificate, the Court noted that the Landmarks Law vests the LPC with broad discretion, and the LPC's determination followed an extensive and inclusive deliberative process. The Court concluded that the LPC's decision was supported by a rational basis, and that the LPC appropriately exercised its authority to grant or deny a certificate.

#### **NATIVE AMERICAN SOVEREIGNTY**

*Cayuga Nation v Campbell* (34 NY3d 282)

Members of the Cayuga Nation purporting to be acting as the tribe's lawful governing body, the Cayuga Nation Council, sued the individuals comprising an opposing leadership faction for liability in tort premised on defendants' lack of authority to act on behalf of the Nation. The Court held that it lacked subject matter jurisdiction to resolve the legal claims raised because they turned on the resolution of an internal government leadership dispute, over which Native American tribes retain exclusive sovereignty. Relatedly, the Court held that it could not defer to the federal government's limited recognition of the Nation Council as the tribe's lawful governing body as a means to assume jurisdiction because it would similarly embroil the Court in the competing leadership claims raised by rival factions of the tribe.

#### **NEGLIGENCE**

*Matter of Eighth Jud. Dist. Asbestos Litig.* (33 NY3d 488)

In this negligence and products liability case, plaintiff, as administrator of the estate of decedent Donald R. Terwilliger, brought suit against the successor-in-interest to a coke oven manufacturer for



injuries decedent sustained during his employment at a steel plant in Lackawanna. In reversing an order granting defendant's motion for summary judgment, the Court concluded that defendant had not met its burden in demonstrating that the large-scale coke ovens, which plaintiff alleged had caused decedent's injuries, were not products as a matter of law. The Court thus rejected defendant's arguments that liability in the failure-to-warn context turns on the size of the hazardous thing or the presence of a service contract for its installation, instead emphasizing such factors as the manufacturer's control over the design of a standardized product, as well as its superior ability to know – and warn about – the dangers inherent in the product's reasonably foreseeable uses or misuses.

*Fasolas v Bobcat of N.Y., Inc.* (33 NY3d 421)

This wrongful death action against a manufacturer arose from decedent's use of a Bobcat loader he leased from a rental company. Liability against the manufacturer was predicated on the theory that decedent, who was impaled by a tree that intruded into the loader's cab, would have avoided injury had the loader been equipped with an optional safety device that enclosed the cab – a device the rental business had not purchased. The Court held that the exception to the general rule of strict products liability for design defects recognized in *Scarangella v Thomas Built Buses* (93 NY2d 655 [1999]) – available where the manufacturer offers a product with an optional safety device, and the purchaser, who is knowledgeable about the safety device, chooses not to obtain it – is not categorically unavailable when the allegedly defective product came into the injured user's hands through the rental

market, rather than by a purchase transaction. Having concluded that no such “rental market” exclusion from *Scarangella* was appropriate, the Court also determined that jury instructions incorporating the rental market theory espoused by plaintiff's expert were misleading and incompatible with governing precedent, warranting a new trial.

*Henry v Hamilton Equities, Inc.* (34 NY3d 136)

The Court had previously recognized a limited exception to the general rule that an out-of-possession landlord is not liable for injuries resulting from the condition of the demised premises where, among other things, the landlord “covenant[s] in the lease or otherwise to keep the land in repair” (*Putnam v Stout*, 38 NY2d 607, 617 [1976]). The issue presented on this appeal was whether that exception applies to a regulatory agreement between defendants, as owners of the property, and the United States Department of Housing and Urban Development, as guarantor of the mortgage on defendants' premises. The Court held that such a regulatory agreement is not a covenant covered by the exception recognized in *Putnam*, and declined to expand the exception in *Putnam* to the facts of this case, where the regulatory agreement did not alter the contractual relationship between the landlord and tenant.

*Xiang Fu He v Troon Mgt., Inc.* (34 NY3d 167)

The Court held that section 7-210 of the Administrative Code of the City of New York unambiguously imposes a nondelegable duty on certain real property owners to maintain City sidewalks abutting

their land in a reasonably safe condition. Under this duty of care, a subject owner is liable for personal injury claims arising from the owner's negligent failure to remove snow and ice from the sidewalk. The Court reasoned the Code speaks to an "owner" of real property and makes no exception for out-of-possession landowners, thus the duty applies with full force to out-of-possession landowners notwithstanding an owner's transfer of possession to a lessee or maintenance agreement with a nonowner.

#### **PUBLIC EMPLOYMENT – RETIREMENT AND PENSIONS**

*Matter of Walsh v New York State Comptroller* (34 NY3d 520)

In this CPLR article 78 proceeding, the Court concluded that the New York State Comptroller erred in denying petitioner, a Nassau County correction officer, performance-of-duty disability retirement benefits after petitioner was injured when an inmate accidentally fell on top of her. Retirement and Social Security Law § 607-c (a) provides performance-of-duty disability retirement benefits to certain correction officers who sustain incapacitating injuries by, or as the natural and proximate result of, "any act of any inmate." The Court disagreed with the Comptroller and Appellate Division's interpretation of the statute, which restricted the word "act" to "volitional or disobedient" acts, and held that "any act of any inmate" includes both voluntary and involuntary conduct of an inmate, including the accidental fall at issue.

#### **PUBLIC HEALTH LAW**

*Haar v Nationwide Mut. Fire Ins. Co.* (34 NY3d 224)

The Court held that Public Health Law

§ 230 (11) (b) does not create a private right of action for bad faith and malicious reporting to the Office of Professional Medical Conduct. No such right of action could fairly be implied from the statutory text or legislative history, which demonstrated that the statute was enacted to protect the general public from medical misconduct by encouraging robust reporting of such misconduct. The Court determined that a private right of action would affirmatively undercut this objective.

#### **PUBLIC UTILITIES – RATE MAKING**

*Matter of National Energy Marketers Assn. v New York State Pub. Serv. Commn.* (33 NY3d 336)

The Court held that the Public Service Law authorizes the Public Service Commission (PSC) to issue an order that conditions access to public utility infrastructure by energy service companies (ESCOs) upon ESCOs capping their prices such that, on an annual basis, they charge no more for electricity than is charged by public utilities unless 30% of the energy is derived from renewable sources. ESCOs are not subject to the PSC's direct rate-making authority under Public Service Law article 4. Nevertheless, the Public Service Law, in directing the PSC to set the conditions under which public utilities will transport consumer-owned electricity and gas, provided the PSC with authority to condition access to utility infrastructure upon ESCOs' compliance with a price cap on gas or electricity.

#### **RELEASE**

*Matter of New York City Asbestos Litig.* (33 NY3d 20)

A merchant marine plaintiff's release, executed to settle a lawsuit for shipboard

asbestos exposure, was insufficient to entitle defendant to summary judgment against plaintiff's subsequent claim that the exposure caused his mesothelioma. Plaintiff was exposed to asbestos over the course of three years working aboard ships owned by the predecessor-in-interest to defendant. In 1997, the predecessor settled hundreds of asbestos claims brought against it in a federal court, including plaintiff's. As part of the settlement, plaintiff gave up the right to bring an action in the future for "any new or different diagnosis that may be made about [his] condition as a result of exposure to any product." In 2015, plaintiff sued defendant for causing his asbestos-related mesothelioma, which developed subsequent to the 1997 settlement. The Court held that under the heightened burden imposed by admiralty law, defendant failed to show that the language of the release unambiguously extinguished a future claim for mesothelioma. In addition, the record was ambiguous as to whether plaintiff had a full understanding of what rights he was extinguishing in the release, the adequacy of the consideration, and the legal and medical advice he received prior to signing.

#### **TAXATION – ASSESSMENT**

*Matter of Larchmont Pancake House v Board of Assessors and/or the Assessor of the Town of Mamaroneck* (33 NY3d 228)

The parties in this tax certiorari proceeding disputed whether petitioner had standing pursuant to article 7 of the Real Property Tax Law, which provides that only an "aggrieved" party may seek judicial review of a property tax assessment. Petitioner was not the owner of the subject property, but nonetheless contended that it was an aggrieved party because, during the

relevant years, it was the sole occupant of the property and paid the entirety of the real property taxes. The Court disagreed, holding that, in the absence of a direct legal obligation to assume the undivided tax liability, a non-owner is not aggrieved within the meaning of RPTL article 7. Because petitioner was a non-owner with no legal authorization or obligation to pay the real property taxes, the Court held that petitioner lacked standing to maintain the tax certiorari proceeding.

#### **TAXATION – SALES AND USE**

*Matter of Wegmans Food Mkts., Inc. v Tax Appeals Trib. of the State of N.Y.* (33 NY3d 587)

Tax Law § 1105 (c) (1) imposes a sales tax on certain information services, "but exclud[es] the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons." In this CPLR article 78 proceeding, the Court held that the Tax Appeals Tribunal of the State of New York rationally determined that the information services receipts at issue were not excluded from the tax because the information at issue was not personal or individual in nature. In addition, the Court reaffirmed that, as with tax exemptions, the presumption is in favor of the taxing power when construing statutory tax exclusions.

# 2019 Annual Events

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## State of Our Judiciary



On February 26, 2019, Chief Judge Janet DiFiore delivered the State of Our Judiciary at the Bronx County Supreme Court. The Chief Judge gave a progress report on the Excellence Initiative and addressed Criminal, Civil, Family and Appellate Justice, Access to Justice, the New York City Housing Court, and the Constitutional Modernization of the New York State Courts.

# Law Day

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## Free Speech, Free Press, Free Society

On May 1, 2019, the Court celebrated Law Day. The 2019 theme was: “Free Speech, Free Press, Free Society.” The celebration included remarks from Chief Judge DiFiore, Attorney General Letitia James, and New York State Bar Association President Michael Miller.



Chief Judge DiFiore, Law Day 2019, Court of Appeals Hall.

# Law Day

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## 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.



Chief Judge DiFiore with the Judith S. Kaye Service Award recipients at Court of Appeals Hall, Law Day 2019.

# Appendices

## Appendix 1

Judges of the Court of Appeals

## Appendix 2

Nonjudicial Staff and Personnel Changes

## Appendix 3

Appeals Decided by Jurisdictional Predicate (2019)

## Appendix 4

Appeals Analysis (2015-2019)

All Appeals – Civil and Criminal

Civil Appeals – Type of Disposition

Criminal Appeals – Type of Disposition

## Appendix 5

Civil Appeals Decided by Jurisdictional Predicate (2015-2019)

## Appendix 6

Criminal Appeals Decided by Jurisdictional Predicate (2015-2019)

## Appendix 7

Motions (2015-2019)

## Appendix 8

Criminal Leave Applications (2015-2019)

## Appendix 9

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2015-2019)

## Appendix 10

Office for Professional Matters (2015-2019)

# 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





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## Nonjudicial Staff

Allen, James A.	Senior Court Attorney, Central Staff
Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Asiello, John P.	Clerk of the Court
Augustyn, Adam	Senior Court Attorney, Central Staff
Bailey, Anna*	Senior Law Clerk to Judge Garcia
Barile, Robert	HVAC Assistant Building Superintendent
Benjamin, Jared*	Law Clerk to Judge Feinman
Bessette, Bryan P.*	Senior Court Attorney, Central Staff
Bielawski, Julia Smead	Assistant Consultation Clerk
Boden, Sean*	Senior Court Attorney, Central Staff
Brizzie, Gary J.	Assistant Building Superintendent I
Buccella, Alina*	Senior Court Attorney, Central Staff
Byer, Ann	Secretary to the Court of Appeals
Byrne, Cynthia D.	Criminal Leave Applications Clerk
Calvay-Benedetto, Patricia	Secretary to Judge Wilson
Chaudhry, Zainab	Principal Court Attorney
Chest, Wesley	Senior Associate Computer Applications Programmer
Chung, Rachel A.*	Law Clerk to Judge Wilson
Clark, Judith A.	Court Analyst
Claydon, Julianne*	Chief Legal Reference Attorney
Conner, Angela*	Senior Custodial Aide
Costa, Gary Q.	Senior Court Building Guard
Coughlin, Monica	Special Projects Coordinator
Couser, Lisa A.	Senior Clerical Assistant
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Senior Clerical Assistant
D'Angelo, Nicholas*	Senior Law Clerk to Chief Judge DiFiore
Dautel, Susan S.*	Assistant Deputy Clerk
Davis, Heather	Deputy Clerk of the Court
Delgosha, Anita	Court Attorney, Central Staff
Desnoyers, Kelli*	Principal Stenographer
Donnelly, William E.	Senior Assistant Building Superintendent
Drumm, Lori	Principal Stenographer
Drury, Lisa	Special Projects Counsel

\* As of January 1, 2020, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Nonjudicial Staff

Eddy, Margery Corbin	Chief Court Attorney
Engel, Hope B.	Consultation Clerk
Figueroa, Milagros*	Principal Stenographer
Ford, Catherine	Law Clerk to Judge Wilson
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
Garnes, Lisa	Assistant Court Analyst
Gersztoff, Stephen	Senior Law Librarian
Gilbert, Marianne	Principal Stenographer
Golebiowski, Jacob	Senior Local Area Network Administrator
Groschadl, Laura A.	Senior Principal Law Clerk to Judge Fahey
Guenthner, Franklin	Assistant Law Clerk to Judge Feinman
Gyori, Elizabeth	Law Clerk to Judge Rivera
Haas, Tammy L.	Principal Assistant Building Superintendent
Halsey, Trevor*	Senior Court Attorney, Central Staff
Hartnagle, Anthony	Senior Custodial Aide
Hartnagle, Mary C.*	Senior Custodial Aide
Herd, Julia*	Senior Principal Law Clerk to Judge Feinman
Hickey, Meaghan	Court Analyst
Hoffmann, Stephanie	Senior Court Attorney, Central Staff
Holman, Cynthia M.	Principal Stenographer
Hosang-Brown, Yanique	Management Analyst
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.	Principal Stenographer
Jurkowski, Stephanie	Court Attorney, Central Staff
Kaiser, Warren	Senior PC Analyst
Keiter, Owen	Law Clerk to Judge Rivera
Kenny, Krysten	Senior Principal Law Clerk to Judge Stein
Kimball-Stanley, David C.*	Law Clerk to Judge Wilson
Kong, Yongjun*	Principal Custodial Aide
Lane, Brian C.	Senior Court Building Guard

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## Nonjudicial Staff

LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
Lazarus, Benjamin	Law Clerk to Judge Wilson
LeBow, Matthew	Deputy Chief Security Attendant
LeCours, Lisa A.	Executive Assistant to Chief Judge DiFiore
Levin, Justin	Senior Principal Law Clerk to Judge Feinman
Logarajah, Shiva H.*	Law Clerk to Judge Garcia
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Chief Motion Clerk
Maller-Stein, Rebecca	Senior Law Clerk to Judge Feinman
Maniscalco, Stephen	Law Clerk to Judge Feinman
Manring, Gregory	Law Clerk to Judge Garcia
Mason, Marissa K.	Principal Law Librarian
Mayo, Michael J.	Building Manager
McGlothlin, William	Assistant Law Clerk to Judge Stein
Molho, Graham	Court Attorney, Central Staff
Moon, Chloe	Law Clerk to Judge Wilson
McDonald, Abel*	Law Clerk to Judge Rivera
McLaughlin, Tess M.*	Law Clerk to Judge Garcia
Minniefield, Matthew E.*	Senior Court Attorney, Central Staff
Moore, Travis R.	Senior Security Attendant
Muller, Joseph J.	Senior Security Attendant
Mulyca, Jonathan A.	Court Analyst
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore
Ohanian, Edward J.	Assistant Deputy Clerk
Oken, Lindsey	Principal Law Clerk to Judge Garcia
O'Rourke, Joseph C.	Senior 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	Custodial Aide
Riegel, Joshua	Law Clerk to Judge Rivera
Rodriguez, Steven	Senior Court Building Guard

\* As of January 1, 2020, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Nonjudicial Staff

Roe, Jennifer L.	Senior Court Building Guard
Ross-Carroll, Amanda	Director Court of Appeals Management & Operations
Rutbeck-Goldman, Ariela	Senior Court Attorney, Central Staff
Schickler, Carmiel	Law Clerk to Judge Garcia
Schwartzman, Nina	Court Attorney, Central Staff
Shain, Aliya	Senior Court Attorney, Central Staff
Sherwin, Stephen P.	Deputy Chief Court Attorney
Shevlin, Denise C.	Senior Security Attendant
Skinner, Erin S.	Court Attorney, Central Staff
Somerville, Robert	Senior Court Building Guard
Spencer, Gary H.	Public Information Officer
Tolon, Elizabeth	Assistant Law Clerk to Judge Garcia
Torres, Samuel	Senior Security Attendant
VanDeloo, James F.	Deputy Building Superintendent
Vogele, Jessica*	Senior Court Attorney, Central Staff
Waithe, Nelvon H.	Senior Court Building Guard
Warenchak, Andrew R.	Principal Custodial Aide
Warren, Melisande H. Johnson*	Senior Court Attorney, Central Staff
Webley, Alec*	Law Clerk to Judge Wilson
Welch, Joseph H.	Court Analyst
Welch, Mary K.	Secretary to Judge Fahey
Wheelock, Kathryn	Law Clerk to Chief Judge DiFiore
Wilkerson, Elizabeth	Law Clerk to Chief Judge DiFiore
Wilson, Mark	Senior Court Building Guard
Wilson, Michele	Senior Custodial Aide
Winkley, Nicholas D.	Court Attorney, Central Staff
Wood, Margaret N.	Assistant Deputy Clerk
Yalamas, George C.	Chief Security Attendant

\* As of January 1, 2020, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

## Personnel Changes

<b>APPOINTMENTS</b>	
Chaudhry, Zainab	Principal Court Attorney
Clark, Judith A.	Court Analyst
Conner, Angela	Senior Custodial Aide
Delgosha, Anita	Court Attorney, Central Staff
Desnoyers, Kelli	Principal Stenographer
Ford, Catherine	Law Clerk to Judge Wilson
Garnes, Lisa	Assistant Court Analyst
Gersztoff, Stephen	Senior Law Librarian
Gyori, Elizabeth	Law Clerk to Judge Rivera
Hartnagle, Anthony	Senior Custodial Aide
Jurkowski, Stephanie	Court Attorney, Central Staff
Keiter, Owen	Law Clerk to Judge Rivera
Lazarus, Benjamin	Law Clerk to Judge Wilson
Maniscalco, Stephen	Law Clerk to Judge Feinman
Manring, Gregory	Law Clerk to Judge Garcia
McGlothlin, William	Assistant Law Clerk to Judge Stein
Molho, Graham	Court Attorney, Central Staff
Moon, Chloe	Law Clerk to Judge Wilson
Riegel, Joshua	Law Clerk to Judge Rivera
Schickler, Carmiel	Assistant Law Clerk to Judge Garcia
Schwartzman, Nina	Court Attorney, Central Staff
Skinner, Erin S.	Court Attorney, Central Staff
Tolon, Elizabeth	Assistant Law Clerk to Judge Garcia
Wheelock, Kathryn	Law Clerk to Chief Judge DiFiore
Winkley, Nicholas D.	Court Attorney, Central Staff
<b>PROMOTIONS</b>	
Allen, James A.	Senior Court Attorney, Central Staff
Augustyn, Adam	Senior Court Attorney, Central Staff
Boden, Sean	Senior Court Attorney, Central Staff
Barile, Robert	HVAC Assistant Building Superintendent
D'Angelo, Nicholas	Senior Law Clerk to Chief Judge DiFiore
Garnes, Lisa	Assistant Court Analyst
Groschadl, Laura	Senior Principal Law Clerk to Judge Fahey
Hickey, Meaghan	Court Analyst
Hoffmann, Stephanie	Senior Court Attorney, Central Staff
Levin, Justin	Senior Principal Law Clerk to Judge Feinman

## Personnel Changes

<b>PROMOTIONS, continued</b>	
Maller-Stein, Rebecca	Senior Law Clerk to Judge Feinman
Mason, Marissa	Principal Law Librarian
McLaughlin, Tess M.	Law Clerk to Judge Garcia
Ohanian, Edward	Assistant Deputy Clerk
O'Rourke, Joseph C.	Senior Law Clerk to Judge Stein
Rodriguez, Steven	Senior Court Building Guard
Rutbeck-Goldman, Ariela	Senior Court Attorney, Central Staff
Schickler, Carmiel	Law Clerk to Judge Garcia
Shain, Aliya	Senior Court Attorney, Central Staff
VanDeloo, James F.	Deputy Building Superintendent
<b>COMPLETION OF CLERKSHIPS, RESIGNATIONS, RETIREMENTS AND TRANSFERS</b>	
Bailey, Anna	Senior Law Clerk to Judge Garcia
Benjamin, Jared	Law Clerk to Judge Feinman
Bessette, Bryan P.	Senior Court Attorney, Central Staff
Boden, Sean	Senior Court Attorney, Central Staff
Bucella, Alina	Senior Court Attorney, Central Staff
Chung, Rachel A.	Law Clerk to Judge Wilson
Claydon, Julianne	Chief Legal Reference Attorney
Conner, Angela	Senior Custodial Aide
D'Angelo, Nicholas	Senior Law Clerk to Chief Judge DiFiore
Dautel, Susan S.	Assistant Deputy Clerk
Desnoyers, Kelli	Principal Stenographer
Figueroa, Milagros	Principal Stenographer
Gannon, Rebecca	Law Clerk to Judge Rivera
Hartnagle, Mary C.	Senior Custodial Aide
Halsey, Trevor	Senior Court Attorney, Central Staff
Herd, Julia	Senior Principal Law Clerk to Judge Feinman
Kimball-Stanley, David C.	Law Clerk to Judge Wilson
Kong, Yongjun	Principal Custodial Aide
Logarajah, Shiva H.	Law Clerk to Judge Garcia
McDonald, Abel	Law Clerk to Judge Rivera
McLaughlin, Tess M.	Law Clerk to Judge Garcia
Minniefield, Matthew E.	Senior Court Attorney, Central Staff
Parr, Henry	Law Clerk to Judge Rivera
Vogele, Jessica	Senior Court Attorney, Central Staff
Warren, Melisande H. Johnson	Senior Court Attorney, Central Staff
Webley, Alec	Law Clerk to Judge Wilson

## Appeals Decided by Jurisdictional Predicate (2019)

Basis of Jurisdiction: All Appeals	Disposition					Total
	Affirmance	Reversal	Modification	Dismissal	Other*	
Appellate Division Dissents	11	5	1	1	0	18
Permission of Court of Appeals/Judge thereof	32	21	4	0	0	57
Permission of Appellate Division/Justice thereof	16	10	0	1	0	27
Constitutional Question	2	0	0	0	0	2
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	1	0	0	0	0	1
Other	0	0	0	0	3	3
<b>Totals</b>	<b>62</b>	<b>36</b>	<b>5</b>	<b>2</b>	<b>3</b>	<b>108</b>

\* 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 (2019)

Basis of Jurisdiction:						
Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division						
Dissents	11	5	1	1	0	18
Permission of Court of Appeals	11	12	2	0	0	25
Permission of Appellate Division	4	6	0	1	0	11
Constitutional Question	2	0	0	0	0	2
Stipulation for Judgment Absolute	0	0	0	0	0	0
CPLR 5601(d)	1	0	0	0	0	1
Other	0	0	0	0	3	3
<b>Totals</b>	<b>29</b>	<b>23</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>60</b>
Basis of Jurisdiction:						
Criminal Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Permission of Court of Appeals Judge	21	9	2	0	0	32
Permission of Appellate Division Justice	12	4	0	0	0	16
<b>Totals</b>	<b>33</b>	<b>13</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>48</b>

\* 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 (2015-2019)

All Appeals –					
Civil and Criminal	2015	2016	2017	2018	2019
Civil	55%	52%	56%	63%	56%
	(112 of 202)	(118 of 225)	(80 of 142)	(86 of 136)	(60 of 108)
Criminal	45%	48%	44%	37%	44%
	(90 of 202)	(107 of 225)	(62 of 142)	(50 of 136)	(48 of 108)
Civil Appeals –					
Type of Disposition					
	2015	2016	2017	2018	2019
Affirmed	44%	54%	47%	58%	48%
Reversed	33%	30%	33%	30%	38%
Modified	10%	7%	10%	7%	5%
Dismissed	1%	1%	1%	0%	3%
Other*	12%	8%	9%	5%	5%
Criminal Appeals –					
Type of Disposition					
	2015	2016	2017	2018	2019
Affirmed	63%	67%	63%	62%	69%
Reversed	31%	28%	34%	38%	27%
Modified	3%	3%	1.5%	0%	4%
Dismissed	2%	2%	1.5%	0%	0%
Other*	1%	0%	0%	0%	0%

\* E.g., Judicial conduct matters; Rule 500.27 certifications.

## Civil Appeals Decided by Jurisdictional Predicate (2015-2019)

	2015	2016	2017	2018	2019
Appellate Division Dissents	8% (9 of 112)	12% (14 of 118)	21% (17 of 80)	17% (15 of 86)	30% (18 of 60)
Permission of Court of Appeals	46% (51 of 112)	45% (54 of 118)	30% (24 of 80)	36% (31 of 86)	42% (25 of 60)
Permission of Appellate Division	29% (33 of 112)	27% (32 of 118)	33% (26 of 80)	37% (32 of 86)	18% (11 of 60)
Constitutional Question	4% (5 of 112)	6% (7 of 118)	5% (4 of 80)	2.5% (2 of 86)	3% (2 of 60)
Stipulation for Judgment Absolute	0% (0 of 112)	0% (0 of 118)	1% (1 of 80)	0% (0 of 86)	0% (0 of 60)
CPLR 5601(d)	3% (3 of 112)	1% (1 of 118)	1% (1 of 80)	2.5% (2 of 86)	2% (1 of 60)
Supreme Court Remand	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)	0% (0 of 60)
Judiciary Law § 44*	2% (2 of 112)	2% (2 of 118)	1% (1 of 80)	2.5% (2 of 86)	0% (0 of 60)
Certified Question (Rule 500.27)**	8% (9 of 112)	7% (8 of 118)	8% (6 of 80)	2.5% (2 of 86)	5% (3 of 60)
Other	0% (0 of 112)	0% (0 of 118)	0% (0 of 80)	0% (0 of 86)	0% (0 of 60)

\* Includes Judicial conduct matters.

\*\* The 2015 to 2016 numbers include decisions accepting certifications.

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## Criminal Appeals Decided by Jurisdictional Predicate (2015-2019)

	2015	2016	2017	2018	2019
<b>Permission of Court of Appeals Judge</b>	81% (73 of 90)	75% (80 of 107)	70% (43 of 62)	60% (30 of 50)	67% (32 of 48)
<b>Permission of Appellate Division Justice</b>	19% (17 of 90)	25% (27 of 107)	30% (19 of 62)	40% (20 of 50)	33% (16 of 48)

## Motions (2015-2019)

	2015	2016	2017	2018	2019
Motions Submitted for Calendar Year	1395	1183	1237	1238	1182
Motions Decided for Calendar Year*	1378	1232	1196	1180	1096
Motions for Leave to Appeal	1051	910	920	926	843
Granted	57	17	38	31	18
Denied	750	689	718	674	640
Dismissed	237	199	164	221	184
Withdrawn	7	5	6	4	1
Motions to Dismiss Appeals	13	4	6	3	6
Granted	4	3	2	1	2
Denied	9	1	4	2	4
Dismissed	0	0	0	0	0
Withdrawn	0	0	0	0	0
Sua Sponte and Court's Own Motion Dismissals	84	96	94	101	118
Total Dismissals of Appeals	88	99	96	102	120
Motions for Reargument of Appeal	27	29	24	27	24
Granted	0	0	0	0	0
Motions for Reargument of Motion	61	72	57	59	68
Granted	0	0	0	1	0
Motions for Assignment of Counsel	70	46	36	29	27
Granted	70	46	36	29	27
Legal Aid	15	5	4	6	7
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	219	184	238	244	194
Granted	6	3	6	5	6
Denied	0	1	0	1	0
Dismissed	213	180	232	238	188

\* 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 (2015-2019)

	2015	2016	2017	2018	2019
Motions for Amicus Curiae Relief	122	117	112	92	79
Granted	118	114	106	89	75
Motions to Waive Rule Compliance	1	0	0	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	6	8	6	5	1
Granted	6	7	3	4	0
Motions for Leave to Intervene	0	0	1	0	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	36	29	32	39	29
Granted	2	1	0	1	1
Denied	3	2	1	2	2
Dismissed	31	26	31	36	26
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	13	22	16	17	18
Granted	12	21	16	17	18
Motions to Strike	3	5	3	0	4
Granted	1	1	1	0	3
Motions to Amend Remittitur	0	0	0	0	0
Granted	0	0	0	0	0
Motions for Miscellaneous Relief	20	30	21	23	34
Granted	2	2	3	2	1
Denied	10	17	7	2	24
Dismissed	8	11	11	19	9
Withdrawn	0	0	0	0	0

## Criminal Leave Applications (2015-2019)

	2015	2016	2017	2018	2019
<b>Total Applications Assigned</b>	2338	2211	2275	2406	2408
<b>Total Applications Decided*</b>	2201	2497	2244	2319	2493
Granted	91	33	25	36	34
Denied	1868	2230	2042	2128	2265
Dismissed	231	221	172	153	188
Withdrawn	11	13	5	2	6
<b>Total People's Applications</b>	51	66	65	49	75
Granted	7	10	7	4	15
Denied	35	48	52	42	52
Dismissed	2	2	5	2	3
Withdrawn	7	6	1	1	5
<b>Average Number of Applications Assigned to Each Judge**</b>	391	358	374	344	344
<b>Average Number of Grants for Each Judge</b>	13	5	4	5	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.

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## Sua Sponte Dismissal (SSD) Rule 500.10 Review (2015-2019)

	2015	2016	2017	2018	2019
Total number of inquiry letters sent	77	57	80	80	80
Withdrawn on stipulation	1	1	0	4	0
Dismissed by Court	44	44	49	50	56
Transferred to Appellate Division Sua Sponte	3	1	4	3	6
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)	5	3	8	6	2
Jurisdiction retained – appeals decided	0	1	2	0	0
Inquiries pending at year's end	25	7	17	17	16

## Office for Professional Matters (2015-2019)

	2015	2016	2017	2018	2019
Attorneys Admitted*	8,868	8,423	8,203	8,750	8,537
Registered In-House Counsel	94	135	162	133	141
Certificates of Admission	94	123	98	133	131
Clerkship Certificates	0	6	2	3	4
Petitions for Waiver**	334	314	270	259	322
Written Inquiries	72	98	75	78	98
Disciplinary Orders***	557	611	3,551	471	763
Name Change Orders	842	850	981	917	965

\* 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 2016, 2017, and 2019 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (see Judiciary Law § 468-a).



