2022

ANNUAL REPORT OF THE CLERK OF THE COURT OF APPEALS

2022

Annual Report of the Clerk of the Court of Appeals

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Clerk of the Court

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Honorable Anthony Cannataro

Acting Chief Judge

Foreword

March 2023

I am honored to contribute to the Court of Appeals' Annual Report for 2022 by recounting some of the Court's most memorable moments from the past year. We kicked off 2022 by welcoming Associate Judge Shirley Troutman in January. A few months later, the Court undertook an impressive feat—hosting its first-ever triple investiture. Although Judge Madeline Singas and I joined the Court of Appeals in 2021, COVID-19 public health precautions prevented the Court from holding its traditional investiture ceremonies that year. By April 2022, we were able to come together—with appropriate safety protocols in place—to honor the three newest members of the bench. The Court was also pleased to host its first in-person Law Day event since 2019.

We said farewell to John P. Asiello, Chief Clerk and Legal Counsel, at the end of April. John's strong work ethic and quiet brilliance improved the work of the Court for an outstanding 40 years, and we congratulate him on his well-deserved retirement. Upon John's departure, the Court welcomed Lisa LeCours to her new role as Chief Clerk. With her incredible intellect and more than 22 years of invaluable experience in Chambers and in the Consultation Clerk's Office, I have every confidence Lisa will be a superb Counsel and leader of the Court's nonjudicial personnel.

Chief Judge DiFiore retired from the Court in the summer of 2022. We owe her many thanks for her exemplary leadership of the court system for more than six years, including through the challenges of the unprecedented COVID-19 pandemic. It has been an incredible privilege to serve as Acting Chief Judge while we await the appointment and confirmation of our next Chief Judge.

Reconvening in September, the Court observed two noteworthy occasions in court history. We commemorated the 175th Anniversary of the first time the Court of Appeals convened to hear oral arguments in 1847. To honor this milestone, the Court compiled the last 25 years of its history in Volume II of its "There Shall Be A Court of Appeals" publication and hung from the rotunda its magnificent banner originally commissioned in 1997 to commemorate the Court's 150th Anniversary. The Court also held oral arguments in Johnstown to mark the 250th Anniversary of the Fulton County Courthouse. Built in 1772, this esteemed landmark is the oldest functioning courthouse in the State; was the professional home of Daniel Cady, ex officio Judge of the Court of Appeals; and was frequented by pioneering women's rights leader Elizabeth Cady Stanton in her formative years.

Throughout this momentous year, the Court carried on its daily work of deciding motions, hearing oral arguments, and resolving appeals in a timely and principled manner. Compared to 2021, the Court reduced by approximately two months the average time between the filing of an appeal and oral argument and the time between readiness and calendaring.

Of course, our work is made possible by the exceptional support of the Court's legal and professional staff. On behalf of my colleagues, I extend my appreciation and gratitude to everyone for their dedication and hard work.

2022
Annual Report of the Clerk of the Court to the Judges of the Court of Appeals of the State of New York

Introduction

2022 was a year of transition at the Court of Appeals as we saw leadership changes at every level, including the retirement of Chief Judge Janet DiFiore effective August 31, 2022. Chief Judge DiFiore's tenure is marked by her many administrative accomplishments, including the Excellence Initiative, the Equal Justice Review to combat racism, bias and disparate treatment in the court system, and her exemplary navigation of the unprecedented challenges presented by a once in a century pandemic. Through it all, Chief Judge DiFiore led the Court of Appeals with fidelity to the core principles of the institution, dedication to the progression of the common law in a changing society and an unwavering commitment to upholding the rule of law and the State and Federal constitutions. As I write this introduction, the position of Chief Judge has not been filled. We are grateful for the steady leadership of Acting Chief Judge Anthony Cannataro who, drawing upon his significant prior experience as an Administrative Judge, has provided invaluable guidance and support to his colleagues and Court of Appeals staff.

Our Chief Clerk and Legal Counsel of seven years, John Asiello, retired after 46 years of service at the Court of Appeals. John's contribution to the Court—in various positions in the Clerk's office and Consultation Clerk department—cannot be overstated. He participated in or presided over countless innovations in Clerk's office functions, including most recently the accelerated development of an electronic companion filing upload portal for motions, criminal leave applications and Rule 500.10 responses, which was integral to virtual operations during the pandemic and has become an invaluable tool for litigants and staff. With his keen intellect and wisdom, John has left an indelible mark on this institution.

The Court also bid farewell to our longstanding Building Superintendent Michael Mayo, who retired after 26 years in the maintenance department. Mike will be remembered for his meticulous eye for detail and devotion to historic Court of Appeals Hall and our iconic H.H. Richardson Courtroom. Fortunately, the baton has been passed to Jim VanDeloo, a veteran of the maintenance department whose diligence and vision will serve us well as we safeguard these historic landmarks while embracing facility improvements that advance our goal of providing excellent service to litigants, attorneys, and the public. Senior Technical Manager Bryan Lawrence also retired after 26 years. The dramatic evolution in our use of technology during Bryan's tenure at the Court—in large part due to his leadership—will likely never be replicated. We are grateful to Jay Kemprowski, who has continued Bryan's legacy,

ensuring that the IT department provides superb assistance to our Judges and staff while moving the Court forward in the digital age. To top it off, we welcomed a new Director of Management and Operations, Nala Woodard, who has already proved himself an invaluable asset to this institution.

Throughout these transitions, the Court continued its gradual emergence from the operational limitations wrought by the pandemic. As noted by Acting Chief Judge Cannataro, in May, the Court held the first in-person Law Day ceremony since 2019, as well as an unprecedented triple investiture ceremony—albeit with limited audiences and social distancing. In September, community conditions were such that masking and social distancing requirements could be lifted, permitting the Court to return to its traditional Courtroom configuration just in time to celebrate the 175th Anniversary of the first time the Court of Appeals, a creation of the 1846 Constitution, convened for oral argument on September 7, 1847. To commemorate that event, a committee comprised primarily of Court staff prepared a booklet chronicling significant events at the Court over the past 25 years, an update to the 1997 "There Shall be a Court of Appeals" publication celebrating the Court's 150th anniversary. As a further sign of our return to normal operations, the Court traveled to Johnstown to hear oral argument at the historic Fulton County Courthouse in honor of the Courthouse's 250th Anniversary. Court system leaders, members of the public and—to our great delight—high school students from the surrounding area joined our celebration of the memorable occasion. It was exhilarating to once again bring the work of the Court directly to New Yorkers.

Although 2022 was a year of significant transition, what should be emphasized is that which has not changed. Over the past 175 years, the Court of Appeals has repeatedly demonstrated its institutional resilience. Despite changes in personnel and the bench and, most recently, in the wake of significant operational challenges associated with the global health crisis, the essential work of the Court—clarifying and advancing the law of New York for the benefit of all its residents—has continued without interruption. In addition to our Judges, for this I sincerely thank the dedicated staff of the Court of Appeals who, each and every day, demonstrate their consummate professionalism and unparalleled commitment to the Court's mission.

The format of this year's Annual Report, divided into five parts, follows the format of the 2021 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 2022. The third section highlights selected decisions of 2022. The fourth part covers some of the Court's 2022 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. Civil motions for leave to appeal are "granted upon the approval of two judges of the [C]ourt of [A]ppeals" (CPLR 5602[a]). 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 2022, the Court and its Judges disposed of 2,522 matters, including 91 appeals,* 957 motions, and 1,474 criminal leave applications. A detailed analysis of the Court's work follows.

* This number 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 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 2022, 50 appeals were subject to Rule 500.10 inquiries. Of those, 35 appeals were dismissed *sua sponte* (SSD) or transferred to the Appellate Division. Eleven 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 2022, 67 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; for this reason, 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. The parties' submissions are available through the Court's Public Access and Search System (Court-PASS), and Court Rules permit amicus curiae participation.

Of the 179 appeals filed in 2022, 26 (14.5%) were initially selected to receive SSM consideration, a slight decrease from the percentage so selected in 2021 (17.6%). Twelve (12) were civil matters and 14 were criminal matters. Four (4) of the appeals initially selected to receive SSM consideration in 2022 were directed to full briefing and oral argument. Of the 91 appeals decided in 2022 on the normal course or on the SSM procedure, 24 (26%) were decided upon SSM review (31% were so decided in 2021). Thirteen (13) were civil matters and 11 were criminal matters. Two appeals that were initially selected for SSM treatment, and then placed on the normal course of full briefing and argument, were thereafter withdrawn. Nine (9) matters remained pending on SSM review at the end of 2022 (4 civil and 5 criminal).

Promptness in Deciding Appeals

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2022, the average time from argument to disposition of a normal course appeal was 34 days; for all appeals, the average time from argument or submission to disposition was 26 days. In 2022, the average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 15 months, compared to 17 months in 2021. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 9 months, compared to 11 months in 2021.

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 16.5 months, compared to 18 months in 2021. 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 5 months, the same as in 2021.

The Court's 2022 Docket

Filings

One hundred seventy nine (179) notices of appeal and orders granting leave to appeal were filed in 2022 (187 were filed in 2021). One hundred thirty four (134) filings were civil matters (compared to 151 in 2021), and 45 were criminal matters (compared to 36 in 2021). The Appellate Division Departments issued 18 of the orders granting leave to appeal filed in 2022 (8 were civil, 10 were criminal).

Motion filings significantly decreased in 2022. During the year, 903 motions were submitted to the Court, compared to the 1,030 submitted in 2021. Criminal leave application filings also decreased significantly in 2022. In 2022, 1,489 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 1,659 assigned in 2021. On average, each Judge was assigned 213 such applications during the year.

Dispositions

Appeals and Writings

In 2022, the Court decided 91 appeals (60 civil and 31 criminal), compared to 81 appeals in 2021 (37 civil and 44 criminal). Fifty (50) of the 91 appeals were decided by signed opinions, 32 by memoranda, and 9 by decision list entries. Forty (40) dissenting opinions and 2 concurring opinions were issued.

Motions

The Court decided 957 motions in 2022, slightly fewer than the 988 decided in 2021. Of the 765 motions for leave to appeal decided in 2022, 3.5% were granted, 67.7% were denied, 28.0% were dismissed, and less than 1% were withdrawn. Twenty-seven motions for leave to appeal were granted in 2022. 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 95 days, while the average period of time from return date to disposition for all motions was 83 days.

CPL 460.20 Applications

Individual Judges of the Court granted 33 of the 1,474 decided applications for leave to appeal in criminal cases decided in 2022. Seventy-nine (79) applications were dismissed for lack of jurisdiction and nine (9) were withdrawn. Five (5) of the forty-five applications filed by the People were granted. Of the 52 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 2022, on average, 65 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 (Commission) 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 (*see* Judiciary Law § 44 [8]). Two judges were suspended by the Court in 2022 based on determinations of the Commission recommending that the judges be removed from office. The Court dismissed one request for review of the Commission's determination based on the judge's failure to timely file papers and the Court thereafter removed that judge. One request for review remained pending at year's end.

In 2022, the Court considered the continuation of a prior order that suspended one judge, with pay, based on the judge being charged with a felony; the Court determined that the suspension should continue, without pay, based on that judge being convicted of a felony. The Court subsequently terminated the suspension based on the judge's resignation and agreement not to seek judicial office in the future.

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. The Court accepted three certified questions and answered two certified questions in 2022. At the end of 2022, three certified questions remained pending.

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

In 2022, the Court decided 582 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a significant increase from the 448 petitions decided in 2021. Petitions typically are decided six to eight weeks after submission.

Court Rules

In response to the global health pandemic, the Court temporarily waived certain bar exam eligibility requirements for J.D. and LL.M. candidates. Also, the Court amended its Rules for Temporary Practice of Law (Part 523), effective December 7, 2022. The amendment relates to lawyers who are not admitted in New York but work remotely from their homes in New York State.

Administrative Functions and Accomplishments

Court of Appeals—175th Anniversary

To commemorate the 175th anniversary of the first oral argument of the Court of Appeals, Court Staff produced an updated publication, "There Shall Be a Court of Appeals, Volume II: 1997-2022." The comprehensive first volume of the publication "There Shall Be a Court of Appeals" was produced to commemorate the Court's 150th anniversary. The 175th anniversary update focused on the past 25 years in the Court's history, including documenting the Judges and Clerks of the Court, noteworthy decisions, the events of September 11, 2001, the 2002-2004 restoration of Court of Appeals Hall, the Court hearing oral argument at locations throughout the State, and the Court's operations during the COVID-19 Pandemic.

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, Secretary to the Court of Appeals and several administrative assistants 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, including digital filings; 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. Clerical Assistants deliver mail in-house and maintain the Court's records room, tracking and distributing all briefs, records, exhibits, and original court files.

Information Technology

The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of a Senior Technical Manager, assisted by an Associate 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 4,100 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.courtpass.nycourts.gov. Over 1,138,156 visits were recorded to the main internet site in 2022, averaging 3,118 visits per day. The Court-PASS and Companion Filing Upload Portal sites recorded 108,929 visits in 2022.

Court of Appeals Website

The Court's comprehensive website posts information about the Court, its Judges, and its history; summaries of pending cases and news items; and 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. 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.

Companion Filing Upload Portal for Motions, Criminal Leave Applications and Rule 500.10 Responses (the Portal)

The Companion Filing Upload Portal for Motions, Criminal Leave Applications and Rule 500.10 Responses (the Portal) is used to upload companion digital submissions of motions, criminal leave applications and Rule 500.10 Jurisdictional Responses. Instructions for uploading companion digital submissions are provided in an instructional letter following the filing of a motion, criminal leave application or appeal subject to Rule 500.10 review.

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. An administrative assistant 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 2021 through December 2022, Central Staff completed 750 motion reports and five 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 2022 were graduates of Albany, CUNY, Northeastern University, Pace University, Syracuse University, University at Buffalo, and Vermont law schools.

Library

The Principal Law Librarian and Senior Law Librarian provide legal and general research and reference services to the Judges of the Court, their law clerks, and the Clerk's Office staff. The Court has subscriptions to the major legal research databases, and the Library continues to expand the in-house databases that provide full-text access to the Court's internal reports, bill jackets, and other research materials.

In 2022, the librarians participated on a committee to produce an updated publication, "There Shall Be a Court of Appeals, Volume II: 1997-2022" to commemorate the 175th anniversary of the first oral argument of the Court of Appeals. In further celebration of this anniversary, the librarians created display cases and boards for display in the anteroom to the Courtroom.

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 offered by the Court or its auxiliary agencies.

In 2022, the Committee provided 8 programs totaling 12 credit hours. Attorneys also are able to access pre-recorded CLE programs housed on an internal Court database. In addition, attorneys were provided with information on CLE programs offered by the Appellate Division, Third Department, the New York State Judicial Institute and the Historical Society of the New York Courts. These programs accounted for 9.5 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 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 the New York State Law Reporting Bureau was performed within the 2022-23 fiscal year budget appropriation of $1.5 million for non-personal services costs, including in-house maintenance of Court of Appeals Hall.

Budget Requests

The total request for fiscal year 2023-24 for the Court and Law Reporting Bureau is $1.5 million for non-personal services.

The budget request for fiscal year 2023-24 illustrates the Court's diligent attempt to perform its functions and those of the New York State Law Reporting Bureau economically and efficiently. The Court will continue to maximize opportunities for savings.

Revenues

In calendar year 2022, the Court reported filing fees for civil appeals totaling $13,230. Also, the Court reported filing fees for motions totaling $23,047. 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 ($950.68). For calendar year 2022, revenue collections totaled $37,227.68.

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 in particular Deputy Clerk Heather Davis, who, in addition to discharging her numerous other duties, compiled and edited the report, and mention also Julia Bielawski, Ann Byer, Cynthia Byrne, Lisa Drury, Margery Corbin Eddy, Hope Engel, Krysten Kenny, Rachael MacVean, Edward Ohanian, Stephen Sherwin, Margaret Wood, and Nala Woodard.

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.

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.

Year in Review: Decisions

Below is a summary of significant 2022 decisions, reflecting the range of constitutional, statutory, regulatory and common law issues decided by the Court each year.

ADMINISTRATIVE LAW

Matter of Independent Ins. Agents & Brokers of N.Y., Inc. v New York State Dept. of Fin. Servs. (39 NY3d 56)

This case presented several challenges to the validity of Insurance Regulation 187, which implemented the "best interest of the consumer" rule for insurance agent and broker recommendations related to life insurance and annuity transactions. The Court held that the regulation was not unconstitutionally vague on its face because it gave sufficient notice of the conduct required for insurance agents and brokers to discharge their duties under the regulation, noting that the regulation used typical legal standards and terminology to define the terms "recommendation" and "suitability information," and that the term "best interest" required brokers and agents to reasonably recommend a suitable policy that will benefit the consumer, while refraining from considering their own financial gain. The Court also held that the regulation was not arbitrary or capricious, and that the New York State Department of Financial Services did not exceed its rulemaking authority in promulgating the amended regulation or violate the State Administrative Procedure Act.

CHILDREN—CUSTODY

Matter of D.L v S.B. (39 NY3d 81)

Out-of-state father's petition for custody of his child, who had been placed in foster care in New York, was dismissed based on father's failure to first obtain approval under the Interstate Compact on the Placement of Children (ICPC). The Court held that the ICPC does not, by its plain language, apply to out-of-state, noncustodial parents seeking custody of their children, and that New York's Family Court Act contains other effective means to ensure the safety of a child before awarding custody to an out-of-state parent.

CIVIL PROCEDURE

34-06 73, LLC v Seneca Ins. Co. (39 NY3d 44)

The Court considered whether plaintiffs' initial pleading alleging breach of contract provided sufficient notice of an otherwise untimely reformation claim under CPLR 203 (f). Defendant insured plaintiffs' real property under a written policy which contained an endorsement requiring that plaintiffs maintain automatic sprinkler systems within the insured premises and warning that defendant would not cover fire damage if plaintiffs failed to maintain working sprinklers. A fire damaged the premises and defendant denied coverage on the ground that plaintiffs failed to maintain working sprinklers. Plaintiffs sued defendant for breach of contract, alleging that they had complied "with all of the conditions precedent and subsequent pursuant to the terms of the subject policy." Years later at trial, plaintiffs argued for the first time that the policy did not reflect the parties' agreement and, after resting, moved to amend the complaint to include a reformation claim. In response to defendant's argument that the claim was time-barred, plaintiffs asserted that the reformation claim related back to the original complaint under CPLR 203 (f),

which provides that "[a] claim asserted in an amended pleading is deemed to have been interposed at the time the claims in the original pleading were interposed, 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." The Court held that plaintiffs' reformation claim was time-barred because the original pleading claiming breach of contract asserted total compliance with the agreement and disclaimed any challenge to the policy's terms, and thus failed to provide notice of the transactions or occurrences of a reformation claim.

Batavia Townhouses, Ltd. v Council of Churches Hous. Dev. Fund Co., Inc. (38 NY3d 467)

This appeal addressed which section of article 17 of the General Obligations Law governs the tolling or revival of the statute of limitations period in an action, pursuant to RPAPL 1501 (4), to cancel a mortgage where the limitations period for commencing a foreclosure action has expired. General Obligations Law § 17-101 allows for a borrower's written and signed "acknowledgment" of a contractual obligation to toll or revive the statute of limitations for a civil action by the lender, except in "an action for the recovery of real property." In contrast, General Obligations Law § 17-105 (1) requires that the mortgage debtor made a "promise to pay a mortgage debt" through the "express terms" of a signed writing in order to toll or revive the mortgage lender's limitations period for the "commencement of an action to foreclose a mortgage of real property." After reviewing the statutory language, framework, and legislative history of article 17, the Court determined that the legislative intent behind section 17-105 (1) was to require more express actions by a mortgage debtor to toll or revive the statute of limitations so as to prevent "[s]erious impairment of titles to land and hindrance of real property financing." Accordingly, the Court held that, in an action to cancel a mortgage under RPAPL 1501 (4), only section 17-105 (1) applies when determining whether the limitations period for commencing a foreclosure action was tolled or revived. The Court clarified that *Petito v Piffath* (85 NY2d 1 [1994]) is not to the contrary.

CIVIL SERVICE

Matter of Borelli v City of Yonkers (39 NY3d 138)

Thirty-nine former firefighters, who were permanently disabled and retired due to work-related injuries, asserted that the City of Yonkers was obligated to pay them certain benefits under General Municipal Law § 207-a (2), which required the City of Yonkers to pay the difference between the retirees' accidental disability pension benefits and their "regular salary or wages." The Court held that the retirees were entitled to the holiday and check-in pay but not the night shift differential due to the structure of their collective bargaining agreement. Because the check-in pay and holiday pay were guaranteed to all comparably ranked, active-duty firefighters who performed their regular job duties, the retirees were able to collect those benefits. By contrast, because the retirees did not establish that all comparably ranked firefighters would be entitled to collect the night pay for performing their regular job duties, General Municipal Law § 207-a (2) did not obligate the City of Yonkers to pay the night pay differential to plaintiffs.

Donohue v Cuomo (38 NY3d 1)

In *Kolbe v Tibbetts* (22 NY3d 344 [2013]), the Court left open whether a New York court should infer vesting of retiree health insurance rights when construing a collective bargaining agreement (*see* 22 NY3d 344, 354 [2013]). In this federal action, the Court declined to adopt such inferences in response to questions certified by the Second Circuit, either in favor of vested rights or in favor of determining that ambiguity exists concerning that issue. Such inferences conflict with New York's established contract law, which focuses on the parties' chosen language, by injecting considerations untethered to the words that the parties used in their agreement.

Matter of City of Long Beach v New York State Pub. Empl. Relations Bd. (39 NY3d 17)

A professional firefighter for petitioner City of Long Beach sustained injuries in the line of duty that were determined to be compensable under the Workers' Compensation Law. The firefighter was absent from work for almost a year when the City provided notification that it was evaluating whether to terminate the firefighter's employment, asserting that after a year-long absence, Civil Service Law § 71 did not bar termination. The City explained that, if the firefighter "dispute[d] this potential termination," the City would provide the firefighter with an opportunity to be heard. After the City refused the union's demand to negotiate the procedures for termination of members covered by Civil Service Law § 71, the union filed an improper practice charge with the Public Employment Relations Board. After reviewing the statutory language and legislative history of section 71, the Court determined that there was no plain and clear statutory directive or legislative intent that overcame the Taylor Law's presumption in favor of mandatory bargaining. Accordingly, the Court held that, although it was undisputed that the City's right to terminate is not a subject of mandatory negotiation, the City must negotiate the procedures necessary to effectuate that right.

COMMERCIAL LAW

Worthy Lending LLC v New Style Contrs., Inc. (39 NY3d 99)

Worthy Lending LLC brought suit to enforce its security interest in the accounts receivable of Checkmate Communications LLC. A promissory note between Worthy and Checkmate explicitly granted Worthy the right to notify and instruct account debtors (including one of Checkmate's customers, defendant New Style Contractors) to pay what the debtors owed to Checkmate directly to Worthy, even before a default. Worthy so notified and instructed New Style; despite that instruction, New Style remitted payment to Checkmate, not Worthy. New Style contended that under New York's Uniform Commercial Code § 9-406 an assignment and a security interest are treated differently and, because Worthy only held the latter, it was not entitled to payment. The Court held that an assignment and a security interest are treated the same for purposes of UCC § 9-406.

CONSTITUTIONAL LAW

Delgado v State of New York (_NY3d_, 2022 NY Slip Op 06538)

In this declaratory judgment action, plaintiffs challenged the constitutionality of part HHH of chapter 59 of the Laws of 2018, in which the Legislature tasked the

Committee on Legislative and Executive Compensation with determining whether the compensation of the members of the Legislature and certain other state officials should be increased. The statute further provided that the Committee's recommendation with respect to any salary changes would become effective unless modified or abrogated by statute. The Court held that plaintiffs failed to overcome the presumption of constitutionality afforded to the enabling act as a duly enacted state statute. The Court explained that the statute was a valid assignment by law of new powers and functions to the Committee under article V, § 3 of the New York Constitution because the Committee was created for a discrete purpose, and the Legislature did not delegate the power to make the law or entirely divest the executive branch of supervision but set standards on the exercise of the Committee's authority through appropriate guidance sufficient to prevent the Committee from intruding on the Legislature's law-making function.

Matter of Harkenrider v Hochul (38 NY3d 494)

The Court interpreted certain 2014 amendments to the New York State Constitution that require the creation of electoral maps by an Independent Redistricting Commission (IRC) and declare that "[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties" (NY Const, art III, § 4 [c] [5]). The Court held that the record supported that the 2022 congressional district lines were drawn with an unconstitutional partisan intent. Further, the Court concluded that the constitutional text and legislative record established that the IRC's fulfillment of its constitutional obligations was intended to operate as a necessary precondition to, and limitation on, the legislature's exercise of its discretion in redistricting. Because the IRC failed to follow the procedure prescribed by the Constitution, the Court held that judicial oversight was required to facilitate the expeditious drafting of new, constitutionally conforming maps for use in the 2022 congressional and state senate elections.

White v Cuomo (38 NY3d 209)

In this litigation challenging the constitutionality of Racing, Pari–Mutuel Wagering and Breeding Law Article 14—which authorized and regulated interactive fantasy sport contests—the Court upheld the challenged statutes and clarified that the prohibition on "gambling" in article I, § 9 of the New York Constitution does not encompass skill-based competitions in which participants who exercise substantial influence over the outcome of the contest are awarded predetermined fixed prizes by a neutral operator. As applied to article 14, the Court determined there was ample support for the legislature's conclusion that the interactive fantasy sport contests authorized are lawful skill-based competitions for prizes and, therefore, are not prohibited gambling activities.

CONTRACTS

Sage Sys., Inc. v Liss (39 NY3d 27)

Plaintiff sought attorney's fees incurred in defending an unsuccessful partnership dissolution action by defendant. Under the American rule, attorney's fees are incidents of litigation, and a prevailing party may not collect them from the loser unless authorized by agreement, statute, or court rule. The Court held that plaintiff was not entitled to recover attorney's fees, because

nothing in the partnership agreement's indemnification provision made unmistakably clear that the parties intended to permit recovery in an action between them on the contract. The indemnification provision was broad and did not explicitly state that the partners could recoup attorney's fees, nor was there any basis to infer the provision was limited to actions between the partners. The Court noted that, although parties must determine how best to articulate their agreements, the inclusion of clear language stating that the prevailing party is entitled to recover attorney's fees in an action between the parties on the contract would avoid potential litigation on the issue.

U.S. Bank N.A. v DLJ Mtge. Capital, Inc. (38 NY3d 169)

In this residential mortgage-backed securities litigation, the Court determined that a sole remedy repurchase protocol provision required plaintiff trustee to provide loan-specific pre-suit notice to invoke the sponsor's repurchase obligation and satisfy the contractual prerequisite to suit. The Court also rejected the trustee's reliance on post-suit disclosure to satisfy the repurchase protocol provision, concluding that no action may be validly commenced to recover in connection with a particular loan until the repurchase protocol has been invoked with respect to that loan, the cure period has expired, and the sponsor has failed to adhere to the contractually agreed-upon remedy for the breach.

CRIMINAL LAW

People v Burgos (38 NY3d 56)

Defendant was represented by an attorney who, unbeknownst to defendant, was suspended by the United States Court of Appeals, Second Circuit, from the practice of law before that court during the pendency of defendant's criminal case in New York state court. Two weeks after defendant was sentenced, the Appellate Division imposed reciprocal discipline on the attorney, suspending him from the practice of law in New York. Defendant moved to vacate the criminal judgment, contending that the suspension by the Second Circuit rendered the attorney constructively suspended in New York, and that the attorney's failure to disclose the Second Circuit's suspension to defendant deprived defendant of counsel of his choosing. The Court rejected both arguments, declining to hold that an attorney is constructively suspended in New York upon the imposition of foreign discipline before reciprocal disciplinary proceedings in New York are final, observing that the Second Circuit's order did not require the attorney to disclose the foreign discipline to defendant, and concluding that the attorney had provided meaningful representation.

People v Deverow (38 NY3d 157)

During defendant's murder trial, the trial court precluded several pieces of evidence offered by defendant in support of his justification defense. The Court held that the trial court erred in excluding as collateral the testimony of the sole eyewitness's girlfriend, who would have contradicted the eyewitness's account that he was with her until mere seconds before the shooting in question. The Court held that this evidence was probative of the eyewitness's ability to observe and recall details of the shooting. The Court further held that the trial court erred in excluding three 911 calls containing details that conflicted with the People's evidence,

concluding that the calls were contemporaneous with the shooting and sufficiently corroborated by independent evidence. The Court determined that these collective errors deprived defendant of his constitutional right to present a defense and were not harmless.

People v Hill (38 NY3d 460)

In a misdemeanor complaint, defendant was charged with criminal possession of a controlled substance in the seventh degree for allegedly possessing a synthetic cannabinoid. Public Health Law § 3306 (schedule I) (g) makes 10 synthetic cannabinoid substances schedule I controlled substances by listing their specific chemical designation, while referencing some trade or other names for the substances. The Court held that the misdemeanor complaint failed to establish reasonable cause to believe that defendant committed the crime as charged. The instrument's factual assertions gave no basis for concluding that the substance defendant possessed was an illegal synthetic cannabinoid listed in section 3306 (schedule I) (g), as opposed to one of the many synthetic cannabinoid substances that are not criminalized in the schedule.

People v Galindo (38 NY3d 199)

Defendant was charged with multiple Vehicle and Traffic Law offenses, including both misdemeanor counts and traffic infractions. After approximately a year and a half, defendant moved to dismiss the accusatory instrument on speedy trial grounds pursuant to CPL 30.30. The trial court denied the motion, holding that the statute did not apply to jointly charged traffic infractions and that the prosecution had not exceeded the statutory time limit applicable to misdemeanors. Defendant was thereafter convicted. During the pendency of defendant's appeal before the Appellate Term, the legislature amended CPL 30.30 to include 30.30 (1) (e), which states that "for the purposes of this subdivision, the term offense shall include vehicle and traffic law infractions." The Appellate Term granted defendant's motion to dismiss the accusatory instrument, including the traffic infractions, concluding that the amendment applied retroactively and that the prosecution had exceeded the statutory time limit to state its readiness for trial. The Court first held that the amendment demonstrates the legislature's intent that CPL 30.30 speedy trial limitations apply to all the counts of an accusatory instrument charging traffic infractions jointly with higher graded offenses for which the statute specifically enumerates time limits for trial readiness. However, the Court held that the amendment has only prospective effect because nothing in the text or history of the amendment suggests that the legislature intended it to apply retroactively.

People v Jimenez (39 NY3d 74)

Defendant was charged with various offenses arising from injuries to a small dog when defendant swung and hit the dog with a stick. Defendant testified before a grand jury that he was not afraid of the dog, mistakenly hit it, and felt bad about it. The issue before the Court was whether defendant was entitled to a justification defense under Penal Law § 35.05 (2)—commonly called the "choice of evils" defense—which renders ordinarily criminal conduct non-criminal when it is "necessary as an emergency measure" to avoid imminent harm. The Court held that defendant's testimony that he hit the dog

mistakenly confirmed that he did not make any choice to hit it at all, thus disentitling him to this justification defense.

People v Lagano (39 NY3d 108)

Defendant was a police officer who made several threatening statements over the phone to a former intimate partner, including a threat to shoot the partner's children and "firebomb" the partner's home. The Court held defendant's actions reflected a genuine threat, supporting a conviction of second-degree harassment. Under *People v Dietze* (75 NY2d 47 [1989]), a genuine threat is one that is serious, should reasonably have been taken to be serious, or was confirmed by other words or acts showing that it was more than a crude outburst. Looking to defendant's several escalating and specific threats, the use of an angry tone and profanities, the motive for the threats, and the fact that defendant was a police officer trained in the use of deadly force, the Court concluded that a rational factfinder could have found the elements of second-degree harassment beyond reasonable doubt. The Court clarified that a "genuine threat" is one that would appear genuine to a reasonable person under the totality of the circumstances.

People v Mitchell (38 NY3d 408)

Defendant was charged with fraudulent accosting in violation of Penal Law § 165.30 (1) after blocking a street corner and asking a passersby for money for charity, notwithstanding an intention to keep the money. Defendant waived prosecution by information and pleaded guilty to fraudulent accosting in violation of Penal Law § 165.30 (1). Rejecting defendant's argument that the accusatory instrument was facially insufficient because it did not include a physical approach and an element of aggressiveness or persistence, the Court held that fraudulent accosting does not require any aggressive or persistent approach and the accusatory instrument contained factual allegations sufficient to establish reasonable cause that defendant accosted the potential victims.

People v Murray (39 NY3d 10)

Defendant challenged the trial court's decision to reseat an alternate juror who had previously been discharged. Criminal Procedure Law 270.30 (1) provides a trial court with two options regarding alternate jurors after the jury retires to deliberate: it can discharge them upon the parties' consent or it may retain them and keep them separate from the deliberating jury. If, after the jury in a criminal trial has been sworn but before it has rendered a verdict, a trial court determines that a regular juror is unable to serve, is grossly unqualified, or has committed substantial misconduct, the court must discharge the juror and may replace such juror with an alternate, provided that the alternate is "available for service" (CPL 270.35 [1]). Where no alternate juror is available, the trial court's sole remedy is to declare a mistrial. The Court held that once a trial court has clearly stated on the record that an alternate juror has no further responsibilities in the case, the alternate juror is discharged and is unavailable for continued service. Applying this bright line rule, the Court determined that once the trial judge thanked the alternate jurors for their service and excused them from the case, the alternate jurors were discharged and the trial judge erred in subsequently replacing a trial juror with

one of the discharged alternates.

People v Rodriguez (38 NY3d 151 [2022])

Defendant sent sexually explicit text messages to a 15-year-old student he was coaching. At trial, the victim testified that printouts of screenshots were fair and accurate depictions of messages sent to and from defendant's phone on a particular date. The Court concluded that the victim's testimony sufficed to authenticate the screenshots of the text messages, and that the best evidence rule did not preclude admission of the screenshots.

People v Wakefield (38 NY3d 367)

Addressing the admissibility of DNA mixture interpretation evidence generated by the TrueAllele Casework System—in particular, its use of the continuous probabilistic genotyping approach, including the use of peak data below the stochastic threshold, to generate a statistical likelihood ratio of a DNA genotype—the Court held that there was no abuse of discretion in the trial court's decision to admit the evidence following a *Frye* hearing, as the methodology used by TrueAllele was generally accepted in the relevant scientific community (*see Frye v United States*, 293 F 1013 [DC Cir 1923]). The Court further held that there was no error in the denial of defendant's request for discovery of the TrueAllele software source code in connection with the *Frye* hearing, since defendant was not entitled to the source code under the demand-discovery provision of former CPL 240.20 and defendant made no further attempt to demonstrate a particularized need for the source code. Finally, the Court rejected defendant's argument that the source code was the declarant and had to be disclosed for the purpose of his Sixth Amendment right to confront the witness against defendant at trial.

HABEAS CORPUS

Matter of Nonhuman Rights Project, Inc. v Breheny (38 NY3d 555)

Petitioner sought a writ of habeas corpus on behalf of Happy, an elephant residing at the Bronx Zoo. The issue before the Court was whether a third party may invoke the writ of habeas corpus on behalf of a nonhuman animal. Because the writ of habeas corpus is intended to protect the liberty right of human beings to be free of unlawful confinement, the Court held that it has no applicability to a nonhuman animal who is not a "person" subjected to illegal detention. Moreover, the Court explained, a writ of habeas corpus may be sustained only when a person is entitled to immediate release from unlawful restraint, and the relief requested was only a transfer of Happy from one lawful confinement in a zoo to another lawful confinement in a sanctuary. The Court observed that the law recognizes that nonhuman animals are not the equivalent of "things" and they have been afforded numerous protections by the legislature, which is the appropriate forum for resolution of such animal welfare issues.

People ex rel. Molinaro v Warden, Rikers Is. (39 NY3d 120)

The Court held that Criminal Procedure Law article 730 does not authorize the jail detention of a criminal defendant solely for the purposes of conducting a competency examination. The arraignment court ordered defendant held in Rikers Island pending a psychiatric evaluation to determine fitness to stand trial. Defendant's writ of habeas corpus sought defendant's release because defendant had not been charged with a bail-eligible offense and CPL article 730 did not

provide the court with independent authority to order detention. The Court concluded that when defendant was arraigned, defendant was not "in custody" for the purposes of CPL 730.20 (3), which would have required an in-jail competency examination. The Court rejected the Warden's contention that CPL 730.20 (2) provided authority to order a defendant held pending a competency examination. The Court interpreted the word "may" in the statute as limiting a court to two options for a defendant not in custody: order an out-patient examination or, upon a hospital director's request and if deemed appropriate by a court, order an in-patient hospital examination.

INSURANCE

Columbia Mem. Hosp. v Hinds (38 NY3d 253)

Medical Liability Mutual Insurance Company (MLMIC), a mutual insurance company, issued professional liability insurance policies to medical professionals. The medical professionals were the policyholders; the employers of those medical professionals paid the policy premiums. When MLMIC demutualized, the employers and medical professionals disputed to whom the proceeds of demutualization should be paid. In eight appeals, the Court held that, when a mutual insurance company demutualizes and pays out proceeds, the policyholder is entitled to the proceeds absent a contrary agreement binding on the parties.

LABOR

Konkur v Utica Academy of Science Charter Sch. (38 NY3d 38)

Plaintiff, a teacher at defendant Utica Academy of Science Charter School, brought suit against the school and others, claiming that defendants demanded illegal wage kickbacks in violation of Labor Law § 198-b. Applying the well-established three-factor test for determining whether a statute's legislative intent favors an implied private right of action, the Court held that, although plaintiff satisfied the first and second factors of the test (plaintiff was a member of the class of persons the statute was designed to protect and a private right of action would promote the statute's objective), plaintiff failed to satisfy the third and most important factor—whether recognition of such a right would be consistent with the legislative scheme. Accordingly, the Court held that Labor Law § 198-b does not contain an implied private right of action.

Toussaint v Port Auth. of N.Y. & N.J. (38 NY3d 89)

Plaintiff was injured by a power buggy while working at a construction site owned by the Port Authority of New York and New Jersey. Plaintiff sued the Port Authority under Labor Law § 241 (6). Adhering to the rule that a section 241 (6) claim must allege a violation of an Industrial Code regulation that sets forth a specific standard of conduct and does not simply recite common law safety principles, the Court held that the language of Industrial Code 23-9.9 (a), governing operation of power buggies, does not set forth a concrete specification sufficient to give rise to a non-delegable duty under Labor Law § 241 (6).

MUNICIPAL CORPORATIONS—TORT LIABILITY

Ferreira v City of Binghamton (38 NY3d 298)

Under the special duty rule, plaintiffs must establish that a municipality owes them a tort duty of care exceeding the duty owed to the public generally. Answering a

question certified by the Second Circuit, the Court held that the special duty requirement applies to all negligence actions against a governmental defendant, including those claiming that the municipality directly inflicted the injury. The Court further concluded that a special duty arises when the police plan and execute a no-knock search warrant at an identified residence, running to the individuals within the targeted premises at the time the warrant is executed. This duty exists because, in those circumstances, the municipality takes positive control of a known and dangerous safety condition.

Maldovan v County of Erie (39 NY3d 166)

Plaintiff was the public administrator of the estate of decedent, an adult person with developmental disabilities who was murdered by family members. Considering whether the County and the Sheriff owed a special duty to protect decedent, the Court held that defendants established that government employees took no action that could have induced justifiable reliance, a necessary element of the special duty test. The Court rejected plaintiff's contention that the justifiable reliance element should be eliminated when the injured party is an adult of diminished capacity. The Court did not address whether or how the special duty rule would apply in a different case where the injured party was incapable of pursuing other avenues of protection and did not have a competent adult family member advocating on their behalf.

TAXATION

Matter of DCH Auto v Town of Mamaroneck (38 NY3d 278)

DCH Auto was the lessee of a parcel of real property under a "net lease," which required DCH to pay, in addition to rent, all the real estate taxes associated with the property. DCH challenged tax assessments it believed were too high by filing grievance complaints with the local board of assessment review. Resolving a dispute about whether a lessee could challenge the tax assessments, the Court held that a grievance complaint filed by a net lessee who is contractually obligated to pay real estate taxes on the subject property satisfies RPTL 524 (3) such that the net lessee may properly commence a RPTL article 7 proceeding upon rejection of its grievance.

TORT—CAUSATION

Nemeth v Brenntag N. Am. (38 NY3d 336)

Plaintiff's spouse died as a result of peritoneal mesothelioma. Plaintiff sued defendant, alleging that decedent's use of defendant's commercial talcum powder product for a period of ten years in the 1960s was a proximate cause of decedent's illness. The Court set aside the jury's verdict in plaintiff's favor because plaintiff's proof failed as a matter of law to meet the requirements of proving causation in toxic tort cases. The Court reaffirmed that an expert opinion on causation must set forth a plaintiff's exposure to a toxin, that the toxin is capable of causing the particular illness (general causation), and that plaintiff was exposed to sufficient levels of that toxin to cause the illness (specific causation). Because plaintiff's expert had not sufficiently demonstrated these requirements, the Court held that plaintiff's proof of causation at trial was insufficient as a matter of law.

WORKERS' COMPENSATION

Matter of Green v Dutchess County BOCES (39 NY3d 35)

Claimant, the minor child of an injured employee who received a nonschedule

award for a permanent partial disability under Workers' Compensation Law § 15 (3) (w), sought to recover unaccrued amounts of the father's award following father's death. Decedent had received an award in the amount of $500 per week for no longer than 350 weeks, and decedent died due to unrelated causes after 311.2 weeks. The Court held that because of the nature of nonschedule awards, which are dependent on an employee's actual earnings and the continuance of the disability, there is no remaining portion of the award that can pass through to a beneficiary and so claimant could not recover posthumous benefits based on unaccrued portions of a nonschedule award.

Matter of Johnson v City of New York (38 NY3d 431)

In these appeals, the issue was whether a claimant's schedule loss of use award must always be reduced by a prior award for injury to the same body "member." In one case, claimant suffered successive injuries to his leg; in another, claimant suffered successive injuries to his arm. The Court held that claimants are entitled to a second schedule loss of use award commensurate with the increased loss of use caused by the second injury "considered by itself and not in conjunction with the previous disability" (Workers' Compensation Law § 15 [7]). This limitation ensures that a subsequent schedule loss of use award is based solely on the diminished earning capacity resulting from the later injury, rather than from all disabilities.

2022 Events

State of Our Judiciary

STATE *of* OUR JUDICIARY
Chief Judge Janet DiFiore

Chief Judge Janet DiFiore delivered her sixth State of Our Judiciary (virtually) on February 16, 2022. The address, filmed at Court of Appeals Hall, focused on steps being taken by the court system to ensure a fair, inclusive workplace and eliminate barriers to equal justice, including the need to streamline the State's trial court structure.

Chief Judge DiFiore paid tribute to the court system's judges and staff, as well as its partners in the bar and in government, for their commitment to serving the people of New York during the pandemic.

Investitures

Judges Madeline Singas and Anthony Cannataro were nominated to the Court of Appeals on May 25, 2021 and both were confirmed by the New York State Senate on June 8, 2021. Judge Shirley Troutman was nominated to the Court of Appeals on November 24, 2021, and she was confirmed by the New York State Senate on January 12, 2022. A formal investiture ceremony for Judges Singas, Cannataro and Troutman was held on April 5, 2022, at Court of Appeals Hall.

Law Day 2022

The Court of Appeals continued the tradition of co-hosting the annual Law Day ceremony with the Attorney General of the State of New York. After two years of a virtual format, on May 2, 2022, the ceremony was held in-person at Court of Appeals Hall, with appropriate health and safety protocols. Chief Judge DiFiore, Attorney General Letitia James and State Bar President T. Andrew Brown delivered remarks.

The 2022 Law Day theme was "Toward a More Perfect Union: The Constitution in Times of Change."

Judith S. Kaye Service Awards

Chief Administrative Judge Lawrence K. Marks presented the Judith S. Kaye Service Awards for Exemplary Performance and Heroism to Unified Court System employees during the Law Day Ceremony.

Oral Argument—Fulton County Courthouse

On September 8, 2022, the Court heard argument at the Fulton County Courthouse. The Court's visit was part of the 250th celebration of the Fulton County Courthouse. After oral argument, the Judges spoke to local high school students in attendance.

Appendices

Appendix 1

Judges of the Court of Appeals

Appendix 2

Appeals Decided by Jurisdictional Predicate (2022)

Appendix 3

Appeals Analysis (2018-2022)

All Appeals — Civil and Criminal

Civil Appeals — Type of Disposition

Criminal Appeals — Type of Disposition

Appendix 4

Civil Appeals Decided by Jurisdictional Predicate (2018-2022)

Appendix 5

Criminal Appeals Decided by Jurisdictional Predicate (2018-2022)

Appendix 6

Motions (2018-2022)

Appendix 7

Criminal Leave Applications (2018-2022)

Appendix 8

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2018-2022)

Appendix 9

Office for Professional Matters (2018-2022)

Judges of the Court of Appeals

Chief Judge

Hon. Janet DiFiore (retired)

Acting Chief Judge

Hon. Anthony Cannataro

Associate Judges

Hon. Jenny Rivera

Hon. Michael J. Garcia

Hon. Rowan D. Wilson

Hon. Madeline Singas

Hon. Shirley Troutman

Appeals Decided by Jurisdictional Predicate (2022)

Basis of Jurisdiction: All Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Appellate Division Dissents	6	2	0	1	0	9
Permission of Court of Appeals/Judge thereof	29	18	3	1	0	51
Permission of Appellate Division/Justice thereof	13	10	0	0	0	23
Constitutional Question	1	2	1	0	0	4
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other*	1	0	0	0	3	4
Totals	**50**	**32**	**4**	**2**	**3**	**91**

* One affirmance based on a remand from the Supreme Court of the United States; two final determinations of Rule 500.27 certified questions; one removal of a Judge in a proceeding pursuant to Judiciary Law § 44 (8).

Appeals Decided by Jurisdictional Predicate (2022)

Basis of Jurisdiction: Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Appellate Division Dissents	6	2	0	1	0	9
Permission of Court of Appeals	18	10	2	1	0	31
Permission of Appellate Division	8	5	0	0	0	13
Constitutional Question	1	2	1	0	0	4
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other*	0	0	0	0	3	3
Totals	**33**	**19**	**3**	**2**	**3**	**60**
Basis of Jurisdiction: Criminal Appeals	**Disposition**					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Permission of Court of Appeals Judge	11	8	1	0	0	20
Permission of Appellate Division Justice	5	5	0	0	0	10
Other**	1	0	0	0	0	1
Totals	**17**	**13**	**1**	**0**	**0**	**31**

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

** Remand from the Supreme Court of the United States.

Appeals Analysis (2018-2022)

All Appeals — Civil and Criminal	2018	2019	2020	2021	2022
Civil	63% (86 of 136)	56% (60 of 108)	56% (54 of 96)	46% (37 of 81)	66% (60 of 91)
Criminal	37% (50 of 136)	44% (48 of 108)	44% (42 of 96)	54% (44 of 81)	34% (31 of 91)

Civil Appeals — Type of Disposition	2018	2019	2020	2021	2022
Affirmed	58%	48%	41%	32%	55%
Reversed	30%	38%	45%	49%	35%
Modified	7%	5%	8%	3%	5%
Dismissed	0%	3%	2%	3%	3%
Other*	5%	5%	4%	13%	2%

Criminal Appeals — Type of Disposition	2018	2019	2020	2021	2022
Affirmed	62%	69%	36%	57%	55%
Reversed	38%	27%	62%	39%	42%
Modified	0%	4%	0%	4%	3%
Dismissed	0%	0%	2%	0%	0%

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

Civil Appeals Decided by Jurisdictional Predicate (2018-2022)

	2018	2019	2020	2021	2022
Appellate Division Dissents	17% (15 of 86)	30% (18 of 60)	22% (12 of 54)	19% (7 of 37)	15% (9 of 60)
Permission of Court of Appeals	36% (31 of 86)	42% (25 of 60)	44% (24 of 54)	43% (16 of 37)	52% (31 of 60)
Permission of Appellate Division	37% (32 of 86)	18% (11 of 60)	20% (11 of 54)	13% (5 of 37)	22% (13 of 60)
Constitutional Question	2.5% (2 of 86)	3% (2 of 60)	6% (3 of 54)	8% (3 of 37)	7% (4 of 60)
Stipulation for Judgment Absolute	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)
CPLR 5601(d)	2.5% (2 of 86)	2% (1 of 60)	0% (0 of 54)	3% (1 of 37)	0% (0 of 60)
Supreme Court Remand	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)
Judiciary Law § 44	2.5% (2 of 86)	0% (0 of 60)	4% (2 of 54)	0% (0 of 37)	1% (1 of 60)
Certified Question (Rule 500.27)	2.5% (2 of 86)	5% (3 of 60)	4% (2 of 54)	14% (5 of 37)	3% (2 of 60)
Other	0% (0 of 86)	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)

Criminal Appeals Decided by Jurisdictional Predicate (2018-2022)

	2018	2019	2020	2021	2022
Permission of Court of Appeals Judge	60% (30 of 50)	67% (32 of 48)	81% (34 of 42)	68% (30 of 44)	65% (20 of 31)
Permission of Appellate Division Justice	40% (20 of 50)	33% (16 of 48)	19% (8 of 42)	32% (14 of 44)	32% (9 of 31)
Other*	0% (0 of 50)	0% (0 of 48)	0% (0 of 42)	0% (0 of 44)	3% (1 of 31)

*Remand from the Supreme Court of the United States.

Motions (2018-2022)

	2018	2019	2020	2021	2022
Motions Submitted for Calendar Year	1238	1182	954	1030	903
Motions Decided for Calendar Year*	1180	1096	1070	988	957
Motions for Leave to Appeal	926	843	870	801	765
Granted	31	18	32	33	27
Denied	674	640	663	587	518
Dismissed	221	184	171	177	214
Withdrawn	4	1	4	4	6
Motions to Dismiss Appeals	3	6	3	6	1
Granted	1	2	2	2	1
Denied	2	4	1	4	0
Dismissed	0	0	0	0	0
Withdrawn	0	0	0	0	0
***Sua Sponte* and Court's Own Motion Dismissals**	101	118	97	85	74
Total Dismissals of Appeals	102	120	99	87	75
Motions for Reargument of Appeal	27	24	23	19	17
Granted	0	0	0	0	0
Motions for Reargument of Motion	59	68	55	29	47
Granted	1	0	0	0	0
Motions for Assignment of Counsel	29	27	23	22	25
Granted	29	27	23	22	25
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	244	194	205	168	165
Granted	5	6	4	3	9
Denied	1	0	0	0	0
Dismissed	238	188	201	165	156

* 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 (2018-2022)

	2018	2019	2020	2021	2022
Motions for Amicus Curiae Relief	92	79	71	94	83
Granted	89	75	70	91	81
Motions to Waive Rule Compliance	0	0	0	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	5	1	6	2	0
Granted	4	0	3	0	0
Motions for Leave to Intervene	0	0	0	0	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	39	29	20	13	22
Granted	1	1	2	0	1
Denied	2	2	2	0	2
Dismissed	36	26	16	13	19
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	17	18	12	18	17
Granted	17	18	12	17	15
Motions to Strike Brief/Record/Appendix	0	4	2	2	0
Granted	0	3	2	0	0
Motions to Amend Remittitur	0	0	1	3	0
Granted	0	0	0	2	0
Motions for Miscellaneous Relief	23	34	27	17	13
Granted	2	1	2	2	0
Denied	2	24	12	4	4
Dismissed	19	9	13	11	9
Withdrawn	0	0	0	0	0

Criminal Leave Applications (2018-2022)

	2018	2019	2020	2021	2022
Total Applications Assigned	2406	2408	1729	1659	1489
Total Applications Decided*	2319	2493	1824	1658	1474
Granted	36	34	29	27	33
Denied	2128	2265	1668	1526	1353
Dismissed	153	188	117	98	79
Withdrawn	2	6	10	7	9
Total People's Applications	49	75	38	52	45
Granted	4	15	4	3	5
Denied	42	52	29	43	34
Dismissed	2	3	1	1	1
Withdrawn	1	5	4	5	5
Average Number of Applications Assigned to Each Judge	344	344	247	237	213
Average Number of Grants for Each Judge	5	5	4	4	5

* Includes some applications assigned in previous year.

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2018-2022)

	2018	2019	2020	2021	2022
Total number of inquiry letters sent	80	80	68	63	50
Withdrawn on stipulation	4	0	2	1	0
Dismissed by Court	50	56	48	49	30
Transferred to Appellate Division *Sua Sponte*	3	6	2	3	5
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)	6	2	4	5	4
Jurisdiction retained — appeals decided	0	0	0	0	0
Inquiries pending at year's end	17	16	12	5	11

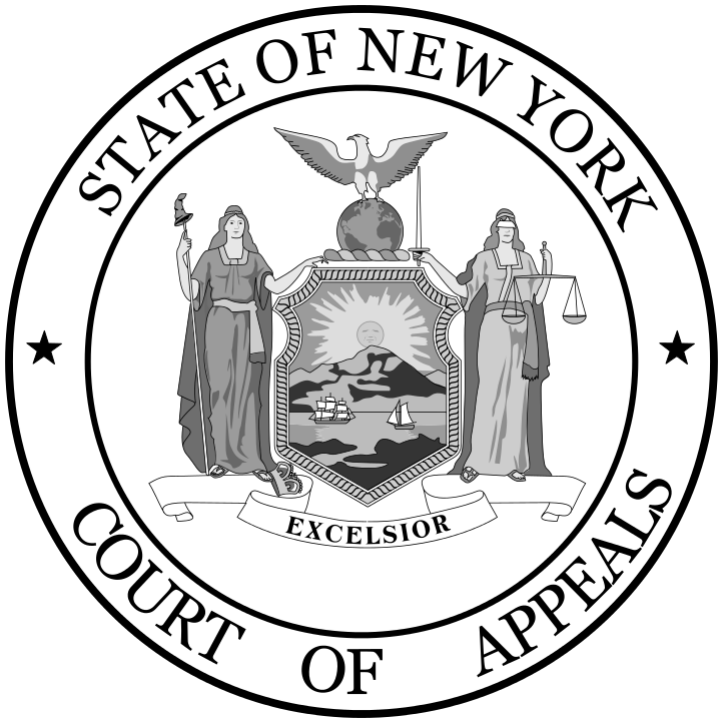
Office for Professional Matters (2018-2022)

	2018	2019	2020	2021	2022
Attorneys Admitted*	8,750	8,537	8,276	7,829	7,736
Registered In-House Counsel	133	141	71	164	235
Certificates of Admission	133	131	152	102	88
Clerkship Certificates	3	4	2	4	6
Petitions for Waiver**	259	322	309	448	582
Written Inquiries	78	98	128	94	153
Disciplinary Orders***	471	763	1,889	410	3,142
Name Change Orders	917	965	483	668	842

* 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 2019, 2020, 2021, and 2022 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (*see* Judiciary Law § 468-a).


STATE OF NEW YORK
EXCELSIOR
COURT OF APPEALS