2023

ANNUAL REPORT OF THE CLERK OF THE COURT OF APPEALS

2023

Annual Report of the Clerk of the Court of Appeals

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Cover photograph, taken by Court of Appeals Senior Court Analyst Jonathan Mulyca and edited by Court of Appeals Principal Stenographer Taylor Flowers, depicts Court of Appeals Hall as seen from Albany's Academy Park.

Photographs in Annual Events section provided by David Handschuh, Office of Court Administration.

Honorable Rowan D. Wilson Foreword March 2024

It has been an immense joy to serve, since February 2017, as an Associate Judge on the New York State Court of Appeals. The year 2023 marks both continuity and change: continuity, in that the work of the Court in intelligently and carefully resolving challenging legal questions that affect the lives of New Yorkers remains our fundamental goal; change, in that as part of my duties as Chief Judge, which I assumed in April, it falls to me to work with my colleagues on the Court, with the Presiding Justices of the Appellate Division, and with Judges and administrative personnel throughout the Unified Court System, to ensure that the Court of Appeals can achieve that fundamental goal. The Court must do so in a way that ensures public confidence that the decisions we reach are firmly based in the law and simultaneously recognizes the needs of a changing society. Under Chief Judge Cardozo, the Court of Appeals was the finest court in the nation. My colleagues and I aspire to reach that same pinnacle.

This report outlines the Court's work in 2023. It contains many metrics—including the number of appeals we decided, the number of leave motions and applications we considered, and the speed with which we decided cases and motions. Those metrics are noteworthy, and it is my hope that, in the coming years, we will receive even more civil motions and criminal leave applications, and that we will have the opportunity to decide even more appeals. Increasing the number of motions and appeals would move the Court toward its historically

normal caseload, which would allow us better to honor our responsibility to resolve all issues of statewide importance that require our attention. I must, however, emphasize that volume, throughput and speed are not measures of the quality of the decisions, and they are not the principal benchmarks by which we should measure success. More importantly, in 2023 my colleagues and I strove to resolve each appeal with great attention to the individualized facts of each case, and with great care for the humanity and dignity of the parties before us. I am confident that we will continue with that attention and care, no matter our caseload.

2023 was marked by many happy events. Foremost among them, in April, Judge Caitlin J. Halligan joined the Court, and we celebrated her investiture in June. In November, the Court held a weeklong session in Buffalo, which we had done thrice before, in 1849, 1901 and 2005. In coming years, we plan to have the Court sit for a week in various locations around the State, as part of informing and interacting with the public and bar.

This past fall, we also instituted two new internal processes to facilitate the correct and timely disposition of the appeals that we hear. First, we are proactively vouching in Justices of the Appellate Division when a member of the Court is recused from a case. With a handful of exceptions, the Court's practice had been to sit with as few as five judges when some of us are recused—and those cases would sometimes deadlock or result in no quorum and would then need to be set for reargument, often many months later, with Justices from the Appellate Division vouched in. Our new practice spares parties the delay and cost of reargument and allows us to hear more cases each year. The second new internal process is that we are assigning variable (usually longer) argument times, instead of nominally assigning each party ten minutes and then allowing some arguments to continue longer. We made that change to enable the counsel who practice before us to have a clear understanding of the time allocated for argument so that they can best structure their presentations to give the best performance in support of their clients. We have also increased the number of arguments we hear each day and have reduced the fraction of cases we decide without argument.

All of the Court's work is made possible by the Court's exceptional legal and administrative staff. When visitors come to Court, they uniformly recognize the warmth and professionalism of all who work at Court of Appeals Hall. I thank everyone who works at the Court for their devotion and service to the people of New York, and for making the Court the superb institution that it is.

The Court looks forward to the coming year as we continue to serve the public and dedicate ourselves to resolving the important legal issues that come before us. And next year, I look forward to resuming the time-honored tradition of rotating responsibility for authoring this Foreword among all the Judges of the Court!

2023
Annual Report of the Clerk of the Court
to the Judges of the Court of Appeals of the State of New York

Introduction

2023 was another dynamic year for the Court of Appeals. In April, following an extended vacancy in the position, Governor Hochul nominated, and the State Senate confirmed, a new Chief Judge, elevating Associate Judge Rowan D. Wilson to the post. A sitting Court of Appeals Judge had not been designated to the position in three decades, not since Chief Judge Judith S. Kaye in 1993. The Court celebrated the historic appointment of Chief Judge Wilson, the first person of color to hold the seat, at an investiture ceremony attended by the Governor and other state dignitaries. With the appointment of Caitlin J. Halligan to fill the newly-created Associate Judge vacancy, the Court was returned to its full complement of seven Judges. The Court worked diligently to hear several appeals that had been held during the transition period due, among other reasons, to lack of a quorum and the inability to vouch in a Justice to address the vacancy. All such cases have been decided and the Court has returned to its typical currency.

In addition to the leadership transition, historic Court of Appeals Hall received a refresh with the installation of new carpeting. The extensive project—largely accomplished during the summer—required each Judge and virtually every staff member to pack their offices, with Albany employees working from swing spaces within the building. The staff is to be commended for its genial cooperation, with special recognition owed to our maintenance and Information Technology departments for their extraordinary efforts associated with coordination and implementation of the project.

During 2023, the Court was honored to welcome the following Justices of the Appellate Division Departments to participate in appeals pursuant to New York Constitution, article VI, § 2(a): Presiding Justice Dianne T. Renwick and Associate Justices Colleen D. Duffy, John C. Egan, Jr., Stephen K. Lindley, Michael C. Lynch, and Nancy E. Smith. We thank them and their staff for their significant contributions to the law of this State. Thanks also are due to the many members of our Court staff who assisted and facilitated the participation of our visiting Judges in keeping with the Court's reputation for hospitality and service.

In November, the Court traveled to Buffalo to hold a three-day session in the ceremonial

courtroom at historic Old County Hall. This is the first time the Court had conducted a full session away from Court of Appeals Hall since 2017. Each day, the Court heard oral arguments in a packed courtroom attended by members of the bar and public, including students from several local high schools and the University of Buffalo Law School. We are grateful for the extraordinary hospitality of Eighth Judicial District staff led by Administrative Judge Kevin M. Carter and District Executive Tasha Moore, particularly Facilities Director Chris Burns and Information Technology Director David Solazzo. The Court also expresses deep appreciation to the Appellate Division, Fourth Department, particularly Presiding Justice Gerald J. Whalen, his Chief of Staff Timothy A. Ball and Clerk of the Court Ann Dillon Flynn who anticipated the Court's every need and ensured that the visit would be meaningful and productive both for the Court, the bar and the public.

The Court of Appeals staff that accompanied the Judges to Buffalo as well as the staff that kept the home fires burning at Court of Appeals Hall are also to be commended for their unfailing competence, professionalism, ingenuity and enthusiastic support of the Court and its mission, both during the Buffalo trip and throughout the year. No matter the challenge, our extraordinary staff can be counted on to meet the moment and I am deeply grateful to them for all that we accomplished together this year.

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 from the parties 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 afternoons and the Court conferences 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 2023, the Court and its Judges disposed of 2,079 matters, including 88 appeals,* 816 motions, and 1,175 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 brief 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 2023, 39 appeals were subject to Rule 500.10 inquiries. Of those, 26 appeals were dismissed sua sponte (SSD) or transferred to the Appellate Division. Ten 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. The parties' submissions are available through the Court's Public Access and Search System (Court-PASS), and Court Rules permit amicus curiae participation. In 2023, 77 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 and relevant facts 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, 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 letter 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 190 appeals filed in 2023, 15 (8%) were initially selected to receive SSM consideration, a decrease from the percentage so selected in 2022 (14.5%). Five (5) were civil matters and 10 were criminal matters. Six (6) of the appeals initially selected to receive SSM consideration in 2023 were directed to full briefing and oral argument. Of the 88 appeals decided in 2023 on the normal course or on the SSM procedure, 11 (11%) were decided upon SSM review (26% were so decided in 2022). Four (4) were civil matters and 7 were criminal matters. Six (6) matters remained pending on SSM review at the end of 2023 (3 civil and 3 criminal).

Promptness in Deciding Appeals

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2023, the average time from argument to disposition of a normal course appeal was 27 days; for all appeals, the average time from argument or submission to disposition was 24 days. In 2023, the average period from filing a notice of appeal or an order granting leave to appeal to oral argument was approximately 14 months, compared to 15 months in 2022. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately 8 months, compared to 9 months in 2022.

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 15.6 months, compared to 16.5 months in 2022. 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 2022.

The Court's 2023 Docket

Filings

One hundred ninety (190) notices of appeal and orders granting leave to appeal were filed in 2023 (179 were filed in 2022). One hundred forty-three (143) filings were civil matters (compared to 134 in 2022), and 47 were criminal matters (compared to 45 in 2022). The Appellate Division Departments issued 29 of the orders granting leave to appeal filed in 2023 (16 were civil, 13 were criminal).

Motion filings decreased in 2023. During the year, 846 motions were submitted to the Court, compared to the 903 submitted in 2022. Criminal leave application filings decreased significantly in 2023. In 2023, 1,143 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 1,489 assigned in 2022. On average, each Judge was assigned 163 such applications during the year.

Dispositions

Appeals and Writings

In 2023, the Court decided 88 appeals (52 civil and 36 criminal), compared to 91 appeals in 2022 (60 civil and 31 criminal). Sixty-three (63) of the 88 appeals were decided by signed opinions, 17 by memoranda, 4 by per curiam writings, and 4 by decision list entries. Forty-five (45) dissenting opinions and 10 concurring opinions were issued.

Motions

The Court decided 816 motions in 2023, fewer than the 957 motions decided in 2022. Of the 636 motions for leave to appeal decided in 2023, 6.8% were granted, 70.7% were denied, 22.2% were dismissed, and less than 1% were withdrawn. Forty-three (43) motions for leave to appeal were granted in 2023. 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 novel, of great public importance, 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 99 days, while the average period of time from return date to disposition for all motions was 85 days.

CPL 460.20 Applications

Individual Judges of the Court granted 33 of the 1,175 applications for leave to appeal in criminal cases decided in 2023. Ninety-one (91) applications were dismissed for lack of jurisdiction and 9 were withdrawn. Four (4) of the 30 applications filed by the People were granted. Of the 55 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, none was granted.

Review and determination of applications for leave to appeal in criminal cases constitutes 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 2023, on average, 80 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]). One judge was suspended by the Court in 2023 based on a determination of the Commission recommending that the judge be removed from office and one judge was suspended as a result of being charged with felonies in New York.

In 2023, the Court removed one judge based on the judge's failure to seek review of the Commission's determination recommending removal and removed another judge after review pursuant to Part 530 of the Court's Rules.

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 three certified questions in 2023. At the end of 2023, three certified questions remained pending.

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

In 2023, the Court decided 685 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a significant increase from the 582 petitions decided in 2022. Petitions typically are decided within three months of submission.

Court Rules

The Court temporarily waived strict compliance with certain distance learning limitations and restrictions of sections 520.3 and 520.6 of the Rules for the Admission of Attorneys and Counselors at Law (22 NYCRR 520.3 and 520.6). Subject to specific conditions, the temporary waiver applied when students and faculty who were subject to mandatory COVID-19 quarantine requirements attended in-person classes remotely or when a student had been granted an accommodation under the Americans with Disabilities Act.

Administrative Functions and Accomplishments

Court of Appeals Holds Session in Buffalo

The Court heard argument away from Court of Appeals Hall in Albany for its November 2023 Session. On November 14, 15, and 16, the Court heard argument at Old County Hall, 92 Franklin Street, Buffalo, New York.

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. 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 Chief Management Analyst, 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 4,300 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 1,346,899 visits were recorded to the main internet site in 2023, averaging 3,690 visits per day. The Court-PASS and Companion Filing Upload Portal sites recorded 109,629 visits in 2023.

Court of Appeals Website

The Court's comprehensive website posts information about the Court, its Judges, and its history; summaries of pending cases and new filings; notices to the bar and other noteworthy information; and recent Court of Appeals decisions. 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 a 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. 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 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, Clerk, Deputy Clerk, Chief Court Attorney, and Deputy Chief Court Attorney, the Central Legal Research Staff prepares reports on civil motions and selected appeals for the full Court's review and deliberation. From December 2022 through December 2023, Central Staff completed 773 motion reports, 30 SSD reports, and 3 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 2023 were graduates of Albany, CUNY, Hofstra, Northeastern University, Pace University, Syracuse University, and University at Buffalo 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 2023, the Principal Law Librarian joined the newly reactivated Archives Advisory Committee of the New York State Archives.

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 and issues credit for suitable programs offered by the Court or its auxiliary agencies. In 2023, the Committee provided 8 programs totaling 11 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.

Security Services

The Chief Security Attendant and Deputy Chief of Security supervise Senior Security Attendants and Court Building Guards. The attendants are sworn New York State Court Officers who have peace officer status.

The security staff ensures that Judges, court staff, and court visitors are safe and protected. They conduct 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 Senior 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 2023-24 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 2024-25 for the Court and Law Reporting Bureau is $1.5 million for non-personal services. This request 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 2023, the Court reported filing fees for civil appeals totaling $18,270 and for motions totaling $21,075. 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 ($557.87). For calendar year 2023, revenue collections totaled $39,902.87.

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, Marissa Mason, 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 2023 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues decided by the Court each year.

ADMINISTRATIVE LAW

Matter of Stevens v New York State Div. of Criminal Justice Servs. (40 NY3d 505)

The Commission on Forensic Sciences (the Commission) promulgated Familial DNA Search Regulations, governing the use of familial DNA searches in the statewide DNA Identification Index as part of criminal investigations. The DNA Identification Index contains genetic profiles of individuals convicted of certain statutorily enumerated crimes. Petitioners—biological siblings of individuals whose genetic information was stored in the index—challenged the Commission's rulemaking authority. The Court first held that petitioners had standing to bring the proceeding because they shared genetic information with their indexed sibling and had a heightened risk of being identified through familial DNA searches and subjected to law enforcement scrutiny when compared to the public at large, a cognizable injury in fact. The Court also held that the legislature granted the Commission sufficient rulemaking authority to promulgate the regulations.

ARBITRATION

Matter of TCR Sports Broadcasting Holding, LLP v WN Partner, LLC (40 NY3d 71)

Two Major League Baseball teams and their co-owned regional sports network were arbitrating the fair market value of certain telecast rights. Holding the highly sophisticated parties to the terms of their arbitral contract, the Court declined to reform that agreement. Instead, the Court concluded that remittal of the matter, following an initial arbitration award, to the arbitral forum selected by the parties afforded them the amount of impartiality for which they bargained. In addition, the Court upheld a second arbitration award, rejecting the claim that the arbitrators had been evidently partial.

CIVIL PROCEDURE

Matter of Nemeth v K-Tooling (40 NY3d 405)

The Court considered whether, under CPLR 203 (c) and the relation back doctrine, claims against a party mistakenly omitted from the initial filing and then added after the expiration of the statute of limitations period may be treated as interposed when the proceeding was timely commenced against the originally named respondents. The Court held that the relation back doctrine is not limited to cases where the amending party's omission results from doubts regarding the omitted party's identity or status. Rather, the doctrine applies when the omitted party knew or should have known that, but for the mistake—be it a simple oversight or a mistake of law (i.e., that the amending party failed to recognize the omitted party as a legally necessary party)—the omitted party initially would have been named.

CONSTITUTIONAL LAW

Henry v New Jersey Tr. Corp. (39 NY3d 361)

The Court considered whether it had power to hear the as-of-right appeal under New York Constitution, article VI, § 3 and CPLR 5601 (b) (1). Plaintiff sustained injuries while riding on a bus owned by defendant New Jersey Transit Corporation (NJT) when the bus collided with a vehicle

in the Lincoln Tunnel. NJT failed to preserve its interstate sovereign immunity claim, raising it for the first time on appeal to the Appellate Division, after the Supreme Court of the United States decided *Franchise Tax Bd. of Cal. v Hyatt* (587 US 230 [2019]). Although a party need not preserve a claim that a court lacks subject matter jurisdiction, this Court held that NJT's interstate sovereign immunity defense did not fall within that exception to preservation because the defense was more closely aligned with jurisdiction over a party. The Court explained that the Supreme Court of the United States had determined that interstate sovereign immunity is waivable, which fatally undermined NJT's argument that the doctrine is rooted in subject matter jurisdiction. Instead, interstate sovereign immunity is analyzed in terms of concepts such as a court's power over a party, a State's amenability to suit, its consent to be sued, and haling a party into court—all of which align closely with treatment of personal jurisdiction issues. Thus, because the preservation exception did not apply, no constitutional question was directly involved and the Court dismissed the appeal.

Matter of Hoffmann v New York State Ind. Redistricting Commn. (2023 NY Slip Op 06344)

The Court held that the New York State Constitution limits courts' redistricting power only to the extent required to remedy a violation of law. As such, the Independent Redistricting Commission (IRC) was not relieved of its constitutional obligation to submit a second set of maps to the legislature after court-drawn redistricting maps, which were an interim measure, were created as a result of 2022 litigation. The Court held that petitioners' CPLR article 78 proceeding seeking a writ of mandamus was neither untimely nor barred by laches. In addition, the Court held that the proceeding was not an impermissible collateral attack on the prior 2022 judgment ordering the court-drawn redistricting maps. The Court affirmed the Appellate Division's grant of a writ of mandamus compelling the IRC to complete its constitutional mandate and submit a second set of redistricting maps to the legislature no later than February 28, 2024.

Matter of Owner Operator Ind. Drivers Assn., Inc. v New York State Dept. of Transp. (40 NY3d 55)

Warrantless administrative searches are legal if what is being inspected is subject to a long tradition of pervasive government regulation and if the regulatory scheme authorizing the search delineates rules to guarantee the certainty and regularity of application necessary to provide a constitutionally adequate substitute for a warrant. The Court held that warrantless inspections authorized by New York regulations adopting the Federal Motor Carrier Safety Administration rule requiring installation of electronic logging devices in commercial motor vehicles fall within the administrative search exception to the warrant requirement and are not unreasonable searches and seizures under article I, § 12 of the New York State Constitution.

Police Benevolent Assn. of the City of New York, Inc. v City of New York (40 NY3d 417)

Administrative Code of the City of New York § 10-181 makes it a misdemeanor offense for any person to "restrain an individual in a manner that restricts the flow of air or blood by compressing the

windpipe or the carotid arteries on each side of the neck, or sitting, kneeling, or standing on the chest or back in a manner that compresses the diaphragm, in the course of effecting or attempting to effect an arrest." Law enforcement unions sought a declaration that the diaphragm compression portion of section 10-181 violates the New York Constitution on preemption and due process grounds. The Court held that section 10-181 is not field preempted because the legislature has not occupied the field of criminal offenses that may occur during arrest. Clarifying that a local law is not conflict preempted merely because it prohibits conduct that is not proscribed by state law, the Court further held that section 10-181 does not directly conflict with state law since the Penal Law justification defense remains applicable and state law does not specifically permit the conduct prohibited. The Court also rejected plaintiffs' due process challenge, concluding that an ordinary person would understand that section 10-181 prohibits the application of pressure to an arrestee's chest or back through sitting, kneeling, or standing in a manner that impedes the person's ability to breathe by causing interference with the regular movement of the diaphragm. Because section 10-181 provides fair notice of the conduct prohibited and is sufficiently definite to avoid arbitrary or discriminatory enforcement, it is not void for vagueness.

People ex rel. Rivera v Superintendent, Woodbourne Corr. Facility (40 NY3d 307)

Defendant was unable to locate housing that complied with the Sexual Assault Reform Act's school grounds condition, codified in Executive Law § 259-c (14), resulting in his inability to comply with a condition of his parole. Accordingly, defendant remained incarcerated beyond his open parole release date. The school grounds condition was enacted after defendant's criminal conduct. The Court held that the school grounds condition did not violate the Ex Post Facto Clause of the United States Constitution, concluding that although the condition bore some resemblance to punishment, the condition was rationally related to a legitimate government purpose of protecting minors from contact with sex offenders deemed to have the highest risk of recidivism and was narrowly tailored to serve that purpose.

CONTRACTS

Cordero v Transamerica Annuity Serv. Corp. (39 NY3d 399)

In New York, every contract implies "a covenant of good faith and fair dealing in the course of performance." By that covenant, the contracting parties pledge not to destroy or injure "the right of the other party to receive the fruits of the contract." Answering a question certified by the United States Court of Appeals for the Eleventh Circuit, the Court held that a plaintiff does not sufficiently allege a breach of that covenant by merely pleading that, during a Structured Settlement Protection Act (SSPA) proceeding, defendants—a structured settlement obligor and an issuer of an annuity funding the settlement—failed to enforce anti-assignment provisions contained in the structured settlement and qualified assignment agreements. The Court explained that a contrary holding would create an implied fiduciary duty for issuers or obligors to protect a plaintiff from the consequences of their own breach even though a fiduciary relationship was not contemplated by the contract's express terms. Instead, it is the responsibility of the

court presiding over the SSPA proceeding to determine if a plaintiff's assignment of periodic payments under a structured settlement agreement is in their best interests.

IKB Intl., S.A. v Wells Fargo Bank, N.A. (40 NY3d 277)

Plaintiffs, commercial banks incorporated in Germany, invested in residential mortgage-backed securities issued by securitization trusts for which defendants served as trustees. Plaintiffs alleged that defendants breached numerous contractual, fiduciary, and statutory duties, causing plaintiffs' investments to become essentially worthless. The Court held that, while plaintiffs' failure to comply with the no-action clause in the agreements did not bar the action, the governing agreements between the trusts and plaintiffs did not impose on defendants an affirmative duty to enforce repurchase obligations. The Court also held that plaintiffs' tort claims must be dismissed as duplicative of their contract claims.

CRIMES—SEX OFFENDERS

People v Brown (2023 NY Slip Op 05973)

Defendant stole money from his aunt at gunpoint while his 10-year-old cousin was present. He pleaded guilty to, among other offenses, unlawful imprisonment of a child, an offense which compels registration as a sex offender under the Sex Offender Registration Act (SORA). The crime involved no sexual component and defendant posed no sexual threat. The Court held that SORA's automatic registration requirement as applied to defendant was not rationally related to SORA's purpose of protecting the public from sex offenders and therefore violated his due process rights. Crucially, the Court distinguished *People v Knox* (12 NY3d 60 [2009]), observing that the defendants' crimes in those cases—although they likewise did not involve any actual or attempted sexual harm to a child—provided some basis to conclude that the defendants posed a future risk of sexual harm to children. Here, by contrast, there was a record finding that defendant did not pose any future sexual threat. Recognizing the extreme stigma associated with being labeled a sex offender, the Court held that the application of that label to defendant impermissibly impinged his liberty interest in being free from an unwarranted sex offender designation.

People ex rel. E.S. v Superintendent, Livingston Corr. Facility (40 NY3d 230)

The Court considered whether Executive Law § 259-c (14), a provision of the Sexual Assault Reform Act (SARA), applies to youthful offenders. Section 259-c (14) prohibits a person "serving a sentence" for an enumerated offense against a minor victim and released on parole from coming within 1,000 feet of any school grounds. Relying on other provisions in the youthful offender statutes and the Criminal Procedure Law, the petitioner argued that a youthful offender is not "serving a sentence" for the purposes of section 259-c (14) and thus not subject to the restriction. Based on the plain language of section 259-c, the statutory structure, and relevant legislative history, the Court held that youthful offenders are "serving a sentence" for the purposes of section 259-c (14) and therefore the school grounds condition applies.

People v Worley (40 NY3d 129)

Defendant was convicted of crimes requiring him to register under the Sex Offender Registration Act (SORA). The Board of Examiners of Sex Offenders

recommended that the SORA court classify defendant as a level three sex offender based on a risk factor score of 115 points. At the SORA hearing, the court agreed with defendant's assertion that the Board erroneously scored 15 points under one risk factor and, as such, he should have been assessed a presumptive level two offender. However, the SORA court further suggested that an upward departure may be appropriate under the circumstances. In response, the People requested an upward departure to level three, and the court granted that request over defendant's objection that he received no notice of a departure request prior to the SORA hearing. The Court held that defendant was denied his constitutional due process rights to notice and an opportunity to be heard. The Court determined that the SORA court failed to provide defendant a sufficient opportunity to muster evidence and prepare arguments in opposition to the People's departure application.

CRIMINAL LAW

People v Bay (2023 NY Slip Op 06407)

Construing CPL article 245 for the first time, the Court held that defendant's motion to dismiss on speedy trial grounds should have been granted because the People did not adequately comply with their discovery obligations under the statute. The legislature had recently revised New York's statutory scheme governing discovery in criminal cases by enacting CPL article 245, which imposes automatic disclosure obligations and compliance mechanisms, including the requirement that the People file a Certificate of Compliance (COC) to certify satisfaction of their discovery obligations, and amending CPL 30.30—the speedy trial provision—to tie those discovery obligations to trial readiness. The Court explained that a COC must state that after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the People have disclosed and made available all known material and information subject to discovery. Because the Court determined that the People made no such showing in this case, it held that the COC was improper when filed and the People's statement of trial readiness was thus illusory. The Court concluded that, in the absence of a valid readiness statement, the applicable speedy trial period had run and defendant's motion to dismiss under CPL 30.30 should have been granted.

People v Butler (2023 NY Slip Op 06468)

After observing what they believed to be a hand-to-hand drug transaction in a parking lot known for such activity, officers pulled over defendant's vehicle and used a trained dog to sniff-test the car and defendant's person for the presence of illegal drugs, leading to defendant's arrest. Answering a question of first impression in this State, the Court held that using a dog's heightened sense of smell to detect the presence of illegal drugs constitutes a search within the meaning of the Fourth Amendment. The Court explained that the Fourth Amendment was implicated even assuming the dog did not make actual contact with defendant and sniffed only the air closely surrounding his person, given the heightened interest society recognizes in the privacy and security of the human body.

People v Cabrera (41 NY3d 35)

The Court held that defendant was in custody for purposes of *Miranda v Arizona*

(384 US 436 [1966]) when he was handcuffed and questioned by law enforcement officers in his mother's driveway. While declining to adopt a *per se* rule that the use of handcuffs places an individual in custody, the Court concluded that a reasonable innocent person in defendant's position could not have felt free to leave, and the level to which the police restricted his movement was of a degree associated with a formal arrest. Accordingly, in the absence of *Miranda* warnings, his responsive statements should have been suppressed. The Court did not reach defendant's additional unpreserved argument that, in light of the decision by the Supreme Court of the United States of America in *New York State Rifle & Pistol Assn, Inc. v Bruen* (597 US 1 [2022]), New York's criminal prohibition on the unlicensed public carry of a loaded firearm is unconstitutional; contrary to defendant's assertion, intervening precedent did not permit review of these unpreserved claims.

People v Cerda (40 NY3d 369)

The Court held that application of New York's Rape Shield Law excluding forensic evidence proffered by defendant to show someone else caused the complainant's injuries was error and deprived defendant of the constitutional right to present a defense. The Court held that defendant's motion *in limine* satisfied the "offer of proof" exception to the Rape Shield Law because it delineated findings in the forensic reports and explained how the findings constituted evidence of something other than defendant having engaged in inappropriate and unlawful sexual activity with complainant. The Court also held that evidence, consisting of forensic findings that contained plausible alternative explanations for complainant's injuries, was relevant to defendant's defense and should have been admitted under the "interest of justice" exception to the Rape Shield Law. Finally, the Court held that the trial court's erroneous exclusion of said relevant forensic evidence deprived defendant of a meaningful opportunity to present a complete defense, prejudicing him such that he deserved a new trial.

People v Cuencas (40 NY3d 480)

The Court held that police officers' warrantless entry into defendant's apartment was unlawful. Although an individual authorized the officers to enter the vestibule of the two-unit building, the Court held that the circumstances did not reasonably indicate that the individual had apparent authority to consent to police entry into defendant's first-floor apartment; officers did not inquire about the individual's identity or connection to the building, the individual appeared to consent by gesture only to entry into the vestibule, and the door to defendant's apartment was one of two doors off the vestibule, each door visibly bearing an exterior-type lock. The Court remitted the case to the trial court to determine whether evidence obtained as a result of the illegal search was sufficiently attenuated from the illegal arrest.

People v David (2023 NY Slip Op 05970)

The Court did not reach a distinct constitutional challenge to New York's criminal prohibition on the unlicensed public carry of a loaded firearm based on the decision by the Supreme Court of the United States of America in *New York State Rifle & Pistol Assn, Inc. v Bruen* (597 US 1 [2022]), rejecting defendant's contention that his unpreserved argument fell within the narrow preservation exception for

mode of proceedings errors.

People v Debellis (40 NY3d 431)

The Court held that defendant was deprived of the effective assistance of counsel because his attorney sought an instruction on an inapplicable defense, temporary and lawful possession of a firearm, rather than the only defense supported by defendant's trial testimony, voluntary surrender.

People v Johnson (40 NY3d 172)

The Court held that a police officer's stop and frisk of defendant was unlawful because the officer lacked the requisite suspicion necessary to effectuate a lawful level 3 *DeBour* stop (*see People v DeBour*, 40 NY2d 210 [1976]). Defendant's actions of sliding from the driver's seat to the passenger seat in a parked car, exiting from the passenger side to the curb, and adjusting his belt and pants as he walked down the street did not provide reasonable suspicion that defendant had committed, or was about to commit, a crime or that he was in possession of a weapon. Therefore, the evidence seized as a result of the illicit frisk must be suppressed.

People v Jordan (40 NY3d 396)

Defendant was charged with second degree robbery and petit larceny after a store in Queens was robbed. Police officers swabbed a phone left at the scene for DNA, and analysts from the Office of Chief Medical Examiner (OCME) created a DNA profile from the swab and ran the profile through the Combined DNA Index System (CODIS). The profile matched defendant's DNA profile stored in CODIS. At trial, the People called an OCME criminalist, who testified about the likelihood that defendant's DNA was a match for the DNA sample from the cell phone. The criminalist's testimony did not explain their level of involvement in the generation of the DNA profiles at the crucial final stage of testing, which involves the exercise of judgment and the opportunity to identify error. The Court reversed defendant's conviction, holding that introduction of the DNA evidence violated defendant's right to confrontation and that the error was not harmless.

People v Myers (39 NY3d 130)

While monitoring a wiretap in an investigation not involving defendant, law enforcement officials intercepted a call from county jail. Defendant joined the call and made statements that implicated him in an unsolved hit-and-run accident. Officials informed local police, who obtained a recording of the jail call. Defendant was indicted on one count of leaving the scene of an accident without reporting, and the People introduced the jail recording as evidence at trial without providing notice within fifteen days of arraignment, as required by CPL 700.70. The Court reversed defendant's conviction, holding that a communication intercepted via wiretap is not exempt from statutory notice procedures merely because the same communication was incidentally captured on a separate, consensual recording.

People v Muhammad (40 NY3d 26)

During defendant's trial for murder in the second degree and criminal possession of a weapon in the second degree, the trial court continued its policy prohibiting spectator ingress and egress from the courtroom during witness testimony. Court personnel improperly applied the policy, preventing would-be spectators

from entering the courtroom at a time such persons should have been permitted entry under the trial court's policy. As a result, those persons were absent from the courtroom during the testimony of a key prosecution witness. The Court held that this misapplication of the policy caused an unjustified exclusion of members of the public from the courtroom and therefore violated defendant's Sixth Amendment right to a public trial. To this end, the Court explained that the trial court, having adopted a policy which restricted access to the courtroom, bore responsibility for the policy's proper delegation and implementation.

People v Ortega (40 NY3d 463)

During defendant's murder trial, the People introduced two autopsy reports through a medical examiner who did not perform or observe either autopsy. The Court held that the introduction of the autopsy reports violated defendant's right to confrontation, but that the error was harmless. In reaching this result, the Court overruled *People v Freycinet* (11 NY3d 38 [2008]) as inconsistent with subsequent precedent from the Supreme Court of the United States. The Court concluded that the autopsy reports were solemn declarations or affirmations made for the purpose of proving the homicidal nature of the victims' deaths and were made under circumstances which would lead the performing examiner to reasonably believe that the reports would be available for use at a later trial. The Court also held that an expert medical examiner may testify where that expert performed, supervised, or observed the autopsy or used their independent analysis on the primary data, but concluded that the record did not establish that the testifying examiner's conclusions met this standard.

People v Pastrana (41 NY3d 23)

In 2015, defendant was driving a car that was stopped at a police roadblock. After officers smelled marijuana in the car, they conducted a search, during which they recovered a loaded firearm. In 2018, defendant was convicted of criminal possession of a weapon and other crimes. In 2021, the New York State Legislature enacted the Marihuana Regulation and Taxation Act (MRTA). In relevant part, the MRTA provides that with certain exceptions, the odor of marijuana alone can no longer be the basis for a police search. On appeal, defendant argued that this provision of the MRTA should apply retroactively to invalidate searches that were conducted based on the odor of cannabis before the law's effective date. The Court rejected that contention, concluding that nothing in the text of the statute or its legislative history supported the conclusion that the legislature intended for this portion of the MRTA to be applied retroactively.

People v Perdue (2023 NY Slip Op 06404)

During trial, a witness to the alleged crime identified defendant as the perpetrator for the first time in court, without having been subjected to any pretrial identification procedure. The Court held that when the People call a witness to make such a first-time, in-court identification, they must ensure that the defendant is aware of that possibility as early as practicable so that the defendant has a meaningful opportunity to request alternative identification procedures. If a defendant explicitly requests such procedures, a trial court may exercise its discretion to fashion any measures necessary to reduce the risk of

misidentification. The Court further concluded that the ultimate determination of whether to admit a first-time, in-court identification rests within the trial court's discretion, balancing the probative value of the identification against the dangers of misidentification and other prejudice to the defendant. Applying that framework, the Court concluded that the trial court did not abuse its discretion in admitting the disputed identification testimony.

People v Regan (39 NY3d 459)

There was a four-year gap between the identification of defendant by the victim and defendant's indictment; at least 31 months of those four years were unexplained and unjustified. The Court held that the delay violated defendant's constitutional speedy trial right.

People v Rodriguez (41 NY3d 1)

Defendant was indicted on several weapons counts based on his possession of a loaded firearm, which the police recovered from him after they stopped him on his bicycle. During a suppression hearing, an officer testified that defendant was riding his bike somewhat recklessly down the street, although defendant was not charged with any traffic infractions. The officer also recalled that defendant was favoring his waistband and holding a bulky object, although the officer could not tell what the object was. The officers then drove up alongside defendant and either said or yelled out "Police, stop" or "Hold up, police." Defendant did not stop right away, so the officers continued following him and commanded him to stop a second time, yelling even louder either "stop the bicycle, police" or "[h]old up, police." Defendant then turned onto a side street and stopped his bike before admitting to the police that he was carrying a gun. The Court held that, like an automobile stop, a police command that a bicyclist stop is a seizure which the State and Federal Constitutions forbid unless the police, at a minimum, have reasonable suspicion of criminality beforehand. The Court concluded that the officers' observations fell short of this threshold and, therefore, reversed defendant's conviction and dismissed the indictment.

People v Saenger (39 NY3d 433)

Defendant was charged in an indictment with the crime of aggravated family offense pursuant to Penal Law § 240.75, among other offenses. To commit the crime of aggravated family offense, a defendant must have been convicted of one or more "specified offenses" in the statute within the previous five years, presently committed one of the misdemeanor "specified offenses" in the statute, and both offenses must have been committed against a member of the same family or household as the defendant. This Court agreed with defendant that the count of the indictment charging him with aggravated family offense was jurisdictionally defective because it failed to specify the present misdemeanor defendant had committed. Observing that there were 18 misdemeanor offenses listed in the statute, and that allegations of defendant's conduct in the People's bill of particulars could have qualified for several of those offenses, the Court held that the indictment failed to give defendant sufficient notice of the charged crime. The Court instructed that an indictment charging a defendant with aggravated family offense will be facially valid if it specifies the underlying misdemeanor

offense, by incorporating the misdemeanor offense by section number or by stating the definition of the offense.

ENVIRONMENTAL CONSERVATION LAW

Matter of Town of Southampton v New York State Dept. of Envtl. Conservation (39 NY3d 201)

In a case involving a Long Island sand mine, the Court interpreted Environmental Conservation Law § 23-2703 (3), which prohibits any state agency from considering or processing applications for mining permits in certain counties "if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined." The Court held that the plain language of the statute does not bar the Department of Environmental Conservation from processing renewal and modification applications for mining permits in covered counties where the application involves land that is within the scope of a prior nonconforming use, and therefore within the scope of local zoning laws. Since there had been no determination as to whether the renewal and modification applications at issue were within the scope of the applicant's prior nonconforming use, the matter was remitted to the agency for further proceedings.

FREEDOM OF INFORMATION LAW

Matter of Appellate Advocates v New York State Dept. of Corr. & Community Supervision (40 NY3d 547)

Non-profit Appellate Advocates sought all training materials prepared for the Department of Corrections and Community Supervision's (DOCCS) Board of Parole. As the documents at issue on appeal were privileged attorney-client communications containing legal advice from counsel, the Court held that DOCCS properly invoked the statutory Freedom of Information Law (FOIL) exemption for privileged matters (*see* Public Officers Law § 87 [2] [a]; CPLR 4503 [a]).

INSURANCE

Nitkewicz v Lincoln Life & Annuity Co. of N.Y. (40 NY3d 349)

The United States Court of Appeals for the Second Circuit certified a question to the Court, asking the Court to determine whether Insurance Law § 3203 (a) (2), which requires insurers to refund a portion of a life insurance premium "if the death of the insured occurs during a period for which the premium has been paid," applied to "planned payment[s] into an interest-bearing policy account, as part of a universal life insurance policy." The Court answered the question in the negative, holding that planned premiums for universal life insurance policies were not subject to the refund requirement because discretionary payments into a policy account—like those typically made for a universal life insurance policy—were not "premiums" within the meaning of that statute. Nor were the payments made "for any period" because the payments could not be tied to any particular monthly deduction from the account required to keep the insurance in effect.

LIBEL AND SLANDER

Gottwald v Sebert (40 NY3d 240)

Plaintiff, a well-known music producer, sued defendant, a successful recording artist, for defamation, alleging that certain statements made by defendant in a separate action were defamatory. Defendant argued that because plaintiff was a public figure, he was required to

establish that the allegedly defamatory statements were made with actual malice. The Court held that because plaintiff purposefully sought extensive publicity for himself, his businesses, and the artists he represents, and highlighted the nature of his relationships with those artists to advance his business interests, he was appropriately considered a limited-purpose public figure. The Court determined that questions of fact existed as to whether the statutory fair reporting privilege or the pre-litigation privilege applied to several of the allegedly defamatory statements, but held that five of those statements were protected by the absolute privilege afforded to statements made in connection with judicial proceedings and rejected the argument that a "sham exception" applies to the litigation privilege. The Court also determined whether 2020 amendments to New York's anti-SLAPP statute applied to this action. The New York anti-SLAPP statute, codified in Civil Rights Law § 70-a and § 76-a, is designed to protect certain individuals who face targeted litigation for their participation in public affairs—Strategic Lawsuits Against Public Participation (SLAPP suits). The Court held that the 2020 amendments did not apply retroactively to actions commenced prior to the effective date of the amendments, but that there is no retroactive effect when its provisions are applied prospectively to actions commenced or continued beyond the effective date. Because plaintiff continued this action after that point, defendant could assert a counterclaim against plaintiff pursuant to section 70-a and, if successful, would be entitled to recover costs, attorney's fees, and damages; any calculation of damages must begin at the amendment's effective date.

MORTGAGES—FORECLOSURE

Bank of Am., N.A. v Kessler (39 NY3d 317)

Defendant defaulted on a loan secured by a mortgage on his home and Bank of America sent him a 90-day pre-foreclosure notice pursuant to Real Property Actions and Proceedings Law § 1304, a statutorily required notice designed to encourage communication between borrowers and lenders to reduce unnecessary foreclosure proceedings. In addition to containing all the language required by statute, the notice also contained two paragraphs containing accurate descriptions of additional safeguards available to borrowers in bankruptcy status or with military membership. Defendant argued those statements violated section 1304's "separate envelope" provision, thereby rendering the notice void and barring Bank of America from filing a subsequent foreclosure action. The Court rejected defendant's argument, holding that the inclusion of clear and concise additional statements beyond the required statutory notice did not void a lender's otherwise valid 90-day pre-foreclosure notice to a home mortgagee.

MUNICIPAL CORPORATIONS—PUBLIC EMPLOYMENT

Matter of Rochester Police Locust Club, Inc. v City of Rochester (2023 NY Slip Op 05959)

The Court held that police discipline was a mandatory subject of bargaining in Rochester under the Taylor Law and that Rochester Local Law No. 2, which created procedures for police discipline that conflicted with those set out in the collective bargaining agreement between the City of Rochester and the Rochester Police Locust Club, was therefore invalid. The Court rejected the City of Rochester's

argument that police discipline was a prohibited subject of bargaining in the City of Rochester pursuant to the Rochester Charter and *Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v New York State Pub. Empl. Relations Bd.* (6 NY3d 563 [2006]), reasoning that bargaining became mandatory when the City of Rochester repealed portions of its charter committing police discipline to the discretion of City officials in 1985.

NEGLIGENCE—ASSUMPTION OF RISK

Grady v Chenango Val. Cent. Sch. Dist. (40 NY3d 89)

After the enactment of the comparative negligence regime, the Court retained the assumption of risk doctrine in the limited context of athletic and recreative activities. In these limited circumstances, primary assumption of risk applies when a consenting participant in a qualified activity is aware of the risks, has an appreciation of the nature of the risks, and voluntarily assumes the risks, but a participant is not deemed to have assumed risks that are concealed or unreasonably enhanced. In companion cases, the Court considered application of the doctrine in claims arising from plaintiffs' injuries while playing basketball and baseball, respectively. In the basketball case, plaintiff was injured during a drill when he collided with another player and fell into the retracted bleachers while chasing a loose ball. The Court held that assumption of risk applied to bar plaintiff's claim because plaintiff's injury is one inherent in the sport of basketball and the drill during which he sustained his injury did not unreasonably increase the risk of injury beyond that inherent in the sport of basketball. In the baseball case, the Court held that material issues of fact remained regarding whether the drill in which plaintiff was engaged at the time of his injury created a dangerous condition over and above the usual dangers inherent in baseball. Under the unique circumstances of the drill, which involved multiple balls in play directed to the same part of the field and with only a relatively small protective screen protecting players, defendants did not show, as a matter of law, that plaintiff's awareness of the risks inherent in baseball practices and games encompassed the risks from the drill.

NEGLIGENCE—NEGLIGENT SUPERVISION

Moore Charitable Found. v PJT Partners, Inc. (40 NY3d 150)

The complaint in this commercial action alleged that plaintiffs were defrauded of $25 million by an employee of an investment bank who, acting under the guise of his employment, convinced them to participate in a fake financing transaction. The Court reversed the pleading-stage dismissal of plaintiffs' claim for negligent supervision and retention of the employee, holding that plaintiffs had adequately alleged that the bank had constructive notice of the employee's propensity to commit fraud because it should have known that the employee had previously diverted a fee from the bank. The Court also held that plaintiffs were not required to allege a customer relationship with the bank in order to proceed; their allegations that they were prospective customers who were solicited by the employee to participate in financing related to one of the bank's legitimate business deals, using genuine documentation from the deal, sufficed to state a claim.

NEGLIGENCE—MAINTENANCE OF PREMISES

Scurry v New York City Hous. Auth. (39 NY3d 443)

The Court held that the New York City Housing Authority (NYCHA) was not entitled to summary judgment in a premises security negligence action brought by administrators of estates of deceased NYCHA tenants who were murdered by intruders in NYCHA apartments. Administrators of decedents' estates alleged that the exterior door locks to the apartment buildings were nonfunctioning and NYCHA conceded that it had a duty to provide a locking exterior door. The Court held that there were several disputed issues of material fact, including whether the risk created by the nonfunctioning door locks was the proximate cause of the tenants' death, the accuracy of NYCHA's maintenance logs, whether NYCHA had notice about the exterior door to the apartment building not locking, and whether the door had been fixed since NYCHA was made aware of the problem.

TAXATION

Hetelekides v County of Ontario (39 NY3d 222)

The Court held that a tax foreclosure proceeding is in rem against taxable real property, not in personam against an individual and that New York statutory law and state and federal constitutional guarantees of due process require an attempt at notice of the tax foreclosure that is reasonably calculated to alert all parties with an interest in the property. Plaintiff challenged the validity of a tax proceeding related to commercial real property owned by plaintiff's decedent, on the ground that the proceeding was commenced after decedent's death and violated due process guarantees because plaintiff was not individually served with the notice of foreclosure. The Court first concluded—based on decisional law, the statutory structure, and traditional notions of jurisdiction—that the tax foreclosure proceeding was brought against the property, not against decedent. Second, the Court held that the taxing authority adequately attempted to notify all parties with an interest in the property by calling twice and making a personal visit to the commercial real property.

WORKERS' COMPENSATION

Matter of Lazalee v Wegman's Food Mkts., Inc. (40 NY3d 458)

The Court held that a workers' compensation law judge (WCLJ) lacks the discretion to deny an employer's request for cross-examination of the claimant's physician made before the WCLJ has rendered a decision on the merits. The rule at issue uses mandatory language, providing that the WCLJ "shall" grant an adjournment for that purpose upon such a request (12 NYCRR 300.10 [c]), and the rules promulgated by the Workers' Compensation Board pursuant to its rulemaking authority are binding upon the Board.

2023 Events

Investiture of Chief Judge Wilson

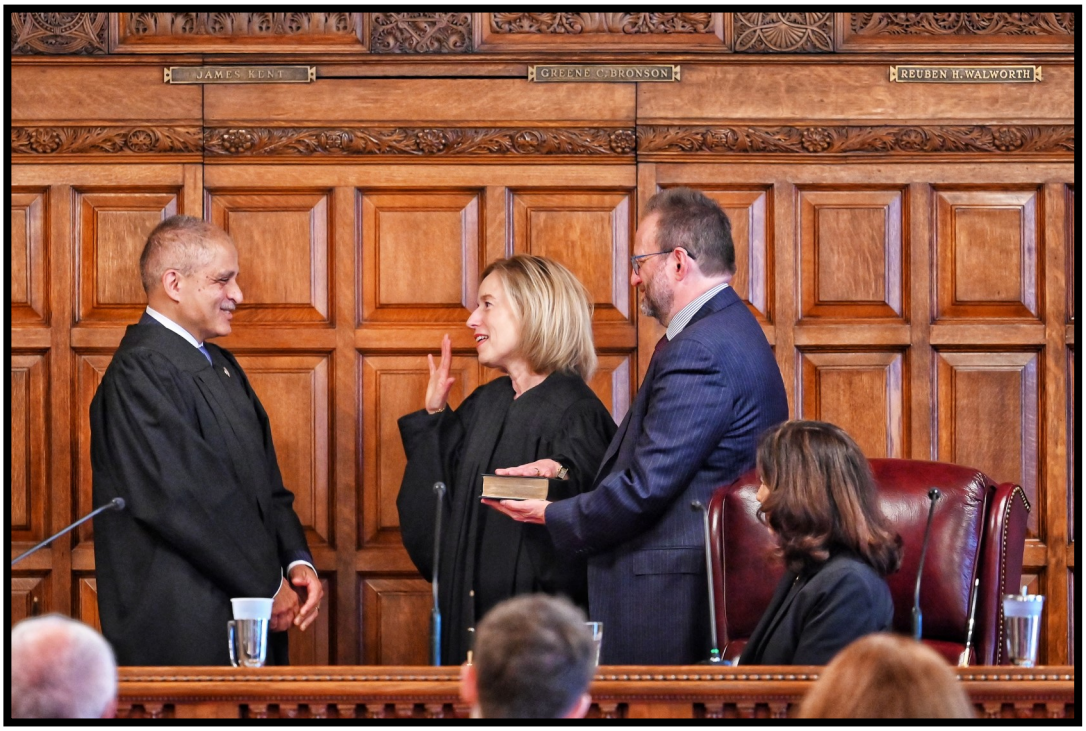
On April 10, 2023, Governor Kathy Hochul nominated Associate Judge Rowan D. Wilson to serve as Chief Judge of the New York State Court of Appeals and State of New York. The New York State Senate confirmed the nomination on April 18, 2023.

On September 12, 2023, pictured above, a formal investiture ceremony was held at Court of Appeals Hall.

Investiture of Judge Halligan

On April 19, 2023, the New York State Senate confirmed Governor Kathy Hochul's nomination of Caitlin J. Halligan as an Associate Judge of the Court of Appeals.

On June 7, 2023, pictured below, a formal investiture ceremony was held at Court of Appeals Hall.



Law Day 2023

On May 1, 2023, 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. Chief Judge Wilson, Attorney General Letitia James and State Bar President Sherry Levin Wallach delivered remarks at Court of Appeals Hall.

The 2023 Law Day theme was "Cornerstones of Democracy: Civics, Civility, and Collaboration."

Judith S. Kaye Service Awards

During the Law Day ceremony, the Judith S. Kaye Service Awards were awarded to Unified Court System employees for exemplary work performance, heroism, and special commendations.

Pictured below with the award recipients are Chief Administrative Judge Joseph A. Zayas, Acting Chief Administrative Judge Tamiko Amaker, and Deputy Chief Administrative Judge of the New York City Courts Deborah A. Kaplan.

Court of Appeals Holds Session in Buffalo

The Court convened for its full November Session in Buffalo, New York. Local residents, attorneys, and students attended oral argument in the Ceremonial Courtroom at Old County Hall.

Appendices

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Judges of the Court of Appeals

Appendix 2

Appeals Decided by Jurisdictional Predicate (2023)

Appendix 3

Appeals Analysis (2019-2023)

All Appeals—Civil and Criminal

Civil Appeals—Type of Disposition

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Appendix 4

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Office for Professional Matters (2019-2023)

Judges of the Court of Appeals

Chief Judge Rowan D. Wilson

Judge Jenny Rivera

Judge Michael J. Garcia

Judge Madeline Singas

Judge Anthony Cannataro

Judge Shirley Troutman

Judge Caitlin J. Halligan

Appeals Decided by Jurisdictional Predicate (2023)

Basis of Jurisdiction: All Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Appellate Division Dissents	7	5	0	0	0	12
Permission of Court of Appeals/Judge thereof	24	23	2	1	0	50
Permission of Appellate Division/Justice thereof	3	11	2	0	0	16
Constitutional Question	2	0	1	0	0	3
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other*	0	1	1	1	4	7
Totals	**36**	**40**	**6**	**2**	**4**	**88**

* Three CPLR 5601 (d) appeals; three 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 (2023)

Basis of Jurisdiction: Civil Appeals	Disposition					
	Affirmance	Reversal	Modification	Dismissal	Other	Total
Appellate Division Dissents	7	5	0	0	0	12
Permission of Court of Appeals	11	9	1	0	0	21
Permission of Appellate Division	2	5	2	0	0	9
Constitutional Question	2	0	1	0	0	3
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other*	0	1	1	1	4	7
Totals	**22**	**20**	**5**	**1**	**4**	**52**
Basis of Jurisdiction: Criminal Appeals	**Disposition**					
	Affirmance	**Reversal**	**Modification**	**Dismissal**	**Other**	**Total**
Permission of Court of Appeals Judge	13	14	1	1	0	29
Permission of Appellate Division Justice	1	6	0	0	0	7
Other	0	0	0	0	0	0
Totals	**14**	**20**	**1**	**1**	**0**	**36**

* Three CPLR 5601 (d) appeals; three final determinations of Rule 500.27 certified questions; one removal of a Judge in a proceeding pursuant to Judiciary Law § 44 (8).

Appeals Analysis

(2019-2023)

All Appeals— Civil and Criminal	2019	2020	2021	2022	2023
Civil	56% (60 of 108)	56% (54 of 96)	46% (37 of 81)	66% (60 of 91)	59% (52 of 88)
Criminal	44% (48 of 108)	44% (42 of 96)	54% (44 of 81)	34% (31 of 91)	41% (36 of 88)
Civil Appeals— Type of Disposition					
	2019	2020	2021	2022	2023
Affirmed	48%	41%	32%	55%	42%
Reversed	38%	45%	49%	35%	38%
Modified	5%	8%	3%	5%	10%
Dismissed	3%	2%	3%	3%	2%
Other	5%	4%	13%	2%	8%*
Criminal Appeals— Type of Disposition					
	2019	2020	2021	2022	2023
Affirmed	69%	36%	57%	55%	39%
Reversed	27%	62%	39%	42%	55%
Modified	4%	0%	4%	3%	3%
Dismissed	0%	2%	0%	0%	3%

*CPLR 5601 (d) appeals, 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 (2019-2023)

	2019	2020	2021	2022	2023
Appellate Division Dissents	30% (18 of 60)	22% (12 of 54)	19% (7 of 37)	15% (9 of 60)	23% (12 of 52)
Permission of Court of Appeals	42% (25 of 60)	44% (24 of 54)	43% (16 of 37)	52% (31 of 60)	40% (21 of 52)
Permission of Appellate Division	18% (11 of 60)	20% (11 of 54)	13% (5 of 37)	22% (13 of 60)	17% (9 of 52)
Constitutional Question	3% (2 of 60)	6% (3 of 54)	8% (3 of 37)	7% (4 of 60)	6% (3 of 52)
Stipulation for Judgment Absolute	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)	0% (0 of 52)
CPLR 5601 (d)	2% (1 of 60)	0% (0 of 54)	3% (1 of 37)	0% (0 of 60)	6% (3 of 52)
Supreme Court Remand	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)	0% (0 of 52)
Judiciary Law § 44	0% (0 of 60)	4% (2 of 54)	0% (0 of 37)	1% (1 of 60)	2% (1 of 52)
Certified Question (Rule 500.27)	5% (3 of 60)	4% (2 of 54)	14% (5 of 37)	3% (2 of 60)	6% (3 of 52)
Other	0% (0 of 60)	0% (0 of 54)	0% (0 of 37)	0% (0 of 60)	0% (0 of 52)

Criminal Appeals Decided by Jurisdictional Predicate (2019-2023)

	2019	2020	2021	2022	2023
Permission of Court of Appeals Judge	67% (32 of 48)	81% (34 of 42)	68% (30 of 44)	65% (20 of 31)	81% (29 of 36)
Permission of Appellate Division Justice	33% (16 of 48)	19% (8 of 42)	32% (14 of 44)	32% (9 of 31)	19% (7 of 36)
Other*	0% (0 of 48)	0% (0 of 42)	0% (0 of 44)	3% (1 of 31)	0% (0 of 36)

*Remand from the Supreme Court of the United States.

Motions (2019-2023)

	2019	2020	2021	2022	2023
Motions Submitted for Calendar Year	1182	954	1030	903	846
Motions Decided for Calendar Year*	1096	1070	988	957	816
Motions for Leave to Appeal	843	870	801	765	636
Granted	18	32	33	27	43
Denied	640	663	587	518	450
Dismissed	184	171	177	214	141
Withdrawn	1	4	4	6	2
Motions to Dismiss Appeals	6	3	6	1	1
Granted	2	2	2	1	0
Denied	4	1	4	0	1
Dismissed	0	0	0	0	0
Withdrawn	0	0	0	0	0
Sua Sponte and Court's Own Motion Dismissals	118	97	85	74	60
Total Dismissals of Appeals	120	99	87	75	61
Motions for Reargument of Appeal	24	23	19	17	13
Granted	0	0	0	0	0
Motions for Reargument of Motion	68	55	29	47	31
Granted	0	0	0	0	0
Motions for Assignment of Counsel	27	23	22	25	33
Granted	27	23	22	25	33
Denied	0	0	0	0	0
Dismissed	0	0	0	0	0
Motions for Poor Person Status	194	205	168	165	158
Granted	6	4	3	9	5
Denied	0	0	0	0	0
Dismissed	188	201	165	156	153

* 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 (2019-2023)

	2019	2020	2021	2022	2023
Motions for Amicus Curiae Relief	79	71	94	83	79
Granted	75	70	91	81	78
Motions to Waive Rule Compliance	0	0	0	0	0
Granted	0	0	0	0	0
Motions to Vacate Dismissal/Preclusion	1	6	2	0	4
Granted	0	3	0	0	2
Motions for Leave to Intervene	0	0	0	0	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	29	20	13	22	23
Granted	1	2	0	1	3
Denied	2	2	0	2	1
Dismissed	26	16	13	19	19
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	18	12	18	17	12
Granted	18	12	17	15	11
Motions to Strike Brief/Record/Appendix	4	2	2	0	0
Granted	3	2	0	0	0
Motions to Amend Remittitur	0	1	3	0	0
Granted	0	0	2	0	0
Motions for Miscellaneous Relief	34	27	17	13	10
Granted	1	2	2	0	0
Denied	24	12	4	4	4
Dismissed	9	13	11	9	6
Withdrawn	0	0	0	0	0

Criminal Leave Applications (2019-2023)

	2019	2020	2021	2022	2023
Total Applications Assigned	2408	1729	1659	1489	1143
Total Applications Decided*	2493	1824	1658	1474	1175
Granted	34	29	27	33	33
Denied	2265	1668	1526	1353	1042
Dismissed	188	117	98	79	91
Withdrawn	6	10	7	9	9
Total People's Applications	75	38	52	45	30
Granted	15	4	3	5	4
Denied	52	29	43	34	21
Dismissed	3	1	1	1	0
Withdrawn	5	4	5	5	5
Average Number of Applications Assigned to Each Judge	344	247	237	213	163
Average Number of Grants for Each Judge	5	4	4	5	5

* Includes some applications assigned in previous year.

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2019-2023)

	2019	2020	2021	2022	2023
Total number of inquiry letters sent	80	68	63	50	39
Withdrawn on stipulation	0	2	1	0	2
Dismissed by Court	56	48	49	30	25
Transferred to Appellate Division Sua Sponte	6	2	3	5	1
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)	2	4	5	4	0
Jurisdiction retained—appeals decided	0	0	0	0	1
Inquiries pending at year's end	16	12	5	11	10

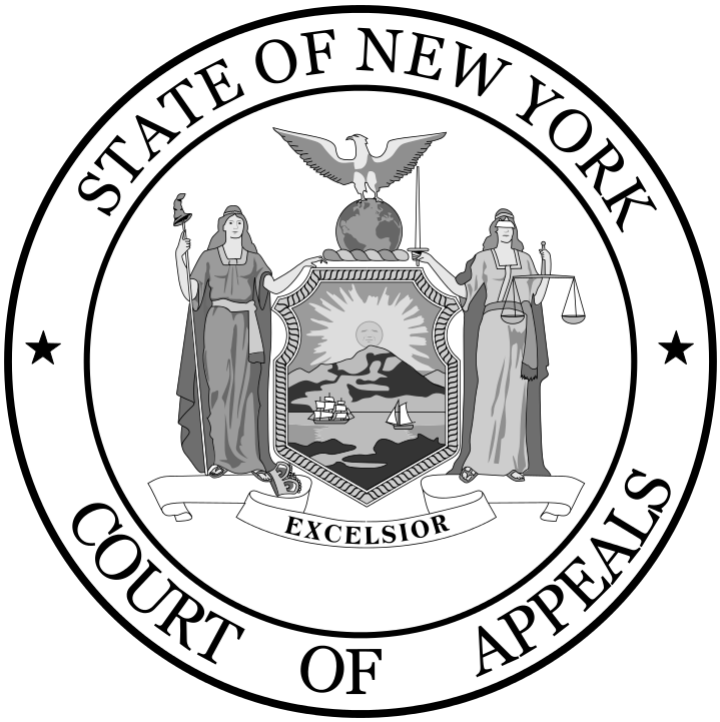
Office for Professional Matters (2019-2023)

	2019	2020	2021	2022	2023
Attorneys Admitted*	8,537	8,276	7,829	7,736	8,985
Registered In-House Counsel	141	71	164	235	231
Certificates of Admission	131	152	102	88	103
Clerkship Certificates	4	2	4	6	3
Petitions for Waiver**	322	309	448	582	685
Written Inquiries	98	128	94	153	187
Disciplinary Orders***	763	1,889	410	3,142	541
Name Change Orders	965	483	668	842	906

* 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 2020, 2021, 2022, and 2023 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (*see* Judiciary Law § 468-a).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