
COURT OF APPEALS OF THE STATE OF NEW YORK



2015 ANNUAL REPORT OF THE CLERK OF THE COURT

2015

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



John P. Asiello
Clerk of the Court
Court of Appeals

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Honorable Eugene F. Pigott, Jr.

Senior Associate Judge

Foreword

March 2016

January 2015 began without two of our most esteemed jurists, Judge Victoria A. Graffeo and Judge Robert S. Smith. The Court will continue to miss Judge Graffeo's vast experience and distinguished service, as it will the wealth of practicality and insight Judge Smith brought to the Court.

Judge Graffeo was succeeded by Judge Leslie E. Stein, who came to the Court from the Appellate Division, Third Department, where she served for seven years. Judge Stein's experience in private practice for nearly 14 years before being elected to Supreme Court will serve her and the Court well.

Judge Smith was succeeded by Judge Eugene M. Fahey. Judge Fahey, from Buffalo, served on the Appellate Division, Fourth Department, from December 2006 until his appointment to the Court of Appeals. Previous to that, Judge Fahey served on the Buffalo Common Council for a number of years prior to assuming the City Court bench in 1995 and being elected to Supreme Court, Eighth Judicial District, in 1996.

Both Judges Stein and Fahey were confirmed by the New York State Senate on February 9, 2015.

On March 25, 2015, the Court traveled to Syracuse for a day of oral argument at Syracuse University College of Law to celebrate the school's new facilities. April found the Court in White Plains for a week of oral argument as guests of the Westchester County Bar Association and the New York State Judicial Institute. In June, the Court of

Appeals' Lecture Series continued under the guidance of Judge Susan Phillips Read. Randall R. Craft, Jr., General Counsel of the New York City Ballet, presented the lecture, entitled "Dancing with the Law: Counsel, Choreography & Copyright."

In the second half of the year, changes were again the order of the day. On August 24, Judge Read retired from the Court. Judge Read had served since being appointed by Governor Pataki in 2003. Prior to that, she was the Presiding Judge of the New York State Court of Claims from 1999 to 2003.

On September 17, Andrew Klein, the Clerk of the Court, retired. During a distinguished career at the Court, Andy also served as Consultation Clerk to the Judges. Andy was sometimes referred to as the "eighth judge" during the Court's deliberations. By the unanimous consent of the Court, John Asiello became our Clerk on that date. John has served the Court in several capacities for well over 30 years, tracing his beginnings back to Chief Judge Charles Breitel.

December 31, 2015 marked the end of the remarkable tenure of Chief Judge Jonathan Lippman. Chief Judge Lippman's work both for the Court and for the Office of Court Administration simply cannot be overstated; nor can it be fairly recounted in this brief summary of the year.

On December 1, Governor Andrew M. Cuomo nominated Janet DiFiore, District Attorney of Westchester County, to be the next Chief Judge of the State of New York, and the State Senate confirmed her nomination on January 21, 2016. Chief Judge DiFiore brings a wealth of legal, judicial, and government experience to her new post.

Finally, this summary cannot end without recognizing the passing of our truly historic and much beloved former Chief Judge Judith S. Kaye. Judith left us on January 7, 2016. She has been and will be sorely missed.

2015

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

Introduction

I begin by thanking Judge Pigott for recounting the highlights of 2015 in his foreword, and most especially for his comments recognizing those who have recently left the Court. I join Judge Pigott in welcoming our new Chief Judge, Janet DiFiore.

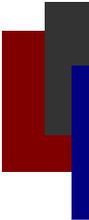
With respect to the Court's Rules, the changes made in 2015 having the greatest application will be the adoption of the Uniform Bar Examination and the adoption of a skills competency and professional values requirement for bar admission. As explained also in the report, the Court amended its Rules pertaining to the practice of law in several other respects. The Court did not change its Rules of Practice, which relate specifically to procedures on matters before the Court.

May 2015 marked 35 years since the Court of Appeals became one of the first courts to transition from paper docket books to electronic record-keeping. Court staff continue to work on ways to improve the Court's internal data systems and its Public Access and Search System (Court-PASS) to serve the Judges and the public more efficiently and effectively. As a tool to aid counsel, a video orientation on arguing at the Court, presented by former Clerk Andrew Klein, was added to the Court's website. Also added to the website was a virtual tour of Court of Appeals Hall, which includes views of both public and non-public areas of the courthouse and provides relevant historical information.

This report covers the calendar year 2015, but at this writing the passing of former Chief Judge Judith S. Kaye on January 7, 2016 was the most significant recent event for her Court of Appeals family. Chief Judge Kaye's inspiring leadership and friendship remain an enduring legacy at the Court of Appeals, recalled by those who had the privilege of serving the Court during her tenure.

Recognizing that this report is now more commonly viewed electronically through the

Court's website, the format and appearance have been changed substantially to better accommodate such viewing. Statistical tables were converted from landscape orientation to portrait, without changing the content. This year's Annual Report is divided into five parts: The first section is a narrative, statistical, and graphic overview of matters filed with and decided by the Court during the year. The second describes various functions of the Clerk's Office and summarizes administrative accomplishments in 2015. The third section highlights selected decisions of 2015. The fourth part, which is new, covers some of the Court's 2015 events and includes photographs. 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. Similar to the Supreme Court of the United States and other state courts of last resort, the primary role of the Court of Appeals is to unify, clarify, and pronounce the law of New York for the benefit of the community at large. 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, or certiorari, 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. By State Constitution and statute, the Appellate Division also can grant leave to appeal to the Court of Appeals in civil cases, and individual Justices of that court can grant leave to appeal to the Court of Appeals in most criminal cases.

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

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

The Court sits in Albany throughout the year, usually for two-week sessions. During these sessions, the Court meets each morning in conference to discuss the appeals argued the afternoon before, to consider and vote on writings circulated on pending appeals, and to decide motions and administrative matters. Afternoons are devoted to hearing oral argument, and evenings to preparing for the following day.

Between Albany sessions, the Judges return to their home chambers throughout the state, where they continue their work of reviewing briefs, writing opinions, and preparing for the

next Albany session. During these home chambers intersessions, each Judge annually decides hundreds of requests for permission to appeal in criminal cases, prepares reports on motions for the full Court's consideration and determination, and fulfills many other judicial and professional responsibilities.

In 2015, the Court and its Judges disposed of 3,781 matters, including 202 appeals, 1,378 motions and 2,201 criminal leave applications. A detailed analysis of the Court's work follows.

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 an original and one copy of a preliminary appeal statement in accordance with Rule 500.9. Pursuant to Rule 500.10, the Clerk examines all preliminary appeal statements filed for issues related to subject matter jurisdiction. This review usually occurs the day a preliminary appeal statement is filed. Written notice to counsel of any potential jurisdictional impediment follows immediately, giving the parties an opportunity to address the jurisdictional issue identified. After the parties respond to the Clerk's inquiry, the matter is referred 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.

Of the 147 notices of appeal received by the Court in 2015, 77 were subject to Rule 500.10 inquiries. Of those, all but 30 were dismissed sua sponte or on motion, withdrawn, or transferred to the Appellate Division. Twenty-five 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 these cases, copies of the briefs and record are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or

concerns prompted by the briefs. Each appeal argued or submitted is assigned by random draw to one member of the Court for reporting to the full Court at the Court's next conference.

In conference, the Judges are seated clockwise in seniority order around the conference table. When a majority of the Court agrees with the reporting Judge's proposed disposition, the reporting Judge becomes responsible for preparing the Court's writing in the case. If the majority of the Court disagrees with the recommended disposition of the appeal, the first Judge taking the majority position who is seated to the right of the reporting Judge assumes responsibility for the proposed writing, thus maintaining randomness in the distribution of all writings for the Court. Draft writings are circulated to all Judges during the Court's subsequent intersession and, after further deliberation and discussion of the proposed writings, the Court's determination of each appeal is handed down, typically during the next 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 a number of appeals on letter submissions without oral argument, saving the litigants and the Court the time and expense of full briefing and oral argument; for this reason, the parties may request SSM review. A case may be placed on SSM track if, for example, it involves narrow issues of law or issues decided by a recent appeal. As with normal-coursed appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes and are conferenced and determined by the entire Court.

Of the 322 appeals filed in 2015, 26 (8%) were initially selected to receive SSM consideration, a decrease from the percentage initially selected in 2014 (12.6%). Fifteen were civil matters and 11 were criminal matters. Five appeals initially selected to receive SSM consideration in 2015 were directed to full briefing and oral argument. Of the 202 appeals decided in 2015, 24 (11.8%) were decided upon SSM review (12.3% were so decided in 2014; 11.6% were so decided in 2013). Thirteen were civil matters and 11 were criminal matters. One civil appeal was withdrawn. Eight matters remained pending on SSM review at the end of 2015 (five civil and three criminal).

Promptness in Deciding Appeals

In 2015, litigants and the public continued to benefit from the Court's tradition of prompt disposition of appeals following oral argument or submission. The average time from argument or submission to disposition of an appeal decided in the normal course was 38 days; for all appeals, the average time from argument or submission to disposition was 34 days.

The average period from filing a notice of appeal or an order granting leave to appeal to calendaring for oral argument was approximately 12 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately seven months.

The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release of a decision in a normal-coursed appeal (including SSM appeals tracked to normal course) was 417 days. For all appeals, including those decided pursuant to the Rule 500.11 SSM procedure, those dismissed pursuant to Rule 500.10 SSD inquiries, and those dismissed pursuant to Rule 500.16 (a) for failure to perfect, the average was 324 days.

The Court's 2015 Docket

Filings

Three hundred twenty-two (322) notices of appeal and orders granting leave to appeal were filed in 2015 (310 were filed in 2014). Two hundred thirty-four (234) filings were civil matters (compared to 219 in 2014), and 88 were criminal matters (compared to 91 in 2014). The Appellate Division Departments issued 50 of the orders granting leave to appeal filed in 2015 (33 were civil, 17 were criminal).

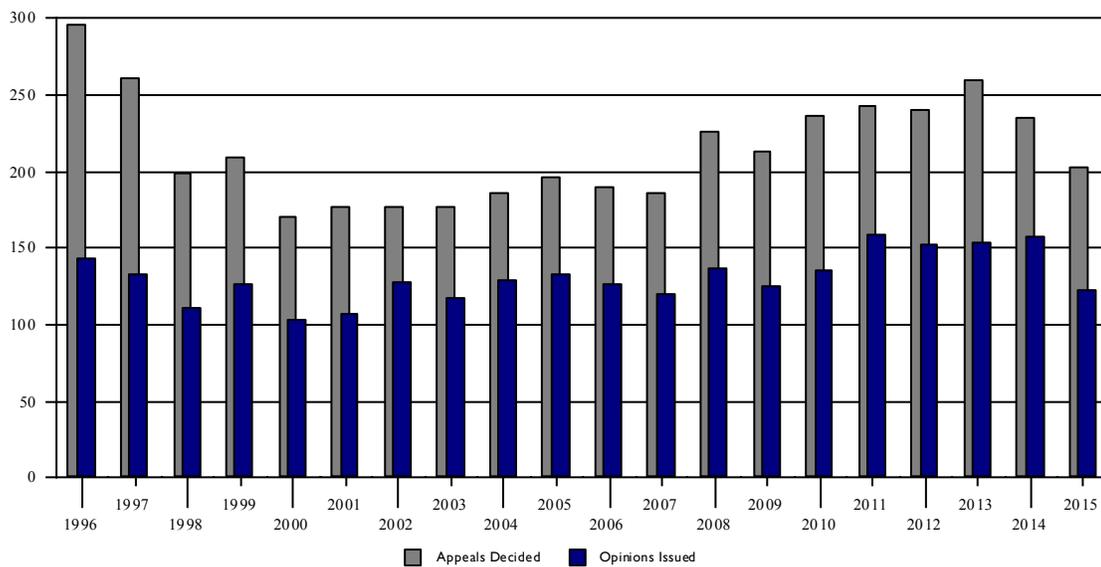
Motion filings increased by 7.9% in 2015. During the year, 1,395 motions were submitted to the Court, compared to the 1,293 submitted in 2014. Criminal leave applications also increased in 2015, by 11.3%. Two thousand three hundred thirty-eight (2,338) applications for leave to appeal in criminal cases were assigned to individual Judges of the Court during the year, 238 more than in 2014. On average, each Judge was assigned 391 such applications during the year.

Dispositions

Appeals and Writings

In 2015, the Court decided 202 appeals (112 civil and 90 criminal, compared to 144 civil and 91 criminal in 2014). Of these appeals, 124 were decided unanimously. The Court issued 120 signed opinions, 2 per curiam opinions, 68 dissenting opinions, 16 concurring opinions, 57 memoranda, and 24 decision list entries (one of which was a dissenting entry). The following chart tracks appeals decided and full opinions (signed and per curiam) issued over the past 20 years.

Appeals Decided and Opinions Issued (1996-2015)

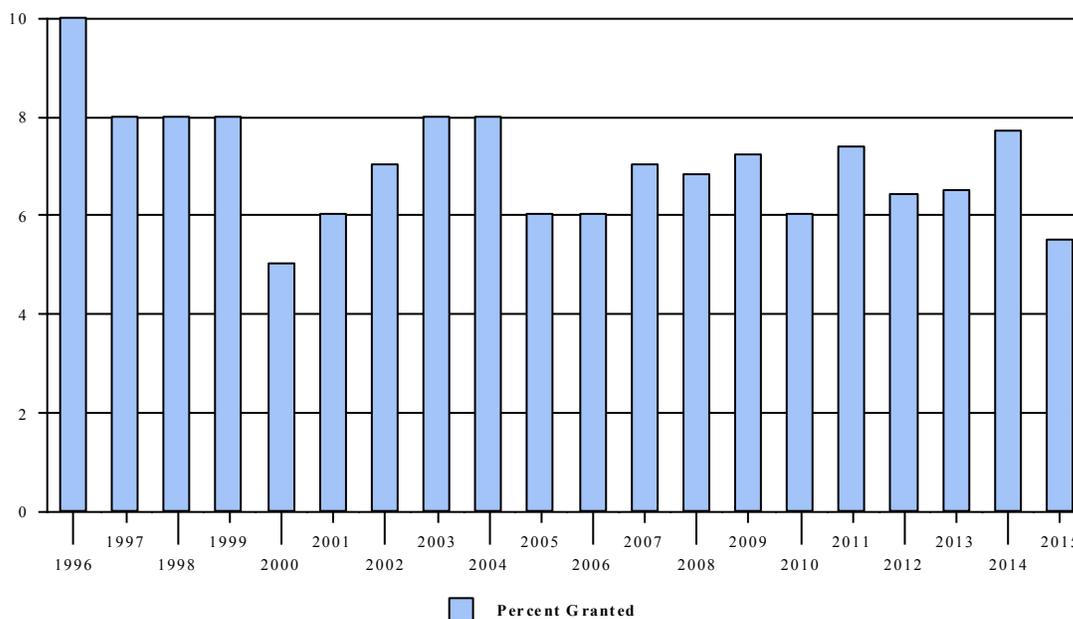


Motions

The Court decided 1,378 motions in 2015, an increase from the 1,300 decided in 2014. Of the 1,051 motions for leave to appeal decided in 2015, 5.5% were granted, 71.8% were denied, 22.5% were dismissed, and less than 1% were withdrawn. Fifty-seven motions for leave to appeal were granted in 2015. 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, that are novel, or that 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 56 days, while the average period of time from return date to disposition for all motions was 49 days. The following chart shows the percentage of civil motions for leave to appeal granted over the past 20 years.

Percentage of Motions for Leave to Appeal Granted by Year (1996-2015)

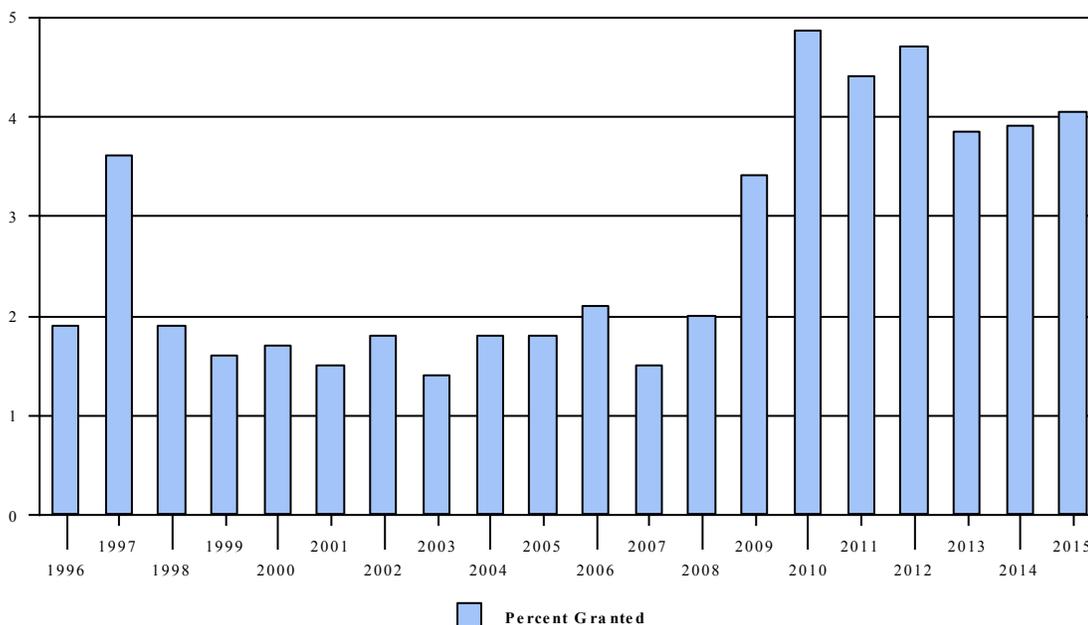


CPL 460.20 Applications

Individual Judges of the Court granted 91 of the 2,201 applications for leave to appeal in criminal cases decided in 2015 -- up slightly, on a percentage basis, from the grant of 81 of the 2,090 applications decided in 2014. Two hundred thirty-one (231) applications were dismissed for lack of jurisdiction, and 11 were withdrawn. Seven of the 51 applications filed by the People were granted. Of the 206 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, none were granted. The chart below shows the percentage of applications for leave to appeal granted in criminal cases over the past 20 years.

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 2015, on average, 100 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

Percentage of Criminal Leave Applications Granted by Year (1996-2015)



Review of Determinations of the State Commission on Judicial Conduct

By State Constitution and statute, the Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this state with a crime punishable as a felony. In 2015, pursuant to Judiciary Law § 44(8), the Court suspended one judge with pay and continued the suspension of that judge with pay.

Certifications Pursuant to Section 500.27 of the Rules

Section 500.27 of the Court's Rules of Practice 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. After a court certifies a question to this Court pursuant to section 500.27, the Court first decides whether the certification should be accepted. When the Court accepts a certified question, the matter is treated similarly to an appeal. Although the certified question may be determined pursuant to the Court's alternative sua sponte merits procedure (see section 500.11), the preferred method of handling is full briefing and oral argument. In 2015, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 22 days. The average period from acceptance of a certification to disposition was 8 months.

Four cases involving questions certified by the United States Court of Appeals for the Second Circuit remained pending at the end of 2014. In 2015, the Court answered the questions certified in those cases. In 2015, the Court accepted three cases involving questions certified by the United States Court of Appeals for the Second Circuit and one case involving questions certified by the Supreme Court of Delaware. Three of those cases remained pending at the end of 2015.

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

In 2015, the Court decided 334 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a slight decrease from the 361 petitions

decided in 2014. Notably, in May 2015, the Court eliminated the requirement that applicants who obtain a waiver to take the New York State bar examination and who fail or do not take the exam must re-petition the Court to sit for a subsequent exam. This resulted in a decrease in the number of petitions considered during 2015. Petitions typically are decided four to eight weeks after submission.

Court Rules

In 2015, the Court amended the Rules for the Admission of Attorneys and Counselors at Law in several significant respects. In May 2015, upon recommendation of the Advisory Committee on the Uniform Bar Examination (UBE), the Court amended sections 520.2, 520.7, 520.8, 520.9, and 520.12 of the Rules to adopt the UBE, effective for the July 2016 administration of the New York State bar examination. At the same time, the Court added new language to section 520.16, pertaining to the 50-hour pro bono admission requirement, to clarify the date after which the 50 hours of pro bono work must be performed. In June 2015, the Court amended section 520.6(b)(3)(vi) by slightly changing one category of courses that must be completed by foreign-educated applicants in an LL.M. program of study. In August 2015, the Court again amended section 520.16 to allow for remote supervision of pro bono work.

In November 2015, the Task Force on Experiential Learning and Admission to the Bar, chaired by Court of Appeals Associate Judge Jenny Rivera, submitted a report to the Court recommending that New York adopt a skills competency and professional values requirement for bar admission. The Court accepted the Task Force's recommendations in December, resulting in a new section 520.18 of the Rules for the Admission of Attorneys and Counselors at Law.

Also in December 2015, the Court amended the Rules for the Registration of In-House Counsel (Part 522) to allow for the registration of foreign attorneys. Additionally, the Court adopted a new Part 523, relating to the temporary practice of law in New York by out-of-state and foreign attorneys.



Administrative Functions and Accomplishments

Court of Appeals Hall

Court of Appeals Hall at 20 Eagle Street has been the Court's home for nearly 100 years. This 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 and the Deputy Building Superintendent oversee 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. For example, in 2015, Clerk's Office staff participated in the New York State Bar Association's continuing legal education program "New York Appellate Courts: A View from the Inside" at locations in Albany, Rochester, White Plains, Melville, and New York City.

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, Prisoner Applications Attorney, Criminal Leave Applications Clerk, several secretaries, court attendants, and clerical aides perform the many and varied tasks involved in appellate case management. Their responsibilities include receiving and reviewing all papers, filing and distributing to recipients all materials received, scheduling and noticing oral arguments, compiling and reporting statistical information about the Court's work, assisting the Court during conference, and preparing the Court's decisions for release to the public. The Court's document reproduction unit

handles most of the Court's internal document reproduction needs, as well as reproducing decision lists and slip opinions for release to the public. Security attendants screen all mail. Court attendants deliver mail in-house and maintain the Court's records room, tracking and distributing all briefs, records, exhibits, and original court files. During the Court's sessions, the court attendants also assist the Judges in the courtroom and in conference.

Court of Appeals Website

The Court's comprehensive website (<http://www.nycourts.gov/ctapps>) posts information about the Court, its Judges, history, summaries of pending cases and other news, as well as Court of Appeals decisions for the past six months. 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, session calendars, and undecided lists of argued appeals and civil motions -- and it provides links to other judiciary-related websites. The text and webcast of the Chief Judge's most recent State of the Judiciary address are posted on the home page, and the text of prior addresses can be reached through the "Annual Releases and Events" link. Archived webcasts of Law Day Celebrations and prior Annual Reports are also available through that link. A virtual tour of the Court and a video orientation for arguing counsel were added to the website in 2015.

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 filing records and briefs in digital format on appeals to the Court of Appeals and offers universal online access to publicly available documents through a searchable database (www.nycourts.gov/ctapps/courtpass). Anyone may search or browse the Court-PASS database free of charge, and may view or download documents from every stage of a case at the Court, including motion papers for civil motions in which leave to appeal has been granted by the Court of Appeals, and briefs and records in civil and criminal appeals. Court-PASS also incorporates the videos and transcripts of oral arguments, as well as Court decisions. The docket function of Court-PASS contains a snapshot of frequently requested information for all undecided appeals, including the due dates set for filing of

briefs, records, and appendices; the dates on which such documents are filed; scheduled dates of oral argument; and attorney contact information.

Public Information

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

The Public Information Office also provides information concerning the work and history of New York's highest court to all segments of the public -- from schoolchildren to members of the bar. Throughout the year, the Public Information Officer and other members of the Clerk's staff conduct tours of the historic courtroom for visitors. The Public Information Office maintains a list of subscribers to the Court's "hard copy" slip opinion service and handles requests from the public for individual slip opinions.

Under an agreement with Albany Law School's Government Law Center and Capital District public television station WMHT, the Public Information Office supervises the video recording of all oral arguments before the Court and of special events conducted by the Chief Judge or the Court. The recordings are preserved for legal, educational and historical research in an archive at the Government Law Center, and copies are available for purchase by the public.

Office for Professional Matters

The Court Attorney for Professional Matters manages the Office for Professional Matters. A court analyst provides administrative, research, and drafting support for the office.

The Court Attorney 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 ultimately decided by the Court, 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 individual Judges and the Clerk of the Court, the Central Legal Research Staff prepares draft reports on civil motions and selected appeals for the full Court's review and deliberation. From December Decision Days 2014 through December Decision Days 2015, Central Staff completed 994 motion reports, 56 SSD reports, and 13 SSM reports. Throughout 2015, Central Staff remained current in its work.

Staff attorneys also write and research materials for use by the Judges' chambers and Clerk's staff, and perform other research tasks as requested. During 2015, the staff continued to revise and expand work on an existing substantive law manual -- covering areas of law frequently encountered in the Court's civil motion practice.

Attorneys usually join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed in 2015 were graduates of Albany, Boston University, the State University of New York at Buffalo, the City University of New York at Queens, the University of Connecticut, Harvard University, Pace University, St. John's University and Wake Forest University law schools.

Library

The Chief Legal Reference Attorney provides legal and general research and reference services to the Judges of the Court, their law clerks, and the Clerk's Office staff.

The 2015 Court of Appeals Library staff work included relocating the core collection titles for more visibility and easier access, adding microfiche materials and superseded titles to the catalog, and deaccessioning materials that are readily available electronically. The Library staff also began working with the Information Technology department to create a new catalog and inventory database for the Court's collection.

The Library staff continued to provide the secondary source authorities research service to Judges' Chambers by making electronically available resources cited in the parties' briefs but not provided to the Court. The Library staff also worked to expand the in-house databases that provide full-text access to the Court's internal reports and additional Bill Jackets were added to the Court's internal database.

Continuing Legal Education Committee

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee is currently chaired by the Senior Deputy Chief Court Attorney, and meets on an as-needed basis. Other members include the Chief Court Attorney, the Chief Legal Reference Attorney, a Principal Court Attorney, three Judges' law clerks, and one attorney from the Law Reporting Bureau. A Central Legal Research Staff secretary manages CLE records, coordinates crediting, and issues certificates.

Beginning in August 2015, the Court received accredited provider status upon approval by the CLE Board. As such, the CLE Committee may now issue credit for suitable programs it and its affiliates plan. This new status provides greater flexibility and control and involves additional record-keeping and related administrative responsibilities. The first program offered as an accredited provider was a presentation by Honorable Albert M. Rosenblatt, Associate Judge of the Court of Appeals (ret.), on the historical origins of New York's justice system.

Over the entire year, the CLE Committee provided numerous programs for Court-associated attorneys -- including new staff training and orientation -- totaling 15 credit hours. Attorneys also attended classes offered by the New York Supreme Court, Appellate Division, Third Department; Albany Law School; and various state and local bar groups. These programs accounted for over 20 additional credit hours of live programming.

Management and Operations

The Director of Court of Appeals Management and Operations, aided by secretarial assistants, is responsible for supervising fiscal and personnel systems and functions, including purchasing, inventory control, fiscal cost recording and reporting, employee time and leave management, payroll document preparation, voucher processing, benefit

program administration, and annual budget request development. A supplies manager is responsible for distributing supplies, comparison shopping, and purchasing office supplies and equipment.

Budget and Finance

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

Expenditures

The work of the Court and its ancillary agencies (the New York State Law Reporting Bureau and the New York State Board of Law Examiners) was performed within the 2015-2016 fiscal year budget appropriation of \$15.4 million, which included all judicial and nonjudicial staff salaries (personal services costs) and all other cost factors (nonpersonal services costs), including in-house maintenance of Court of Appeals Hall.

Budget Requests

The total request for fiscal year 2016-2017 for the Court and its ancillary agencies is \$15.4 million. The 2016-2017 personal services request is \$13.5 million. This includes funding for all judicial positions and all filled nonjudicial positions. Funding is also included for the payment of increments, longevity bonuses, uniform allowance, and location pay, as required by law, for all eligible employees. The 2016-2017 nonpersonal services request is \$1.85 million.

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2016-2017 illustrates the Court's diligent attempt to perform its functions and those of its ancillary agencies economically and efficiently. The Court will continue to maximize opportunities for savings to limit increases in future budget requests.

Revenues

In calendar year 2015, the Court reported filing fees for civil appeals totaling \$31,035 and

for motions totaling \$35,954. 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 the slip opinion distribution service (\$2,100) and miscellaneous collections (\$978.74). For calendar year 2015, revenue collections totaled \$70,067.78.

Information Technology

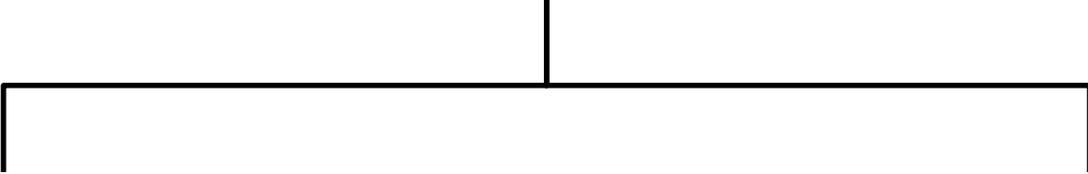
The Information Technology Department oversees all aspects of the Court's computer and web operations under the direction of the Chief Management Analyst, assisted by a LAN Administrator, a PC Analyst, and a Senior Associate Computer Applications Programmer. These operations include all software and hardware used by the Court and a statewide network connecting the remote Judges' chambers with Court of Appeals Hall.

The Department 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 2,575 for the year.

The Department is also responsible for the upkeep of three websites: an intranet website, the Court's main internet site, located at <http://www.nycourts.gov/ctapps>, and the Court-PASS website, located at <http://www.nycourts.gov/ctapps/courtpass>. Over 1,093,084 visits were recorded to the main internet site in 2015, averaging 2,994 visits per day. The Court-PASS site recorded 80,764 visits in 2015.

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 supervises the Court Security Unit, which consists of Senior Security Attendants and Court Building Guards. The attendants are sworn New York State Court Officers and 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.

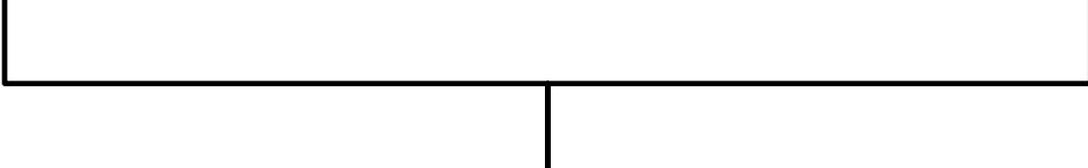


ACKNOWLEDGMENT

Although it is 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 mention in particular Heather Davis and Margaret Wood, who edited the Report and provided suggestions for updating its format; Andrea Ignazio and Bryan Lawrence, who prepared the detailed appendices; and Lisa Bohannon for her photography. I also thank especially Cynthia Byrne, Julianne Claydon, Margery Corbin Eddy, James Costello, Hope Engel, Rachael MacVean, Cynthia McCormick, Paul McGrath, Stephen Sherwin and Inez Tierney.

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

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





Year in Review: Decisions

Below is a summary of significant 2015 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues reaching the Court each year.

ARBITRATION

Cusimano v Schnurr (26 NY3d 391)

The Court determined that the Federal Arbitration Act (FAA) was applicable to certain commercial agreements entered into among family members regarding family-owned entities. The Court observed that the United States Supreme Court has interpreted the reach of the FAA to be coextensive with Congress's Commerce Clause powers. Moreover, even if the particular transaction at issue does not have a substantial effect on interstate commerce, the FAA would still apply if, in the aggregate, the economic activity in question is generally subject to federal control. Here, where the agreements concerned ownership of and investment in commercial properties, the FAA was deemed applicable. However, since the plaintiffs had vigorously pursued a litigation strategy, resulting in prejudice to the defendants, the Court held that plaintiffs had waived their right to arbitration.

ATTORNEY AND CLIENT

Schoenefeld v State of New York (25 NY3d 22)

In response to a question certified by the

Second Circuit, the Court interpreted Judiciary Law § 470 as requiring nonresident attorneys to maintain a physical office for the transaction of law business within the State. The Court rejected defendants' argument that the statute should be read narrowly to require only that out-of-state attorneys have a physical presence in the State for the receipt of service, observing that the statute as originally enacted had a service provision that was later severed. The Court further opined that, to interpret the statutory requirement of an "office for the transaction of law business" merely as a place where an attorney can receive service, as defendants urged, would have required the Court to rewrite the statute.

CIVIL PROCEDURE

ACE Sec. Corp., Home Equity Loan Trust, Series 2006-SL2 v DB Structured Prods., Inc. (25 NY3d 581)

This appeal arose from a transaction involving residential mortgage-backed securities. Purchasers, certificateholders of a trust, sued the sponsor of the transaction for failure to repurchase loans that allegedly did not conform to the sponsor's representations and warranties. The issues presented were whether the action was timely and the certificateholders complied with a condition precedent of the contract. The Court held that the cause of action for breach of representations and warranties accrued at the point of contract execution and where, as in this case, representations and warranties concern the characteristics of their subject as of the date they are

made, they are breached, if at all, on the date of contract execution. The Court further held that the certificateholders did not validly commence the action because they failed to comply with a contractual condition precedent to suit -- affording the sponsor 60 days to cure and 90 days to repurchase from the date of notice of the alleged non-conforming loans.

Conason v Megan Holding, LLC (25 NY3d 1)

Tenants in a rent-stabilized apartment in a residential building in Manhattan sued the building's owner/landlord, asserting an overcharge claim for rents paid beginning with their occupancy of the apartment -- which began more than five years earlier. In determining whether the four-year statute of limitations in CPLR 213-a barred tenants' rent overcharge claim, the Court held that, based on the unrefuted proof of fraud in the record, section 213-a merely limited tenants' recovery to those overcharges occurring during the four-year period immediately preceding tenants' claim.

Faison v Lewis (25 NY3d 220)

Plaintiff sought to vacate a forged deed and declare the deed and a bank's mortgage-based interest in the property a legal nullity. In determining whether plaintiff's claims were time-barred under CPLR 213(8), the Court held a forged deed is void at its inception, thus plaintiff's claim that the deed was forged was not subject to a statutory time bar. Furthermore, the Court held that a forged deed cannot convey any interest in property as only a

holder of legal title may convey such an interest, and therefore, there can be no bona fide purchaser of real estate under such a deed. Finally, the Court concluded that recording a forged deed will not transfer title to the property, as New York's recording statute does not apply to forged instruments.

Walton v Strong Mem. Hosp. (25 NY3d 554)

In 1986, when plaintiff was three years old, he underwent surgery to correct a congenital heart malformation. Plaintiff commenced this medical malpractice action in 2009, alleging that during his 1986 treatment, defendants hospital and physicians negligently left a portion of a catheter in his heart, causing serious and permanent injuries. The Court was faced with determining whether the portion of the catheter left in plaintiff's heart was a foreign object for purposes of the discovery rule of CPLR 214-a, thus extending the statute of limitations for plaintiff's claim. Following a comprehensive review of "foreign object" case law, the Court held that the catheter was not a fixation device, as it did not perform a securing or supporting role after surgery and, further, that leaving the catheter in plaintiff's heart post-surgery to serve a monitoring function did not convert it to a fixation device. Ultimately, the Court concluded that the lower courts erred in dismissing plaintiff's claim as time-barred.

COLLEGES AND UNIVERSITIES

Matter of Powers v St. John's Univ. Sch. of Law (25 NY3d 210)

In this CPLR article 78 proceeding, a law student challenged a determination of St. John's University School of Law to rescind his admission, after he had completed three semesters of law school as a part-time student, based on material misrepresentations and omissions in his application regarding his criminal history. The Court held that the law school's determination was rational insofar as it was not wholly inconsistent with the school's approach to rescission in general, the school followed its own rules and procedures, and the penalty was not disproportionate to the misconduct.

CONTEMPT

El-Dehdan v El-Dehdan (26 NY3d 19)

This challenge to a determination of civil contempt arose out of one party's failure to comply with an order issued in the course of a matrimonial action. The Court held that civil contempt does not require a finding that the contemnor wilfully violated the underlying order, and therefore plaintiff sustained her burden to establish civil contempt by showing the violation of a clear and lawful court order, defendant had knowledge of the order, and the violation prejudiced plaintiff's rights.

CONTRACTS

Beardslee v Inflection Energy, LLC (25 NY3d 150)

In this certified question from the Second

Circuit, the Court was asked to interpret a force majeure clause in certain oil and gas leases between New York landowners and energy companies. The energy companies asserted that New York's moratorium on the use of horizontal drilling and hydraulic fracturing triggered the force majeure clause and therefore extended the leases' operation. The Court declined to answer the question of whether the moratorium constituted a force majeure, holding that even if it did, the force majeure clause could not extend the leases' operation. Applying principles of New York contract law, the Court concluded that the force majeure clause had no effect on the habendum clause because the habendum clause did not incorporate the force majeure clause by reference or contain any language expressly subjecting it to other lease terms.

Coöperatieve Centrale Raiffeisen-Boerenleenbank, B.A., "Rabobank Intl.," N.Y. Branch v Navarro (25 NY3d 485)

Defendant personally guaranteed the obligations of two related corporations, under an agreement in which plaintiff purchased the corporations' indebtedness. In connection with the purchase agreement, a default judgment was entered against one of the corporations in favor of plaintiff. The Court held that the guarantor's contention, that the default judgment could not serve as a valid underlying debt for which he was liable because it was obtained by plaintiff's collusion, constituted a defense that was precluded by the express language of the "unconditional and absolute" guaranty. The

Court noted that, by "its plain terms . . . [and] sweeping and unequivocal language, the guaranty forecloses any challenge to the enforceability and validity of the documents which establish defendant's liability for payments arising under the purchase agreement, as well as to any possible defense to his liability for the obligations of the corporate businesses."

Ministers & Missionaries Benefit Bd. v Snow (26 NY3d 466)

Decedent died without changing his beneficiary designations for his retirement and death benefit plans, which named as beneficiaries his former wife and her father. The administrator of the plans could not determine whether to pay the benefits to the decedent's former wife, former father-in-law, or decedent's estate. The plans included provisions that they were to be governed and construed in accordance with New York law. A New York statute revokes beneficiary designations of former spouses, but not their family members, whereas Colorado law -- the law of decedent's domicile at death -- revokes designations of former in-laws as well. A New York statutory choice-of-law directive provides that a decedent's personal property shall be distributed in accordance with the laws of the state of his or her domicile at the time of death. The Court held that, when parties include a choice-of-law provision in a contract, they intend to have only that state's law applied. Specifically, the chosen state's substantive law -- but not its common-law conflict-of-laws principles or statutory choice-of-law

directives -- will govern the application of the contract, unless the parties expressly provide otherwise.

CRIMINAL LAW

People v Barksdale (26 NY3d 139)

Police officers encountered defendant standing in the lobby of a building in New York City that was enrolled in the trespass affidavit program. The officers inquired as to the nature of defendant's presence in the building, and defendant acknowledged that he did not live in the building and could not identify the friend he was purportedly visiting. The officers arrested defendant, and their ensuing pat frisk led to the discovery of a razor blade in one of defendant's pockets. The Court held that the record supported the lower courts' determinations that the police had an objective credible reason to approach and request information from defendant, and thus to begin the encounter that culminated in defendant's arrest and the seizure of the razor blade.

People v Carr; People v Cates (25 NY3d 105)

The Court determined that defendants' right to counsel was violated when the trial court held an in camera, ex parte and untranscribed proceeding with a critical witness who claimed he was too ill to testify but whose credibility was questioned by his long-term drug use. In the absence of substantial justifications, the ex parte in camera examination of witnesses as to nonministerial matters violates a defendant's constitutional right to counsel and right to confrontation. Because the

witness's examination involved issues of credibility that affected a substantial right of a party, the Court held that defense counsels' presence was required.

People v Conceicao; People v Perez; People v Sanchez (26 NY3d 375)

Defendants pleaded guilty to low-level offenses in exchange for non-incarceratory sentences. On appeal, each defendant sought to vacate his guilty plea under *People v Tyrell* (22 NY3d 359 [2013]), claiming that the plea was invalid because the trial court did not recite any of the constitutional rights he was waiving. The Court concluded that defendants' claims were reviewable on direct appeal, despite their failure to make the appropriate post-allocation motion, because defendants faced a practical inability to move to withdraw their pleas. The Court rejected defendants' contention, however, that a trial court's failure to mention the constitutional rights that are waived upon a guilty plea constitutes a mode of proceedings error exempt from the preservation requirement. The Court reviewed each case on the merits to determine whether the record in each case demonstrated that defendants intentionally relinquished their constitutional rights.

People v Dubarry (25 NY3d 161)

Defendant was convicted of attempted murder, depraved indifference murder, and intentional murder on a transferred intent theory where defendant killed a bystander while shooting at someone else. The Court held that the trial court improperly charged

defendant with both depraved indifference murder and intentional murder. The two charges were mutually exclusive, even though they relied on two distinct states of mind, because there was only one victim and thus only one possible outcome. In addition, defendant's conviction for attempted murder was reversed because the trial court erred when it allowed an unavailable witness's grand jury testimony into evidence.

People v Durant (26 NY3d 341)

Defendant was arrested on suspicion of robbery, and the police took him to a station house that lacked video and audio recording equipment, even though such equipment was available at another police facility a 10-minute drive away. During interrogation, defendant admitted that he had assaulted, but had not robbed, the victim. At his subsequent trial for robbery, defendant asked the court to instruct the jurors that they could draw an inference adverse to the prosecution and the police witnesses based on the police's failure to make an electronic recording of his interrogation. The Court concluded that the trial court did not abuse its discretion in rejecting defendant's request for an adverse inference instruction. The Court declined to adopt defendant's proposal for a per se rule mandating the issuance of adverse inference instructions in such situations, noting that the Legislature, which was actively considering proposed rules governing the recording of interrogations, was in the best position to make any changes to the law in this area. The Court

determined that the traditional rationales for issuing an adverse inference instruction -- e.g., as a penalty for governmental malfeasance -- did not automatically compel a trial court to deliver an adverse inference charge whenever the police could have recorded, but failed to record, an interrogation.

People v Garay (25 NY3d 62)

Defendant failed to preserve his claim that he was deprived of his right to counsel. The court discussed replacing a sick juror with an alternate juror while defense counsel was absent. However, defense counsel was aware there was a sick juror and was present when the judge told the alternate juror to take the seat of the sick juror. Defense counsel failed to object. The court's replacement of the sick juror in the presence of defense counsel was not a mode of proceedings error, and thus the traditional preservation rules applied.

People v Golo (26 NY3d 358)

Days after defendant pleaded guilty to possession of a controlled substance in the third degree (a crime committed in April 2003) and was sentenced to an indeterminate prison term, he pleaded guilty to two counts each of first-degree robbery and endangering the welfare of a child in connection with robberies that had occurred in May and June 2003. Although he was subsequently paroled, his parole was revoked on two occasions following various other arrests. When he moved pursuant to the Drug Law Reform Act of 2009 (DLRA-3) to be resentenced on the drug

conviction, Supreme Court, holding that defendant was ineligible to be resentenced because he had been convicted of an "exclusion offense" (CPL 440.46[5][a]), denied the motion without offering defendant an opportunity to be heard. The Court held that the robbery convictions were not "exclusion offenses" because they occurred after the drug offense for which he sought resentencing and that it was error to decide defendant's application without giving him an opportunity to appear before the court as required by DLRA-3.

People v Guthrie (25 NY3d 130)

The Court determined that there is probable cause to make a traffic stop for a suspected violation of law when the stop is based upon a police officer's objectively reasonable, but mistaken, view of the law. Generally, a traffic stop is justified when an officer observes a vehicle fail to stop at a valid stop sign, but the sign at issue in this case was located at the edge of a parking lot and not legally valid because it was not registered as required by the Vehicle and Traffic Law. The Court considered whether the officer reasonably believed that defendant violated the Vehicle and Traffic Law, without drawing any distinction between mistakes of fact and law, and rejected defendant's argument that a mistake of law can never provide justification for a traffic stop.

People v Harris (26 NY3d 321)

In a prosecution for burglary predicated upon defendant's intention to commit a larceny within a dwelling, defendant sought

relief from a conviction upon a time-barred petit larceny count on the ground that his trial attorney's failure to obtain the count's dismissal constituted ineffective assistance. The Court granted relief from the petit larceny conviction, making express the rule implicitly recognized in *People v Turner* (5 NY3d 476 [2005]), namely, that a claim for ineffective assistance may be sufficiently premised upon a strategically inexplicable failure by counsel to move for the dismissal of a time-barred count.

People v Holley (26 NY3d 514)

The Court held that failure by the police to preserve a record of computer-generated photograph arrays shown to an identifying witness gives rise to a rebuttable presumption that the procedure was unduly suggestive. Here, no record of the photo arrays was preserved, and a suppression hearing proceeded on the basis of testimony from the detective who had shown the arrays to the witness who identified defendant in three photographs. Explaining the rebuttable presumption of suggestiveness, the Court held that the People failed to meet their initial burden of producing evidence that the photo array was fair. However, in this case, the witness viewed about one hundred photographs and identified defendant and only defendant consistently, and the detective testified that he did not consider defendant a suspect before this procedure. Under these circumstances, the Court held that the People overcame the presumption.

People v Inoa (25 NY3d 466)

In this murder for hire prosecution, the issue was whether a detective who participated in the underlying investigation and who helped prepare the case for trial was properly permitted to testify as an expert in "decoding phone conversations," and, in that capacity, to provide extensive interpretive commentary as to what was being planned and referred to during numerous recorded phone conversations between alleged participants in the murder plot. The Court recognized, as have federal courts considering similar uses of case-specific investigative expertise (see e.g. *United States v Mejia*, 545 F3d 179 [2d Cir 2008]; *United States v Dukagjini*, 326 F3d 45 [2d Cir 2002]), that there is a point at which expert testimony of this description operates impermissibly to displace the jury in the performance of its fact-finding function. In this case, the Court determined that the purported expert was improperly used to instruct the jury as to the particular inferences it should draw from the evidence. The Court nonetheless affirmed defendant's conviction, citing the overwhelming properly admitted proof of defendant's commission of the murder with the expectation of payment and the absence of any claim that the prosecution expert acted as a conduit for testimonial hearsay.

People v Jones (25 NY3d 57)

Following defendant's conviction for criminal possession of a forged instrument in the second degree, defendant was

adjudicated a persistent felony offender pursuant to Penal Law § 70.10. Defendant's adjudication was based, in part, on two felonies in the Federal District Court for the Middle District of Florida -- making a false statement on a Bureau of Alcohol, Tobacco and Firearms form (18 USC § 924 [a]) and being a convicted felon possessing a firearm (*id.* § 922[g]). Neither of these federal crimes has a New York counterpart. Defendant challenged the adjudication, arguing that a predicate conviction must be based on a felony in New York or, if based on an out-of-state felony, must have a New York counterpart. The Court rejected defendant's argument, holding that New York's persistent felony offender statute, by its plain terms, does not require that an out-of-state predicate felony have a New York counterpart in order to classify someone as a persistent felony offender.

People v Jorgensen (26 NY3d 85)

Defendant, who was 34 weeks pregnant, was driving a car and was involved in a head-on collision, resulting in the deaths of two individuals in the other car and the early delivery and eventual death of her child. A jury acquitted defendant of the deaths of the people in the other car, but convicted her of manslaughter in the second degree for the death of her child. The Court held that the Legislature did not intend to hold pregnant women criminally responsible under the second degree manslaughter statute for reckless acts committed while pregnant that result in the eventual death of a child born alive.

People v Keschner; People v Goldman (25 NY3d 704)

The Court held that the prosecution in an enterprise corruption case may prove that a defendant was a member of a criminal enterprise, with a continuity beyond the scope of individual criminal incidents, without showing that the enterprise would have survived the removal of a key participant (Penal Law § 460.10[3]). There is no reason to treat a criminal structure as less deserving of enhanced penalty if its key figure is so essential to the organization that his or her absence would threaten its criminal agenda. The statute is best understood as requiring not that the group would continue in the absence of a key participant, but rather that it would continue to exist in the form of a structured, purposeful criminal organization beyond the time required to commit individual crimes.

People v Marshall (26 NY3d 495)

The Court reviewed so-called *Herner* hearings, conducted under *People v Herner* (85 NY2d 877 [1995]), in which a court examines whether a photograph shown to an eyewitness out of court was trial preparation. The Court held that there were no grounds on which to distinguish trial preparation displays from other displays, as the effect of such a procedure is the same regardless of the intent behind it. Because this exception fails to address whether such a display was unduly suggestive, and if so, whether the eyewitness's identification of defendant will

be tainted, all displays of defendant's image are subject to the same *United States v Wade* (388 US 218 [1967]) analysis and, where appropriate, are to be reviewed in a *Wade* hearing.

People v Martinez (26 NY3d 196)

In this appeal, the Court concluded that the presumption of judicial vindictiveness does not apply where a defendant rejects a plea offer and, after proceeding to trial for the first time, is convicted and sentenced to a much harsher term of imprisonment. Defendant rejected a plea offer of 10 years' probation after the trial court cautioned defendant that he risked a much stronger punishment should he be convicted after trial. After being found guilty of first-degree rape, he was sentenced to a term of 10 to 20 years in prison. While the presumption of vindictiveness is recognized where a defendant successfully appeals a conviction and, after being retried, receives a longer term of imprisonment, the Court concluded that the same policy considerations are not implicated when a defendant rejects a plea offer and receives a harsher sentence upon being convicted after trial.

People v Middlebrooks; People v Lowe (25 NY3d 516)

Criminal Procedure Law § 720.10 provides that a person charged with a crime alleged to have been committed when the individual was at least 16 and less than 19 years old is a "youth" and eligible for youthful offender status, except for, as relevant here, youths who have been con-

victed of an armed felony (CPL 720.10[2][a][ii]). CPL 720.10(3) provides, however, that a youth convicted of an armed felony is eligible for youthful offender treatment under certain specified circumstances. CPL 720.20(1) requires that upon the conviction of an eligible youth, the court must determine whether or not the eligible youth is a youthful offender. The Court held that, in order to fulfill its responsibility under CPL 720.20(1) and *People v Rudolph* (21 NY3d 497 [2013]), the sentencing court must make a threshold determination on the record as to whether a defendant convicted of an armed felony is an eligible youth by considering the factors set forth in CPL 720.10(3). If the court determines that one or both of the CPL 720.10(3) factors are present, and the defendant is therefore an eligible youth, the defendant is then entitled to the court's further consideration of whether to grant the defendant youthful offender treatment.

People v Nealon (26 NY3d 152)

The Court clarified the application of the mode of proceedings error doctrine to departures from the preferred procedure for responding to jury notes set forth in *People v O'Rama* (78 NY2d 270 [1991]). The Court held that a trial court complies with its responsibility to provide counsel with meaningful notice where, as here, the court reads the precise contents of a jury note into the record in open court in the presence of counsel and the jury before providing its response. The Court reasoned that, although the trial court departed from the *O'Rama* procedure by not discussing the

note and the court's intended response with counsel before recalling the jury, counsel nevertheless had notice of the precise contents of the note, as well as the content of the court's response to the jury, which counsel heard in open court as the court provided it. The Court held that, in such a situation, counsel has all the knowledge required to make an objection, either to the trial court's deviation from the *O'Rama* procedure or the court's response to the jury, or both.

People v Pavone (26 NY3d 629)

Defendant was convicted of first degree murder after a trial where his only defense was extreme emotional disturbance. Defendant argued that the People improperly used evidence of his post-arrest silence and that he was denied effective assistance of counsel. A plurality of the Court held that the People violated defendant's rights under the New York State Constitution by using his post-arrest silence for impeachment purposes. However, the violation was harmless because there was overwhelming proof that defendant did not suffer from an extreme emotional disturbance at the time of the murders, and there was no reasonable possibility that the error contributed to defendant's conviction. The Court also held that counsel was not ineffective for refusing to provide his expert with audio recordings, when the expert had the transcripts, and counsel's choice could be considered strategic.

People v Rodriguez (25 NY3d 238)

In this case, the Court clarified that, in accordance with its prior decision in *People v Rodriguez* (18 NY3d 667 [2012]), where the Appellate Division corrects an illegal sentence and remits the matter to the sentencing court under CPL 470.20, the sentencing court has discretion -- despite CPL 430.10 -- to modify a defendant's sentence. The Court also held that, under the facts presented, the assault and robbery counts were committed by separate and distinct acts and, therefore, the sentencing court had discretion to impose defendant's sentences on those counts consecutively.

People v Sanders (25 NY3d 337)

The Court upheld defendant's waiver of the right to appeal as voluntary, knowing, and intelligent where the right to appeal was adequately described without lumping it into the panoply of rights normally forfeited upon a guilty plea and defendant was asked whether he understood that, as a condition of his plea, he was "waiving the right to appeal [his] conviction and sentence to the Appellate Division." The Court emphasized that, although it has underscored the critical nature of a court's colloquy with a defendant explaining the right relinquished by an appeal waiver, it continues to require assessment of all relevant factors surrounding the waiver, including the experience and background of an accused.

People v Soto (26 NY3d 455)

At issue was whether an unavailable witness's statement to a defense investigator -- that she, not defendant, was

the driver at the time of the accident and fled the scene -- should have been admitted under an exception to the hearsay rule as a declaration against interest. The jury convicted defendant of drunk driving after the trial court refused to allow key evidence that a third party was actually the driver. The witness's statement amounted to an admission to leaving the scene of an accident, and although the witness believed that her conduct may have been illegal, she was uncertain and sought to speak with an attorney. Despite the witness's uncertainty as to her criminal liability and despite the crime being relatively minor, the Court reaffirmed the more lenient standard that applies to exculpatory declarations when holding that the statement qualified as a declaration against interest.

People v Walker (26 NY3d 170)

The issue in this case was whether the standard criminal jury instruction on the "initial aggressor exception" to the justification defense misstates the applicable law where defendant claimed that he intervened in an ongoing fight that began in his absence in order to shield a third party from unlawful attack. The Court concluded that the standard charge is misleading unless a supplemental charge is given on the meaning of "initial aggressor" in the defense -of-another scenario, explaining that if the intervenor was not involved in the initiation of the original conflict and had no reason to know that the person being defended initiated the conflict, then the defense is available.

People v Williams (25 NY3d 185)

During police interrogation, defendant waived his *Miranda* rights and willingly answered some police inquiries, but refused to answer others. At trial, the People used defendant's selective silence against him during their direct case. The Court held that this use of defendant's selective silence was impermissible. The Court reiterated the principle that, as a matter of state evidentiary law, the People generally may not use evidence of a defendant's silence during their direct case, nor may they impeach the defendant's trial testimony with such evidence unless unusual circumstances are present. The Court concluded that this general principle applies with equal force to selective silence. The Court reasoned that evidence of selective silence is of extremely limited probative worth, and "the potential risk of prejudice from evidence of a defendant's selective silence is even greater than the risk to a defendant who chooses to remain totally silent," because jurors are more likely to draw an improper inference of guilt if the defendant has willingly answered other police inquiries.

People v Wragg (26 NY3d 403)

The Court held that defendant's counsel was not ineffective where counsel made a tactical decision during voir dire to treat the victim's identification as a good faith error and that any mistakes by the People during summation did not constitute prosecutorial abuse. The Court also held that defendant had been properly

sentenced as a second child sexual assault felony offender, even though the People did not submit a predicate felony conviction statement prior to commencement of trial. The Court held that CPL 400.19(2) permits filing of a predicate felony conviction statement before commencement of a trial, but it does not prohibit the filing of such a statement after commencement of the trial and before sentencing.

People v Wright (25 NY3d 769)

In this prosecution for murder based on circumstantial DNA evidence, the Court concluded that defendant was deprived of the effective assistance of counsel by defense counsel's failure to object, time and again, when the prosecutor repeatedly, and affirmatively, misrepresented in summation to the jury that the DNA evidence was proof of defendant's guilt. Defendant was convicted of murder in the second degree based primarily on DNA analysis that was circumstantial because it did not "match" defendant's DNA to the DNA collected at the crime scene. Instead, as the People's expert confirmed, the analysis only indicated that defendant could not be excluded from the pool of male DNA contributors. Further, the expert testimony provided no statistical comparison to measure the significance of the results. The Court ruled that the summation did not merely ask the jury to draw reasonable inferences from the evidence presented at trial, but rather exceeded the bounds of that evidence, so as to require a reasonable defense counsel to object.

DEFAMATION

Front, Inc. v Khalil (24 NY3d 713)

This case required the Court to answer the open question whether statements made by attorneys prior to the commencement of litigation are privileged. The statements at issue were contained in a letter sent by an attorney hired by plaintiff to retrieve proprietary information it believed defendant, an employee it had terminated, stole. When the employee failed to comply with the demand to return the information, plaintiff sued. Defendant brought a third-party action against the attorney for libel based upon the statements in the letter. The Court held that such statements are protected by a qualified privilege and no cause of action for defamation can be based on those statements if the statements are pertinent to a good faith anticipated litigation.

ENVIRONMENTAL LAW

Matter of Natural Resources Defense Council, Inc. v New York State Dept. of Env'tl. Conservation (25 NY3d 373)

Federal and state law prohibit discharges of stormwater from New York's municipal separate storm sewer systems in urbanized areas without authorization under a State Pollutant Discharge Elimination System (SPDES) permit. As an alternative to an individual SPDES permit, municipal separate storm sewer systems that serve a population under 100,000 may seek to discharge stormwater under a "general" SPDES permit. The Court rejected a challenge to the 2010 general permit at

issue by environmental advocacy groups, holding that the general permit complied with federal and state law. The Court noted that the 2010 general permit required these municipal systems to develop, document, and implement a Stormwater Management Program in compliance with detailed specifications developed by the New York State Department of Environmental Conservation to limit the introduction of pollutants into stormwater to the maximum extent practicable.

Matter of Sierra Club v Village of Painted Post (26 NY3d 301)

Residents of the Village of Painted Post and not-for-profit organizations brought a CPLR article 78 proceeding raising a State Environmental Quality Review Act challenge to Village resolutions authorizing the sale and export of excess water from the municipal water supply and permitting construction of a transloading facility in the Village to load the water onto trains to accomplish that purpose. In determining standing, the Court analyzed *Society of Plastics Indus. v County of Suffolk* (77 NY2d 761 [1991]), and clarified that while the harm alleged must be specific to the individuals who allege it, the harm need not be unique, and that the number of people who are affected by a challenged action is not dispositive of standing.

FAMILY LAW

Matter of Veronica P. v Radcliff A. (24 NY3d 668)

Family Court found respondent guilty of a

family offense for harassing petitioner and entered a two-year order of protection against him. The Appellate Division dismissed the appeal to that court as moot, based on the expiration of the order of protection. This Court held that the appeal had not been mooted solely by the expiration of the order of protection. The Court noted that, even after its expiration, the order of protection exposed respondent to a variety of enduring practical and legal consequences, including the stigma of the determination of guilt referenced in the order, the increase of a sentence in any future criminal proceeding brought against him, increased scrutiny from law enforcement and impeachment in future legal proceedings.

Matter of Suarez v Williams (26 NY3d 440)

A child had lived with his grandparents for almost 10 years, virtually his entire life. The mother lived nearby, and she regularly saw and spent time with the child, including overnights. The mother had signed authorizations so the grandparents could make medical and educational decisions regarding the child, and he went to school in the grandparents' school district. After the mother refused to return the child following a visit, the grandparents commenced a proceeding seeking custody. The mother contended that the grandparents lacked standing. The Court held that, pursuant to Domestic Relations Law § 72(2) and *Matter of Bennett v Jeffreys* (40 NY2d 543 [1976]), grandparents may demonstrate standing to seek custody against a parent based on extraordinary

circumstances consisting of an extended disruption of custody where the child has lived with the grandparents for a prolonged period of time, even if the child had contact with the parent while the child lived with the grandparents.

INSURANCE

Matter of State Farm Mut. Auto. Ins. Co. v Fitzgerald (25 NY3d 799)

Respondent police officer was injured when an underinsured motorist struck a police vehicle occupied by him and driven by his fellow officer. Respondent sought supplementary underinsured motorist (SUM) coverage under the SUM endorsement of an insurance policy issued by appellant insurance carrier to the officer who had driven the police car during the accident. When respondent demanded arbitration under the SUM endorsement, appellant petitioned to stay arbitration on the ground that the police vehicle in which respondent had ridden was not a "motor vehicle" that could trigger SUM coverage under the policy and Insurance Law § 3420(f)(2)(A). The Court concluded that, because its decision in *Matter of State Farm Mut. Auto. Ins. Co. v Amato* (72 NY2d 288 [1988]) established that the term "motor vehicle" under Insurance Law § 3420(f)(1) excludes police vehicles, that statutory term also excludes police vehicles from SUM coverage under the related SUM provision in Insurance Law § 3420(f)(2)(A), and therefore the statutorily mandated SUM endorsement at issue here did not cover losses sustained by respondent in the

subject accident.

Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa. (25 NY3d 675)

In this insurance contract dispute, plaintiff sought to recover over \$18 million in losses for payment of fraudulent claims made by its authorized health care providers through an automatic computerized reimbursement system for services never actually performed under its Medicare Advantage plans. The insuring agreement for computer systems fraud covered "fraudulent entry . . . Of Electronic Data or Computer Program" losses. The Court concluded that the term "fraudulent entry" was unambiguous, and that the agreement did not cover losses caused by an authorized user's submission of fraudulent information into the insured's computer system. Therefore, the insuring agreement referred to unauthorized access into plaintiff's computer system, i.e., by "hackers."

Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co. (25 NY3d 498)

What proof must a plaintiff medical provider present to make a prima facie showing of entitlement to summary judgment in a no-fault insurance action? This Court held that a plaintiff demonstrates prima facie entitlement to summary judgment by submitting evidence that payment of no-fault benefits are overdue, and that proof of its claim, using the statutory billing form, was mailed to and received by the defendant insurer. The proof evincing the mailing must be presented in admissible form, including,

where applicable, meeting the business records exception to the hearsay rule.

LABOR LAW

Nicometi v Vineyards of Fredonia, LLC (25 NY3d 90)

Plaintiff, a construction worker, slipped on ice and fell to the floor while wearing stilts to install ceiling insulation. At issue was whether plaintiff's accident was caused by a special hazard presenting an elevation-related risk, as opposed to an ordinary construction site danger. The Court held that, under *Melber v 6333 Main St.* (91 NY2d 759 [1998]), plaintiff's accident did not fall within the ambit of Labor Law § 240(1) because the ice upon which he slipped was an ordinary slipping hazard unrelated to an elevation risk.

Saint v Syracuse Supply Co. (25 NY3d 117)

The Court determined that plaintiff's work -- removing an old advertisement from a billboard that was raised 59 feet from the ground, attaching extensions using angle irons, nuts, bolts, and nails that would change the dimensions of the billboard to accommodate a new advertisement with different measurements, and then attaching the new advertisement itself -- was included in the activities protected under Labor Law § 240(1). The Court held that plaintiff's work was "altering," under the definition adopted in *Joblon v Solow* (91 NY2d 457 [1998]), as the work was "a significant physical change to the configuration or composition of the building or structure," that was not "routine maintenance" or "decorative modification."

Tipaldo v Lynn (26 NY3d 204)

Plaintiff reported alleged misconduct engaged in by the then-Commissioner and First Deputy Commissioner of the New York City Department of Transportation to his immediate supervisor and the agency's Inspector General. After plaintiff was retaliated against for his report, he commenced this action pursuant to Civil Service Law § 75-b. Defendants argued that plaintiff failed to comply with Civil Service Law § 75-b by not reporting the allegedly wrongful actions to the appointing authority -- which under these facts were defendants -- before reporting to the Inspector General. The Court held that plaintiff sufficiently complied with Civil Service Law § 75-b. Because plaintiff's appointing authorities were defendants and he understandably did not report their alleged misconduct to them, strict compliance with the reporting requirements of Civil Service Law § 75-b would not serve the purpose of the statute as plaintiff made a good faith effort to comply.

LANDLORD AND TENANT

Graham Ct. Owners Corp. v Taylor (24 NY3d 742)

Applying Real Property Law § 234, which imposes a covenant in favor of a tenant's right to attorneys' fees, the Court ruled that the tenant was entitled to attorneys' fees because the lease authorized the landlord to cancel the lease upon tenant's default, repossess the premises, and then collect attorneys' fees incurred in retaking possession. The lease provision fit precisely

within the language of section 234, because "Real Property Law § 234 is a remedial statute intended to equalize the power of landlords and tenants," and evidences the Legislature's intent to abrogate the common-law rule that disfavors attorneys' fees for prevailing parties.

LOCAL LAWS

People v Diack (24 NY3d 674)

Defendant, a level one sex offender, was charged with violating Nassau County Local Law 4, which was codified in Nassau County Administrative Code § 8-130.6. That provision prohibited "any registered sex offender" from establishing a residence or domicile within 1,000 feet of the property line of a park. The Court held that the design and purpose of the State's enactment of a series of laws regulating registered sex offenders was to preempt the subject of sex offender registry restriction legislation, and that Nassau County was preempted by the State regulatory framework from enacting Local Law 4 and section 8-130.6.

Eric M. Berman, P.C. v City of New York (25 NY3d 684)

In 2009, through Local Law 15, the New York City Council amended its debt collection legislation by expanding the definition of a "debt collection agency." The amendments continued a limited exemption for attorneys or law firms who were performing debt collection activities on behalf of a client solely through activities that could only be performed by licensed attorneys. However, the exemption did not

cover attorneys or law firms "who regularly engage[d] in activities traditionally performed by debt collectors." The Court determined that there was no express conflict between Local Law 15 and the State's broad authority to regulate the practice of law. Rather, the regulatory schemes were seen as complementary to one another. The Court also rejected the argument that the courts' authority to regulate attorney conduct evidenced an intent to preempt the field of nonlegal services rendered by attorneys.

MENTAL HYGIENE LAW

People ex rel. DeLia v Munsey (26 NY3d 124)

A Mental Hygiene Law article 9 patient was involuntarily retained for several weeks after the expiration of the retention order authorizing his commitment. The patient sought a writ of habeas corpus pursuant to CPLR article 70, and he argued that the court need not conduct a hearing into his mental fitness prior to his release. The hospital argued that, under Mental Hygiene Law § 33.15, the patient could legally be released only if a court determined that he was not mentally disabled or in need of further treatment. The Court held that Mental Hygiene Law § 33.15 is not the exclusive mechanism through which article 9 patients may obtain a writ of habeas corpus. Rather, the Court interpreted section 33.15 as supplementing -- not supplanting -- CPLR article 70 for article 9 patients. Thus, patients can seek a writ of habeas corpus under section 33.15 when they believe their detention is unlawful

because they have recovered from their mental illness, and they may also seek a writ pursuant to CPLR article 70 when their detention is otherwise unauthorized and illegal, without regard to their mental state.

Matter of Shannon (25 NY3d 345)

The guardian of an incapacitated patient's person and property commenced this proceeding seeking, among other things, a determination whether it was required to pay the patient's remaining property in equal amounts to Westchester County Department of Social Services (DSS) and Eastchester Rehabilitation & Health Care Center (Eastchester), a skilled nursing home. After the patient's death, the funds remaining in her guardianship account passed to her estate and, pursuant to Social Services Law § 104(1), a claim advanced by DSS would have had priority over a competing claim brought by Eastchester against the patient's estate because Eastchester did not take a judgment against the patient before she died. The Court was called upon to determine whether Mental Hygiene Law § 81.44 permits a guardian to withhold from the patient's estate funds for the purpose of paying a claim against the patient that arose before that person's death; it concluded that section 81.44 does not permit such a retention, and it therefore ruled that the guardian could not withhold from the patient's estate funds to pay the patient's debt to Eastchester.

MUNICIPAL CORPORATIONS

Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn. (25 NY3d 600)

Taxi owners challenged the process used by the New York City Taxi & Limousine Commission to create the "Taxi of Tomorrow," culminating in rules that established a particular make and model as the official New York City taxicab. Petitioners acknowledged that the Commission had the authority to create specifications that could only be met by one model, and to approve one model as part of a pilot project. Rules permitted other models to be used for accessible vehicles. The Court held that the Commission was acting within the broad authority delegated to it, and not exceeding the powers granted to it under the City Charter, by enacting the Taxi of Tomorrow rules.

PAROLE

Matter of Lopez v Evans (25 NY3d 199)

In this CPLR article 78 proceeding, the Court held that when a parolee lacks mental competency to stand trial, it is a violation of his or her due process rights to conduct a parole revocation hearing. The Court observed that several of the reasons underlying the prohibition of prosecution of a mentally incompetent defendant, in particular those related to the accuracy of fact-finding, apply to parole revocation. However, recognizing the practical consequence that a person deemed to be mentally incompetent is released to parole bereft of the Office of Mental Health's inpatient mental health treatment, the

Court urged the Legislature to address CPL article 730.

PRISON AND PRISONERS

Matter of Teixeira v Fischer (26 NY3d 230)

Petitioner, a prison inmate, had originally been found guilty of a prison infraction after a disciplinary hearing where his requested witness did not testify. On appeal, the administrative determination was overturned and the matter was remitted for a new hearing because the hearing officer violated petitioner's regulatory right to have a witness present. Petitioner argued that his due process rights had been violated and the proper remedy was expungement. The Court affirmed and held that, where it is unclear whether petitioner's due process rights are violated but it is clear that a regulatory right was violated, remittal is the proper remedy.

PUBLIC HEALTH LAW

Shipley v City of New York (25 NY3d 645)

Decedent's next of kin brought an action against the City of New York and the City's Office of the Medical Examiner, asserting that the medical examiner failed to notify the next of kin, before decedent's burial, that decedent's brain had been retained for further examination and testing as part of an autopsy. The Court held that the medical examiner did not have a mandated statutory or common-law obligation to notify decedent's next of kin that organs and/or tissues had been retained for further examination and testing.

TAXATION

Burton v New York State Dept. of Taxation & Fin. (25 NY3d 732)

Plaintiffs, nonresident former shareholders in an S corporation, challenged a tax imposed on their pro rata share of gains from the sale of the corporation's stock, alleging that New York Constitution, article XVI, § 3, prohibits taxing a gain from a sale of intangible assets held by nonresidents when that asset was not employed in business carried on within the state. The Court held that the assessment taxed only New York-source income earned from the transaction, and that the tax assessment complied with applicable statutes (Tax Law §§ 617[a], 631[a][1][B], 632[a][2]), which, among other things, treated a shareholder's S corporation gains the same for state income tax purposes as for federal income tax purposes.

Matter of Manuel v Board of Assessors (25 NY3d 46)

Petitioners applied for a small claims assessment review of their property under Real Property Tax Law § 730. Nassau County found that petitioners could not use the section 730 review mechanism to request an assessment review because they were not living at the property in question and thus it was not "owner-occupied." On appeal, petitioners argued that since the property was noncommercial, and occupied rent-free by the mother of one petitioner, it fit within the statutory framework of RPTL 730. The Court held that the term "owner-occupied" was unambiguous, and that the

legislative history supported that only an owner of the subject property -- who is also occupying the property -- can petition for an assessment review.

People v Sprint Nextel Corp. (26 NY3d 98)

This case addressed Sprint's practice of "unbundling" intrastate mobile calls from interstate and international calls for sales tax purposes. The Court held that the Tax Law unambiguously imposes sales tax on interstate voice services that are sold by a mobile provider along with other services for a fixed monthly charge. In addition, the Court determined that the Tax Law was not preempted by the federal Mobile Telecommunications Sourcing Act.

TORTS

Davis v South Nassau Communities Hosp. (26 NY3d 563)

Defendants, a hospital, two medical professionals, and the corporation that employed those professionals, allegedly administered to nonparty Walsh an opioid narcotic painkiller and a benzodiazepine drug without warning her that such medication either impaired or could impair her ability to safely operate an automobile. A short time later, Walsh drove from the hospital and, while allegedly impaired by the medication administered to her at that facility, was involved in an accident in which the automobile she operated struck a bus driven by plaintiff. The Court concluded that, under the facts of this case, defendants owed to plaintiff a duty to warn Walsh that the medication administered to her either impaired or could have impaired her ability

to safely operate an automobile. In doing so, the Court expanded the scope of persons to whom a medical provider may be responsible for failing to warn a patient of the dangers of prescribed medication.

Hutchinson v Sheridan Hill House Corp.; Zelichenko v 301 Oriental Blvd., LLC; Adler v QPI-VIII, LLC (26 NY3d 66)

The Court reviewed three appeals in which an individual tripped on a defect in a sidewalk or stairway and was injured, but was foreclosed from going to trial because the defect was deemed trivial. The Court observed that a small difference in height or other physically insignificant defect is actionable if its intrinsic characteristics or the surrounding circumstances magnify the dangers it poses, so that it unreasonably imperils the safety of a pedestrian. The Court reiterated the doctrine of *Trincere v County of Suffolk* (90 NY2d 976 [1997]) that a grant of summary judgment because of triviality must be based on all the facts and circumstances presented, and not on size alone.

ANNUAL EVENTS

State of the Judiciary



On February 17, 2015, Chief Judge Jonathan Lippman delivered his final State of the Judiciary address. The Chief Judge highlighted the need for access to justice for all New Yorkers. The full text of the 2015 State of the Judiciary and a webcast of the event is available on the Court's website.

Investitures

In October 2014, Judge Leslie E. Stein was nominated by Governor Andrew M. Cuomo to serve as an Associate Judge of the Court of Appeals. Her nomination was confirmed by the New York State Senate on February 9, 2015.

In January 2015, Judge Eugene M. Fahey was nominated by Governor Andrew M. Cuomo to serve as an Associate Judge of the Court of Appeals. His nomination was confirmed by the New York State Senate on February 9, 2015.



Law Day

On May 5, 2015, the Court celebrated Law Day. This year's theme was Magna Carta, Symbol of Freedom Under Law. The celebration included remarks from Chief Judge Lippman, Attorney General Eric Schneiderman and New York State Bar Association President Glenn Lau-Kee.



Associate Judge Jenny Rivera poses with the collegiate winners of the Historical Society of the Courts of the State of New York's annual essay contest, who were recognized on Law Day.



Chief Administrative Judge A. Gail Prudenti and First Deputy Chief Administrative Judge Lawrence K. Marks recognized outstanding Unified Court System employees with awards of distinction on Law Day.



Lecture Series

On June 4, 2015, the Court hosted Randall R. Craft, general counsel to the New York City Ballet, who presented a lecture entitled “Dancing with the Law: Counsel, Choreography & Copyright.” Judge Susan Phillips Read, who retired in August 2015, welcomed Mr. Craft to the Court. A webcast of the lecture is available on the Court’s website.



Conference Room Ceremonies

In June and December, 2015, Conference Room ceremonies were held to commemorate the retirements of Andrew W. Klein, Clerk of the Court, and Chief Judge Lippman, respectively.



Appendices

Appendix 1

Judges of the Court of Appeals

Appendix 2

Nonjudicial Staff & Personnel Changes

Appendix 3

Appeals Decided by Jurisdictional Predicate (2015)

Appendix 4

Appeals Analysis (2011-2015)

All Appeals - Civil and Criminal

Civil Appeals - Type of Disposition

Criminal Appeals - Type of Disposition

Appendix 5

Civil Appeals Decided by Jurisdictional Predicate (2011-2015)

Appendix 6

Criminal Appeals Decided by Jurisdictional Predicate (2011-2015)

Appendix 7

Motions (2011-2015)

Appendix 8

Criminal Leave Applications (2011-2015)

Appendix 9

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2011-2015)

Appendix 10

Office for Professional Matters (2011-2015)

JUDGES OF THE COURT OF APPEALS

Chief Judge

Hon. Jonathan Lippman

Associate Judges

Hon. Susan Phillips Read (retired August 24, 2015)

Hon. Eugene F. Pigott, Jr.

Hon. Jenny Rivera

Hon. Sheila Abdus-Salaam

Hon. Leslie E. Stein

Hon. Eugene M. Fahey



NONJUDICIAL STAFF

Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Armistead, Mary*	Court Attorney
Asiello, John P.	Clerk of the Court
Bleshman, Joseph M.*	Counsel to Chief Judge Lippman
Bohannon, Lisa	Senior Court Analyst
Bowman, Jennifer L.	Senior Court Building Guard
Brizzie, Gary J.	Principal Custodial Aide
Broad, Kimberley	Court Attorney
Byer, Ann	Principal Stenographer
Byrne, Cynthia D.	Criminal Leave Applications Clerk
Chest, Wesley	Senior Associate Computer Applications Programmer
Claydon, Julianne	Chief Legal Reference Attorney
Cleary, Lisa M.	Principal Stenographer
Costa, Gary Q.	Court Building Guard
Costello, James A.	Assistant Deputy Clerk
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Clerical Assistant
Dautel, Susan S.	Assistant Deputy Clerk
Davis, Heather A.	Chief Motion Clerk
De La Hoz Miranda, Catalina	Court Attorney
Deppermann, Lee*	Law Clerk to Judge Read
Donnelly, William E.	Assistant Building Superintendent
Dragonette, John M.	Senior Court Building Guard
Duncan, Priscilla*	Secretary to Judge Read
Eddy, Margery Corbin	Senior Deputy Chief Court Attorney
Emigh, Brian J.	Building Manager
Engel, Hope B.	Consultation Clerk
Fernandez, Raymond*	Senior Law Clerk to Judge Rivera
Fix-Mossman, Lori E.	Principal Stenographer
Fornadel, Joseph*	Senior Court Attorney
Garcia, Heather A.	Senior Security Attendant
Gerber, Matthew	Security Attendant
Gilbert, Marianne	Principal Stenographer
Giller, David	Law Clerk to Judge Rivera
Golebiowski, Jacob	Senior Local Area Network Administrator
Goretsky, Asher	Clerical Assistant
Grogan, Bruce D.	Senior Principal Law Clerk to Judge Pigott
Groschadl, Laura A.	Law Clerk to Judge Fahey

Appendix 2

Haas, Tammy L.	Principal Assistant Building Superintendent
Hartnagle, Mary C.	Senior Custodial Aide
Heaney, Denise C.	Senior Security Attendant
Herman, Lisa M.	Senior Law Clerk to Judge Pigott
Holman, Cynthia M.	Senior Stenographer
Hosang-Brown, Yanique	Principal Court Analyst
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.	Principal Stenographer
Johar, Kanika*	Senior Court Attorney
Kaiser, Warren	Senior PC Analyst
Kane, Suzanne M.	Principal Stenographer
Kearns, Ronald J.	HVAC Assistant Building Superintendent
Kenny, Krysten	Principal Law Clerk to Judge Stein
Klein, Andrew W.*	Clerk of the Court
Kong, Yongjun	Principal Custodial Aide
LaGrave, Trevor*	Court Building Guard
Lane, Brian C.	Court Building Guard
LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
LeCours, Lisa A.	Assistant Consultation Clerk
Levin, Justin	Principal Court Attorney
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Principal Court Attorney
Martin, John	Principal Law Clerk to Judge Abdus-Salaam
Martino, Regina	Secretary to Judge Stein
Mauer, Samantha	Court Attorney
Mayo, Michael J.	Deputy Building Superintendent
McCormick, Cynthia A.	Director of Management and Operations
McGrath, Paul J.	Chief Court Attorney
Moore, Travis R.	Senior Security Attendant
Morgen, David	Senior Court Attorney
Muller, Joseph J.	Senior Security Attendant
Mulyca, Jonathan A.	Clerical Assistant
Nina, Eddie A.	Senior Security Attendant
Nociolo, Julie*	Court Attorney
O'Friel, Jennifer A.	Executive Assistant to Chief Judge Lippman
O'Rourke, Joseph	Court Attorney
Pace, Lisa A.	Clerical Assistant
Panchok-Berry, Janine*	Law Clerk to Chief Judge Lippman
Pasquarelli, Angela M.	Senior Services Aide

Appendix 2

Pastrick, Michael	Senior Principal Law Clerk to Judge Fahey
Pavlenko, Ivan*	Senior Court Attorney
Penn, Robert	Senior Law Clerk to Judge Rivera
Pepper, Francis W.	Principal Custodial Aide
Radley, Kelly	Senior Custodial Aide
Rogachevsky, Katrina C.	Law Clerk to Judge Rivera
Rudykoff, Nathaniel T.*	Senior Principal Law Clerk to Chief Judge Lippman
Saint-Fort, Dominique F.	Principal Law Clerk to Judge Abdus-Salaam
Schoeneberger, Michael	Senior Court Attorney
Scoville, Hannah	Senior Court Attorney
Sheltry, Jaclyn*	Senior Court Attorney
Sherwin, Stephen P.	Principal Court Attorney
Side, Matthew P.	Senior Principal Law Clerk to Judge Stein
Somerville, Robert	Senior Court Building Guard
Spencer, Gary H.	Public Information Officer
Stromecki, Kristie L.	Senior Principal Law Clerk to Judge Pigott
Stuart, Ansley*	Clerical Assistant
Tallent, Joshua	Senior Court Attorney
Tierney, Inez M.	Principal Court Analyst
Turon, Kristin L.	Stenographer
Valenti, Kyle*	Law Clerk to Judge Rivera
VanDeloo, James F.	Senior Assistant Building Superintendent
Villaronga, Genoveva	Secretary to Judge Abdus-Salaam
Waddell, Maureen A.	Secretary to Judge Pigott
Waithe, Nelvon H.	Senior Court Building Guard
Ward-Leon, Tara	Court Attorney
Warechak, Andrew R.	Principal Custodial Aide
Wasserbach, Debra C.	Principal Court Analyst
Welch, Joseph H.	Senior Clerical Assistant
Welch, Mary K.	Secretary to Judge Fahey
Wilson, Mark	Court Building Guard
Wodzinski, Esther T.*	Secretary to Judge Smith
Woll, Deborah	Senior Principal Law Clerk to Judge Abdus-Salaam
Wood, Margaret N.	Prisoner Applications Attorney; Court Attorney for Professional Matters
Yalamas, George C.	Chief Security Attendant
Zahn, Gabriella*	Law Clerk to Chief Judge Lippman
Zanello, Lindsay	Court Attorney

*As of January 1, 2016, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

Appendix 2

PERSONNEL CHANGES

APPOINTMENTS

Amyot, Leah Soule	Senior Principal Law Clerk to COA Judge, February 2015
Chest, Wesley	Senior Associate Computer Applications Programmer, February 2015
Golebiowski, Jacob	Senior Local Area Network Administrator, April 2015
Giller, David	Law Clerk to COA Judge, August 2015
Goretsky, Asher	Clerical Assistant, July 2015
Groschadl, Laura A.	Law Clerk to COA Judge, February 2015
Martino, Regina	Secretary to COA Judge, February 2015
Pastrick, Michael	Senior Principal Law Clerk to COA Judge, February 2015
Rogachevsky, Katrina	Law Clerk to COA Judge, August 2015
Side, Matthew P.	Senior Principal Law Clerk to COA Judge, March 2015
Welch, Mary K.	Secretary to COA Judge, February 2015
Wilson, Mark	Court Building Guard, March 2015

PROMOTIONS

Asiello, John P.	Deputy Clerk of the Court to Clerk of the Court, September 2015
Herman, Lisa	Senior Law Clerk to COA Judge, August 2015
Kenny, Krysten	Principal Law Clerk to COA Judge, August 2015
Martin, John	Principal Law Clerk to COA Judge, August 2015
Penn, Robert	Senior Law Clerk to COA Judge, August 2015
Saint-Fort, Dominique	Principal Law Clerk to COA Judge, August 2015

RESIGNATIONS AND

RETIREMENTS

Duncan, Priscilla	Transferred to Office of Court Administration, August 2015
Bleshman, Joseph	Retired as Counsel to Chief Judge, December 2015
Deppermann, Lee	Resigned as Law Clerk to COA Judge, August 2015
Fernandez, Raymond	Resigned as Law Clerk to COA Judge, August 2015
Klein, Andrew W.	Retired as Clerk of the Court, September 2015
LaGrave, Trevor	Resigned as Court Building Guard, January 2015
Rudykoff, Nathaniel	Retired as Senior Principal Law Clerk to Chief Judge, December 2015
Stuart, Ansley	Resigned as Clerical Assistant, May 2015
Valenti, Kyle	Resigned as Law Clerk to COA Judge, August 2015
Wodzinski, Esther	Retired as Secretary to COA Judge, January 2015
Zahn, Gabriella	Resigned as Law Clerk to COA Judge, October 2015

**CENTRAL LEGAL
RESEARCH STAFF**

APPOINTMENTS

Broad, Kimberley	Court Attorney, August 2015
De La Hoz Miranda, Catalina	Court Attorney, August 2015
Levin, Justin	Principal Court Attorney, August 2015
Maurer, Samantha	Court Attorney, August 2015
O'Rourke, Joseph	Court Attorney, August 2015
Ward-Leon, Tara	Court Attorney, August 2015
Zanello, Lindsay	Court Attorney, August 2015

PROMOTIONS

Morgen, David	Senior Court Attorney, August 2015
Tallent, Joshua	Senior Court Attorney, August 2015
Schoeneberger, Michael	Senior Court Attorney, August 2015
Scoville, Hannah	Senior Court Attorney, August 2015

COMPLETION OF CLERKSHIPS

Johar, Kanika	Transferred to State Board of Law Examiners, August 2015
Fornadel, Joseph	August 2015
Sheltry, Jaclyn	August 2015
Armistead, Mary	July 2015
Nociolo, Julie	August 2015

APPEALS BY JURISDICTIONAL PREDICATE (2015)

Basis of Jurisdiction: All Appeals

	Disposition					Total
	Affirmance	Reversal	Modification	Dismissal	Other*	
Appellate Division Dissents	7	2	0	0	0	9
Permission of Court of Appeals/Judge thereof	69	46	7	0	2	124
Permission of Appellate Division/Justice thereof	26	13	6	3	2	50
Constitutional Question	3	2	0	0	0	5
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	2	1	0	11	14
Totals	105	65	14	3	15	202

* Includes anomalies which did not result in an affirmance, reversal, modification, or dismissal (e.g., judicial suspensions, acceptance of case for review pursuant to Rule 500.27).

Appendix 3

**Basis of Jurisdiction:
Civil Appeals**

	Disposition					Total
	Affirmance	Reversal	Modification	Dismissal	Other*	
Appellate Division Dissents	7	2	0	0	0	9
Permission of Court of Appeals	26	19	4	0	2	51
Permission of Appellate Division	13	12	6	1	1	33
Constitutional Question	3	2	0	0	0	5
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	2	1	0	11	14
Totals	49	37	11	1	14	112

**Basis of Jurisdiction:
Criminal Appeals**

	Disposition					Total
	Affirmance	Reversal	Modification	Dismissal	Other*	
Permission of Court of Appeals Judge	43	27	3	0	0	73
Permission of Appellate Division Justice	13	1	0	2	1	17
Totals	56	28	3	2	1	90

* Includes anomalies which did not result in an affirmance, reversal, modification, or dismissal (e.g., judicial suspensions, acceptance of case for review pursuant to Rule 500.27).

Appendix 3

APPEALS ANALYSIS (2011-2015)

All Appeals - Civil and Criminal

	2011	2012	2013	2014	2015
Civil	54%	62%	57%	61%	55%
	(130 of 242)	(149 of 240)	(148 of 259)	(144 of 235)	(112 of 202)
Criminal	46%	38%	43%	39%	45%
	(112 of 242)	(91 of 240)	(111 of 259)	(91 of 235)	(90 of 202)

Civil Appeals - Disposition

	2011	2012	2013	2014	2015
Affirmed	51%	54%	49%	37%	44%
Reversed	30%	30%	27%	38%	33%
Modified	12%	10%	6%	9%	10%
Dismissed	1%	0%	2%	1%	1%
Other*	6%	6%	16%	15%	12%

Criminal Appeals - Disposition

	2011	2012	2013	2014	2015
Affirmed	59%	58%	66%	54%	63%
Reversed	30%	29%	28%	33%	31%
Modified	8%	12%	5%	9%	3%
Dismissed	3%	1%	1%	4%	2%
Other**	0%	0%	0%	0%	1%

* E.g., judicial suspension; Rule 500.27 certification.

** In 2015, the Court ordered reargument in one criminal case.

Appendix 4

**CIVIL APPEALS DECIDED BY JURISDICTIONAL PREDICATE
(2011-2015)**

	2011	2012	2013	2014	2015
Appellate Division Dissents	14.60%	14%	21%	9%	8%
	(19 of 130)	(21 of 149)	(31 of 148)	(14 of 144)	(9 of 112)
Court of Appeals Leave Grants	40%	51%	35%	38%	46%
	(52 of 130)	(76 of 149)	(52 of 148)	(55 of 144)	(51 of 112)
Appellate Division Leave Grants	38.50%	24%	17%	29%	29%
	(50 of 130)	(36 of 149)	(25 of 148)	(42 of 144)	(33 of 112)
Constitutional Questions	0.80%	4%	9%	5%	4%
	(1 of 130)	(6 of 149)	(13 of 148)	(7 of 144)	(5 of 112)
Stipulation for Judgment Absolute	0%	0%	0.70%	0.70%	0%
	(0 of 130)	(0 of 149)	(1 of 148)	(1 of 144)	(0 of 112)

Appendix 5
Continued on following page

**CIVIL APPEALS DECIDED BY JURISDICTIONAL PREDICATE
(2011-2015)**

	2011	2012	2013	2014	2015
CPLR 5601(d)	0.80% (1 of 130)	1% (1 of 149)	2% (3 of 148)	1% (2 of 144)	3% (3 of 112)
Supreme Court Remand	0% (0 of 130)	0% (0 of 149)	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)
Judiciary Law § 44*	0.80% (1 of 130)	3% (4 of 149)	4% (6 of 148)	1% (2 of 144)	2% (2 of 112)
Certified Question (Rule 500.27)**	3.80% (5 of 130)	3% (5 of 149)	11% (17 of 148)	16% (23 of 144)	8% (9 of 112)
Other	0.80% (1 of 130)	0% (0 of 149)	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)

* Includes judicial suspension matters.

** Includes decisions accepting/declining certifications.

Appendix 5
Continued from previous page

**CRIMINAL APPEALS DECIDED BY JURISDICTIONAL PREDICATE
(2011-2015)**

	2011	2012	2013	2014	2015
Permission of Court of Appeals Judge	77%	84%	84%	82%	81%
	(87 of 112)	(76 of 91)	(93 of 111)	(75 of 91)	(73 of 90)
Permission of Appellate Division Justice	23%	16%	16%	18%	19%
	(25 of 112)	(15 of 91)	(18 of 111)	(16 of 91)	(17 of 90)

MOTIONS (2011-2015)

	2011	2012	2013	2014	2015
Motions Submitted for Calendar Year	1375	1296	1292	1293	1395
Motions Decided for Calendar Year*	1355	1330	1310	1300	1378
Motions for Leave to Appeal	1112	999	995	934	1051
Granted	82	64	65	72	57
Denied	822	733	739	662	750
Dismissed	203	202	190	193	237
Withdrawn	5	9	2	7	7
Motions to Dismiss Appeals	6	9	12	5	13
Granted	2	3	2	1	4
Denied	4	6	7	4	9
Sua Sponte and Court's own Motion Dismissals	76	85	92	96	84
Total Dismissals of Appeals	78	84	94	97	88
Motions for Reargument of Appeal	20	28	22	34	27
Granted	0	1	3	0	0
Motions for Reargument of Motion	39	67	54	54	61
Granted	3	0	1	0	0
Motions for Assignment of Counsel	51	86	45	64	70
Granted	51	85	45	64	70
Legal Aid	8	13	10	15	15
Denied	0	1	0	0	0

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

Appendix 7

	2011	2012	2013	2014	2015
Motions for Poor Person Status	155	126	159	170	219
Granted	7	8	6	12	6
Denied	0	0	0	0	0
Dismissed	148	118	153	158	213
Motions for Amicus Curiae Relief	76	82	124	155	122
Granted	76	77	119	152	118
Motions to Waive Rule Compliance	0	5	0	0	1
Granted	0	5	0	0	0
Motions to Vacate Dismissal/Preclusion	17	11	5	9	6
Granted	16	8	5	9	6
Motions for Leave to Intervene	0	0	2	0	0
Granted	0	0	0	0	0
Motions to Stay/Vacate Stay	26	26	34	22	36
Granted	4	3	3	3	2
Denied	0	3	0	3	3
Dismissed	22	20	31	16	31
Withdrawn	0	0	0	0	0
Motions for CPL 460.30 Extension	16	18	22	13	13
Granted	12	16	21	11	12
Motions to Strike	14	5	7	11	3
Granted	8	2	3	4	1
Motions to Amend Remittitur	0	1	1	0	0
Granted	0	0	0	0	0
Motions for Miscellaneous Relief	13	11	9	17	20
Granted	0	1	3	2	2
Denied	10	8	3	12	10
Dismissed	3	2	3	3	8
Withdrawn	0	0	0	0	0

Appendix 7

CRIMINAL LEAVE APPLICATIONS (2011-2015)

	2011	2012	2013	2014	2015
Total Applications Assigned	2190	2014	2044	2100	2338
Total Applications Decided*	2089	2096	1923	2090	2201
Granted	91	99	74	81	91
Denied	1845	1842	1692	1843	1868
Dismissed	142	147	145	154	231
Withdrawn	11	6	12	12	11
Total People's Applications	70	50	63	47	51
Granted	18	10	14	11	7
Denied	42	33	39	29	35
Dismissed	2	5	3	2	2
Withdrawn	8	2	7	5	7
Average Number of Applications Assigned to Each Judge**	313	287	324	325	391
Average Number of Grants for Each Judge	13	14	11	12	13

* Includes some applications assigned in previous year.

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

SUA SPONTE DISMISSAL (SSD) RULE 500.10 REVIEW (2011-2015)

	2011	2012	2013	2014	2015
Total number of inquiry letters sent	63	71	100	73	77
Withdrawn on stipulation	3	1	2	1	1
Dismissed by Court	48	43	69	48	43
Transferred to Appellate Division	0	4	2	9	3
Appeals allowed to proceed in normal course (a final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	6	14	6	8	5
Jurisdiction retained - appeals decided*	0	4	1	0	0
Inquiries pending at year's end	6	5	20	7	25

* In 2013, the one appeal where jurisdiction was retained was later withdrawn by stipulation.

OFFICE FOR PROFESSIONAL MATTERS (2011-2015)

	2011	2012	2013	2014	2015
Attorneys Admitted *	9,855	9,657	10,251	10,748	8,868
Registered In-House Counsel	362	118	91	100	94
Certificates of Admission	57	78	91	142	94
Clerkship Certificates	5	9	4	3	0
Petitions for Waiver**	236	357	313	361	334
Written Inquiries	76	98	82	71	72
Disciplinary Orders***	605	527	3,012	2,172	557
Name Change Orders	1,072	1,074	923	803	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 2010, 2013 and 2014 numbers include orders involving multiple attorneys' violation of the registration requirements (see Judiciary Law § 468-a).

Appendix 10