

# COURT OF APPEALS OF THE STATE OF NEW YORK



2016 ANNUAL REPORT OF THE CLERK OF THE COURT

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2016  
Annual Report of the Clerk of the Court to the Judges  
of the Court of Appeals of the State of New York

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John P. Asiello  
Clerk of the Court  
Court of Appeals

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**Honorable Janet DiFiore**

**Chief Judge**

**Foreword**

**April 2017**

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Each time I enter the courthouse at 20 Eagle Street or take the middle seat on the bench of our beautiful courtroom, it is impossible not to feel humbled by the magnitude of the special privilege I have been given to serve as the Chief Judge of the Court of Appeals.

Over the course of my first year on the Court, I have been deeply impressed by my new colleagues – by their scholarship, work ethic and, above all, their commitment to justice. Thanks to Governor Andrew Cuomo's superb appointments, the Court of Appeals is eminently prepared to carry out the important work of declaring the law of our State and developing a clear and predictable body of law by which all New Yorkers can organize their personal and professional lives.

The year 2016 brought much change to the Court of Appeals. In February, Judge Michael Garcia joined the Court, succeeding Judge Susan Phillips Read who served the Court with great distinction for twelve years. At the end of 2016, we bade farewell to our Senior Associate Judge, Eugene F. Pigott, Jr., who fortunately decided to extend his already storied judicial career by returning to the trial bench as a Supreme Court Justice in the Eighth Judicial District. Only weeks ago, we were pleased to welcome his successor, Judge Rowan Wilson, to our Court.

Among the memorable highlights for the Court in 2016 was our Law Day celebration at Court of Appeals Hall, which was dedicated to the memory of former Chief Judge Judith S. Kaye, who passed away in January 2016. Another highlight was our road trip to Rochester, where we heard appeals and had the opportunity to interact with our judicial colleagues, court staff, the Bar and the public in Western New York.

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As reflected in our Annual Report, the Court of Appeals hears a wide range of disputes that reflect the complex, ever-changing nature of our society. It is a challenging job to resolve these weighty issues in a just, persuasive and timely fashion. That is why my fellow Judges and I are truly appreciative of the excellent support we receive from the Court's outstanding legal and administrative staff, headed by Clerk of the Court John Asiello. Their hard work, pride and professionalism shine through in every aspect of the Court's work product, from the efficiency of the Clerk's office to the beautifully maintained building to the special atmosphere that every lawyer, litigant and member of the public immediately notices upon entering our building.

The Judges and staff of the Court of Appeals look forward to the coming year with great anticipation as we continue working together to build on our historic legacy as one of the nation's preeminent state high courts.

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

**Introduction**

In what remained a time of transition, significant changes in personnel assignments occurred in 2016. Practitioners who communicate often with the attorneys in the Clerk's Office may have noted that Heather Davis was promoted from Chief Motion Clerk to Deputy Clerk of the Court. Rachael MacVean is now the Chief Motion Clerk. Assistant Deputy Clerk Margaret Wood joined the appeals department of the Clerk's Office. James Costello resigned as Assistant Deputy Clerk, after serving with distinction for many years.

Another department affected by change was the Court's Central Legal Research Staff. Paul McGrath, whose dedicated service to the Court ranged from clerking for Judge Richard D. Simons to providing leadership to generations of young court attorneys, retired. Deputy Chief Court Attorney Margery Corbin Eddy was promoted to Chief Court Attorney. Stephen Sherwin succeeded her as Deputy Chief Court Attorney. Building manager Brian Emigh also retired, after more than 35 years at the Court. Brian supervised the building maintenance staff – taking care of the building and serving the Judges and staff with extraordinary attention to detail.

The Court amended its Rules of Practice in two respects in 2016. As explained at page seven of the report, the Court adopted word limits for papers filed on appeals. The Court also amended section 500.20(d) of its rules to clarify that only one request for reargument or reconsideration per party of a specific criminal leave application is permitted.

On behalf of the Court's staff, I join Chief Judge DiFiore in welcoming Judge Rowan Wilson and in recognizing not the retirement but the continuing judicial career of Judge Eugene F. Pigott, Jr. following his tenure at the Court of Appeals.

The format of this year's Annual Report, divided into five parts, follows the format of the 2015 report. The first section is a narrative 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 2016. The third section highlights selected decisions of 2016. The fourth part covers some of the Court's 2016 events and includes photographs. The fifth part consists of appendices with detailed statistics and other information.

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## 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 review briefs, write opinions, and prepare for the next Albany session. During these 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.

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In 2016, the Court and its Judges disposed of 3,954 matters, including 225 appeals, 1,232 motions and 2,497 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. 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 Clerk may direct the parties to proceed to argue the merits of the appeal or refer the matter to the Central Legal Research Staff to prepare a report on jurisdiction for review and disposition by the full Court. The Rule 500.10 screening process is valuable to the Court, the bar, and the parties because it identifies at the earliest possible stage of the appeal process jurisdictionally defective appeals destined for dismissal or transfer by the Court.

Of the 119 notices of appeal received by the Court in 2016, 57 were subject to Rule 500.10 inquiries. Of those, all but 11 were dismissed sua sponte (SSD) or on motion, withdrawn, or transferred to the Appellate Division. Seven 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 material are circulated to each member of the Court well in advance of the argument date. Each Judge becomes conversant with the issues in the cases, using oral argument to address any questions or concerns prompted by the briefs. Each appeal argued or submitted is assigned by random draw to one member of the Court for reporting to the full Court.

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 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 course appeals, SSM appeals are assigned on a random basis to individual Judges for reporting purposes, and are conferenced and determined by the entire Court.

Of the 227 appeals filed in 2016, 44 (19%) were initially selected to receive SSM consideration, an increase from the percentage so selected in 2015 (8%). Twenty-seven were civil matters and 17 were criminal matters. Two appeals initially selected to receive SSM consideration in 2016 were directed to full briefing and oral argument. Of the 225 appeals decided in 2016, 35 (15.5%) were decided upon SSM review (11.8% were so decided in 2015). Nineteen were civil matters and 16 were criminal matters. Following the withdrawal of two civil matters on SSM review, 14 matters remained pending on SSM review at the end of 2016 (7 civil and 7 criminal).

### **Promptness in Deciding Appeals**

The Court continued its tradition of prompt disposition of appeals following oral argument or submission. In 2016, the average time from argument or submission to disposition of a normal course appeal was 39 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 14 months. The average period from readiness (papers served and filed) to calendaring for oral argument was approximately eight months. The average length of time from the filing of a notice of appeal or order granting leave to appeal to the release of a decision in a normal course appeal (including SSM appeals tracked to normal course) was 462 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 342 days.

## **The Court's 2016 Docket**

### **Filings**

Two hundred twenty-seven (227) notices of appeal and orders granting leave to appeal were filed in 2016 (322 were filed in 2015). One hundred seventy-eight (178) filings were civil matters (compared to 234 in 2015), and 49 were criminal matters (compared to 88 in 2015). The Appellate Division Departments issued 67 of the orders granting leave to appeal filed in 2016 (47 were civil, 20 were criminal).

Motion filings decreased in 2016. During the year, 1,183 motions were submitted to the Court, compared to the 1,395 submitted in 2015. Criminal leave application filings also decreased in 2016. In 2016, 2,211 applications for leave to appeal in criminal cases were assigned to individual Judges of the Court, compared to the 2,338 assigned in 2015. On average, each Judge was assigned 358 such applications during the year.

### **Dispositions**

#### **Appeals and Writings**

In 2016, the Court decided 225 appeals (118 civil and 107 criminal, compared to 112 civil and 90 criminal in 2015). Of these appeals, 188 were decided without dissent. The Court issued 131 signed opinions, 4 per curiam opinions, 53 dissenting opinions, 32 concurring opinions, 59 memoranda, and 31 decision list entries.

#### **Motions**

The Court decided 1,232 motions in 2016, a decrease from the 1,378 decided in 2015. Of the 910 motions for leave to appeal decided in 2016, 1.9% were granted, 75.7% were denied, 21.9% were dismissed, and less than 1% were withdrawn. Seventeen motions for leave to appeal were granted in 2016. The Court's leave grants covered a wide range of subjects and reflect the Court's commitment to grant leave in cases presenting issues that are of great public importance, are novel, or present a split in authority among the Appellate Division Departments.

The average period of time from return date to disposition for civil motions for leave to appeal was 69 days, while the average period of time from return date to disposition for all motions was 59 days.

### **CPL 460.20 Applications**

Individual Judges of the Court granted 33 of the 2,497 applications for leave to appeal in criminal cases decided in 2016. Two hundred twenty-one (221) applications were dismissed for lack of jurisdiction and 13 were withdrawn. Ten of the 66 applications filed by the People were granted. Of the 183 applications for leave to appeal from intermediate appellate court orders determining applications for a writ of error coram nobis, one was granted.

Review and determination of applications for leave to appeal in criminal cases constitute a substantial amount of work for the individual Judges of the Court. The period during which such applications are pending includes several weeks for the parties to prepare and file their written arguments. In 2016, on average, 99 days elapsed from assignment to Judges to disposition of applications for leave to appeal in criminal cases.

### **Review of Determinations of the State Commission on Judicial Conduct**

The Court of Appeals has exclusive jurisdiction to review determinations of the State Commission on Judicial Conduct and to suspend a judge, with or without pay, when the Commission has determined that removal is the appropriate sanction, or while the judge is charged in this state with a crime punishable as a felony. In 2016, pursuant to Judiciary Law § 44(8), the Court suspended one judge with pay, accepted the removal determination of the Commission regarding that judge and removed him from office.

### **Certifications Pursuant to Rule 500.27**

Rule 500.27 provides that whenever it appears to the Supreme Court of the United States, any United States Court of Appeals, or a court of last resort of any other state that determinative questions of New York law are involved in a case pending before it for which no controlling precedent from this Court exists, that court may certify the dispositive questions of law to this Court. After a court certifies a question to this Court pursuant to Rule 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. In 2016, the period from receipt of initial certification papers to the Court's order accepting or rejecting review was 34 days. The average period from acceptance of a certification to disposition was nine months.

The Court answered four certified questions in 2016. Three of those questions were accepted in 2015 and one was accepted in 2016. At the end of 2016, three questions that were accepted in 2016 remained pending.

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

In 2016, the Court decided 314 petitions seeking waiver of the Court's Rules for the Admission of Attorneys and Counselors at Law, a slight decrease from the 334 petitions decided in 2015. Petitions typically are decided four to eight weeks after submission.

## **Court Rules**

Effective June 22, 2016, the Court's Rules of Practice were amended by adding word and page limits for principal briefs filed on normal course appeals, certified questions and review of the determinations of the State Commission on Judicial Conduct (subject to a 14,000 word limit) and Rule 500.11 submissions, reply briefs, amicus curiae briefs and briefs in response to amicus curiae briefs (subject to a 7,000 word limit). Rule 500.20(d) was also amended to clarify that only one reargument per party of a criminal leave application is permitted.

## **Administrative Functions and Accomplishments**

### **Court of Appeals Hall**

Court of Appeals Hall at 20 Eagle Street has been the Court's home for 100 years. The classic Greek Revival building, originally known as State Hall, formally opened in 1842 with offices for the Chancellor, the Register of Chancery, and the State Supreme Court. On January 8, 1917, the Court of Appeals moved from the State Capitol into the newly refurbished building at 20 Eagle Street. The Court's beloved Richardson Courtroom was reassembled in an extension to State Hall built to accommodate both the courtroom and the Court's library and conference room. Major renovations in 1958-1959 and 2002-2004 – the latter including two additions to the building faithful to its Greek Revival design – produced the architectural treasure the Court inhabits today.

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

### **Clerk's Office**

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

The Clerk, Deputy Clerk, Consultation Clerk, Assistant Consultation Clerk, two Assistant Deputy Clerks, Chief Motion Clerk, 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 recent Court of Appeals decisions. The latest decisions are posted at the time of their official release. During Court sessions, the website offers live webcasts of all oral arguments. Since January 2010, these webcasts have been preserved in a permanent archive on the website to allow users to view the arguments at their convenience. Since September 2012, transcripts of oral arguments are also available on the website, and are archived there as well.

The website provides helpful information about the Court's practice – including its Rules, civil and criminal jurisdictional outlines, 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, archived webcasts of Law Day celebrations and prior Annual Reports can be reached through the "Annual Releases and Events" link. A virtual tour of the Court and a video orientation for arguing counsel also are available.

### **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](http://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.

### **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.

In 2016, the Court Attorney for Professional Matters worked with an Associate Judge of the Court on implementation of the Skills Competency and Professional Values bar admission requirement, adopted by the Court in late 2015 (*see* Rule 520.18). In addition, the Court Attorney presented an in-house CLE on attorney admissions, participated in a webinar hosted by the New York State Bar Association regarding admission on motion, and continued to serve as a member of the Unified Court System's Advisory Committee on Bar Admissions.

### **Central Legal Research Staff**

Under the supervision of the individual Judges and the Clerk and Deputy 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 2015 through December Decision Days 2016, Central Staff completed 998 motion reports, 72 SSD reports (examining the subject matter jurisdiction of appeals screened under Rule 500.10), and 13 SSM reports (appeals selected for alternative track review under Rule 500.11). Throughout 2016, 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 2016, 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, but not invariably, join the Central Legal Research Staff immediately following law school graduation. The staff attorneys employed during part or all of 2016 were graduates of Albany, American University Washington, Boston University, CUNY, Ohio State University, St. John's University, Syracuse University, University of Buffalo, and University of Maryland law schools. Staff attorneys hired for work beginning in 2017 will represent the following law schools: Albany, Brooklyn, Cornell, Touro, Western New England, and Wake Forest.

### **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. In 2016, the Court of Appeals Library staff worked to complete a physical reorganization of resources within the library and began creating records in the new catalog and inventory database.

The Library staff continued to provide the secondary source authorities research service, worked to update the existing catalog, continued the work to keep current the Court's internal reports database, and started work on archiving the records and briefs volume index. The Chief Legal Reference Attorney presented at the CLE-certified orientation for new Judges' clerks and Central Staff attorneys.

### **Continuing Legal Education Committee**

The Continuing Legal Education (CLE) Committee coordinates professional training for Court of Appeals, Law Reporting Bureau, and Board of Law Examiners attorneys. The Committee meets on an as-needed basis.

The CLE Committee issues credit for suitable programs it and its affiliates plan. Over the entire year, the CLE Committee provided numerous programs for Court-associated attorneys – including new staff training and orientation – totaling 17 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 2016-2017 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 2017-2018 for the Court and its ancillary agencies is \$16 million. The 2017-2018 personal services request is \$14.1 million. This includes funding for all judicial positions and all filled nonjudicial positions. The 2017-2018 nonpersonal services request is \$1.86 million.

Notwithstanding necessary increases in travel, administration and support services, and building maintenance operations, the budget request for fiscal year 2017-2018 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 2016, the Court reported filing fees for civil appeals totaling \$22,365 and for motions totaling \$30,145. 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 (\$900) and miscellaneous collections (\$992.59). For calendar year 2016, revenue collections totaled \$54,402.59.

## **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 3,100 for the year.

The Department is also responsible for the upkeep of three websites: an intranet website, the Court's main internet site, located at <http://www.nycourts.gov/ctapps>, and the Court-PASS website, located at <http://www.nycourts.gov/ctapps/courtpass>. Over 1,225,964 visits were recorded to the main internet site in 2016, averaging 3,439 visits per day. The Court-PASS site recorded 91,911 visits in 2016.

## **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.

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## 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 thank especially Lisa Bohannon, Cynthia Byrne, Julianne Claydon, Susan Dautel, Heather Davis, Margery Corbin Eddy, Hope Engel, Andrea Ignazio, Suzanne Kane, Bryan Lawrence, Rachael MacVean, Cynthia McCormick, Stephen Sherwin, Inez Tierney, and Margaret Wood.

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

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

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## Year in Review: Decisions

Below is a summary of significant 2016 decisions, reflecting the range of constitutional, statutory, regulatory, and common law issues reaching the Court each year.

### ADMINISTRATIVE LAW

*Matter of ACME Bus Corp. v Orange County* (28 NY3d 417)

Orange County issued a Request for Proposals (RFP) from bus companies to provide transportation of certain children in the county pursuant to contracts awarded under General Municipal Law § 104-b. The Court held that the award of a contract under General Municipal Law § 104-b is arbitrary and capricious if the municipality evaluates a proposal using a standard that deviates from one expressly set forth in the RFP. The Court noted that services governed by General Municipal Law § 104-b must "be procured in a manner so as . . . to guard against favoritism, improvidence, extravagance, fraud and corruption," yet changing expressly defined rules mid-way through the evaluation process gives rise to a perception of fraud or corruption.

*Matter of Entergy Nuclear Operations, Inc. v New York State Dept. of State* (28 NY3d 279)

The Court held that Entergy's pending application to renew its federal operating licenses for the Indian Point nuclear reactors on the Hudson River in Westchester County, for an additional 20 years, is subject to review by the New York State Department of State for consistency with the policies of New York's Coastal

Management Program (CMP). The Court upheld as rational the agency's determination that the renewal application did not fit within the CMP's grandfather exemptions and therefore was subject to review.

*Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation & Historic Preserv.* (27 NY3d 174)

Through the Parks, Recreation and Historic Preservation Law, the legislature charged the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) with operating and maintaining state parks, state historic sites, and various other state recreational areas. In the same law, the legislature instructed OPRHP to provide for the health, safety, and welfare of the public using facilities under OPRHP's jurisdiction. The Court was confronted with the question whether OPRHP acted within the confines of those legislative edicts in enacting a regulation prohibiting the smoking of tobacco or any other product in certain outdoor locations under the jurisdiction of OPRHP. Specifically, NYC C.L.A.S.H., Inc., a nonprofit organization dedicated to advancing and protecting the interests of smokers, challenged the rule as unconstitutional and violative of the separation of powers doctrine inasmuch as it allegedly exceeded the scope of the power granted to OPRHP by the legislature. Applying the four touchstone factors articulated in *Boreali v Axelrod* (71 NY2d 1 [1987]) for determining whether agency rulemaking has exceeded legislative fiat, the Court concluded that OPRHP acted within the confines of the power delegated to it under the Parks, Recreation

and Historic Preservation Law and did not usurp the authority of the legislature in promulgating the rule in question.

## ASSIGNMENTS

*Justinian Capital SPC v WestLB AG, N.Y. Branch* (28 NY3d 160)

New York's champerty doctrine is codified at Judiciary Law § 489 and prohibits the purchase of notes, securities, or other instruments for the primary purpose of bringing a lawsuit. This case involved notes that had been assigned by a non-party German bank to plaintiff Justinian. The Court determined that the assignment of the notes was champertous as a matter of law because Justinian's subsequently-commenced lawsuit against defendant WestLB "was not merely an incidental or secondary purpose of the assignment, but its very essence." Although New York's champerty statute contains a safe harbor provision that makes otherwise champertous transactions permissible when the assigned securities have "an aggregate purchase price of at least five hundred thousand dollars," the Court concluded that the safe harbor provision did not apply. Although Justinian ostensibly agreed to pay one million dollars for the notes, Justinian and the non-party bank structured the transaction so that the purchase price would only be paid from the proceeds of the lawsuit. Such arrangement did not constitute a binding and bona fide obligation to pay at least five hundred thousand dollars for the notes, which the legislature clearly intended when it enacted the safe harbor.

## ATTORNEY AND CLIENT

*Ambac Assur. Corp. v Countrywide Home Loans, Inc.* (27 NY3d 616)

A monoline insurer that guaranteed payments on certain residential mortgage-backed securities brought an action against the issuer of the mortgages, Countrywide Home Loans, and its successor-in-interest, Bank of America, for breach of contractual representations and fraud. The issue on appeal was whether certain documents that Countrywide and Bank of America exchanged before the two entities merged were protected from disclosure under the "common-interest doctrine." That doctrine is an exception to the general rule that communications protected by the attorney-client privilege are no longer privileged once they have been shared with a third party. Under the common-interest doctrine, however, an attorney-client communication disclosed to a third party remains privileged if the third party shares a common legal interest with the client who made the communication and the communication is made in furtherance of that common legal interest. The Court held that the common interest must also be related to pending or anticipated litigation; it cannot be used to shield from disclosure attorney-client communications that have been shared with a third party outside the specter of anticipated or ongoing litigation. New York courts had applied such a "litigation" limitation on the common-interest doctrine for over two decades, and the Court declined to expand it beyond that narrow scope.

## CIVIL PROCEDURE

*Rushaid v Pictet & Cie* (28 NY3d 316)

The issue before the Court was whether a foreign party's use of a New York correspondent bank account, to further a bribery and money-laundering scheme, constituted transaction of business sufficient to confer personal jurisdiction under CPLR 302(a)(1) of New York's long-arm statute. Under CPLR 302(a)(1), a New York court may exercise personal jurisdiction over a non-domiciliary when the party "transacts any business within the state." Plaintiffs sued defendants, alleging that defendants had breached their fiduciary duties by laundering bribes and kickbacks for plaintiffs' employees, costing plaintiffs millions of dollars. Defendants moved to dismiss for lack of personal jurisdiction. The Court held that under *Amigo Foods Corp. v Marine Midland Bank-N.Y.* (39 NY2d 391 [1976]) and *Licci v Lebanese Can. Bank, SAL* (20 NY3d 327 [2012]), defendants' numerous money-laundering transactions were the type of "repeated," "deliberate," and "approved" uses of the bank account that demonstrate volitional activity constituting a transaction of business within the meaning of CPLR 302(a)(1). New York's exercise of personal jurisdiction over defendants, furthermore, did not violate due process.

*Matter of Tonawanda Seneca Nation v Noonan* (27 NY3d 713)

The Court was asked to determine whether a CPLR article 78 proceeding against a Surrogate's Court Judge is properly commenced in the Appellate Division. The Court held that the

proceeding should have originated in Supreme Court and that the determination of venue for an article 78 proceeding against a multi-bench judge turns on the capacity in which the judge was serving when taking the challenged action.

## CONDOMINIUMS AND COOPERATIVES

*Plotch v Citibank, N.A.* (27 NY3d 477)

A Condominium Board commenced a foreclosure action to recover unpaid common charges. Plaintiff was the winning bidder, purchasing the condominium unit subject to "[t]he first Mortgage of record against the premises." The issue was whether two mortgages that were consolidated into a single mortgage lien years before the condominium board filed its common charges lien qualify as the first mortgage of record under Real Property Law article 9-B, the Condominium Act. The Court held that the agreement to consolidate the mortgages into a single mortgage lien, recorded years before the common charges lien, qualified as the first mortgage of record.

## CONSTITUTIONAL LAW

*People v Aviles* (28 NY3d 497)

The Court upheld the constitutionality of a New York City Police Department policy, under which officers do not administer physical coordination tests when a language barrier prevents the administering officer from communicating the test's instructions to a non-English speaking suspect. The Court rejected defendant's arguments that his equal protection and due process

rights were violated because he was denied a coordination test on the basis of a language barrier. The Court determined that the challenged policy was subject to rational basis review and that the policy was rationally related to a legitimate government interest. The Court similarly rejected defendant's due process claim, holding that defendant had no due process right to a physical coordination test and, in any event, the policy was justified by substantial state interests.

*Matter of County of Chemung v Shah* (28 NY3d 244)

These cases were the culmination of a lengthy battle between several counties and the Department of Health in which the counties sought reimbursement for a category of Medicaid disability expenses, known as "overburden expenditures," paid to the State prior to the 2006 enactment of the Medicaid Cap Statute. In 2012, the legislature passed an amendment to that statute extinguishing the counties' ability to submit reimbursement claims for overburden expenditures that had accrued prior to 2006. The Court held the amendment did not violate the counties' due process rights, as the counties had considerable time to seek reimbursement prior to 2012, and procedural due process did not require a further grace period following the enactment of the amendment. Also, the State was under no further obligation to address outstanding county reimbursement claims filed after the amendment's enactment, or to initiate an administrative review of its records to

identify and pay for any pre-2006 claims, which was the mandamus relief sought by the counties.

*People v Stephens* (28 NY3d 307)

The Court upheld the constitutionality of Syracuse Noise Control Ordinance § 40-16(b), which prohibits the creation of "unnecessary noise" emanating beyond 50 feet from a motor vehicle operated on a public highway. Specifically, the Court concluded that section 40-16(b) does not "offend the constitutional void-for-vagueness doctrine of due process" as did the ordinance in *People v New York Trap Rock Corp.* (57 NY2d 371 [1982]). Unlike the ordinance in *Trap Rock*, the Syracuse ordinance defines "unnecessary noise" based on an objective standard – "a reasonable person of normal sensibilities" – which prevents arbitrary and discriminatory enforcement, and is tailored to a specific context. The Court concluded that the Syracuse ordinance is sufficiently definite to put a person on notice that playing music which can be heard over 50 feet away from such person's car on a public road, in a manner that would annoy or disturb a reasonable person of normal sensibilities, is forbidden conduct and the objective standard affords police sufficiently clear standards for enforcement.

## CONTRACTS

*Stonehill Capital Mgt. LLC v Bank of the W.* (28 NY3d 439)

Stonehill Capital Management, LLC and two related commercial entities sought to enforce the sale of a syndicated loan put up for auction by Bank of the West.

Three weeks after accepting Stonehill's bid, Bank of the West reneged on the sale. Stonehill claimed this was a breach of contract, as Bank of the West's acceptance of Stonehill's bid formed a legally binding agreement between the two parties. Bank of the West countered that it expressly reserved the right not to be bound until a writing was executed and the buyer paid a ten percent deposit. Bank of the West conceded that it accepted Stonehill's bid, but claimed to have no legal obligation to follow through with the transfer because the parties never executed the written sales agreement and Stonehill failed to timely submit the cash deposit. The Court held that these prerequisites are not conditions precedent to formation of the parties' contract, and so did not render their agreement unenforceable. Instead, based on the totality of the parties' actions and communications, the parties agreed to an enforceable contract, with express material terms and post-formation requirements.

### **COPYRIGHT**

*Flo & Eddie, Inc. v Sirius XM Radio, Inc.* (28 NY3d 583)

Answering a certified question from the Second Circuit Court of Appeals, the Court held that New York's common-law copyright does not recognize a right of public performance for creators of sound recordings. Although federal law recognizes a limited copyright in sound recordings fixed after February 1972, the federal statutes allow the states to address other rights in sound recordings. New York's common law has long differentiated among various

types of rights held by copyright holders; however, for sound recordings, it has recognized only a right against unauthorized reproduction. The complex federal scheme for post-1972 sound recordings, and the necessary balancing of competing interests, as well as societal expectations, highlight that recognition of a right of public performance in sound recordings is best left to a legislative body, not the courts.

### **CORPORATIONS**

*Matter of Kenneth Cole Prods., Inc., Shareholder Litig.* (27 NY3d 268)

In this shareholder class action, the Court adopted a standard of review for challenges to going-private corporate mergers. Specifically, New York courts should apply the business judgment rule, provided that two shareholder-protective conditions are present: first, the proposed merger must be contingent from the outset upon negotiation and approval by a special committee of independent directors; and, second, the proposed merger must be subject to approval by a majority of shareholders that were unaffiliated with the controlling shareholder. If those measures are not present, the entire fairness standard should be applied.

### **CORRECTION LAW**

*People v Howard* (27 NY3d 337)

The Court held that defendant was properly adjudicated a risk level three sex offender at a Sex Offender Registration Act (SORA) proceeding triggered by defendant's unlawful imprisonment of a naked eight-year-old victim for five days in a bedroom during

which time he inflicted serious physical injury. Despite the absence of a sexual component to defendant's underlying offenses, and the absence of a past criminal history of sexual offenses, the SORA hearing court did not abuse its discretion in declining to engage in a downward departure. The Risk Assessment Instrument assessed zero points for sexual contact with the victim and for defendant's criminal history, thus taking into account the mitigating factors that defendant argued compelled a downward departure.

### CRIMINAL LAW

*People v Allard* (28 NY3d 41)

The Court was asked to reconcile the hearing requirement of CPL 210.45 with the Court's established three-step procedure for preserving a statutory speedy trial claim. Defendant moved to dismiss the indictment pursuant to CPL 30.30 on the ground that he was denied his statutory right to a speedy trial. The People opposed the motion, and defendant did not file reply papers. Supreme Court denied the motion without a hearing. The Appellate Division remitted to Supreme Court for a hearing, holding that defendant was entitled to a hearing pursuant to CPL 210.45(5). Supreme Court conducted a hearing and thereafter granted defendant's motion, concluding that the People had exceeded their six-month speedy trial period. The Appellate Division affirmed. On appeal to this Court, the People argued that the Appellate Division erred in concluding that defendant's claim was preserved for appellate review because – by failing to

file a reply brief identifying the “legal or factual impediments” to the People's proffered exclusions – defendant failed to comply with the Court's established procedure for preserving an argument in a CPL 30.30 motion. The Court disagreed, holding that a defendant's failure to reply is not fatal where, as here, the defendant requests and receives a hearing and, at that hearing, the defendant properly preserves his arguments.

*People v Aragon* (28 NY3d 125)

The issue presented in this case was whether the accusatory instrument alleging that defendant unlawfully possessed “brass metal knuckles” was facially sufficient. The Court held that the accusatory instrument was facially sufficient. Although the Penal Law does not define “brass metal knuckles,” the Court stated that “metal knuckles have a common meaning in ordinary American parlance, which corresponds to the dictionary definition [as being] . . . a metal object with multiple holes, through which an individual places his or her fingers so that a metal bar rests atop the individual's knuckles. That object is used as a weapon to cause increased pain when the person wearing it hits someone with a fist.” Further, the Court determined that the arresting officer here did not have to exercise professional skill or experience to conclude defendant possessed metal knuckles, and therefore the accusatory instrument did not require any specific description of the officer's training or experience.

*People v Badalamenti* (27 NY3d 423)

Defendant, who was charged with second-degree assault and other crimes for beating his girlfriend's six-year-old son, protested the admission at his jury trial of a recording in which he was heard yelling at the boy and threatening to beat him. The recording had been made by the child's father, when a cell phone call he placed to the mother allowed him to hear and record the conversation in her apartment without her knowledge. Defendant contended that the making of the recording amounted to the crime of "mechanical overhearing of a conversation" (Penal Law §§ 250.05, 250.00[2]), because no party to the conversation consented to the recording, and that it was therefore inadmissible under CPLR 4506(1). The Court, however, interpreted the term "consent" in the definition of that crime to include vicarious consent on behalf of a minor child. The Court joined other jurisdictions, notably the Sixth Circuit Court of Appeals, in holding that if a parent or guardian has a good faith, objectively reasonable basis to believe that it is necessary, in order to serve the best interests of his or her minor child, to create an audio or video recording of a conversation to which the child is a party, the parent or guardian may vicariously consent on behalf of the child to the recording. The Court noted that, properly applied, this narrowly tailored test of parental good faith and reasonableness does not lend itself to abuse by scheming parents in custody disputes. Significant factors in assessing whether the test is met will

be the parent's motive or purpose for making the recording, the necessity of the recording to serve the child's best interests, and the child's age, maturity, and ability to formulate well-reasoned judgments of his or her own regarding best interests. The Court concluded that in this case the father had a good faith, objectively reasonable basis to believe that it was necessary for the welfare of his son to record the conversation, and that he therefore gave vicarious consent to the recording within the meaning of the law criminalizing "mechanical overhearing of a conversation."

*People v Barden* (27 NY3d 550)

This case addressed a statutory speedy trial motion and who is chargeable with certain pre-readiness delay. The Court held that defense counsel's mere failure to object to the People's request for an adjournment, or indication that a date requested by the People is inconvenient, does not constitute a request or a clear expression of consent such as would exclude the entire requested adjournment for speedy trial purposes. The Court applied the general rules that the People bear the burden of establishing what time is excludable for speedy trial purposes, and that pre-readiness delays arising from court congestion are chargeable to the People. Where the People initially request an adjournment to a specific date, the defense is unavailable on that date and requests a different date, and the court is unavailable and schedules a still later date, the court should exclude only the time specifically requested by

the defense, but any extension of the adjournment due to court congestion is chargeable to the People.

*People v Bridgeforth* (28 NY3d 567)

This appeal raised the question of whether color was a cognizable classification upon which a *Batson* claim may be based (see *Batson v Kentucky*, 476 US 79 [1986]). The Court held that under the State Constitution and Civil Rights Clause, a *Batson* challenge to the use of peremptory strikes during voir dire to exclude potential jurors for pretextual reasons may be based on color. The Court determined that the issue of whether defendant made out a prima facie case of discrimination at Step 1 of the *Batson* protocol was not moot, because the trial court did not complete the *Batson* protocol. At Step 1, defendant made out a prima facie case of discrimination and at Step 2 the People failed to provide a specific non-discriminatory reason for the prosecutor's use of a peremptory challenge against a dark-skinned female potential juror. This failure required reversal of defendant's conviction and a new trial.

*People v Brown* (28 NY3d 392)

In each of these appeals, the defendant moved to dismiss the accusatory instrument on speedy trial grounds pursuant to CPL 30.30(1), arguing that the People's off-calendar statements of readiness were illusory because the People were not ready for trial at the next court appearance. The common issue was whether, in the event of a change in the People's readiness status,

the People or the defendant have the burden of showing that a previously filed off-calendar statement of readiness is illusory. The Court held that such a statement is presumed truthful and accurate but that it may be rebutted by a defendant's demonstration that the People were not, in fact, ready at the time the statement was filed. If the People announce that they are not ready after having filed an off-calendar statement of readiness, and the defendant challenges such statement – at a calendar call, in a CPL 30.30 motion, or both – the People must establish a valid reason for their change in readiness status to ensure that a sufficient record is made for the court to determine whether the delay is excludable. The defendant then bears the ultimate burden of demonstrating, based on the People's proffered reasons and other relevant circumstances, that the prior statement of readiness was illusory.

*People v Cedeno* (27 NY3d 110)

The Court reversed defendant's conviction where the admission in evidence of a nontestifying codefendant's redacted statement to police facially incriminated defendant, even though the jury was instructed to consider the confession only against the codefendant. Although the statement was redacted by replacing defendant's name and description with large blank spaces, the redacted statement indicated to the jury that the original contained actual names or clearly identifying descriptors and, thus, immediately inculpated one of the jointly tried

defendants. The Court held that the admission violated defendant's rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution, and the error was not harmless.

*People v Clark* (28 NY3d 556)

Defendant appealed his conviction of murder in the second degree and assault in the second degree, arguing that his lawyer had been ineffective for failing to advance a self-defense theory, even though defendant rejected the defense outright for a defense of misidentification. The Court concluded that defendant's trial attorney was not ineffective for presenting only a misidentification theory because advancing both theories together would have been inconsistent, and the record did not indicate that any one theory of defense was vastly superior to the other. The Court further reasoned that defendant's wish to advance a misidentification theory was not so self-destructive that it undermined counsel's ability to provide meaningful representation.

*People v Clarke* (28 NY3d 48)

At issue was whether the People were chargeable with the period of delay of 161 days for DNA testing after having failed to exercise due diligence in seeking defendant's DNA exemplar in order to conduct comparative testing with the DNA obtained by the Office of Chief Medical Examiner from the gun that was the subject of the weapons offenses charged in the indictment. The Court held that the People did not

exercise due diligence in obtaining defendant's DNA exemplar and, based on that prosecutorial inaction, the 161-day period at issue was not excludable from a CPL 30.30 speedy trial computation as an exceptional circumstance. The Court explained that the time to conduct DNA testing and to produce a DNA report may, under certain circumstances, be excluded from speedy trial computation as an exceptional circumstance. To invoke the exclusion provided in CPL 30.30(4)(g), however, the People must exercise due diligence in obtaining the evidence. Here, the People waited almost nine months after the indictment was filed to ask OCME what results, if any, were obtained from the preindictment scientific testing performed on the gun swabs. The Court held that the prosecutorial inaction in this case contravenes CPL 30.30.

*People v Davis* (28 NY3d 294)

The Court held that there was legally sufficient evidence to support the jury's conclusion that defendant's violent beating of a victim during a home invasion was a sufficiently direct cause of the victim's death. Specifically, the medical examiner's testimony that the stress induced by the injuries inflicted by defendant, given the victim's underlying heart disease, caused his death. Taken in conjunction with crime scene evidence proving that defendant's beating of the victim was severe and immediate in its consequences, the evidence supported the jury's determination that defendant's conduct was an actual contributory cause of the victim's death

and that the death of the victim was a reasonably foreseeable result of defendant's conduct.

*People v DiPippo* (27 NY3d 127)

The Court granted defendant a new trial, holding that defendant should have been permitted to introduce evidence of third-party culpability. Defendant submitted the affidavit of another inmate averring that a third party, who knew and had access to the victim, had made various statements implicating himself in the crimes with which defendant was charged. Defendant also proffered evidence suggesting that the third party had a specific modus operandi that matched elements of the crime. In holding that defendant's proffer was sufficient, the Court emphasized that third-party culpability proof is subject to the same general balancing analysis as other evidence and should be admitted where defendant's offer of proof connects the third party to the crime and the probative value of the evidence outweighs the potential for prejudice. The Court explained that evidence of a third party's bad acts which are similar to those that the defendant is charged with committing can support a third-party culpability proffer where the crimes reflect a specific modus operandi connecting the third party to the charged crimes. The Court also clarified that, while a defendant must connect a third party to a crime to establish the probative value of the proffered evidence, the third party need not be linked directly to the crime scene.

*People v Flowers* (28 NY3d 536)

Following a successful appeal, defendant was resentenced to the same sentence that was originally imposed. The Court rejected defendant's argument that his attorney was ineffective for failing to object at resentencing. The Court noted that the presumption of vindictiveness is inapplicable where the same term of imprisonment is imposed upon resentencing, and that the record was devoid of any retaliatory or improper conduct by the resentencing court.

*People v Hogan* (26 NY3d 779)

The Court held that the decision regarding whether defendant should testify before the grand jury is a strategic one, reserved to defense counsel. The Court adhered to its prior decisions establishing that the refusal to timely facilitate a defendant's appearance before the grand jury does not, per se, amount to ineffective assistance of counsel. Thus, defense counsel's refusal to consult with defendant before advising the district attorney's office that he did not wish to have defendant testify did not deprive defendant of the effective assistance of counsel. The Court also held that the drug factory presumption contained in Penal Law § 220.25(2) was properly considered where the evidence was sufficient to establish that drugs were being packaged or otherwise prepared for sale, permitting the conclusion that defendant, who was found in close proximity to the drugs, knowingly possessed them.

*People v John* (27 NY3d 294)

Defendant was convicted of criminal possession of a weapon in the second degree and menacing in the second degree based, in part, upon laboratory reports containing DNA evidence linking him to the gun used in the offense. The Court held that defendant's Sixth Amendment right to confrontation was violated by the admission of the DNA reports through the testimony of a witness who had not conducted, witnessed or supervised the generation of the DNA profile. Significantly, the DNA profiles had been generated in connection with the police investigation of a known perpetrator and for the primary purpose of proving his guilt in a pending criminal action. The Court rejected the argument that each analyst involved in the DNA testing process had to be produced for cross-examination, but held that a single analyst – in particular, the one who performed, witnessed or supervised the generation of the numerical DNA profile – would be sufficient.

*People v Johnson (Keith)* (27 NY3d 60)

During defendant's trial for armed robbery, the trial court permitted, over defendant's objection but with a curative instruction, the introduction of the codefendant's self-exculpatory grand jury testimony. The Court held this to be error because regardless of the intended effect of the statements, defendant was charged with acting in concert with the codefendant, the statements admitted an element of the charged crime, and the testimony improperly incriminated defendant.

*People v Johnson (Marcellus)* (27 NY3d 199)

A jury convicted defendant of robbery, larceny, and possession of stolen property. Prior to trial, due to his inability to make bail, defendant was held at Rikers Island. While at Rikers defendant made a number of phone calls to friends and family that were recorded, pursuant to Department of Corrections procedure, and subsequently turned over to the People to be introduced at trial. Defendant argued that the practice of monitoring all phone calls and routinely disseminating those calls to the District Attorney's Office violated defendant's right to counsel, exceeded the scope of the Department of Corrections' statutory authority, and was conducted without his consent. The Court upheld defendant's conviction, holding that defendant's Sixth Amendment rights were not violated because the Department of Corrections did not act as an agent of the state and did not induce or coerce defendant into making any calls.

*People v Jones* (26 NY3d 730)

The Court held that the defendant's due process rights were not violated when the sentencing court refused to consider his request to defer payment of a mandatory surcharge imposed upon him pursuant to Penal Law § 60.35. The sentencing court had no discretion to consider the defendant's request. The relevant statutes prohibit judicial waiver of a mandatory surcharge, require collection of any unpaid amounts from an inmate's funds upon confinement and throughout the period of incarceration,

and provide for deferral under limited circumstances, namely an inability to pay not solely due to incarceration. A person subject to a mandatory surcharge may seek to defer payment at any time after sentencing, by way of a motion to resentence under CPL 420.10(5). In addition, persons sentenced to confinement of 60 days or less may avoid filing such motion, and instead present information in support of a request to defer on the appearance date set forth on a summons issued pursuant to Penal Law § 60.35(8). Under either procedural mechanism, if the court grants a deferral it must place its reasons on the record (CPL 420.40[4]; 420.10[5]), and issue a written order, which shall be treated as a civil judgment in accordance with CPLR 5016 (CPL 420.40[5]; 420.10[6][a]). The Court recognized that the statutory scheme is structured to further the legislative goals of raising revenue and ensuring payment of the mandatory surcharge by persons convicted of crimes.

*People v Lin* (26 NY3d 701)

Defendant challenged his conviction on grounds that his confession was an involuntary product of untoward psychological pressure by police and consequent fatigue induced during a prolonged interrogation, extended, in part, by unnecessary prearraignment delay, manufactured for the sole purpose of procuring inculpatory statements. He also contended that due to his limited English language proficiency he did not understand the import of the *Miranda* warnings given to him, and, therefore, did not knowingly and voluntarily waive his rights to counsel or to remain silent,

further establishing the involuntariness of his statements to the police. The Court held that the delay of more than 28 hours between defendant's arrest and his arraignment was unnecessary. However, based on the totality of the circumstances, the Court held that the defendant's statements were voluntarily made, despite delay in arraignment. The Court reasoned that the defendant's basic human needs were provided for because he was permitted to eat, drink, access the bathroom, and even to smoke cigarettes. The interrogations were not done in continuous rotations, but rather were intermittent, and provided breaks during which defendant was able to rest and sleep, as well as remain silent and consider his situation. The Court further held that the trial court did not abuse its discretion in refusing to admit videotape of defendant's meeting with an assistant district attorney, which occurred just prior to arraignment, given that a still photograph would have served defendant's purpose of presenting the jury with evidence of his physical appearance, and also avoided any potential confusion or misdirection created by the jury's consideration of defendant's linguistic skills based on the audio component of the video. Finally, the Court held that the excerpts from defendant's handwritten notes, made while in custody, were inadmissible.

*People v Mack* (27 NY3d 534)

During deliberations, the jury sent out notes asking for further legal instruction and a readback of testimony. As the trial court and counsel were conferring with respect to how to respond to those notes,

the jury sent another note stating that it had reached a verdict. The court announced on the record in the presence of counsel and defendant that the jury had reached a verdict and that the court planned to call the jurors into the courtroom to take their verdict. The court accepted the guilty verdict without responding to the outstanding jury notes and without asking the jurors whether they still desired a response. Defendant did not object. On appeal, defendant contended that the trial court committed a mode of proceedings error by failing to provide a meaningful response to the substantive jury notes before accepting the verdict. The issue was one of first impression – the Court stated that it had not before considered whether a mode of proceedings error occurs when the trial court satisfies its obligation to provide meaningful notice of a substantive jury note to counsel, but fails to provide a meaningful response to the jury. The Court concluded that where counsel has meaningful notice of a substantive jury note, but the trial court fails to provide a meaningful response to the jury, no mode of proceedings error has occurred. The Court reasoned that counsel had all the information required to object, either to the trial court’s procedure or to the lack of response to the jury’s substantive requests.

*People v Nelson* (27 NY3d 361)

During summations, defense counsel noted that members of the deceased victim’s family who were seated in the courtroom were wearing T-shirts bearing the victim’s photograph and the phrase “Remembering Leo Walton.” Counsel

requested that the spectators be required to change or remove their shirts. The trial court denied the request, noting that the spectators were seated quietly and had not drawn attention to themselves, and that family members of the victim had worn the same shirts to court on previous trial dates but that counsel had not objected. The Court concluded that whether the trial court should intervene, and what intervention is appropriate, in response to objections of spectator misconduct depends upon the particular facts and circumstances of each case and should be left to the sound discretion of the trial court. The Court further held that appellate courts reviewing claims of spectator misconduct should review the trial court’s corrective action, or lack thereof, for abuse of discretion. Applying *People v Stevens* (76 NY2d 833 [1990]), the Court concluded that spectator displays of a deceased victim’s image generally should be prohibited in the courtroom during trial due to the risk that such depictions might arouse the emotions of the jury. The Court nevertheless concluded that the court’s error was harmless under the circumstances.

*People v Nicholson* (26 NY3d 813)

A jury convicted defendant of sexual conduct against a child for engaging in sexual acts with his then six-year-old daughter. On appeal, defendant argued that the Appellate Division exceeded its authority when, relying on grounds different from those explicitly stated by the trial court, it affirmed the use of the People’s rebuttal witness; that the trial court erred when it admitted evidence of

prior bad acts; and that trial counsel was ineffective. The Court affirmed the conviction, holding that the Appellate Division properly examined the record in order to determine the underlying context for the trial court's determination since there was never an identified predicate for the ruling. Further, defendant's prior bad acts were properly admitted since they were relevant to explain the victim's delayed disclosure and that any possible errors by trial counsel did not deprive defendant of a meaningful trial.

*People v Ocasio* (28 NY3d 178)

The Court held that an accusatory instrument alleging that a defendant possessed a "rubber gripped, metal, extendable baton (billy club)" was facially sufficient to charge the defendant with criminal possession of a weapon under Penal Law § 265.01(1), which penalizes the possession of a "billy" as a strict liability crime. The Court determined that the well-understood character of a "billy" encompasses an extendable metal baton, within the ordinary meaning of the term.

*People v Pabon* (28 NY3d 147)

Defendant challenged his conviction of first-degree course of sexual conduct against a child, arguing that the statute of limitations had run. Defendant maintained that the version of the Criminal Procedure Law in place at the time, CPL 30.10(2)(b), provided a general five-year statute of limitations period applicable to defendant's crime, rendering CPL 30.10(3)(e), which also

provided for a five-year statute of limitations period, superfluous. To avoid redundancy, defendant maintained that the tolling provision, CPL 30.10(3)(f), which established when the statute of limitations for CPL 30.10(3)(e) would begin to run, must instead be interpreted as both the statute of limitations and the tolling provision. The Court disagreed, ruling that the statutory language and the legislative intent of easing prosecutions for repeated sexual offenses against children established that CPL 30.10(3)(f) was, in fact, the tolling provision for CPL 30.10(3)(e).

*People v Perkins* (28 NY3d 432)

The Court clarified that although some cases from the Appellate Division may suggest that a witness's prior mention of a distinctive feature can be a determinative factor in a lineup's suggestiveness, a bright line rule in this area would be unworkable and unwise. A lineup's suggestiveness should not turn solely on whether a defendant's distinctive feature figured prominently in a witness's prior description. Rather, a witness's prior description is but one factor a court should consider in determining whether the lineup is one that creates a substantial likelihood that the defendant would be singled out for identification. The Court noted that its review remains limited and deferential to the suppression court's findings on this mixed question of law and fact. The Court thus reversed the suppression court's determination that a lineup was not suggestive as to two of four witnesses based solely on the fact

that they did not mention the distinctive lineup feature possessed only by defendant – dreadlocks – in their prior description of the perpetrator.

*People v Powell* (27 NY3d 523)

In *People v Primo* (96 NY2d 351 [2001]), the Court clarified that third-party culpability evidence should be evaluated in accordance with ordinary evidentiary principles by balancing the proffered evidence's probative value against its potential for undue prejudice, delay, and confusion. Defendant challenged the *Primo* standard, contending that it was constitutionally deficient in light of the Supreme Court's ruling in *Holmes v South Carolina* (547 US 319 [2006]). The Court held that the standard did not offend defendant's constitutional right to present a complete defense under the Sixth and Fourteenth Amendments, and concluded that the trial court did not abuse its discretion by precluding defendant's proffered third-party culpability evidence.

*People v Smith (Charles)* (27 NY3d 652)

In three related appeals, where defendants had been precluded from cross-examining police officers regarding allegations of prior misconduct in unrelated federal lawsuits, the Court held that law enforcement officials should be treated in the same manner as any other prosecution witnesses for purposes of cross-examination. In that regard, a lawsuit alleging tortious conduct by a law enforcement official provides a good faith basis for raising the issue where the specific allegations are relevant to the witness's credibility. There is no

categorical prohibition against such cross-examination; rather, whether to permit inquiry into such prior bad acts for impeachment purposes lies in the trial court's sound discretion.

*People v Smith (Glen)* (27 NY3d 643)

The Court held that, under CPL 460.10, the filing of an affidavit of errors is a jurisdictional prerequisite for the taking of an appeal from a judgment entered in a local criminal court where there was no court stenographer present during the criminal proceeding. In doing so, the Court concluded that a mechanical recording of proceedings in town or village justice courts was not equivalent to a record taken by a court stenographer. Accordingly, where defendants filed a transcript derived from the mechanical recording of the underlying proceedings but no affidavit of errors, they failed to meet the jurisdictional prerequisite, requiring dismissal of their appeals.

*People v Smith (Roni)* (28 NY3d 191)

Defendants in these appeals were convicted and sentenced for crimes they committed in 2010. They brought post-conviction motions to challenge prior *Catu*-infected pleas (see *People v Catu*, 4 NY3d 242 [2005]) and convictions from 2000 and 2002 that were used to enhance the sentences they received for the 2010 convictions. They challenged the use of the earlier, *Catu*-infected convictions as "unconstitutionally obtained" on the ground that defendants were not apprised of the postrelease supervision

component of their sentence, and that such unconstitutional convictions could not be used to enhance a later sentence they received for a subsequent crime. The Court rejected the defendants' arguments and held that *Catu* does not apply retroactively in enhanced sentence proceedings.

*People v Williams* (27 NY3d 212)

Defendant negotiated a guilty plea in Supreme Court to criminal sale of a controlled substance in the third degree, and the court agreed to offer defendant the People's recommended sentence of three years in prison and a two-year period of postrelease supervision. However, the court was unaware that, because defendant was a second felony drug offender previously convicted of a violent felony, that sentence was not lawfully available to defendant in light of his predicate status. Subsequently, after the plea proceeding, defendant violated a condition of his presentencing release, and, as a second felony drug offender previously convicted of a violent felony, was sentenced to six years in prison with two years of postrelease supervision. The Court held that defendant had reasonable opportunities before final imposition of his sentence to challenge the validity of his guilty plea, and that he failed to preserve his claim that he was induced to plead guilty by the promise of an unlawful sentence.

## **ELECTIONS**

*Matter of Glickman v Laffin* (27 NY3d 810)

The Court held that respondent, a candidate for the office of State Senator,

failed to meet the State Constitution's five-year residency requirement pertaining to candidates for legislative office and therefore invalidated his designating petitions. The Court recognized that, although a person is permitted to have more than one residence, he or she cannot have more than one electoral residence. Thus, respondent's November 2014 registration to vote in Washington D.C. precluded him from establishing continuous residency in New York for the five years prior to the election.

## **ENVIRONMENTAL LAW**

*Matter of Ranco Sand & Stone Corp. v Vecchio* (27 NY3d 92)

A property owner sought review of a Town Board's resolution issuing a positive declaration under State Environmental Quality Review Act (SEQRA) that required the owner to prepare a draft environmental impact statement (DEIS) in connection with its application to rezone its property from residential to heavy industrial. The Town contended that the Board's issuance of the positive declaration was not final and therefore not ripe for review. Starting from the settled understanding of appellate courts that a positive declaration imposing a DEIS requirement is usually not a final agency action, and is instead an initial step in the SEQRA process, the Court ruled that the positive declaration was not ripe for judicial review because the owner did not claim the declaration was unauthorized or that the property was not subject to SEQRA, nor did it

present any other basis to conclude that the Board acted outside the scope of its authority.

## EVIDENCE

*Sean R. v BMW of N. Am., LLC* (26 NY3d 801)

A plaintiff born with severe mental and physical disabilities brought a personal injury action against the manufacturer of the vehicle driven by his mother during her pregnancy, alleging that the vehicle's defective fuel hose caused her to inhale toxic gasoline vapor, which resulted in his birth defects. In support of his theory, plaintiff sought to introduce expert testimony that exposure to gasoline vapor is capable of causing birth defects like the ones plaintiff sustained, and that his mother inhaled a sufficient quantity of gasoline vapor to cause his injuries. The issue on appeal was whether such testimony was admissible under the *Frye* test (*see Frye v United States*, 293 F 1013 [DC Cir 1923]) — specifically, whether the experts used reliable techniques and methodologies in estimating the amount of gasoline plaintiff's mother inhaled. The Court held that the experts did not rely on generally accepted techniques and methodologies because their conclusion was based solely on reports by plaintiff's mother and grandmother about the smell of gasoline in the car, and the plaintiff failed to identify any text, scholarly article or scientific study that approved of using reported symptoms alone to determine quantity of exposure to a substance. In the absence of evidence

about how much gasoline vapor plaintiff's mother inhaled, plaintiff could not establish that the defective fuel hose caused his injuries and therefore his claim was dismissed.

## FRAUD

*People v Greenberg* (27 NY3d 490)

This appeal involved an action commenced by the Attorney General under the Martin Act (General Business Law art 23-A) and Executive Law § 63(12) against defendants, two former officers of American International Group, Inc. The Court held that the Attorney General may obtain permanent injunctive relief under the Martin Act upon a showing of a reasonable likelihood of a continuing violation based upon the totality of the circumstances. No showing of irreparable harm is necessary. The Court further determined that disgorgement is not barred by the Supremacy Clause, but is available under the Martin Act and the Executive Law as an equitable remedy distinct from restitution.

## INSURANCE

*Aetna Health Plans v Hanover Ins. Co.* (27 NY3d 577)

The issue presented in this appeal was whether a health insurer who pays for medical treatment that should have been covered by the insured's no-fault automobile insurance carrier may maintain a reimbursement claim against the "no-fault" insurer within the framework of the Comprehensive Motor Vehicle Insurance Reparations

Act (see Insurance Law § 5101 et seq.) (the No-Fault Law). The Court held that because New York's No-Fault Law and regulatory scheme does not contemplate such reimbursement to a health insurer, as opposed to a health care provider, the health insurer may not maintain such a claim.

*Government Empls. Ins. Co. v Avanguard Med. Group, PLLC* (27 NY3d 22)

Defendant, a New York State accredited office-based surgery center, sought reimbursement from plaintiffs for the professional services of their doctors and for facility fees associated with the use of their physical location, equipment, and technicians. Plaintiffs agreed to pay professional fees associated with the medical services, but refused to pay facility fees, arguing that they had no legal obligation under the Comprehensive Motor Vehicle Insurance Reparations Act (see Insurance Law § 5101 et seq.) (the No-Fault Law). The Appellate Division granted plaintiffs' motion for summary judgment, holding that plaintiffs were not obligated to provide reimbursement for office-based surgery centers' facility fees. The Court affirmed, explaining that the no-fault fee schedule does not permit facility fee reimbursement for office-based surgery centers, and instead only allows facility fee reimbursements for hospital and ambulatory surgery centers. The Court explained that this express difference indicated an intent by the legislature to treat office-based surgery centers differently than hospitals and ambulatory centers, due, in part, to hospitals' and

ambulatory centers' greater responsibilities and stricter standards.

*Matter of Viking Pump, Inc.* (27 NY3d 244)

The Supreme Court of Delaware certified to the Court the questions whether all sums or pro rata allocation applies in excess insurance policies that follow form to, or contain, a non-cumulation and prior insurance provision, and whether horizontal or vertical exhaustion is required before upper level excess policies attach. The Court held that the contract language controls, and held that, based on the language contained in the policies at issue, all sums allocation and vertical exhaustion applied. The Court observed that the language of the non-cumulation clauses would be inconsistent with pro rata allocation.

*Millennium Holdings LLC v Glidden Co.* (27 NY3d 406)

The Court considered whether the antisubrogation rule applied to the claim of a related successor of the insured company. The Court determined that because the successor company was not insured under the relevant policy, the antisubrogation rule did not apply, as that rule requires that the party against whom the insurer seeks to subrogate be a named or additional insurer. The Court held that if application of the antisubrogation rule were extended to all non-covered third parties, an insurer who fulfills its obligation to pay on the risks insured by the relevant policy would essentially be foreclosed from the ability to subrogate. Thus, the Court concluded,

absent a policy reason supporting application of the antisubrogation rule, the third party against whom the insurer seeks to exercise its right of subrogation is not covered by the relevant insurance policy.

*Selective Ins. Co. of Am. v County of Rensselaer* (26 NY3d 649)

This action required the Court to consider whether the County of Rensselaer's improper strip searches of arrestees prior to their admission into county jail over a four-year period constituted separate occurrences subject to separate deductible payments under its insurance policy. The Court held that under the policy terms each strip search was a separate occurrence. Further, the Court determined the insurer did not act in bad faith by not challenging class certification and reaching a settlement that made the county liable for all the damages recovered by the class members. Additionally, the Court held that the attorneys' fees generated in defending the class action were properly allocated to the named plaintiff only, rather than ratably among the deductibles for each class member.

### **MEDICAL MALPRACTICE**

*Mazella v Beals* (27 NY3d 694)

A jury found defendant liable for medical malpractice resulting from the suicide of plaintiff's husband. Defendant admitted that he deviated from standard medical care by failing to adequately monitor decedent while prescribing him medication. On appeal, defendant argued that decedent's hospitalization acted as an intervening

superseding cause and that he was denied a fair trial due to evidentiary errors. The Court held that despite any intervening medical treatment there was sufficient trial evidence for the jury to conclude that defendant's actions were a proximate cause of decedent's suicide. However, the Court ordered a new trial due to the improper inclusion of an earlier consent order signed by defendant where he agreed to not contest charges of negligence involving twelve other patients. The Court explained that the consent order was not probative of defendant's liability in this case, especially since he conceded negligence, and any possible relevance was outweighed by the order's prejudicial nature.

### **MENTAL HYGIENE LAW**

*Matter of State of New York v Dennis K.* (27 NY3d 718)

In three cases involving Mental Hygiene Law article 10, the Court reaffirmed its recent holding in *Matter of the State of New York v Donald DD.* (24 NY3d 174 [2014]) that evidence that a respondent suffers from antisocial personality disorder (ASPD) cannot be used to support a finding that he or she has a "mental abnormality" as defined by Mental Hygiene Law § 10.03(i), unless it is accompanied by another diagnosis of mental abnormality. Where a finding of ASPD is accompanied by another diagnosed condition, disease or disorder, however, the evidence may be sufficient to support a verdict that a respondent suffered from a "mental abnormality." Respondents in these

appeals were not diagnosed with ASPD alone but suffered from other conditions, diseases or disorders, and therefore the evidence was sufficient to support the verdict against them under article 10.

### **MOTOR VEHICLES**

*Beck Chevrolet Co., Inc. v General Motors LLC* (27 NY3d 379)

Answering questions certified by the United States Court of Appeals for the Second Circuit, the Court determined that the Retail Sales Index (RSI) that General Motors LLC (GM) uses to measure the sales performance of its dealers was unlawful under Vehicle and Traffic Law § 463(2)(gg) because it failed to account for local popularity of general vehicle types. Specifically, the RSI uses “average” performance based on statewide sales data to determine a dealer’s compliance with a franchise agreement and controlled for customer purchasing preference for certain vehicle types (vehicle segmentation) but did not incorporate local customer brand popularity and import bias. These omissions “rendered the standard unreasonable and unfair because these preference factors constitute market challenges that impact a dealer’s sales performance differently across the state.” The Court relied on the legislature’s intent in enacting section 463(2)(gg) to “address a historical inequality in the vehicle franchise business that favored automobile manufacturers over motor vehicle dealers” and “to prevent unfair business practices.” The Court also ruled that the change to a franchisee’s Area of

Primary Responsibility, the geographic region from which GM bases its dealer sales expectation, does not constitute a prohibited “modification” to the franchise under Vehicle and Traffic Law § 463(2)(ff).

### **NEGLIGENCE**

*Hain v Jamison* (28 NY3d 524)

Plaintiff alleged that the decedent was struck and killed by a passing vehicle after she stopped her own vehicle, exited, and entered the roadway to assist a loose calf that was on or near the roadway. The Court held that summary judgment had been improperly granted to the defendant farm, the calf’s owner, on the ground that the farm’s alleged negligence in failing to restrain or retrieve the calf was not a proximate cause of the decedent’s death. The Court reiterated that, typically, proximate cause is a question for the factfinder that only rarely can be determined as a matter of law. Here, the risk created by the farm’s alleged negligence – i.e., a motor vehicle accident – was the same risk that came to fruition, and the farm’s alleged negligence was ongoing since the calf was unrestrained and in the roadway, such that the farm’s negligence did not merely and fortuitously place the decedent in a location or position in which a completely independent act of negligence caused the harm. The Court held that a jury could reasonably conclude that the farm’s negligence was a proximate cause of decedent’s death and, therefore, the farm’s motion for summary judgment should have been denied.

*Pasternack v Laboratory Corp. of Am. Holdings* (27 NY3d 817)

An airline pilot commenced a federal action sounding in, among other things, negligence and fraud, arising from defendants' alleged misconduct in performing and evaluating a random drug test that he was required to take. In answering two questions certified by the Second Circuit Court of Appeals, the Court held that regulations and guidelines that are ministerial in nature do not create a duty of care for drug testing laboratories and program administrators under New York negligence law. Additionally, a fraud claim requires the plaintiff to have relied upon a misrepresentation by a defendant to his or her detriment, and a third party's reliance on a false statement cannot establish the reliance element of a fraud claim.

#### **NOTICE OF CLAIM**

*Matter of Newcomb v Middle Country Cent. School Dist.* (28 NY3d 455)

General Municipal Law § 50-e(5) permits a court, in its discretion, to allow a petitioner to serve a late notice of claim on a public corporation. The lower courts denied such relief. The Court concluded that in doing so, the lower courts abused their discretion in evaluating one of the pertinent statutory factors – whether the late filing substantially prejudiced the public corporation in its defense – and further erred in placing the burden of proof for this factor solely on petitioner. Specifically, the Court held that a finding of substantial prejudice cannot

be based on speculation and inference but must instead be based on evidence in the record. The Court further held that, while a petitioner must make an initial showing of no substantial prejudice to the public corporation, it then falls on the public corporation to respond with a “particularized evidentiary showing” as to how it will be substantially prejudiced by the late notice.

#### **PARENT, CHILD AND FAMILY**

*Matter of Brooke S.B. v Elizabeth A.C.C.* (28 NY3d 1)

In two cases, the same-sex former partner of a child's biological mother sought custody and/or visitation with the child. Concluding that the definition of “parent” established by its decision in *Matter of Alison D. v Virginia M.* (77 NY2d 651 [1991]) had become unworkable when applied to increasingly varied familial relationships, the Court overruled *Alison D.*, which held that in an unmarried couple, a partner without a biological or adoptive relation to a child is not that child's “parent” for purposes of standing to seek custody or visitation under Domestic Relations Law § 70(a). The Court held that where a partner shows by clear and convincing evidence that the parties agreed to conceive a child and to raise that child together, the non-biological, non-adoptive partner has standing to seek visitation and custody under Domestic Relations Law § 70. Whether, absent such a pre-conception agreement, a partner can establish standing to seek visitation and

custody where the biological or adoptive parent consented to the creation of a parent-like relationship, was a matter left for another day, upon a different record.

*Matter of Columbia County Support Collection Unit v Risley* (27 NY3d 758)

In this child support enforcement case, Family Court determined that the father willfully failed to comply with his court-ordered child support obligations on three separate violation petitions and found good cause existed to revoke the father's two suspended commitments. The Court was called upon to determine whether Family Court, in revoking the two prior suspended orders of commitment, was authorized to order consecutive six-month sentences for each to run consecutively with a third six-month sentence imposed for a current violation. The Court concluded that Family Court Act § 454(3)(a) authorizes consecutive sentences and held that once the determination was made to revoke the suspended sentences, it was within the discretion of the Family Court judge to impose consecutive sentences for each willful violation.

*Matter of Odunbaku v Odunbaku* (28 NY3d 223)

In a child support proceeding, the Court held that if a party is represented by counsel, the time requirements set out in Family Court Act § 439(e) for objections to a support magistrate's final order, when that order is served by mail, do not begin to run until the order is mailed to counsel. The Court relied on *Matter of Bianca v Frank* (43 NY2d 168

[1977]), which held that, in the absence of statutory language excluding in unmistakable terms the necessity of serving counsel, any general requirement that notice must be served upon the party must be read to require, at least, that notice be served upon the party's attorney. The Court observed that Family Court Act § 439(e) does not convey in unmistakable language that mailing to a represented party is dispositive for time requirement purposes and mailing to counsel unnecessary. Finally, it was noted that mailing court orders to parties in child support proceedings without also mailing the orders to their attorneys impairs effective access to justice on the part of vulnerable individuals and undermines their representation.

*S.L. v J.R.* (27 NY3d 558)

In this custody dispute, the Court was asked to decide whether Supreme Court properly made a final custody determination without first conducting a plenary hearing. Supreme Court granted sole legal and physical custody of the parties' two minor children to their father without conducting an evidentiary hearing. The Appellate Division affirmed based on a determination that the lower court possessed adequate relevant information to enable it to make an informed and provident determination as to the children's best interest. The Court reversed and concluded that, under the circumstances, a plenary hearing was necessary. The Court reiterated that custody determinations should generally be made only after a plenary hearing, and noted, among other things, that a custody hearing is required where material facts

remain in dispute and that child custody determinations should be based on admissible evidence.

## PRODUCT LIABILITY

*Finerty v Abex Corp.* (27 NY3d 236)

The plaintiff, a tractor mechanic in Ireland who contracted mesothelioma, brought an action against the Ford Motor Company (Ford USA) and its foreign subsidiaries for defectively designing and failing to warn him about asbestos-containing parts that he regularly replaced in Ireland. The Court held that Ford USA could not be held liable based on strict products liability because the plaintiff failed to provide any evidence that Ford USA manufactured or placed the asbestos-containing parts into the stream of commerce or that it was involved in the chain of distribution. The Court also held that Ford could not be held derivatively liable to the plaintiff under a theory of strict products liability because there was no evidence that Ford disregarded the separate identity of its foreign subsidiary and involved itself directly in that entity's affairs such that the corporate veil could be pierced. The Court rejected the plaintiff's theory that Ford could be subject to strict liability simply because it was in a position to "exert pressure" on the foreign subsidiary, absent evidence that Ford participated in any way in the manufacturing or sale of the allegedly defective parts.

*Matter of New York City Asbestos Litig.* (27 NY3d 765)

In the trial of two lawsuits arising out of

decedents' exposure to asbestos while working on valves used in steam pipe systems, claims were made against the manufacturer of the valves for, among other things, failure to warn. The Court held that, consistent with its decision in *Rastelli v Goodyear Tire & Rubber Co.* (79 NY2d 289 [1992]), a manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a product designed and produced by another company which, as a matter of design, mechanics or economic necessity is necessary to enable the manufacturer's product to function as intended.

## TAXATION

*Matter of Highbridge Broadway, LLC v Assessor of the City of Schenectady* (27 NY3d 450)

The Court was asked to decide whether a taxpayer who files a petition challenging the calculation of the 10-year business investment exemption under RPTL § 485-b must file annual petitions or whether a single petition challenging the calculation suffices. The Court held that the plain statutory language requires that the taxpayer file only a single petition to challenge the calculation. Central to the determination was that the 10-year exemption is calculated using a single assessment roll. The Court concluded that it would be a waste of judicial and other resources to require a taxpayer to lodge a separate challenge in each and every year that the 10-year exemption applies, particularly given that any

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subsequent petitions would raise the identical issue to that raised in the initial petition – the miscalculation of the exemption amount.

## **TORTS**

*Chanko v American Broadcasting Cos. Inc.* (27 NY3d 46)

Family members and the estate of a deceased individual sued a hospital and television broadcasting company for including the individual in a medical emergency reality show, without consent. The Court upheld dismissal of claims by the family members for intentional infliction of emotional distress, as the alleged conduct was not so extreme and outrageous to support such a cause of action. However, the Court reinstated claims against the hospital and treating physician for breach of physician-patient confidentiality, setting forth the elements of that cause of action as: (1) the existence of a physician-patient relationship; (2) the physician's acquisition of information relating to the patient's treatment or diagnosis; (3) the disclosure of such confidential information to a person not connected with the patient's medical treatment, in a manner that allows the patient to be identified; (4) lack of consent for that disclosure; and (5) damages.

*De Lourdes Torres v Jones* (26 NY3d 742)

Plaintiff brought a false arrest action under federal and state law. The Court held that evidence that the defendant police officers arrested plaintiff without probable cause, after inventing a patently false confession, may establish the officers' liability for detaining the

plaintiff without any lawful privilege. Furthermore, evidence that the officers forwarded the false confession to prosecutors can satisfy the commencement element of a malicious prosecution claim, and the proof of absence of probable cause for the prosecution and the transmission of fabricated evidence can overcome the presumption of probable cause arising from a grand jury's indictment of the plaintiff. That same proof can support an inference that the police acted with actual malice in commencing the prosecution.

## **WORKERS' COMPENSATION**

*Matter of Diegelman v City of Buffalo* (28 NY3d 231)

The Court held that where a municipal employer has elected not to provide coverage to police officers under the Workers' Compensation Law, a police officer who suffers a line-of-duty injury caused by the employer's statutory or regulatory violations may pursue a claim against the employer under General Municipal Law § 205-e. The police officer's entitlement to payment of full wages and medical costs under General Municipal Law § 207-c does not bar an action under section 205-e. The Court explained that section 205-e prohibits only recipients of workers' compensation benefits from commencing suit against their employers, and rejected the City of Buffalo's argument that section 207-c benefits are equivalent to, and should be treated the same as, workers' compensation benefits.

## Annual Events

### Investiture of Chief Judge Janet DiFiore

On December 1, 2015, Governor Andrew M. Cuomo nominated Janet DiFiore to the position of Chief Judge of the Court of Appeals of the State of New York. On January 21, 2016, the New York State Senate confirmed her nomination.

Right: Governor Andrew M. Cuomo and Chief Judge Janet DiFiore. Below: the Governor, the Chief Judge and the Judges of the Court of Appeals in the Red Room, Court of Appeals Hall, before the Chief Judge's investiture.





### **Investiture of Judge Michael J. Garcia**

On January 20, 2016, Governor Andrew M. Cuomo nominated Michael J. Garcia to the position of Associate Judge of the Court of Appeals of the State of New York. On February 8, 2016, the New York State Senate confirmed his nomination.

Following Judge Garcia's investiture, the Judges of the Court of Appeals gathered in the Red Room, Court of Appeals Hall.



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## Law Day

On May 2, 2016, the Court celebrated Law Day. This year's theme was *Miranda: More than Words*, and was a tribute to the late Chief Judge Judith S. Kaye. The celebration included remarks from Chief Judge DiFiore, Attorney General Eric Schneiderman, New York State Bar Association President David Miranda and Chief Judge Kaye's daughter, Luisa Kaye.

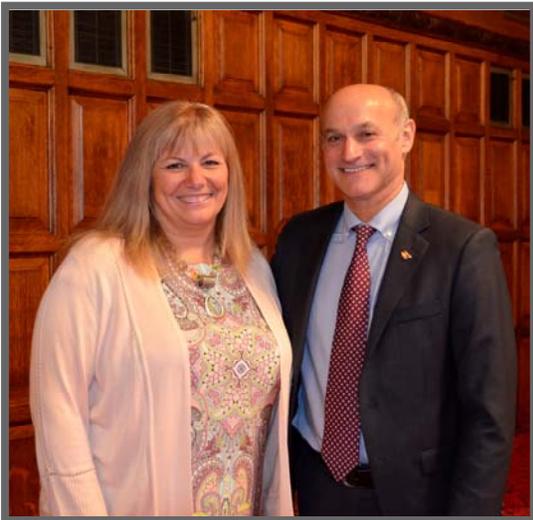


Above: Chief Judge Janet DiFiore speaks at the Law Day Ceremony.

Left: Luisa Kaye delivers remarks.

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



Above: Judge Marks and James McClory, Community Service Award Recipient.  
Above Left: Judge Marks and Marie Villari, Superior Work Performance Award Recipient.

Right: Judge Marks and Frank Costello, Michael Harte, Connie Smith and Michele Stiffler, Heroism Award Recipients.





## Conference Room Ceremony



In December 2016, a Conference Room ceremony was held to commemorate the retirement of Senior Associate Judge Eugene F. Pigott, Jr. Chief Judge DiFiore provided introductory remarks, and Judge Pigott spoke of his tenure at the Court, which spanned from September 15, 2006 until December 31, 2016.



# Appendices

## Appendix 1

Judges of the Court of Appeals

## Appendix 2

Nonjudicial Staff and Personnel Changes

## Appendix 3

Appeals Decided by Jurisdictional Predicate (2016)

## Appendix 4

Appeals Analysis (2012-2016)

All Appeals—Civil and Criminal

Civil Appeals—Type of Disposition

Criminal Appeals—Type of Disposition

## Appendix 5

Civil Appeals Decided by Jurisdictional Predicate (2012-2016)

## Appendix 6

Criminal Appeals Decided by Jurisdictional Predicate (2012-2016)

## Appendix 7

Motions (2012-2016)

## Appendix 8

Criminal Leave Applications (2012-2016)

## Appendix 9

Sua Sponte Dismissal (SSD) Rule 500.10 Review (2012-2016)

## Appendix 10

Office for Professional Matters (2012-2016)

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## Judges of the Court of Appeals

### Chief Judge

Hon. Janet DiFiore

### Associate Judges

Hon. Eugene F. Pigott, Jr.

Hon. Jenny Rivera

Hon. Sheila Abdus-Salaam

Hon. Leslie E. Stein

Hon. Eugene M. Fahey

Hon. Michael J. Garcia



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## Nonjudicial Staff

Alessi, Samantha	Law Clerk to Judge Abdus-Salaam
Amyot, Leah Soule	Senior Principal Law Clerk to Judge Stein
Asiello, John P.	Clerk of the Court
Bohannon, Lisa	Senior Court Analyst
Bowman, Jennifer L.	Senior Court Building Guard
Boyd, J'Naia	Court Attorney
Braunlin, Whitney E.	Court Attorney
Brizzie, Gary J.	Principal Custodial Aide
Broad, Kimberley	Senior Court Attorney
Byer, Ann	Secretary to the Court of Appeals
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
Corcos, Caroline R.	Court Attorney
Costa, Gary Q.	Senior Court Building Guard
Costello, James A.*	Assistant Deputy Clerk
Coughlin, Monica	Secretary to Chief Judge DiFiore
Cross, Robert J.	Senior Court Building Guard
Culligan, David O.	Clerical Assistant
Dautel, Susan S.	Assistant Deputy Clerk
Davis, Heather	Deputy Clerk of the Court
De La Hoz Miranda, Catalina	Senior Court Attorney
Donnelly, William E.	Assistant Building Superintendent
Dragonette, John M.*	Senior Court Building Guard
Dughi-Hogenkamp, Jamie	Law Clerk to Judge Garcia
Eddy, Margery Corbin	Chief Court Attorney
Emigh, Brian J.*	Building Manager
Engel, Hope B.	Consultation Clerk
Estela, Sara Luz	Law Clerk to Judge Rivera
Figueroa, Milagros	Principal Stenographer
Fix-Mossman, Lori E.	Principal Stenographer
Frisch, Deborah	Law Clerk to Chief Judge DiFiore
Galvao, Antonio	Counsel to Chief Judge DiFiore
Garcia, Heather A.	Senior Security Attendant
Geary, Lisa M.*	Principal Law Clerk to Judge Pigott
Gerber, Matthew	Senior Security Attendant
Gilbert, Marianne	Principal Stenographer

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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.	Senior Law Clerk to Judge Fahey
Haas, Tammy L.	Principal Assistant Building Superintendent
Hanft, Genevieve	Law Clerk to Judge Garcia
Hartnagle, Mary C.	Senior Custodial Aide
Heaney, Denise C.	Senior Security Attendant
Holman, Cynthia M.	Senior Stenographer
Hosang-Brown, Yanique	Management Analyst
Ignazio, Andrea R.	Principal Stenographer
Irwin, Nancy J.	Principal Stenographer
Johnson, David P.	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
Kinkle, Jeff	Law Clerk to Judge Rivera
Klubok, Gregory J.	Court Attorney
Kong, Yongjun	Principal Custodial Aide
Kristel, Anna	Assistant Law Clerk to Judge Garcia
Lane, Brian C.	Senior Court Building Guard
LaPorte, Azahar	Secretary to Judge Rivera
Lawrence, Bryan D.	Chief Management Analyst
LeCours, Lisa A.	Assistant Consultation Clerk
LeBow, Matthew	Deputy Chief of Security
Levin, Justin	Principal Court Attorney
Lyon, Gordon W.	Senior Principal Law Clerk to Judge Fahey
MacVean, Rachael M.	Chief Motion Clerk
Martin, John*	Principal Law Clerk to Judge Abdus-Salaam
Martino, Regina	Secretary to Judge Stein
Mauer, Samantha	Senior Court Attorney
Mayo, Michael J.	Deputy Building Superintendent
McCormick, Cynthia A.	Director of Management and Operations
McGrath, Paul J. *	Chief Court Attorney
Meese-Martinez, Jacqueline A.	Law Clerk to Judge Rivera
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
O'Rourke, Joseph	Senior Court Attorney
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore

Oken, Lindsey	Senior Law Clerk to Judge Garcia
Pace, Lisa A.	Clerical Assistant
Pasquarelli, Angela M.	Senior Services Aide
Pastrick, Michael	Senior Principal Law Clerk to Judge Fahey
Penn, Robert*	Senior Law Clerk to Judge Rivera
Pepper, Francis W.	Principal Custodial Aide
Radley, Kelly	Senior Custodial Aide
Randolph, Jennifer	Law Clerk to Chief Judge DiFiore
Rogachevsky, Katrina C.*	Law Clerk to Judge Rivera
Saint-Fort, Dominique F.	Principal Law Clerk to Judge Abdus-Salaam
Schoeneberger, Michael*	Senior Court Attorney
Scoville, Hannah*	Senior Court Attorney
Sherwin, Stephen P.	Deputy Chief 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
Tallent, Joshua*	Senior Court Attorney
Tierney, Inez M.	Principal Court Analyst
Torres, Samuel	Senior Security Attendant
Turon, Kristin L.	Stenographer
VanDeloo, James F.	Senior Assistant Building Superintendent
Villaronga, Genoveva	Secretary to Judge Abdus-Salaam
Waddell, Maureen A.*	Secretary to Judge Pigott
Waiathe, Nelvon H.	Senior Court Building Guard
Ward-Leon, Tara	Senior 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	Senior Court Building Guard
Wisniewski, James J.	Court Attorney
Wolfgang, Katelyn T.	Law Clerk to Chief Judge DiFiore
Woll, Deborah	Senior Principal Law Clerk to Judge Abdus-Salaam
Wood, Margaret N.	Assistant Deputy Clerk
Yalamas, George C.	Chief Security Attendant
Zanello, Lindsay	Senior Court Attorney

\* As of January 1, 2017, no longer employed by the Court of Appeals due to retirement, resignation, or completion of clerkship.

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## Personnel Changes

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### APPOINTMENTS

Alessi, Samantha	Law Clerk to Judge Abdus-Salaam, August 2016
Dughi-Hogenkamp, Jamie	Law Clerk to Judge Garcia, April 2016
Coughlin, Monica	Secretary to Chief Judge DiFiore, January 2016
Estela, Sara Luz	Law Clerk to Judge Rivera, August 2016
Figueroa, Milagros	Principal Stenographer, December 2016
Frisch, Deborah	Law Clerk to Chief Judge DiFiore, February 2016
Galvao, Antonio	Counsel to Chief Judge DiFiore, September 2016
Hanft, Genevieve	Law Clerk to Judge Garcia, March 2016
Kinkle, Jeff	Law Clerk to Judge Rivera, August 2016
Kristel, Anna	Assistant Law Clerk to Judge Garcia, March 2016
Lebow, Matthew	Deputy Chief of Security, November 2016
Meese-Martinez, Jacqueline A.	Law Clerk to Judge Rivera, August 2016
Oken, Lindsey	Senior Law Clerk to Judge Garcia, February 2016
Randolph, Jennifer	Law Clerk to Chief Judge DiFiore, February 2016
Torres, Samuel	Senior Security Attendant, June 2016
Wolfgang, Katelyn T.	Law Clerk to Chief Judge DiFiore, February 2016

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### PROMOTIONS

Byer, Ann	Secretary to the Court of Appeals, November 2016
Costa, Gary	Senior Building Guard, March 2016
Davis, Heather	Deputy Clerk of the Court, April 2016
Eddy, Margery Corbin	Chief Court Attorney, November 2016
Geary, Lisa M.	Principal Law Clerk to Judge Pigott, August 2016
Gerber, Matthew	Senior Security Attendant, June 2016
Groschadl, Laura A.	Senior Law Clerk to Judge Fahey, February 2016
Hosang-Brown, Yanique	Management Analyst, March 2016
Lane, Brian	Senior Building Guard, March 2016
MacVean, Rachael M.	Chief Motion Clerk, June 2016
O'Friel, Jennifer A.	Senior Principal Law Clerk to Chief Judge DiFiore, March 2016
Sherwin, Stephen	Deputy Chief Court Attorney, November 2016
Wilson, Mark	Senior Building Guard, March 2016
Wood, Margaret N.	Assistant Deputy Clerk, December 2016

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**RESIGNATIONS AND RETIREMENTS**

Costello, James A.	Assistant Deputy Clerk, September 2016
Dragonette, John M.	Senior Court Building Guard, December 2016
Emigh, Brian	Building Manager, May 2016
Geary, Lisa M.	Senior Law Clerk to Judge Pigott, December 2016
Giller, David	Law Clerk to Judge Rivera, July 2016
Grogan, Bruce D.	Senior Principal Law Clerk to Judge Pigott, October 2016
Martin, John	Principal Law Clerk to Judge Abdus-Salaam, August 2016
McGrath, Paul J.	Chief Court Attorney, August 2016
Nina, Eddie	Transferred from Sr. Security Attendant to OCA, January 2016
Penn, Robert	Senior Law Clerk to Judge Rivera, August 2016
Rogachevsky, Katrina C.	Law Clerk to Judge Rivera, August 2016
Stromecki, Kristie L.	Principal Law Clerk to Judge Pigott, December 2016
Waddell, Maureen A.	Secretary to Judge Pigott, December 2016

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**CENTRAL LEGAL RESEARCH STAFF****APPOINTMENTS**

Boyd, J'Naia	Court Attorney, August 2016
Braunlin, Whitney E.	Court Attorney, August 2016
Corcos, Caroline R.	Court Attorney, August 2016
Johnson, David P.	Court Attorney, August 2016
Klubok, Gregory J.	Court Attorney, August 2016
Wisniewski, James J.	Court Attorney, August 2016

**PROMOTIONS**

Broad, Kimberley	Senior Court Attorney, August 2016
De La Hoz Miranda, Catalina	Senior Court Attorney, August 2016
Maurer, Samantha	Senior Court Attorney, August 2016
O'Rourke, Joseph	Senior Court Attorney, August 2016
Ward-Leon, Tara	Senior Court Attorney, August 2016
Zanello, Lindsay	Senior Court Attorney, August 2016

**COMPLETION OF CLERKSHIPS**

Morgen, David	Completed clerkship, August 2016
Schoeneberger, Michael	Completed clerkship, May 2016
Scoville, Hannah	Completed clerkship, April 2016
Tallent, Joshua	Completed clerkship, September 2016

## Appeals by Jurisdictional Predicate (2016)

**Basis of Jurisdiction: All Appeals**

	Disposition					Total
	Affirmance	Reversal	Modification	Dismissal	Other*	
Appellate Division Dissents	9	4	1	0	0	14
Permission of Court of Appeals/Judge thereof	83	45	5	1	0	134
Permission of Appellate Division/Justice thereof	37	15	5	2	0	59
Constitutional Question	7	0	0	0	0	7
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	1	0	0	10	11
<b>Totals</b>	<b>136</b>	<b>65</b>	<b>11</b>	<b>3</b>	<b>10</b>	<b>225</b>

\* 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).

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**Basis of Jurisdiction:****Civil Appeals****Disposition**

	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Appellate Division Dissents	9	4	1	0	0	14
Permission of Court of Appeals	28	22	3	1	0	54
Permission of Appellate Division	20	8	4	0	0	32
Constitutional Question	7	0	0	0	0	7
Stipulation for Judgment Absolute	0	0	0	0	0	0
Other	0	1	0	0	10	11
<b>Totals</b>	<b>64</b>	<b>35</b>	<b>8</b>	<b>1</b>	<b>10</b>	<b>118</b>

**Basis of Jurisdiction:****Criminal Appeals****Disposition**

	Affirmance	Reversal	Modification	Dismissal	Other*	Total
Permission of Court of Appeals Judge	55	23	2	0	0	80
Permission of Appellate Division Justice	17	7	1	2	0	27
<b>Totals</b>	<b>72</b>	<b>30</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>107</b>

## Appeals Analysis (2012-2016)

### All Appeals -

Civil and Criminal	2012	2013	2014	2015	2016
<b>Civil</b>	62%	57%	61%	55%	52%
	(149 of 240)	(148 of 259)	(144 of 235)	(112 of 202)	(118 of 225)
<b>Criminal</b>	38%	43%	39%	45%	48%
	(91 of 240)	(111 of 259)	(91 of 235)	(90 of 202)	(107 of 225)

### Civil Appeals -

#### Type of Disposition

	2012	2013	2014	2015	2016
<b>Affirmed</b>	54%	49%	37%	44%	54%
<b>Reversed</b>	30%	27%	38%	33%	30%
<b>Modified</b>	10%	6%	9%	10%	7%
<b>Dismissed</b>	0%	2%	1%	1%	1%
<b>Other*</b>	6%	16%	15%	12%	8%

### Criminal Appeals -

#### Type of Disposition

	2012	2013	2014	2015	2016
<b>Affirmed</b>	58%	66%	54%	63%	67%
<b>Reversed</b>	29%	28%	33%	31%	28%
<b>Modified</b>	12%	5%	9%	3%	3%
<b>Dismissed</b>	1%	1%	4%	2%	2%
<b>Other*</b>	0%	0%	0%	1%	0%

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

## Civil Appeals Decided by Jurisdictional Predicate (2012-2016)

	2012	2013	2014	2015	2016
<b>Appellate Division Dissents</b>	14% (21 of 149)	21% (31 of 148)	9% (14 of 144)	8% (9 of 112)	12% (14 of 118)
<b>Permission of Court of Appeals</b>	51% (76 of 149)	35% (52 of 148)	38% (53 of 144)	46% (51 of 112)	45% (54 of 118)
<b>Permission of Appellate Division</b>	24% (36 of 149)	17% (25 of 148)	29% (42 of 144)	29% (33 of 112)	27% (32 of 118)
<b>Constitutional Questions</b>	4% (6 of 149)	9% (13 of 148)	5% (7 of 144)	4% (5 of 112)	6% (7 of 118)
<b>Stipulation for Judgment Absolute</b>	0% (0 of 149)	0.70% (1 of 148)	0.70% (1 of 144)	0% (0 of 112)	0% (0 of 118)
<b>CPLR 5601(d)</b>	1% (1 of 149)	2% (3 of 148)	1% (2 of 144)	3% (3 of 112)	1% (1 of 118)
<b>Supreme Court Remand</b>	0% (0 of 149)	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)
<b>Judiciary Law § 44*</b>	3% (4 of 149)	4% (6 of 148)	1% (2 of 144)	2% (2 of 112)	2% (2 of 118)
<b>Certified Question (Rule 500.27)**</b>	3% (5 of 149)	11% (17 of 148)	16% (23 of 144)	8% (9 of 112)	7% (8 of 118)
<b>Other</b>	0% (0 of 149)	0% (0 of 148)	0% (0 of 144)	0% (0 of 112)	0% (0 of 118)

\* Includes judicial suspension matters.

\*\* Includes decisions accepting/declining certifications.

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## Criminal Appeals Decided by Jurisdictional Predicate (2012-2016)

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	2012	2013	2014	2015	2016
<b>Permission of Court of Appeals Judge</b>	84% (76 of 91)	84% (93 of 111)	82% (75 of 91)	81% (73 of 90)	75% (80 of 107)
<b>Permission of Appellate Division Justice</b>	16% (15 of 91)	16% (18 of 111)	18% (16 of 91)	19% (17 of 90)	25% (27 of 107)

## Motions (2012-2016)

	2012	2013	2014	2015	2016
<b>Motions Submitted for Calendar Year</b>	1296	1292	1293	1395	1183
<b>Motions Decided for Calendar Year*</b>	1330	1310	1300	1378	1232
<b>Motions for Leave to Appeal</b>	999	995	934	1051	910
Granted	64	65	72	57	17
Denied	733	739	662	750	689
Dismissed	202	190	193	237	199
Withdrawn	9	2	7	7	5
<b>Motions to Dismiss Appeals</b>	9	12	5	13	4
Granted	3	2	1	4	3
Denied	6	7	4	9	1
Dismissed	0	3	0	0	0
Withdrawn	0	0	0	0	0
<b>Sua Sponte and Court's own motion dismissals</b>	85	92	96	84	96
<b>Total Dismissals of Appeals</b>	88	94	97	88	99
<b>Motions for Reargument of Appeal</b>	28	22	34	27	29
Granted	1	3	0	0	0
<b>Motions for Reargument of Motion</b>	67	54	54	61	72
Granted	0	1	0	0	0
<b>Motions for Assignment of Counsel</b>	86	45	64	70	46
Granted	85	45	64	70	46
Legal Aid	13	10	15	15	5
Denied	1	0	0	0	0
Dismissed	0	0	0	0	0
<b>Motions for Poor Person Status</b>	126	159	170	219	184
Granted	8	6	12	6	3
Denied	0	0	0	0	1
Dismissed	118	153	158	213	180

\* 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.

## Motions (2012-2016)

	2012	2013	2014	2015	2016
<b>Motions for Amicus Curiae Relief</b>	82	124	155	122	117
Granted	77	119	152	118	114
<b>Motions to Waive Rule Compliance</b>	5	0	0	1	0
Granted	5	0	0	0	0
<b>Motions to Vacate Dismissal/Preclusion</b>	11	5	9	6	8
Granted	8	5	9	6	7
<b>Motions for Leave to Intervene</b>	0	2	0	0	0
Granted	0	0	0	0	0
<b>Motions to Stay/Vacate Stay</b>	26	34	22	36	29
Granted	3	3	3	2	1
Denied	3	0	3	3	2
Dismissed	20	31	16	31	26
Withdrawn	0	0	0	0	0
<b>Motions for CPL 460.30 Extension</b>	18	22	13	13	22
Granted	16	21	11	12	21
<b>Motions to Strike Brief/Record/Appendix</b>	5	7	11	3	5
Granted	2	3	4	1	1
<b>Motions to Amend Remittitur</b>	1	1	0	0	0
Granted	0	0	0	0	0
<b>Motions for Miscellaneous Relief</b>	11	9	17	20	30
Granted	1	3	2	2	2
Denied	8	3	12	10	17
Dismissed	2	3	3	8	11
Withdrawn	0	0	0	0	0

## Criminal Leave Applications (2012-2016)

	2012	2013	2014	2015	2016
<b>Total Applications Assigned</b>	2014	2044	2100	2338	2211
<b>Total Applications Decided*</b>	2096	1923	2090	2201	2497
Granted	99	74	81	91	33
Denied	1842	1692	1843	1868	2230
Dismissed	147	145	154	231	221
Withdrawn	6	12	12	11	13
<b>Total People's Applications</b>	50	63	47	51	66
Granted	10	14	11	7	10
Denied	33	39	29	35	48
Dismissed	5	3	2	2	2
Withdrawn	2	7	5	7	6
<b>Average Number of Applications Assigned to Each Judge**</b>	287	324	325	391	358
<b>Average Number of Grants for Each Judge</b>	14	11	12	13	5

\* 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.

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## Sua Sponte Dismissal (SSD) Rule 500.10 Review (2012-2016)

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	2012	2013	2014	2015	2016
Total number of inquiry letters sent	71	100	73	77	57
Withdrawn on stipulation	1	2	1	1	1
Dismissed by Court	43	69	48	44	44
Transferred to Appellate Division Sua Sponte	4	2	9	3	1
Appeals allowed to proceed in normal course (a final judicial determination of subject matter jurisdiction to be made by the Court after argument or submission)	14	6	8	5	3
Jurisdiction retained - appeals decided*	4	1	0	0	1
Inquiries pending at year's end	5	20	7	25	7

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

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## Office for Professional Matters (2012-2016)

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	2012	2013	2014	2015	2016
Attorneys Admitted*	9,657	10,251	10,748	8,868	8,423
Registered In-House Counsel	118	91	100	94	135
Certificates of Admission	78	91	142	94	123
Clerkship Certificates	9	4	3	0	6
Petitions for Waiver**	357	313	361	334	314
Written Inquiries	98	82	71	72	98
Disciplinary Orders***	527	3,012	2,172	557	611
Name Change Orders	1,074	923	803	842	850

\* 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 2013, 2014 and 2016 numbers include orders involving multiple attorneys' violation of the biennial registration requirement (see Judiciary Law § 468-a).

