



## NEW YORK CHIEF JUDGE CANDIDATES 2023

### Overview

This document provides research and analysis of the records of [the seven candidates](#) for Chief Judge of the New York Court of Appeals and the State of New York. The information in this document was gathered and prepared by members of [The Court New York Deserves](#), a coalition of over 160 organizations that since last summer has called for a Chief Judge who will safeguard the rights of New Yorkers and protect the most vulnerable. To read our analysis of the first list of Chief Judge candidates, [see here](#). Our coalition is committed to a thorough review of the records of judicial candidates and active public engagement in the nomination, confirmation, and election of judges.

The Chief Judge of New York's highest court is particularly important, since the Court of Appeals interprets New York State law and the Chief Judge oversees the entire New York's court system. The Court of Appeals can and should act as a defense against attacks on New Yorkers' rights, protecting New Yorkers and defending the rule of law. But in recent years, it has done neither. Under former Chief Judge Janet DiFiore, the Court of Appeals [took an alarming turn](#), issuing regressive decisions that harmed [workers](#), [tenants](#), and [immigrants](#), [curtailed New Yorkers' rights](#), [undermined our democratic institutions](#), and [made it more difficult for the state to implement environmental protections](#). The Court's priorities in recent years have been clearly wrong for New York. This nomination therefore offers a critical opportunity for our state—one that should not be missed.



## Hon. Rowan D. Wilson

### Summary

- **Since joining the Court of Appeals in 2017, Judge Wilson has been a tireless champion of the powerless and the voiceless. In more than 100 dissents and concurrences, he has shown that he understands how the law impacts vulnerable New Yorkers and that he is deeply committed to making equal justice under the law a reality.** Wilson’s opinions have articulated, defended, and expanded the rights of [workers](#), [wrongfully convicted people](#), [workplace injury victims](#), [victims of gun violence](#), [small business taxpayers](#), and even [the state’s constitutionally-protected parks](#). He has written frequently in defense of the constitutional right to privacy against government intrusion, whether [in homes](#), [in cars](#), or [online](#). His prolific writing consistently recognizes the interests of people whom many other judges dismiss through action or inaction. Wilson understands the challenges faced by the majority of the court system’s users, and he knows the fundamental purpose of the courts is to do justice.
- **Judge Wilson’s extensive management experience has prepared him well for the Chief Judge role.** Wilson’s career includes decades of leadership of a major law firm, service as a trusted counselor to the largest businesses in New York, and [board chair for over two decades](#) of Neighborhood Defender Services, a holistic defender organization that combines public defense with social services to address the root causes of crime. As head of Cravath, Swaine & Moore LLP’s pro bono practice, Judge Wilson [championed the rights](#) of women and Black plaintiffs discriminated against by the government of Birmingham, Alabama, for 25 years. Many are calling for a system leader who can clear the state court system’s notorious case backlog, a challenge that will require a Chief Judge who leads by consensus and commands statewide respect. Wilson has shown he would provide that leadership.
- **Judge Wilson has earned a distinguished reputation as a brilliant and fair-minded jurist who commands the broad respect of the bench and bar.** Judge Wilson’s signed writings have been cited as influential by [other courts not bound by them](#) (including the [U.S. Supreme Court](#)) and have [spurred legislation](#) adopting his views. Professor Vincent Bonventre, a frequent commentator on the Court of Appeals, has [repeatedly praised](#) Wilson, saying, “If Wilson were on the Supreme Court, he’d double the IQ.” And career prosecutor Paul Schectman [has said](#), “Reading a Judge Wilson opinion, even if one disagrees with it, is often a happy meal.”
- **Judge Wilson has demonstrated commitment to restoring the Court of Appeals to its past status as the nation’s preeminent common-law court.** Commentators have decried the Court of Appeals’ [“incredible shrinking caseload,”](#) particularly on criminal appeals. Of the three Associate Judges who are Chief Judge candidates, Wilson is the only one who routinely grants leave to appeal in criminal cases—to either the defense or the prosecution—to ensure that the Court hears appeals of such cases on the merits.

From the date of Judge Troutman’s confirmation in January 2022 to March 2023, Judges Cannataro and Troutman granted leave in only 4 and 5 cases, respectively (the second- and third-lowest among Court of Appeals judges), while Wilson granted 14 (the highest). Clarifying the law is the essential function of the Court of Appeals, and outside commentators agree with Judge Wilson that the Court has not fulfilled that function. Judge Wilson, having identified the problem, has done his best to address it as an Associate Judge and is best situated to fix it as Chief Judge.

- **Nonetheless, certain elements of Judge Wilson’s jurisprudence—particularly regarding undocumented defendants, labor misclassification, and foreclosure victims—are concerning.** Perhaps most prominently, Judge Wilson dissented from even the Court’s conservatives in concluding that [undocumented defendants did not have a constitutional right to jury trials](#) (a position endorsed by [the New York Post](#)). He has also voted to reject efforts to [grant unemployment insurance benefits to delivery workers](#), sought to make taxpayers pay to defend [abusive cops](#) and [abusive prison guards](#), and joined an opinion giving banks [so much more power to manipulate the foreclosure process](#) that a bipartisan majority of the legislature [overruled the Court’s decision](#) less than a year later. Although these unfortunate decisions are more than outweighed by Judge Wilson’s lengthy history of standing up for the powerless, they nonetheless deserve serious scrutiny from senators during the confirmation process.

## Biography

- 2017-Present: Associate Judge, New York Court of Appeals
- 1991-2017: Partner, Cravath, Swaine & Moore LLP
- 1986-1991: Associate, Cravath, Swaine & Moore LLP
- 1984-1986: Law Clerk, Judge James R. Browning, Chief Judge of the U.S. Court of Appeals for the Ninth Circuit
- Education: J.D., Harvard Law School, 1984; A.B., Harvard College, 1981



## Caitlin J. Halligan, Esq.

### Summary

- **Halligan’s contradictory record makes it difficult to predict what impact she would have on New York State law.** Her record includes a significant amount of troubling work and a series of very promising, largely pro bono efforts. Because Halligan has served clients across the political, social, and economic spectrum, and because she has no substantial body of writings that express her personal views on the law and were not written at the direction of her clients, her jurisprudential philosophy is much less clear than that of the other candidates on this list.
- **When representing corporate and prosecutorial clients, Halligan has advocated regressive legal positions.** For these clients, she has [argued](#) for such a restrictive reading of the Pregnancy Discrimination Act that the conservative U.S. Supreme Court [rejected it 6-3](#), that impoverished workers [could not recover](#) against their employer for exposing them to toxic pesticides or [asbestos](#), and that police could use [illegally obtained identity information](#) against defendants, among other positions. She also [defended Chevron](#) during its campaign against human rights and environmental lawyer Steven Donziger, whose extraordinary prosecution by the district court has drawn alarm from across the [political spectrum](#).
- **But when representing workers, tenants, or civil rights organizations, Halligan has forcefully articulated their positions in critical cases to good effect.** In her pro bono work in recent years, Halligan has argued in favor of [defendants’ constitutional rights to confront witnesses against them](#), the [constitutionality of New York City’s rent control statutes](#), and New York State’s [right to require Amazon](#) to provide better conditions for their workers than those required by federal law.
- **Halligan would not bring the professional diversity that New York’s highest court critically needs. If she is appointed, the Court of Appeals will remain entirely without former public defenders or direct service attorneys.** If appointed, Halligan would be the third former “BigLaw” partner and the fourth former prosecutor on the Court. As our coalition said in a [letter to the Governor](#) after former Chief Judge DiFiore announced her retirement, Governor Hochul should take this opportunity to show the same exemplary leadership as the Biden administration and New York’s U.S. senators, who have appointed numerous judges with the non-prosecutorial and non-corporate backgrounds that our courts desperately need. Adding another corporate lawyer who also worked as a prosecutor to the Court of Appeals would fail to make New York’s highest court more reflective of the New York bar and the state as a whole, and would miss the chance to make a Court with even a single judge who is personally familiar with the law’s human impact on vulnerable New Yorkers—the most common litigants in our court system.

- **Halligan’s choice to spend most of her career using her formidable skills on behalf of the powerful in opposition to the weak is a cause for concern.** Over her career, and especially between 2010 and 2019, Halligan has [defended polluters](#), [excused gender discrimination](#) in the workplace on behalf of massive corporations, and [advanced carceral policies](#) for the Manhattan District Attorney’s Office. As [then-Senator Barack Obama explained](#) when he voted against John Roberts’ nomination to the U.S. Supreme Court, “When I examined Judge Roberts’ record and history of public service, it is my personal estimation that he has far more often used his formidable skills on behalf of the strong in opposition to the weak.” That Halligan has made the same choice is not encouraging.
- **Halligan’s record suggests she will be a serious and thoughtful judge who will help move the Court of Appeals back toward writing more, longer, and better-reasoned decisions.** The many briefs Halligan has authored and her oral arguments before the U.S. Supreme Court illustrate her strong command of complex legal doctrines, and her staunch advocacy on behalf of New York State during the Bush Administration years has earned her admirers in both [the legal](#) and [political](#) worlds. It is therefore unsurprising that she has been [repeatedly praised](#) for over a decade as a leading legal mind, that she has been shortlisted for the Court of Appeals [six times](#), or that President Obama nominated her [multiple times](#) to a federal judgeship on the D.C. Circuit.
- **Should Halligan be nominated to the Court of Appeals, we urge Senators to scrutinize her closely.** Given Halligan’s wide-ranging and in some respects contradictory record, if she is nominated, it is vital that the Senate’s review and hearing process be thorough.

## Biography

- 2019-Present: Partner & Head of Appellate Practice, Selendy Gay Elsberg PLLC
- 2014-2019: Partner & Member of Appellate and Constitutional Law Practice Group, Gibson Dunn
- 2010-2014: General Counsel, Manhattan District Attorney’s Office
- 2007-2009: Partner & Head of Appellate Practice, Weil, Gotshal & Manges
- 2005-2007, 2009, Lecturer-in-Law, Columbia University School of Law
- 2001-2006: Solicitor General, Office of the New York State Attorney General
- 2001-2001: First Deputy Solicitor General, Office of the New York State Attorney General
- 1999-2000: Bureau Chief, Internet and Technology Bureau, Office of the New York State Attorney General
- 1998-1999: Associate, Howard, Smith & Levin LLP
- 1997-1998: Law Clerk, Justice Stephen Breyer, U.S. Supreme Court
- 1997-1997: Adjunct Faculty, Georgetown University Law Center
- 1996-1997: Associate, Wiley, Rein & Fielding



- 1995-1996: Law Clerk, Judge Patricia Weld, U.S. Court of Appeals for the District of Columbia Circuit
- Education: J.D., Georgetown University Law Center, 1995; A.B., Princeton University, 1988



## Hon. Anthony Cannataro

### Summary

- **Judge Cannataro’s Court of Appeals record is unacceptably conservative, as he voted with Chief Judge DiFiore and the conservative bloc in all 98 decisions issued while they were both on the Court.** From the time of Cannataro’s appointment to the Court of Appeals until Chief Judge DiFiore resigned, he was in perfect alignment with her—and has remained strongly aligned with [the conservative bloc](#) since then. Most dramatically, he was in the majority in [the decision](#) that gave control of redistricting to a single Republican trial court judge. Cannataro began to [occasionally concur](#) with the Court’s liberal judges in divided cases only after he applied to be on the last Chief Judge shortlist, with no assurance that these isolated incidents will increase in frequency when he is no longer being considered for a promotion.
- **Judge Cannataro’s elevation to Acting Chief Judge departed from half a century of precedent, was an insult to more senior judges of color, and may have violated state law.** Cannataro is one of the most junior members of the Court of Appeals, having been appointed less than two years ago. In previous Chief Judge vacancies over the last 50 years, the most senior judge served as Acting Chief Judge. Passing over the three more senior judges on the Court, all of whom are people of color, was an insult, and Chief Judge DiFiore's involvement in choosing Judge Cannataro was improper and [potentially in violation of state law](#).
- **As a trial court judge, Judge Cannataro was repeatedly reversed by appellate courts for basic legal errors, and as a high court judge, he has written very little.** Cannataro was reversed by appellate courts for failing to [state the essential facts](#) that he relied on to dismiss a plaintiff’s claims; for [approving a default judgment](#) when it was clear the process server delivered service to the wrong address; for [misapplying the Rent Stabilization Code](#) to overturn a jury’s finding that a tenant was entitled to stay in her apartment; and for improperly [limiting an order of protection](#) to six months when the law specified that the petitioner was entitled to a five-year order of protection.
- **Cannataro has consistently used his power to allow landlords to more easily evict tenants.** As Administrative Judge of New York City Civil Court, he [tried to reopen housing courts early in the Covid-19 pandemic](#), so tenants could be evicted when large numbers of New Yorkers were still dying every day and despite [his own acknowledgment](#) that some housing court facilities were unsafe. And as Acting Chief, he has [neglected to enact](#) policies that would effectuate New York City’s right to counsel law, instead facilitating the eviction of unrepresented tenants despite the law.



## Biography

- 2022-Present: Acting Chief Judge, New York Court of Appeals
- 2021-Present: Associate Judge, New York Court of Appeals
- 2018-2021: Citywide Administrative Judge, New York City Civil Court
- 2016-2018: Supervising Judge, New York City Civil Court
- 2011-2017: Judge, New York City Civil Court, assigned to Kings County Family Court and Bronx County Civil Court
- 2003-2011: Law Clerk, Justice Lottie E. Wilkins, Supreme Court, New York County
- 2000-2003: Law Clerk, Judge Carmen Beauchamp Ciparick, New York Court of Appeals
- Education: J.D., New York Law School, 1996; B.A., Columbia University, 1993



## Hon. Elizabeth A. Garry

### Summary

- **Justice Garry is a prolific and thoughtful appellate judge who has often written separately and at length in favor of the less powerful.** Garry has repeatedly drawn attention to the human stories behind the cases before her. She has often [dissented eloquently](#) in favor of reducing sentences (or [granting parole](#)), [providing](#) accident compensation to victims of workplace injuries, [recognizing](#) the [limits](#) of medical expert testimony in establishing the lived experience of disability, and showing [solicitude](#) to the less-resourced party in divorce proceedings.
- **Justice Garry often prefers to overlook technicalities in close cases, instead trying to advance the broader purpose of the law at issue. This tendency is most apparent in her decisions on foreclosure and landlord-tenant disputes, with mixed results for homeowners and renters.** Technicalities tend to benefit homeowners in the former circumstance, and landlords in the latter. Accordingly, Justice Garry agreed with banks in [several signed](#) majority opinions (and one [dissent](#)) holding that various formal requirements for foreclosure proceedings, like naming the homeowners foreclosed against or ensuring participation in hearings, could be dispensed with if the homeowners knew what was happening. She has also held that the Fair Housing Act [encompasses](#) a disabled tenant's right to an emotional support dog in their rental unit, rejecting the restrictive standard promulgated by the Second Department, and that a village ordinance exposing tenants to far higher risks of eviction if they called the police was [unconstitutionally overbroad](#).
- **Similarly, Justice Garry is often prepared to overlook procedural irregularities in favor of resolving cases on the merits.** In a complex fiduciary duty dispute, Garry [dissented](#) from the majority holding, saying that no fiduciary duty was present on the basis of a theory that both parties largely ignored. In another case, Garry voted in favor of considering [an unreserved claim](#) that a defendant misunderstood the terms of a guilty plea. Garry also [permitted the NAACP to intervene](#) in an important challenge to a dearth of public-transport-accessible polling places, despite a late filing.
- **Justice Garry's pragmatic approach is well illustrated by a series of opinions on prisoner litigation.** The Third Department covers a wide geographic region, including Albany, where the Department of Corrections and Community Supervision is headquartered. As a result, it regularly hears appeals from prisoners challenging disciplinary proceedings. Garry has [repeatedly written separately](#) to stress the importance of body cameras for prison guards, which would resolve many of the factual disputes at issue in these cases.
- **Justice Garry's administrative record as Presiding Justice of the Third Department contains several decisions of interest.** Garry allegedly [voted against](#) Chief Judge DiFiore's extraordinary and deeply concerning efforts to remove 46 Supreme Court



justices; has drawn [welcome attention](#) to the rural justice gap in Northern New York; and [migrated](#) the Third Department to a new case management program while [continuing](#) to expand e-filing. And following the latest shortlist announcement, she has [expressed a strong desire](#) to address the Court of Appeals' notorious decline in caseload and ensure our highest court hears more appeals. But she and her fellow presiding justices (including Justice Whalen) also agreed to [change Question 26](#)—the question about applicants' involvement with the criminal legal system—in a way that appears beneficial but which still leaves the question in violation of the New York State Human Rights Law.

### Biography

- 2018-Present: Presiding Justice, Appellate Division, Third Department
- 2009-2017: Associate Justice, Appellate Division, Third Department
- 2007-2009: Justice, New York State Supreme Court, 6th Judicial district
- 2001-2006: Town Justice, Town of New Berlin
- 1995 -2006: Attorney, Joyce Law Firm
- 1990-1994: Law Clerk, Justice Irad S. Ingraham, Chenango County Supreme Court, 6th Judicial District
- Education: J.D., Albany Law School, 1990; B.A., Alfred University, 1984



## Corey L. Stoughton, Esq.

### Summary

- **Stoughton has dedicated her entire career to civil rights, leading advocacy for disenfranchised and marginalized communities from both within and outside government.** She has done this work at the New York Civil Liberties Union (NYCLU), in the U.S. Department of Justice's Civil Rights Division, and most recently as the Attorney-in-Charge of the Legal Aid Society's Law Reform Unit. She has even undertaken this work internationally, leading the United Kingdom's preeminent domestic human rights organization. While at the Department of Justice, she worked closely with Vanita Gupta, then the Assistant Attorney General for Civil Rights and now the Associate Attorney General of the United States, on a wide range of issues beyond the criminal justice system, including voting rights and discrimination in education, housing, lending, and employment.
- **Stoughton would bring a deep understanding of civil rights law from her years advocating for government accountability at the Department of Justice and NYCLU. She would also provide a defender perspective from her years advocating for criminal justice reform at the country's largest public defender office.** With former prosecutors making up half the Court of Appeals, the stature of the Court and quality of its opinions are widely [acknowledged to have significantly diminished](#). Stoughton would help correct this decline, with numerous valuable experiences shaping her insight into the law:
  - She led the Department of Justice's Civil Rights Division's efforts to improve its approach to police reform and managed its litigation against anti-trans discrimination.
  - As a career civil rights litigator, she has been the lead counsel on key cases seeking to hold state and local governments accountable, including cases that [challenged the NYPD's pattern and practice of inappropriate use of force against protesters](#) and of [stop-and-frisk practices in public housing](#), fought back against the [use of a taser on an eighth grade student by a Syracuse area school safety officer](#), resulted in reforms to [protect students from bullying and harassment based on sexual orientation and gender expression](#) in an upstate school district after their failure to protect a student from such bullying, and [dramatically improved defender caseloads and compensation](#).
- **Stoughton's lifelong work in the criminal justice system in New York, nationally and abroad, has made her a widely respected leader and ideally situated to partner with the Governor and the Legislature to reform the state's criminal courts.** Governor Hochul has [pointed to dysfunction in criminal trials as an urgent issue](#) for the next Chief Judge to address. Stoughton has extensive hands-on experience doing this work in a just and fair way, giving her credibility throughout the field. In addition to her



work as a successful advocate and impact litigator, Stoughton took charge of the U.S. Department of Justice's police reform efforts and has written and spoken extensively on criminal justice reform and civil liberties in the U.S. and in the U.K.

- **Stoughton has valuable management experience in government and at multiple organizations.** At the Legal Aid Society at the local level, the Department of Justice's Civil Rights Division at the national level, and while leading Liberty in the U.K., she has overseen large teams working across litigation, policy, campaigning, and strategic communications to advance human rights and civil liberties.

## Biography

- 2020-Present: Attorney-in-Charge, Special Litigation and Law Reform at the The Legal Aid Society
- 2017-2019: Acting Director and Advocacy Director at Liberty (National Council for Civil Liberties, United Kingdom)
- 2015-2017: Senior Counsel to the Assistant Attorney General for Civil Rights at the United States Department of Justice, Civil Rights Division
- 2007-2016: Adjunct Clinical Professor of Law at New York University School of Law
- 2008-2009: Research Fellow in the Fulbright Programs (Turkey)
- 2005-2015: Senior Supervising Attorney at the New York Civil Liberties Union
- 2004-2005: Karpatkin Fellow in the National Legal Department at the American Civil Liberties Union
- 2003-2004: Civil Rights Fellow at Relman & Associates (now Relman & Colfax PLLC)
- 2002-2003: Law Clerk to Judge Cornelia G. Kennedy of the Sixth Circuit, U.S. Court of Appeals
- Education: J.D., Harvard Law School, 2002; B.A. University of Michigan, 1998



## Hon. Shirley Troutman

### Summary

- **Judge Troutman’s jurisprudence since joining the Court of Appeals has been mixed.** On the positive side, she has written in support of the vital importance of constitutional rights to a [speedy criminal process](#), taking the [interests of justice](#) into consideration in sentencing, and a defendant [knowing fully what rights they waive when they plead guilty](#). Regrettably, however, Judge Troutman has voted repeatedly to give the government a free pass even when their negligence causes [enormous harm](#)—while punishing individuals for even minor failings like [not showing up to a hearing](#).
  - Judge Troutman’s opinion in [Maldovan v. Erie County](#), referenced above, deserves particular emphasis because it is so deeply disappointing. In *Maldovan*, Troutman held for the Court that a county could not be held accountable for the rape, torture, and murder of an intellectually disabled woman by her family members, even though the county’s Child and Adult Protective Services had been repeatedly warned that the family was abusing her. That same day, in a case in which a woman was thrown from a third-story window by her abuser after she received multiple orders of protection against him, Judge Troutman voted to [protect the NYPD from accountability](#) when it ignored those orders of protection and even threatened to arrest her if she called them again.
  - Judge Troutman also joined the Court’s conservatives in regressive decisions [curtailing Miranda rights](#), [blocking a victim](#) of toxic asbestos-laden talcum powder from recovering damages, and [preventing](#) criminal defendants from introducing probative self-defense evidence in some circumstances.
- **Judge Troutman has limited management experience.** Since Judge Troutman, like Judges Cannataro and Wilson, is currently an Associate Judge, elevating her to Chief Judge would not affect the Court’s ideological balance; instead, its most critical change would be in putting her in charge of administering New York’s complex and wide-ranging court system. As far as can be determined, although Judge Troutman has served as the co-chair of the Franklin Williams Commission (which organizes symposia and other programming aimed at reducing bias in the court system), she has not served as an administrative judge or as a leader of a nonprofit direct legal services organization, law firm, or government department.
- **In her capacity as Associate Judge, Judge Troutman has contributed to the Court of Appeals’ shrinking docket.** In her 15 months on the Court so far, Judge Troutman has underutilized her power to grant leave to appeal in criminal cases. She has so far granted only four Criminal Leave Applications, putting her in line with the conservative bloc of Singas (5), Cannataro (5), and Garcia (3), and well below her colleagues Rivera (12) and Wilson (14).



- **If she is nominated and confirmed, Judge Troutman would be the second consecutive former prosecutor to serve as Chief Judge, in a moment in which many New Yorkers in and outside government have called for a Chief Judge with different experience.** With a court system dominated by former prosecutors, and which was until recently led by a former prosecutor with failing results, our next Chief Judge should bring a fresh perspective.

### Biography

- 2022-Present: Associate Judge, New York Court of Appeals
- 2016-2022: Associate Judge, Appellate Division, Fourth Department
- 2009-2016: Justice, Supreme Court, 8th Judicial District
- 2002-2009: Judge, Erie County Court
- 1994-2002: Judge, Buffalo City Court
- 1992-1994: Assistant U.S. Attorney, Western District of New York
- 1989-1992: Assistant Attorney General, Litigation Bureau, Office of the New York State Attorney General
- 1986-1989: Assistant District Attorney, Office of the Erie County District Attorney
- Education: J.D., Albany Law School, 1985; B.A., State University of New York at Buffalo, 1982



## Hon. Gerald J. Whalen

### Summary

- **Justice Whalen has a lengthy history of opinions demonstrating his commitment to upholding constitutional rights and the rule of law.** During his time on the appellate bench, Whalen has written over twenty signed dissents in criminal cases. While he has sided with both the prosecution and the defense, he has frequently dissented in favor of [a strict application of the Fourth Amendment](#) right against unreasonable searches and seizures.
- **But Justice Whalen has, on at least one occasion, declined to recognize a state constitutional right despite the New York Constitution's more expansive text than the federal constitution.** In *People v. Jiles*, Whalen was presented with the open question of whether the police must obtain a warrant before accessing a person's cell phone location history data. Although the high courts in Massachusetts and New Jersey had already created such a requirement under their state constitutions, and despite the lengthy history of independent state constitutional interpretation, Whalen refused to extend New York's constitutional privacy protections to location data. Six months later, the U.S. Supreme Court did just that, in [a decision](#) authored by Chief Justice John Roberts. In other legal areas, where the Supreme Court has dramatically curtailed individual rights, New Yorkers rely on the Court of Appeals to protect those rights.
- **As an administrator, Justice Whalen has made some welcome improvements to court administration, but his apparent support of certain DiFiore-era actions is concerning.** Among changes to increase the accessibility of the Fourth Department's proceedings, Whalen announced that the court would [pilot a hybrid oral arguments model in Spring 2023](#), in which litigants could choose to appear virtually or in person, and he added [closed captioning to all archived](#) oral arguments. As a member of the administrative board, Whalen participated in creating [new family court rules](#) to help low-income parents get publicly funded family defenders in family court. And in bar admission reforms, Whalen joined with the other Appellate Division presiding justices to remove the question about immigration and citizenship status from the bar admission questionnaire. But he and his fellow presiding justices (including Justice Garry) also agreed to [change Question 26](#)—the question about applicants' involvement with the criminal legal system—in a way that appears beneficial but which still leaves the question in violation of the New York State Human Rights Law. It has also been alleged that as a member of the Administrative Board of the New York State Unified Court System, Whalen [expressed early support](#) of then-Chief Judge DiFiore's extraordinary efforts to remove over 46 judges who apparently displeased her using their age as a pretext.



## Biography

- 2016-Present: Presiding Justice, Appellate Division, Fourth Department
- 2012-2016: Associate Justice, Appellate Division, Fourth Department
- 2006-2012: Justice, New York State Supreme Court, 8th Judicial District
- 2001-2005: Partner, Hiscock & Barclay
- 1993-2001: Partner, Williams, Stevens, McCarville & Frizzell, P.C.
- 1988-1993: Partner, Offerman, Fallon, Mahoney & Cassano
- 1983-1987: Associate, Offerman, Fallon, Mahoney & Cassano
- Education: J.D., State University of New York at Buffalo, 1983; B.A., Canisius College, 1979