

June 21, 2021

NEW YORK COURT OF APPEALS ADDS TWO NEW JUDGES

To Our Clients and Friends:

On June 8, 2021, the New York Senate confirmed the appointment of Anthony Cannataro and Madeline Singas to the seven-member New York Court of Appeals. Judge Cannataro, who was formerly the Administrative Judge of the Civil Court of the City of New York, will fill the vacancy left by Judge Paul Feinman, who recently passed away. Judge Singas, who was formerly the Nassau County District Attorney, will fill the vacancy left by the retiring Judge Leslie Stein.^[1] These new judges will leave a lasting mark on the Court of Appeals, which is New York's court of last resort.

Governor Andrew Cuomo has now appointed all seven members of the Court,^[2] and because Judges Cannataro and Singas could serve on the Court for a decade or more, they could serve well past the Governor's time in office.^[3] Judge Singas's confirmation, however, was not unanimous, with opposition coming from Democrats as well as Republicans.^[4]

Although the replacement of Judges Feinman and Stein marks an important development for the Court and its litigants, it remains to be seen whether, and if so in what ways, the confirmation of these new judges portends a shift in the Court's jurisprudence.

Judge Cannataro Replaces Judge Feinman

Judge Cannataro has had a distinguished career in public service, particularly on the bench. After graduating from New York Law School in 1996, he served in the New York City Law Department and then as principal law clerk to Carmen Beauchamp Ciparick on the New York Court of Appeals, and to Lottie Wilkins on the New York Supreme Court. He then served on the New York County Civil Court and held positions on the Kings County Family Court, Bronx County Civil Court, and New York Supreme Court. In 2017, he was elected to Supreme Court, New York County, and was appointed as Administrative Judge for the Civil Court of the City of New York.^[5]

Judge Cannataro is the second openly LGBTQ judge on the Court of Appeals, following his predecessor (Judge Feinman), who was the first.^[6] Judge Cannataro has been the Co-Chair of the Richard C. Failla LGBT Commission of the New York State Courts, and he has been a member of the Plain Language Committee of the Permanent Commission on Access to Justice.^[7] He has publicly emphasized that judges are attuned to the needs of litigants, and that they are "regular people" who "come in all different types, sizes, and backgrounds."^[8]

Despite his lengthy judicial career, Judge Cannataro has not yet sat an appellate bench, and he has published only a handful of opinions in the New York Official Reports.^[9] Predicting his judicial

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philosophy is therefore particularly difficult. Nevertheless, at least one commentator has predicted that he will resolve cases somewhere on the Court’s ideological center-left.[10]

Judge Cannataro replaces recently deceased Judge Feinman, who was appointed in 2017 to fill a vacancy created by the tragic death of Judge Sheila Abdus-Salaam.[11] Judge Feinman graduated from the University of Minnesota Law School in 1985, then worked as a staff attorney for the Legal Aid Society and as a principal law clerk for Justice Angela Mazzarelli on the New York Supreme Court and in the Appellate Division, First Department. From there, he began a lengthy judicial career, starting with his election to the Civil Court of the City of New York in 1996. He then was assigned to the Criminal Court until 2001, designated an acting Supreme Court Justice in 2004, and elected a Justice of Supreme Court in 2007. Governor Cuomo appointed him to the Appellate Division, First Department, in 2012.[12]

Judge Feinman made history as the first openly gay judge to serve on the New York Court of Appeals.[13] His confirmation was unanimous, and he received strong support from LGBTQ rights groups, with experience and leadership positions in LGBTQ and other organizations.[14] He was highly regarded for his thoughtfulness, collegiality, and “sparkling” intellect, with an ability to parse a wide range of issues in a balanced, non-biased manner.[15] Some described him as a “moderate with progressive instincts” who was not “dogmatic in his thinking.”[16] In the year preceding his passing, he voted with Chief Judge DiFiore and Judge Michael Garcia in nearly 90% of cases—a far higher rate than did other members of the current Court.[17]

Judge Singas Replaces Judge Stein

Judge Singas comes to the bench with a distinguished public career as a former prosecutor. The daughter of Greek immigrants, she graduated from Fordham Law School and began her legal career as an Assistant District Attorney in Queens in 1991 “at the height of the crack wars.” She eventually joined the Nassau County District Attorney’s Office in 2006 as chief of the Special Victims Bureau, focusing on crimes against the elderly, children, and victims of domestic and sexual abuse. She became the District Attorney of Nassau County in 2015.[18]

As a district attorney, Judge Singas touted her focus on combatting drug and gun trafficking, violent gangs, sexual assaults, and government corruption.[19] The Governor appointed her to investigate Eric Schneiderman, the state’s former Attorney General accused of assaulting four women, and although the investigation found credible allegations, it did not lead to criminal charges because of purported legal impediments.[20] In nominating Judge Singas, Governor Cuomo praised her work in championing “justice for all” through the creation of an Immigrant Affairs Office, dedicating resources to post-incarceration resources, and working on behalf of Nassau County’s “most vulnerable victims” such as children and victims of domestic and sexual abuse.[21]

Judge Singas’s confirmation followed a debate in the Senate, with opposition coming from both sides of the political aisle.[22] Democratic senators and advocates for criminal justice cautioned that her confirmation could lead to an expansion of police powers and a less equitable justice system, given the Court’s current slate of former prosecutors and her public statements about measures such as bail reform.[23] Republican senators expressed concern that she could rule favorably for the Governor in a

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potential impeachment trial.[24] Judge Singas was strongly supported by moderate Long Island Democrats who helped propel her to confirmation; at her confirmation hearing, Judge Singas highlighted her immigrant background and experience working with vulnerable individuals, assuring the Senate that she would rule fairly and impartially if confirmed.[25]

Given her lack of judicial experience, it is difficult to predict how her confirmation will impact the Court. Notably, however, her appointment follows the confirmation of two other former prosecutors who often vote together—Chief Judge DiFiore, a former Republican whom she has called a friend and mentor,[26] and Judge Garcia, who served as a U.S. Attorney during the George W. Bush administration.[27] Some commentators have predicted that she will rule consistently with these judges on certain issues, particularly in criminal cases,[28] but that remains to be seen.

Judge Singas replaces Judge Stein, who followed a different path on her way to the Court. Judge Stein graduated from Albany Law School in 1981 and began her career as a law clerk to the Schenectady Family Court Judges. After focusing on matrimonial and family law in private practice, she was appointed and elected to the Albany City Court, in addition to serving as an Acting Albany County Court Judge and New York State Supreme Court Judge. In 2008, she was appointed to the New York State Appellate Division, Third Department. She has served as the Administrative Judge of the Rensselaer County Integrated Domestic Violence Part, and she was a former co-chair of the State Unified Court System Family Violence Task Force.[29]

Judge Stein’s nomination was easily confirmed in 2015. She promised to keep an open mind and refrain from being an “activist judge.”[30] Her simultaneous confirmation with Judge Eugene Fahey swung the court from a Republican-appointed to a Democrat-appointed majority for the last several years.[31] Her announcement last year, however, that she would retire from the bench after serving less than half of her term was surprising. She has explained that she wished to spend more time on private pursuits, particularly after the pandemic, and that she sought to step down in advance of Judge Fahey’s impending exit from the Court at the end of this year.[32]

During Judge Stein’s career, court analysts perceived her to be aligned with the Court’s more liberal judges, typically siding with women, children, and other vulnerable individuals, but without a particularly strong pattern in criminal cases and with a concededly deferential approach to administrative agencies.[33] She has recently characterized herself as a “consensus builder” and stated that she believes her judicial record cannot be “easily pigeonholed” or criticized as prejudging cases for preferred results.[34] Indeed, analysts who regularly follow the Court suggest she likely left the Court as its “swing vote,” having voted with the majority in 95% of cases last year and sided often with the “DiFiore-Garcia-Feinman block” in sharply divided decisions.[35]

Conclusion

The departures of Judges Feinman and Stein mark a significant and unexpected development for the Court. The Court’s changing composition could impact both its opinions and its caseload, especially at a time when the Court has been reviewing fewer civil cases per year and has been issuing a growing number of fractured concurring and dissenting opinions.[36]

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Although some believe that newly confirmed Judges Cannataro and Singas will spark a “dramatic rightward turn for the Court,”^[37] particularly given the latter’s prosecutorial background, it remains to be seen how the two collectively will affect future rulings. Indeed, the Court has been perceived by some as fairly moderate in recent years,^[38] with Judges Feinman and Stein (and Judge Fahey) considered to form the Court’s ideological center,^[39] and similarities between the new and departing judges, such as judicial experience and a focus on protecting especially vulnerable individuals, suggest a possible continuation of that trend.

Since Judge Feinman’s passing, the Court has ordered several cases to be reargued in a “future court session,”^[40] which may suggest that his was a potential swing vote in those cases. Regardless, analysts have expressed some concern that the new Court lacks “professional diversity,” which now includes three former prosecutors and only one judge (Fahey) who has judicial experience on the Appellate Division.^[41]

The Court’s future will grow even more uncertain in the coming months, as Judge Fahey will reach his mandatory retirement age at the end of this year.^[42] Not only is he considered a potential swing judge on the current Court,^[43] but his replacement will undoubtedly have an opportunity to join the newly confirmed judges in shaping the Court’s jurisprudence moving forward.

[1] <https://www.governor.ny.gov/news/governor-cuomo-announces-nominations-court-appeals-and-court-claims-and-first-round>.

[2] <https://www.democratandchronicle.com/story/news/politics/albany/2021/05/25/cuomo-new-york-court-of-appeals-nominations/7435678002/>.

[3] *See* N.Y. Const. art. VI, § 2; *see also, e.g.*, <https://www.democratandchronicle.com/story/news/politics/albany/2021/05/25/cuomo-new-york-court-of-appeals-nominations/7435678002/>; <https://www.law.com/newyorklawjournal/2021/06/04/singas-nomination-to-ny-court-of-appeals-draws-concern-from-law-professors/>; <https://www.law.com/newyorklawjournal/2021/06/08/weathering-fiery-confirmation-fight-singas-confirmed-to-nys-high-court-along-with-cannataro/>.

[4] <https://www.law.com/newyorklawjournal/2021/06/08/weathering-fiery-confirmation-fight-singas-confirmed-to-nys-high-court-along-with-cannataro/>; <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-cuomo-court-of-appeals-candidates-approved-20210608-nalzuynhxr2lchgk5nutem2h4-story.html>; <https://www.wsj.com/articles/gov-andrew-cuomo-scores-victory-with-judicial-confirmations-11623625200>; <https://www.newsday.com/news/region-state/singas-court-of-appeals-senate-1.50271826>; <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2021/06/08/lawmakers-look-to-a-potential-impeachment-future>; <https://nynow.wmht.org/blogs/criminal-justice/cuomos-court-nominees-approved-but-faced-scrutiny-from-the-left-and-the-right/>.

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[5] http://ww2.nycourts.gov/courts/ljd/supctmanh/bio_Cannataro.shtml (last visited June 9, 2021); <https://www.governor.ny.gov/news/governor-cuomo-announces-nominations-court-appeals-and-court-claims-and-first-round>.

[6] *See, e.g.*, <https://www.cityandstateny.com/articles/politics/news-politics/3-things-know-about-cuomos-new-judicial-picks.html>.

[7] *Id.*; http://ww2.nycourts.gov/courts/ljd/supctmanh/bio_Cannataro.shtml (last visited June 9, 2021).

[8] <https://www.amny.com/news/a-conversation-with-judge-anthony-cannataro-civil-court-of-the-city-of-new-york-and-justice-of-the-new-york-state-supreme-court/>.

[9] *See* <https://iapps.courts.state.ny.us/lawReporting/Search?searchType=opinion>.

[10] <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>.

[11] <https://www.nycourts.gov/ctapps/jfeinman.htm>;
https://www.timesunion.com/allwcm/article/Senate-confirms-Court-of-Appeals-nominee-Paul-11237072.php?_sm_au_=iHV54RVLTRvMnVF7FcVTvKQkcK8MG.

[12] <https://www.nycourts.gov/ctapps/jfeinman.htm> (last visited June 10, 2021);
<http://www.courts.state.ny.us/whatsnew/pdf/Feinman-Statement-33121.pdf>; <https://nysba.org/court-of-appeals-judge-paul-feinman-has-died/>; <https://www.nytimes.com/2021/04/01/nyregion/paul-feinman-dead.html?login=email&auth=login-email>.

[13] *See, e.g.*, https://www.lambdalegal.org/blog/20210401_mourning-the-passing-of-judge-paul-feinman.

[14] <https://www.nytimes.com/2021/04/01/nyregion/paul-feinman-dead.html?login=email&auth=login-email>; <https://www.timesunion.com/allwcm/article/Senate-confirms-Court-of-Appeals-nominee-Paul-11237072.php>; <https://nysba.org/court-of-appeals-judge-paul-feinman-has-died/>; <https://www.governor.ny.gov/news/governor-cuomo-nominate-justice-paul-g-feinman-associate-judge-new-york-state-court-appeals>.

[15] <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-obit-ny-supreme-court-judge-paul-feinman-20210331-gyjcxfokcjh5hnue74g5jgfhgq-story.html>;
<http://www.courts.state.ny.us/whatsnew/pdf/Feinman-Statement-33121.pdf>;
<https://www.democratandchronicle.com/story/news/politics/albany/2017/06/21/new-yorks-top-court-gets-first-openly-gay-judge/103079984/>.

[16] <https://www.nytimes.com/2017/06/21/nyregion/paul-feinman-court-of-appeals-gay-judge.html>.

[17] <https://twentyeagle.com/twentyeagles-2020-2021-new-york-court-of-appeals-statistics/>.

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[18] <https://nassauda.org/299/Meet-The-District-Attorney> (last visited June 7, 2021); <https://www.cityandstateny.com/articles/politics/news-politics/3-things-know-about-cuomos-new-judicial-picks.html?>

[19] <https://nassauda.org/299/Meet-The-District-Attorney> (last visited June 7, 2021).

[20] <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>; <https://www.politico.com/states/new-york/albany/story/2018/11/08/no-criminal-charges-for-schneiderman-after-abuse-complaints-687755>; <https://www.npr.org/2018/11/08/665673141/eric-schneiderman-wont-face-criminal-charges-over-allegations-of-abuse>; <https://www.npr.org/2018/11/08/665673141/eric-schneiderman-wont-face-criminal-charges-over-allegations-of-abuse>; <https://www.cnn.com/2018/11/08/politics/no-charges-for-former-ny-ag-schneiderman/index.html>.

[21] <https://www.governor.ny.gov/news/governor-cuomo-announces-nominations-court-appeals-and-court-claims-and-first-round>.

[22] <https://www.law.com/newyorklawjournal/2021/06/08/weathering-fiery-confirmation-fight-singas-confirmed-to-nys-high-court-along-with-cannataro/>; <https://patch.com/new-york/gardencity/madeline-singas-confirmed-new-york-court-appeals-justice>; <https://news.wbfo.org/post/cuomos-court-nominees-approved-faced-scrutiny-left-and-right>.

[23] <https://www.nysenate.gov/newsroom/press-releases/alessandra-biaggi/new-york-state-senators-issue-joint-statement-opposition>; <https://slate.com/news-and-politics/2021/06/cuomo-criminal-justice-court-nominees.html>; <https://www.law.com/newyorklawjournal/2021/06/07/a-great-day-for-mediocrity-many-lawyers-left-disappointed-by-nominees-for-nys-top-court/>; <https://www.newsday.com/news/region-state/singas-court-of-appeals-senate-1.50271826>; <https://www.law.com/newyorklawjournal/2021/06/04/singas-nomination-to-ny-court-of-appeals-draws-concern-from-law-professors/>.

[24] <https://news.wbfo.org/post/cuomos-court-nominees-approved-faced-scrutiny-left-and-right>; <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2021/06/08/lawmakers-look-to-a-potential-impeachment-future>; <https://www.wsj.com/articles/gov-andrew-cuomo-scores-victory-with-judicial-confirmations-11623625200>; <https://www.newsday.com/news/region-state/singas-court-of-appeals-senate-1.50271826>.

[25] <https://www.law.com/newyorklawjournal/2021/06/08/weathering-fiery-confirmation-fight-singas-confirmed-to-nys-high-court-along-with-cannataro/>; <https://news.wbfo.org/post/cuomos-court-nominees-approved-faced-scrutiny-left-and-right>; <https://www.newsday.com/news/region-state/singas-court-of-appeals-senate-1.50271826>.

[26] <https://www.law.com/newyorklawjournal/2021/06/04/singas-nomination-to-ny-court-of-appeals-draws-concern-from-law-professors/>; <https://www.politico.com/states/new-york/city-hall/story/2015/12/cuomo-picks-janet-difiore-to-lead-new-yorks-court-of-appeals-000000>.

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[27] <http://www.nycourts.gov/ctapps/jgarcia.htm>; *see* <https://twentyeagle.com/twentyeagles-2020-2021-new-york-court-of-appeals-statistics/>.

[28] *See, e.g.*, <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>; <https://www.newsday.com/news/region-state/singas-court-of-appeals-senate-1.50271826>.

[29] <http://www.nycourts.gov/ctapps/jstein.htm> (last visited June 10, 2021); <https://nysba.org/a-candid-interview-with-court-of-appeals-associate-judge-leslie-e-stein/>.

[30] https://www.nbcnewyork.com/news/local/new-york-court-of-appeals-judges-confirmed-leslie-stein-eugene-fahey/2022980/?_sm_au_=iHV54RVLTRvMnVF7FcVTvKQkcK8MG.

[31] <https://www.timesunion.com/news/article/Two-new-judges-taking-seats-on-state-s-top-court-6071942.php>.

[32] <https://nysba.org/a-candid-interview-with-court-of-appeals-associate-judge-leslie-e-stein/>.

[33] *See, e.g.*, Charlotte Rehfuss, Note, *Judge Stein: Neither Left nor Right*, 81 Albany L. Rev. 1185 (2018); http://www.newyorkcourtwatcher.com/2015/02/part-4-more-of-judge-steins-tendencies.html?_sm_au_=iHV54RVLTRvMnVF7FcVTvKQkcK8MG; <https://nysba.org/a-candid-interview-with-court-of-appeals-associate-judge-leslie-e-stein/>.

[34] <https://nysba.org/a-candid-interview-with-court-of-appeals-associate-judge-leslie-e-stein/>; <https://twentyeagle.com/interview-with-judge-leslie-stein/>.

[35] <https://twentyeagle.com/twentyeagles-2020-2021-new-york-court-of-appeals-statistics/>.

[36] *See, e.g.*, Mylan L. Denerstein, Akiva Shapiro, Seth M. Rokosky & Genevieve Quinn, *New York Court of Appeals Roundup & Preview (2020)*, <https://www.gibsondunn.com/new-york-court-of-appeals-round-up-december-2020/>; <https://twentyeagle.com/twentyeagles-2020-2021-new-york-court-of-appeals-statistics/>; *see also* <https://www.nycourts.gov/ctapps/news/annrpt/AnnRpt2020.pdf>.

[37] <https://www.washingtonexaminer.com/politics/cuomo-picks-two-for-seats-on-new-yorks-highest-court.>; *see, e.g.*, <https://www.nysenate.gov/newsroom/press-releases/alessandra-biaggi/new-york-state-senators-issue-joint-statement-opposition>; <https://slate.com/news-and-politics/2021/06/cuomo-criminal-justice-court-nominees.html>.

[38] *See, e.g.*, <https://www.newsday.com/news/region-state/janet-difiore-andrew-cuomo-court-of-appeals-1.30301355> (explaining that the Court has recently “moved in a more conservative direction” to a “more centrist viewpoint”). .

[39] <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>.

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[40] Keshia Clukey, *Prosecutor, City Judge Nominated for New York's Highest Court*, Bloomberg Law News (June 3, 2021).

[41] *See, e.g.*, <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>;
<https://www.law.com/newyorklawjournal/2021/06/07/a-great-day-for-mediocrity-many-lawyers-left-disappointed-by-nominees-for-nys-top-court/>.

[42] <https://nysba.org/nominees-to-fill-judge-paul-feinmans-court-of-appeals-seat-announced/>; *see* N.Y. Const. art. VI, § 25(b).

[43] <https://nysappeals.com/2021/05/26/governor-andrew-cuomo-nominates-madeline-singas-and-hon-anthony-cannataro-to-the-court-of-appeals/>.



The following Gibson Dunn lawyers prepared this client alert: Mylan Denerstein, Akiva Shapiro, Seth Rokosky, Seton Hartnett O'Brien, Grace Assaye, and Lavi Ben Dor.

Gibson, Dunn & Crutcher's lawyers are available to assist with any questions you may have regarding these issues. For further information, please contact the Gibson Dunn lawyer with whom you usually work, or the following authors:

Mylan L. Denerstein – New York (+1 212-351-3850, mdenerstein@gibsondunn.com)

Akiva Shapiro – New York (+1 212-351-3830, ashapiro@gibsondunn.com)

Seth M. Rokosky – New York (+1 212-351-6389, srokosky@gibsondunn.com)

Seton Hartnett O'Brien – New York (+1 212-351-6259, sobrien@gibsondunn.com)

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