

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**January 7 through January 13, 2011**

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

MARTINO v STOLZMAN, et al. (AND ANOTHER ACTION):

4<sup>TH</sup> Dept. App. Div. order of 6/11/10; modification; leave to appeal granted by App. Div., 12/30/10; Rule 500.11 review pending;

MOTOR VEHICLES - COLLISION - DUTY OF SOCIAL HOSTS TO CONTROL AND SUPERVISE INTOXICATED GUESTS LEAVING THEIR PREMISES; NEGLIGENCE; DISMISSAL OF CLAIMS;

Supreme Court, Niagara County denied the motion of defendants Oliver seeking, among other things, dismissal of the claim in Action No. 1 and the cause of action against them in Action No. 2 asserting a violation of General Obligations Law § 11-101; App. Div. modified by granting the motion of defendants Oliver in part and dismissing the claim against them in Action No. 1 and the cause of action against them in Action No. 2 asserting the violation of General Obligations Law § 11-101.

ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES &c., MATTER OF v  
MARVIN:

2<sup>ND</sup> Dept. App. Div. order of 11/9/10; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
CONTEMPT - CIVIL CONTEMPT - WILLFUL VIOLATION OF SUPPORT ORDER UNDER FAMILY COURT ACT ARTICLE 4 - FAMILY COURT ACT § 454(3)(a); Family Court, Orange County found that father willfully violated a prior support order and directed him to pay child support arrears in the sum of \$22,807.44, among other things; App. Div. affirmed.

SMITH (KEVIN), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 7/1/10; modification; leave to appeal granted by Pigott, J., 12/23/10;  
CRIMES - PROOF OF OTHER CRIMES - WHETHER TRIAL COURT ABUSED ITS DISCRETION IN SANDOVAL HEARING BY PERMITTING THE PEOPLE TO IDENTIFY DEFENDANT'S PRIOR CONVICTIONS SHOULD DEFENDANT CHOOSE TO TESTIFY IN HIS OWN BEHALF; ATTORNEY AND CLIENT - TRIAL COURT'S REFUSAL TO ALLOW SUBSTITUTION OF NEW COUNSEL AFTER BREAKDOWN IN DEFENDANT'S RELATIONSHIP WITH COUNSEL;  
Supreme Court, New York County convicted defendant, after a jury trial, of two counts of criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third and fifth degrees, and sentenced him to an aggregate term of 5 years; App. Div. modified to the extent of vacating the sentence and remanding for resentencing.

WILLIAMS v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/7/10; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the two-justice dissent at the App. Div. is on a question of law;  
DAMAGES - INADEQUATE AND EXCESSIVE DAMAGES - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING A SUPREME COURT ORDER THAT, AS RELEVANT HERE, GRANTED DEFENDANTS' POST-TRIAL MOTION INsofar AS IT SOUGHT TO SET ASIDE AS EXCESSIVE A JURY'S AWARD OF DAMAGES IN THE AMOUNT OF \$6.5 MILLION AND DIRECTED A NEW TRIAL AS TO DAMAGES UNLESS PLAINTIFF STIPULATED TO A REDUCED AWARD OF \$1 MILLION;  
Supreme Court, Bronx County granted defendants' post-trial motion insofar as it sought to set aside the jury's damages award of \$6.5 million as excessive, and directed a new trial as to damages unless plaintiff stipulated to a reduced award of \$1 million;  
App. Div. affirmed.