

COURT OF APPEALS NEW FILINGS

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

August 19 through August 25, 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 within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for 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.

CHESTNUT (KEVIN), PEOPLE v:

2ND Dept. App. Div. order of 2/1/11; affirmance; leave to appeal granted by Jones, J., 8/19/11;

CRIMES - CONSOLIDATION AND SEVERANCE - CPL 200.40(1) - WHETHER SUPREME COURT'S ALLEGED ERROR IN DENYING DEFENDANT'S MOTION TO SEVER UNRELATED COUNTS APPLICABLE ONLY TO CODEFENDANT IS SUBJECT TO HARMLESS ERROR ANALYSIS AND, IF SO, WHETHER THE ERROR IS HARMLESS;

Supreme Court, Queens County convicted defendant of robbery in the first degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

CHISENA, A SUSPENDED ATTORNEY, MATTER OF:

2ND Dept. App. Div. order of 6/28/11; disbarment; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDING - DISBARMENT - CLAIMED VIOLATION OF DUE PROCESS AND OTHER RIGHTS; App. Div., among other things, granted petitioner Grievance Committee's motion to confirm the Special Referee's report, and disbarred respondent Chisena.

DIXON, MATTER OF v CLYNE, et al.:

3RD Dept. App. Div. order of 8/18/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; ELECTIONS - DESIGNATING PETITIONS - FILING OF CERTIFICATE OF ACCEPTANCE WITH ALBANY COUNTY BOARD OF ELECTIONS - CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS; Supreme Court, Albany County dismissed petitioner's application, in a proceeding pursuant to Election Law § 16-102, to declare valid the designating petition naming petitioner as the Independence Party candidate for the office of Albany County Legislator for the 3rd Legislative District in the 9/13/11 primary election; App. Div. affirmed.

DOUGLAS ELLIMAN LLC, &c. v TRETTER:

1ST Dept. App. Div. order of 5/5/11; modification; leave to appeal granted by App. Div., 7/14/11; BROKERS - REAL ESTATE BROKERS - COMMISSION - BREACH OF FIDUCIARY DUTY - BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING - EXISTENCE OF UNDISCLOSED DUAL AGENCY - CHALLENGE TO APPELLATE DIVISION ORDER GRANTING SUMMARY JUDGMENT TO PLAINTIFF BROKER; Supreme Court, New York County denied defendants' motion for summary judgment dismissing the complaint in an action for a brokerage commission and denied plaintiff's cross motion for summary judgment for the amount of the commission sought in the complaint; App. Div. modified to grant plaintiff's motion.

FERNANDEZ (SANDY), PEOPLE v:

App. Term 2nd, 11th and 13th Judicial Districts, order of 5/20/11; affirmance; leave to appeal granted by Graffeo, J., 8/17/11; CRIMES - ACCUSATORY INSTRUMENT - WHETHER THE APPELLATE TERM ERRED IN HOLDING THAT AN ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE IN THE THIRD DEGREE (VEHICLE AND TRAFFIC LAW § 511[1][a]) WAS A SIMPLIFIED TRAFFIC INFORMATION EVEN THOUGH IT WAS TITLED "COMPLAINT/ INFORMATION" AND INCLUDED FACTUAL ALLEGATIONS IN SUPPORT OF THE CHARGE; Criminal Court, New York City, Kings County convicted defendant, upon his guilty plea, of aggravated unlicensed operation of a motor vehicle in the third degree; App. Term affirmed.

LATTA (DOUGLAS), PEOPLE v:

1ST Dept. App. Div. order of 4/19/11; reversal with dissents; leave to appeal granted by Andrias, J., 8/11/11; CRIMES - EVIDENCE - SUFFICIENCY OF EVIDENCE - WHETHER THE PEOPLE PRESENTED SUFFICIENT EVIDENCE TO THE GRAND JURY THAT THE DEFENDANTS' COMBINED ACTIVITIES CONSTITUTED AN "ASCERTAINABLE STRUCTURE" AS REQUIRED BY THE ENTERPRISE CORRUPTION PROVISION (PENAL LAW §§ 460.10[3] AND 460.20) OF NEW YORK'S ORGANIZED CRIME CONTROL ACT - ALLEGED INTERNATIONAL CYBERCRIME GROUP FACILITATING THE INTERNET SALE OF STOLEN CREDIT CARD DATA; Supreme Court, New York County dismissed the enterprise corruption count against defendant and others; App. Div. reversed and reinstated the enterprise corruption count.

RICHARDS, PEOPLE ex rel. v YELICH:

3RD Dept. App. Div. order of 8/4/11; affirmance; sua sponte examination whether any jurisdictional basis exists for an appeal as of right pursuant to CPLR 5601(b); HABEAS CORPUS - WHEN REMEDY APPROPRIATE - ISSUES THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL OR IN A CPL ARTICLE 440 MOTION - CLAIM THAT TRIAL COURT LACKED JURISDICTION TO CONVICT PETITIONER OF FELONY MURDER BECAUSE THE INDICTMENT DID NOT CHARGE HIM WITH THE UNDERLYING FELONY; Supreme Court, Franklin County treated petition as an ex parte request for issuance of a writ of habeas corpus or order to show cause in a habeas corpus proceeding and denied such request and dismissed the petition; App. Div. affirmed.

YATAURO, et al. v MANGANO &c., et al.:

2ND Dept. App. Div. order of 8/9/11; reversal with dissents; ELECTIONS - REDISTRICTING PLAN - WHETHER THE ADOPTION OF LOCAL LAW 3 (2011) TO REDEFINE 19 COUNTY LEGISLATIVE DISTRICTS FOR THE 2011 ELECTIONS WAS IN ACCORDANCE WITH THE REQUIREMENTS OF THE NASSAU COUNTY CHARTER; Supreme Court, Nassau County granted plaintiffs'/petitioners' motion for summary judgment on the first cause of action to the extent of declaring that the implementation of Local Law No. 3 (2011) of the County of Nassau is null and void for lack of compliance with the Nassau County Charter §§ 113 and 114, and declared that the adoption of Local Law No. 3 is in accord with the Nassau County Charter § 112; App. Div. reversed, denied plaintiffs'/petitioners' motion which was for summary judgment on their first cause of action, and declared that the legislative boundaries described in Annex A to the Nassau County Charter, as amended by Local Law 3 (2011) of the County of Nassau, must be implemented in connection with the general election to be held on November 8, 2011.