

COURT OF APPEALS NEW FILINGS

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

March 23, 2012 through March 29, 2012

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.

DE PONCEAU, MATTER OF v FISCHER, &c., et al.:

3RD Dept. App. Div. order of 3/22/12; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING SUPREME COURT JUDGMENT DECLINING TO SIGN AN ORDER TO SHOW CAUSE AND DISMISSING A CPLR ARTICLE 78 PETITION WITHOUT PREJUDICE;

Supreme Court, Franklin County dismissed the CPLR article 78 petition without prejudice; App. Div. affirmed.

DE PROSPERO (STEPHEN), PEOPLE v:

4TH Dept. App. Div. order of 11/18/11; affirmance; leave to appeal granted by Ciparick, J., 3/13/12;

CRIMES - SEARCH WARRANT - DELAYED FORENSIC EXAMINATION OF ELECTRONIC MEDIA - WHETHER PORNOGRAPHIC IMAGES AND VIDEOS OF CHILDREN UNCOVERED AS A RESULT OF A JANUARY 2010 SEARCH OF DEFENDANT'S COMPUTER AND DIGITAL CAMERA HAD TO BE SUPPRESSED, WHERE THEY WERE SEIZED PURSUANT TO A MAY 2009 SEARCH WARRANT AND PREVIOUSLY SUBJECTED TO A LIMITED PREVIEW RESULTING IN ANOTHER CHARGE, AND THE 2010 EXAMINATION OF DEFENDANT'S PROPERTY OCCURRED AFTER SENTENCING ON THE OTHER CHARGE AND FOLLOWING DEFENDANT'S REQUEST FOR THE RETURN OF HIS PROPERTY;

Oneida County Court convicted defendant, upon his guilty plea, of predatory sexual assault against a child; App. Div. affirmed.

THE NEW YORK COUNTY LAWYERS' ASSOCIATION, et al., MATTER OF v BLOOMBERG, et al.:

1ST Dept. App. Div. order of 3/15/12; affirmance with dissents; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 CHALLENGE TO THE CITY OF NEW YORK'S INDIGENT DEFENSE PLAN - PLAN FOR ASSIGNMENT OF COUNSEL IN WHICH THE INITIAL PROVIDER AT ARRAIGNMENT IS UNABLE TO REPRESENT THE INDIGENT CRIMINAL DEFENDANT DUE TO A CONFLICT OF INTEREST; "COMBINATION" PLAN UNDER COUNTY LAW § 722(4) - PARTICIPATION OF COUNTY BAR ASSOCIATIONS; Supreme Court, New York County denied the petition and granted respondents' cross motion for summary judgment dismissing the CPLR article 78 proceeding insofar as it challenged the City of New York's Indigent Defense Plan; App. Div. affirmed.