

COURT OF APPEALS NEW FILINGS

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

May 4, 2012 through May 10, 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.

ABREU, MATTER OF v HOGAN, et al.:

3RD Dept. App. Div. order of 1/5/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - CONDITIONS OF CONFINEMENT - DENIAL OF INMATE GRIEVANCE THAT HE WAS IMPROPERLY DENIED PARTICIPATION IN THE SEX OFFENDER COUNSELING AND TREATMENT PROGRAM AND WAS NOT RECEIVING PROPER MENTAL HEALTH TREATMENT - CLAIMED VIOLATIONS OF CORRECTION LAW § 622 AND CONSTITUTIONAL RIGHTS;
Supreme Court, Albany County dismissed petitioner's CPLR article 78 application to review a determination of the Central Office Review Committee denying his grievance; App. Div. affirmed.

ADAMS (KEITH A.), PEOPLE v:

Monroe County Court order of 11/16/11; affirmance; leave to appeal granted by Jones, J., 4/24/12;

DISTRICT AND PROSECUTING ATTORNEYS - WHETHER DISTRICT ATTORNEY SHOULD HAVE RECUSED HIMSELF OR BEEN DISQUALIFIED FROM PROSECUTING CASE WHERE COMPLAINANT WAS CITY COURT JUDGE BEFORE WHOM DISTRICT ATTORNEY REGULARLY APPEARS; DENIAL, WITHOUT HEARING, OF DEFENDANT'S MOTION FOR APPOINTMENT OF A SPECIAL PROSECUTOR; Rochester City Court convicted defendant of one count of aggravated harassment in the second degree, and sentenced him to time served, a one-year conditional discharge with an order of protection, and a \$200 surcharge; County Court affirmed.

GALASSO, MATTER OF, AN ATTORNEY:

2ND Dept. App. Div. order of 2/21/12; suspension of attorney;

leave to appeal granted by Court of Appeals, 5/1/12;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER SUSPENDING ATTORNEY BASED UPON TEN SUSTAINED CHARGES OF MISCONDUCT - STRICT AND VICARIOUS LIABILITY OF ATTORNEY FOR CRIMINAL ACTS OF LAW FIRM EMPLOYEE;

App. Div., among other things, suspended respondent attorney from the practice of law for a period of two years, commencing March 21, 2012.

GELMAN v BUEHLER:

1ST Dept. App. Div. order of 1/3/12; modification with dissents;

leave to appeal granted by App. Div., 4/26/12;

PARTNERSHIP - DISSOLUTION - UNILATERAL DISSOLUTION OF ORAL PARTNERSHIP - MEANING OF "DEFINITE TERM" AND "PARTICULAR UNDERTAKING" AS USED IN PARTNERSHIP LAW § 62 (1)(b) - APPLICATION OF HAINES v CITY OF NEW YORK (41 NY2d 769) TO SUPPLY MISSING TERMS TO ORAL PARTNERSHIP AGREEMENT;

Supreme Court, New York County granted defendant's motion to dismiss the amended complaint; App. Div. modified to the extent of reinstating the breach of contract cause of action.

MAYRICH CONSTRUCTION COMPANY, MATTER OF v OLIVER LLC &c.:

1ST Dept. App. Div. order of 12/15/11; affirmance; leave to appeal granted by Court of Appeals, 4/26/12;

LIENS - PRIORITY - WHETHER FUNDS RECEIVED BY RESPONDENT UNDER TWO MORTGAGES WERE RECEIVED IN CONNECTION WITH AN IMPROVEMENT OF REAL PROPERTY SUCH THAT THE FUNDS CONSTITUTE ASSETS OF A TRUST FOR THE BENEFIT OF PETITIONER AND OTHER CONTRACTORS WHO PERFORMED WORK ON RESPONDENT'S HIGH-RISE BUILDING PROJECT IN MANHATTAN - LIEN LAW ARTICLE 3-A;

Supreme Court, New York County, upon reargument, vacated a 3/19/10 order and judgment granting the petition and directing respondent owner to serve upon petitioner a verified statement drawn in accordance with Lien Law § 76, denied the petition and dismissed the special proceeding; App. Div. affirmed.

MC GEE (DEMETRIUS), PEOPLE v:

4TH Dept. App. Div. order of 9/30/11; affirmance; leave to appeal granted by Jones, J., 4/24/12;

CRIMES - EVIDENCE - ATTEMPTED MURDER IN THE FIRST DEGREE - RECKLESS ENDANGERMENT IN THE FIRST DEGREE - SUFFICIENCY OF THE EVIDENCE AGAINST DEFENDANT CHARGED AS AN ACCESSORY WHERE DEFENDANT WAS THE DRIVER OF A CAR INVOLVED IN, AMONG OTHER THINGS, THE SHOOTING OF A PERSON ON A RESIDENTIAL STREET; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR FAILING TO REQUEST A LESSER-INCLUDED OFFENSE AND TO MOVE TO SEVER THE TRIAL BASED UPON THE ADMISSION OF THE NON-TESTIFYING CO-DEFENDANT'S CONFESSION;

Supreme Court, Erie County convicted defendant, upon a jury verdict, of attempted murder in the first degree and reckless endangerment in the first degree; App. Div. affirmed.

MURPHY & O'CONNELL, MATTER OF v TAX APPEALS TRIBUNAL, et al.:

1ST Dept. App. Div. orders of 3/20/12; confirmed determination and dismissed petition; sua sponte examination whether a substantial constitutional question is directly involved; TAXATION - UNINCORPORATED BUSINESS INCOME TAX - CHALLENGE TO ADMINISTRATIVE DETERMINATION THAT CONTRIBUTION LAW FIRM MADE TO DEFINED BENEFIT PLAN FOR A PARTNER WAS NOT DEDUCTIBLE - NEED FOR RESPONDENTS TO PROMULGATE A RULE PURSUANT TO THE CITY ADMINISTRATIVE PROCEDURE ACT - APPLICATION OF MATTER OF ROMAN CATHOLIC DIOCESE OF ALBANY v NEW YORK STATE DEPT. OF HEALTH (66 NY2d 948);

App. Div. confirmed the decision of respondent New York City Tax Appeals Tribunal which, in part, affirmed an administrative law judge's determination to sustain a notice of determination asserting a deficiency for petitioner's New York City unincorporated business tax return for calendar year 2001; denied petitioner's application and dismissed the CPLR article 78 petition.

THOMPSON (PAUL), PEOPLE v:

2ND Dept. App. Div. order of 2/1/11; affirmance; leave to appeal granted by Jones, J., 4/24/12;

CRIMES - EVIDENCE - WHETHER TRIAL COURT ERRED, IN RESPONSE TO AN ARGUMENT MADE BY DEFENSE COUNSEL IN SUMMATION, IN ALLOWING THE PEOPLE TO REOPEN THEIR CASE TO INTRODUCE A FINGERLESS GLOVE THAT HAD BEEN SUPPRESSED; CLAIMED VIOLATIONS OF DUE PROCESS DURING GRAND JURY PROCEEDINGS AND AT TRIAL; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL;

Supreme Court, Richmond County convicted defendant, upon a jury verdict, of murder in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.