



*State of New York
Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

December 1, 2023 through December 7, 2023

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.

MATTER OF ANONYMOUS (AD No. 2021-05514):

2nd Dept. App. Div. order of 9/26/23; denial; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;
Attorney and Client—Disciplinary Proceeding—Whether the Appellate Division properly denied respondent's motion to strike the petition;

App. Div. (1) denied respondent's motions to strike the petition and to reargue his motions to dismiss this disciplinary proceeding, (2) on the court's own motion, ordered the Grievance Committee to serve the decision and order upon respondent; (3) on the court's own motion, extended respondent's time to answer; and (4) ordered that no further extensions to interpose an answer would be granted.

MATTER OF ANONYMOUS (AD No. 2021-08435):

2nd Dept. App. Div. order of 9/26/23; denial; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any jurisdictional basis exists for an appeal as of right;

Attorney and Client—Disciplinary Proceeding—Whether the Appellate Division properly denied respondent’s motion to strike the petition;

App. Div. (1) denied respondent’s motions to strike the petition and to reargue his motions to dismiss this disciplinary proceeding, (2) denied the Grievance Committee’s motion for leave to file a third supplemental verified petition adding a charge of professional misconduct without prejudice to file the proposed supplemental charges by petition in a new proceeding, (3) on the court’s own motion, ordered the Grievance Committee to serve the decision and order upon respondent; (4) on the court’s own motion, extended respondent’s time to answer; and (5) ordered that no further extensions to interpose an answer would be granted.

KILPATRICK v HOCHUL:

Single Justice, 1st Dept. App. Div. order of 10/19/23; denial; sua sponte examination of whether an appeal lies from an order of an individual Justice of the Appellate Division;

Appeal—Appealable Order;

App. Div. Justice denied the application for leave to appeal and for related relief.

KNIGHT v DEWITT REHABILITATION AND NURSING CENTER:

1st Dept. App. Div. order of 8/10/23; reversal; leave to appeal granted by the Appellate Division, 11/14/23;

Trial—Place of Trial—Whether the Appellate Division properly held that defendant Dewitt failed to meet its burden on a motion to change venue of demonstrating that the forum selection clause was applicable and enforceable; whether on a motion to change venue under CPLR 501 the Appellate Division improperly held that defendant Dewitt had the burden of demonstrating that the Admission Agreements bearing the decedent’s electronic signature and initials were not forgeries;

Supreme Court, New York County, granted defendant Dewitt Rehabilitation and Nursing Center, Inc. d/b/a Upper East Side Rehabilitation and Nursing Center’s motion to change venue from New York to Nassau County pursuant to CPLR 501, 510, and 511; App. Div. with two Justices dissenting, reversed and denied the motion to change venue.

WHELAN v CUOMO:

2nd Dept. App. Div. order of 10/25/23; affirmance; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;

Pleading—Sufficiency of Pleading—Libel and Slander—Whether the second amended complaint failed to state a cause of action for defamation;

Supreme Court, Suffolk County, granted that branch of defendant’s motion pursuant to CPLR 3211(a)(7), in effect, to dismiss the second amended complaint; App. Div. affirmed.