

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
**October 3, 2003 through October 9, 2003**

A list of appeals with short title, jurisdictional predicate, subject matter and key issues is prepared each week.

Some of these filed appeals may never reach decision on the merits because of dismissal on motion, sua sponte, or for time deficiencies or because of stipulated withdrawals by the parties. Also, some counsel fail to file timely jurisdictional statements and thus the list should not be treated as comprehensive for any particular week.

**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 Court Rule 500.11 and direct any questions to the Clerk's Office.**

For October 3, 2003 through October 9, 2003 the following jurisdictional statements for appeals were filed:

HARRIS &c., et al. v LLEWELLYN, et al.:

2<sup>ND</sup> Dept. App. Div. order of 10/28/02; affirmance; leave to appeal granted by Court of Appeals, 9/23/03;

MUNICIPAL CORPORATIONS - TORT LIABILITY - DUTY - ALLEGED EXISTENCE OF SPECIAL RELATIONSHIP BETWEEN CITY AND PLAINTIFFS IN LEAD PAINT POISONING CASE; 24 RCNY § 173.13;

Supreme Court, Kings County granted defendant City of New York's cross motion for summary judgment dismissing the complaint insofar as asserted against it; App. Div. affirmed.

ROBERT J., MATTER OF (ANONYMOUS):

2<sup>ND</sup> Dept. App. Div. order of 5/27/03; affirmance; leave to appeal granted by Court of Appeals, 9/23/03;

INFANTS - JUVENILES - POWER OF FAMILY COURT TO ORDER, WITHOUT JUVENILE'S CONSENT, PLACEMENT OF JUVENILE THAT EXTENDS BEYOND JUVENILE'S 18<sup>TH</sup> BIRTHDAY (FAMILY COURT ACT § 353.3[6]);

Family Court, Kings County revoked order of disposition placing juvenile on probation for 18 months and placed him in the custody of the New York State Office of Children and Family Services for 18 months; App. Div. affirmed.

KAREEM R., MATTER OF (ANONYMOUS):

2<sup>ND</sup> Dept. App. Div. order of 5/27/03; affirmance; leave to appeal granted by Court of Appeals, 9/23/03;

INFANTS - JUVENILES - POWER OF FAMILY COURT TO ORDER, WITHOUT JUVENILE'S CONSENT, PLACEMENT OF JUVENILE THAT EXTENDS BEYOND JUVENILE'S 18<sup>TH</sup> BIRTHDAY (FAMILY COURT ACT § 353.3[6]);

Family Court, Queens County revoked order of disposition placing juvenile on probation for two years and placed him in the custody of the New York State Office of Children and Family Services for 12 months; App. Div. affirmed.

REDL (FRANK), MATTER OF (an attorney):

2<sup>ND</sup> Dept. App. Div. order of 8/25/03; sua sponte examination whether a jurisdictional predicate lies to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO ORDER SUSPENDING ATTORNEY FROM PRACTICE OF LAW FOR FIVE YEARS; COURT'S ALLEGED FAILURE TO ADOPT PROCEDURES FOR ATTORNEY DISCIPLINARY PROCEEDINGS THAT GUARANTEE FUNDAMENTAL FAIRNESS; DUE PROCESS; EQUAL PROTECTION;

Appellate Division sustained certain charges of professional misconduct against respondent and suspended him from the practice of law for five years.

REYNOLDS, MATTER OF v DUSTMAN:

4<sup>TH</sup> Dept. App. Div. order of 4/23/03; dismissal; leave to appeal granted by Court of Appeals, 9/23/03; Rule 500.4 review pending; APPEAL - COMMENCEMENT OF TIME TO TAKE APPEAL - WHETHER SERVICE OF COVER LETTER STATING THAT THE ENCLOSED "DECISION" WAS "FILED" IN COUNTY CLERK'S OFFICE ON A PARTICULAR DATE TRIGGERS AN APPELLANT'S TIME TO APPEAL;

Supreme Court, Cattaraugus County dismissed CPLR article 78 petition challenging jail time credit given petitioner; App. Div. denied petitioner's motion for poor person relief and dismissed his appeal as untimely.

SHELTON (BYRON), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/28/03; affirmance; leave to appeal granted by McGinity, J., 9/30/03; Rule 500.4 review pending; CRIMES AND CRIMINAL PROCEDURE - CONVICTION FOR RAPE AND SEXUAL ABUSE OF ELDERLY WOMAN - CLAIMED INFLAMMATORY AND PREJUDICIAL COMMENTS BY PROSECUTOR DURING SUMMATION - ADMISSIBILITY OF TESTIMONY UNDER THE "PROMPT OUTCRY" EXCEPTION TO THE HEARSAY RULE - PRESERVATION OF ISSUES FOR APPELLATE REVIEW; Supreme Court, Queens County judgment convicting defendant of rape in the first degree and sexual abuse in the first degree; App. Div. affirmed.

WILSON, et al., MATTER OF, v MCGLINCHEY:

3<sup>RD</sup> Dept. App. Div. order of 5/22/03; modification; leave to appeal granted by Court of Appeals, 9/23/03; PARENT AND CHILD - VISITATION RIGHTS OF GRANDPARENTS - CHALLENGE TO TERMINATION OF EXISTING GRANDPARENT VISITATION ORDER - CHANGE IN CIRCUMSTANCES; Family Court, Rensselaer County dismissed petitioners' application, in a proceeding pursuant to Family Court Act article 6 and Domestic Relations Law § 72, to vacate a prior order of visitation; App. Div. modified by reversing so much of the order as dismissed the petition, granted the petition, vacated the visitation order and affirmed the order as so modified.