

COURT OF APPEALS NEW FILINGS

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

February 15, 2013 through February 21, 2013

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.

HANDLER, MATTER OF v DI NAPOLI:

Supreme Court, Albany County judgment dismissing a CPLR article 78 petition, bringing up for review a 3RD Dept. App. Div. order of 10/27/11; modification; sua sponte examination whether a substantial constitutional question is directly involved in the prior nonfinal App. Div. order to support an appeal as of right under CPLR 5601(d);

STATE - COMPTROLLER - AUTHORITY TO CONDUCT AUDIT OF MEDICAL SERVICES PROVIDER'S BILLING RECORDS;

Supreme Court, Albany County, among other things, partially granted petitioner's application, in a combined CPLR article 78 proceeding and declaratory judgment action, to set aside respondent Comptroller's audit of petitioner; App. Div. modified by reversing so much of the judgment that partially granted

petitioner's application to set aside respondent Comptroller's audit of petitioner, remitted to Supreme Court for further proceedings not inconsistent with the Appellate Division's decision, and affirmed the judgment as so modified.

LOPEZ, MATTER OF v EVANS:

1ST Dept. App. Div. order of 12/27/12; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the issues raised have become moot in light of the subsequent grant of parole to petitioner;

PAROLE - REVOCATION - WHETHER THE DUE PROCESS CLAUSE OF THE FEDERAL CONSTITUTION PROHIBITS A PAROLE REVOCATION PROCEEDING FROM GOING FORWARD AGAINST A PAROLEE WHO, ONLY A SHORT TIME EARLIER, WAS FOUND MENTALLY INCOMPETENT TO STAND TRIAL IN A CRIMINAL PROSECUTION BASED ON THE SAME CHARGES THAT ARE AT ISSUE IN THE REVOCATION PROCEEDING;

Supreme Court, Bronx County denied the CPLR article 78 petition to annul respondent's determination finding that petitioner violated the conditions of his parole, revoking his parole and imposing on him an assessment of 24 months of additional imprisonment, and granted respondent's cross motion to dismiss the petition; App. Div. reversed, granted the petition, annulled respondent's determination, reinstated petitioner to parole and denied respondent's cross motion to dismiss the petition.

McFARLANE (TERRENCE), PEOPLE v:

1ST Dept. App. Div. order of 3/13/12; affirmance; leave to appeal granted by Saxe, J., 1/24/13; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - SCOPE OF CONSENT FOR SEARCH OF AUTOMOBILE - WHETHER THE RECORD SUPPORTS THE FINDING THAT DEFENDANT DID NOT CONSENT TO A SEARCH OF HIS CAR'S LOCKED GLOVE COMPARTMENT WHEN, IN RESPONSE TO OFFICER'S REQUEST TO "TAKE A LOOK" THROUGH THE CAR, DEFENDANT RESPONDED , "GO AHEAD";

Supreme Court, Bronx County granted defendant's suppression motion; App. Div. affirmed.

MELCHER v GREENBERG TRAUERIG, LLG, et al.:

1ST Dept. App. Div. order of 1/17/13; reversal with dissents; LIMITATION OF ACTIONS - WHEN CAUSE OF ACTION ACCRUES - WHETHER PLAINTIFF'S JUDICIARY LAW § 487 CAUSE OF ACTION WAS TIMELY COMMENCED;

Supreme Court, New York County denied defendants' motion to dismiss the amended complaint as barred by the statute of limitations; App. Div. reversed, granted defendants' motion, and dismissed the amended complaint.

SOUTH ISLAND ORTHOPAEDIC GROUP, P.C., MATTER OF v DiNAPOLI:

Supreme Court, Albany County judgment dismissing a CPLR article 78 petition, bringing up for review a 3RD Dept. App. Div. order of 10/27/11; modification; sua sponte examination whether a substantial constitutional question is directly involved in the prior nonfinal App. Div. order to support an appeal as of right under CPLR 5601(d);

STATE - COMPTROLLER - AUTHORITY TO CONDUCT AUDIT OF MEDICAL SERVICES PROVIDER'S BILLING RECORDS;

Supreme Court, Albany County, among other things, partially granted petitioner's application, in a combined CPLR article 78 proceeding and declaratory judgment action, to set aside respondent Comptroller's audit of petitioner; App. Div. modified by reversing so much of the judgment that partially granted petitioner's application to set aside respondent Comptroller's audit of petitioner, remitted to Supreme Court for further proceedings not inconsistent with the Appellate Division's decisions, and affirmed the judgment as so modified.