

CASE ISSUE STATEMENTS – JANUARY 2019

The calendar is subject to change. Please contact the Clerk's Office for any updated information.

If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the homepage on the Court's website.

TUESDAY, JANUARY 8

Matter of Mental Hygiene Legal Service v Sullivan &c.

APL-2017-00153

Mental Health--Patient in Custody of Commissioner of Mental Health--Treatment planning meetings--whether person confined after having been adjudicated a dangerous sex offender is statutorily entitled to have his Mental Hygiene Legal Service counsel present at his treatment planning meetings--construction of Mental Hygiene Law § 29.13 (b)--"person otherwise concerned with the welfare of the patient."

Matter of Mental Hygiene Legal Services v Daniels &c.

APL-2018-00007

Parties--Standing--Whether petitioner Mental Hygiene Legal Services has standing to bring article 78 proceeding seeking a writ of mandamus to compel respondent, acting director of Bronx Psychiatric Center, to provide copies of a patient's complete clinical record (see MHL 9.01, MHL 33.16, 14 NYCRR 501.2[a]) in advance of a retention hearing pursuant to MHL 9.31(a); records--mental health records--whether respondent, in failing to provide petitioner with a copy of a patient's complete clinical record, violated its statutory obligation under MHL 9.31(b).

Matter of James Q. v Commissioner of the Office for People with Developmental Disabilities

APL-2017-00183

Records--Sealing of Records--Motion to seal record of CPL 330.20 retention proceeding--whether the Appellate Division erred in determining that the confidentiality provisions of the Mental Hygiene Law do not require the sealing of documents filed in a CPL 330.20 (9) subsequent retention program; redaction.

WEDNESDAY, JANUARY 9

Arrowhead Capital Finance, Ltd. v Cheyne Specialty Finance Fund L.P. et al.

APL-2018-00005

Attorney and Client--Unauthorized Practice of Law--Whether failure of plaintiff's counsel to maintain an in-state office at the time action was commenced, in violation of Judiciary Law § 470, renders the action a nullity and requires dismissal of the action without prejudice.

People v Michael Thomas

APL-2017-00251

Crimes—Sentence—Second Felony Offender—Whether a prior felony conviction may be used as a predicate felony conviction if the defendant is resentenced on the prior felony conviction after the commission of the instant felony.

U.S. National Bank Assoc. v DLJ Mortgage Capital

APL-2017-00115

Limitation of Actions--Commencement of action after termination of prior action--Where complaint was dismissed because plaintiff failed to satisfy a condition precedent and plaintiff lacked standing to sue, whether CPLR 205(a) applies to allow trustee, which was substituted as plaintiff, to commence a new action; whether trustee may rely on relation-back doctrine of CPLR 203(f).

U.S. National Bank Assoc. v DLJ Mortgage Capital

APL-2017-00116

Contracts--Conditions Precedent--Where plaintiff trustee failed to comply with a contractual condition precedent to bringing suit, whether the timely claims were properly dismissed without prejudice to refile pursuant to CPLR 205(a); limitation of action--commencement of action after termination of prior action.

THURSDAY, JANUARY 10

Matter of NYC Asbestos Litigation (South v Chevron)

APL-2017-00252

Seamen--Jones Act--Whether release executed by plaintiff in a 1997 Jones Act (46 USC § 30104 et seq.) action was enforceable in subsequent Jones Act and negligence action brought by plaintiff and his wife derivatively against defendant manufacturer of asbestos; plaintiff, who was exposed to asbestos while serving as merchant mariner, executed release before mesothelioma diagnosis; enforceability of release under Federal Employers' Liability Act (45 USC § 55).

People v Emmanuel Diaz

APL-2017-00160

Crimes--Evidence--Whether defendant's telephone calls from prison were improperly admitted into evidence in the absence of his consent to release of the recordings to the prosecution; right to counsel--effective representation--whether defendant was deprived of the effective assistance of counsel as a result of his trial counsel's failure to request that the jury be charged on the affirmative defense that the object which he displayed was not a loaded weapon.

People v Ali Cisse

APL-2017-00174

Crimes--Evidence--Whether defendant's telephone calls from prison were admitted into evidence in violation of federal and/or state wiretapping statutes, or right to counsel and due process protections; suppression--whether various physical items should have been suppressed as fruits of an improper stop and search; whether the trial court improperly asked the jury whether it had reached a partial verdict; claimed ineffective assistance of counsel--counsel failed to move to

suppress a suggestive identification and to dismiss the reckless endangerment count; whether the trial court erred in rejecting a voluntariness instruction to the jury.