

March 26, 2009

**CASES**

No. 104

In the Matter of the Honorable  
Francis M. Alessandro, a Judge of  
the New York City Civil Court,  
Bronx County,

Petitioner,

For Review of a Determination of  
State Commission on Judicial  
Conduct,

Respondent.

On the Court's own motion, it is  
determined that Honorable Francis M.  
Alessandro is suspended, with pay,  
effective immediately, from the office  
of Judge of the New York City Civil  
Court, Bronx County, pending  
disposition of his request for review  
of a determination by the State  
Commission on Judicial Conduct.  
Judges Ciparick, Graffeo, Read, Smith,  
Pigott and Jones concur.  
Chief Judge Lippman took no part.

No. 105

In the Matter of the Honorable  
Joseph S. Alessandro, a Justice  
of the Supreme Court, Westchester  
County,

Petitioner,

For Review of a Determination of  
State Commission on Judicial  
Conduct,

Respondent.

On the Court's own motion, it is  
determined that Honorable Joseph S.  
Alessandro is suspended, with pay,  
effective immediately, from the office  
of Justice of the Supreme Court,  
Westchester County, pending disposition  
of his request for review of a  
determination by the State Commission  
on Judicial Conduct.  
Judges Ciparick, Graffeo, Read, Smith,  
Pigott and Jones concur.  
Chief Judge Lippman took no part.

No. 38

The People &c.,  
Appellant,

v.

Amber Bauman and Charles Edward  
Lafler,

Respondents.

Order affirmed.  
Opinion by Judge Jones.  
Chief Judge Lippman and Judges  
Ciparick, Graffeo and Read concur.  
Judge Pigott dissents in part and votes  
to modify in an opinion in which Judge  
Smith concurs.

No. 33

Jane Doe et al.,  
Respondents,  
v.  
Roman Catholic Diocese of  
Rochester, et al.,  
Appellants.

Order, insofar as appealed from,  
reversed, with costs, defendants'  
motions to dismiss the complaint in the  
entirety granted and certified question  
answered in the negative, in a  
memorandum.

Chief Judge Lippman and Judges  
Ciparick, Graffeo, Read, Smith, Pigott  
and Jones concur.

No. 27

IDT Corporation,  
Respondent,  
v.  
Morgan Stanley Dean Witter & Co.  
et al.,  
Appellants.

Order reversed, with costs, defendants'  
motion to dismiss the remaining causes  
of action granted, complaint dismissed  
in the entirety, and certified question  
answered in the negative.

Opinion by Judge Pigott.  
Judges Ciparick, Graffeo, Read, Smith  
and Jones concur.  
Chief Judge Lippman took no part.

No. 26

Michael Israel and Steven Israel,  
Respondents,  
v.  
Surinder S. Chabra,  
Appellant,  
Paran Realty Corp.,  
Defendant.

Following certification of a question  
by the United States Court of Appeals  
for the Second Circuit and acceptance  
of the question by this Court pursuant  
to section 500.27 of the Rules of  
Practice of the New York State Court of  
Appeals, and after hearing argument by  
counsel for the parties and  
consideration of the briefs and the  
record submitted, certified question,  
as reformulated, answered in the  
negative.

Opinion by Judge Graffeo.  
Judges Ciparick, Read, Smith, Pigott  
and Jones concur.  
Chief Judge Lippman took no part.

No. 47  
The People &c.,  
Respondent,  
v.  
Richard Lowe,  
Appellant.

Order affirmed, in a memorandum.  
Judges Ciparick, Graffeo, Read, Smith,  
Pigott and Jones concur.  
Chief Judge Lippman took no part.

No. 28  
Larry Shulman,  
Respondent,  
v.  
James Hunderfund,  
Appellant,  
Tom Tornee,  
Defendant.

Order reversed, with costs, and  
complaint against defendant Hunderfund  
dismissed.  
Opinion by Judge Smith.  
Judges Ciparick, Graffeo, Read, Pigott  
and Jones concur.  
Chief Judge Lippman took no part.

**MOTIONS**

Mo. No. 2009-256  
In the Matter of Lavountae A.,  
Yacier A., and Sabraejuna M.  
  
Monroe County Department of Human  
Services,  
Respondent,  
Laticia A.,  
Appellant.

Motion for assignment of counsel  
granted and Timothy P. Donaher, Esq.,  
Monroe County Public Defender, 10 N.  
Fitzhugh Street, Rochester, NY 14614  
assigned as counsel to the appellant  
on the appeal herein.

Mo. No. 2009-116  
Frank Adamo, as Executor of the  
Estate of Norma Rose, et al.,  
Appellants,  
v.  
Brown & Williamson Tobacco  
Corporation, &c., et al.,  
Respondents,  
et al.,  
Defendant.

Motion for reargument denied with one  
hundred dollars costs and necessary  
reproduction disbursements.  
Chief Judge Lippman took no part.

Mo. No. 2009-103  
In the Matter of Virginia Adams,  
et al.,  
Appellants,  
v.  
Richard S. Schoenstadt, et al.,  
&c.,  
Respondents.

Motion for leave to appeal dismissed  
upon the ground that the order sought  
to be appealed from does not finally  
determine the proceeding within the  
meaning of the Constitution.

Mo. No. 2009-69  
The People &c.,  
Appellant,  
v.  
Miguel Alemany,  
Respondent.

Motion for leave to appeal granted.  
Chief Judge Lippman took no part.

Mo. No. 2009-98  
Judith Askin, &c., et al.,  
Respondents,  
v.  
City of New York, et al.,  
Defendants,  
New York City Health and  
Hospitals Corporation,  
Appellant.

Motion for leave to appeal dismissed  
upon the ground that the order sought  
to be appealed from does not finally  
determine the action within the  
meaning of the Constitution.

Mo. No. 2009-92  
Dilraj Batchu et al.,  
Appellants,  
v.  
5817 Food Corp.,  
Respondent.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-122  
Olga Batyreva,  
Appellant,  
v.  
New York City Department of  
Education,  
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-61  
The People &c. ex rel. Albert  
Bell,  
Appellant,  
v.  
Warden, Rikers Island et al.,  
Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-176  
Lenore Bellinger, &c.,  
Appellant,  
v.  
Ballston Spa Central School  
District,  
Respondent.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-20  
The People &c.,  
Respondent,  
v.  
Roberto Castellano, Also Known  
as Roberto Castelan,  
Appellant.

Motion for reargument denied.  
Chief Judge Lippman took no part.

Mo. No. 2009-80  
In the Matter of Joseph D.  
(Anonymous).

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Adriana D. (Anonymous) et al.,  
Respondents;  
Frank D. (Anonymous),  
Nonparty-Appellant.

Mo. No. 2009-264  
The People &c.,  
Respondent,  
v.  
George Davis,  
Appellant.

Motion for assignment of counsel  
granted and Richard M. Greenberg,  
Esq., Office of the Appellate  
Defender, 11 Park Place, Suite 1601,  
New York, NY 10007 assigned as counsel  
to the appellant on the appeal herein.

Mo. No. 2008-1317  
Satish Deshpande,  
Appellant,  
v.  
TJH Medical Services, P.C.,  
et al.,  
Respondents,  
et al.,  
Defendant.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-88  
In the Matter of King Justice  
Allah El,  
Appellant,  
v.  
Hon. Tanya Kennedy, &c., et al.,  
Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-97  
William Anthony Evans,  
Appellant,  
v.  
State of New York,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-351  
The People &c.,  
Respondent,  
v.  
Robert C. Felton,  
Appellant.

Motion for an extension of the time  
within which to apply for permission  
to appeal pursuant to CPL 460.20  
granted and motion papers treated as a  
timely CPL 460.20 application.

Mo. No. 2009-128  
In the Matter of Joy Gartmond,  
Appellant,  
v.  
Thomas Conway,  
Respondent.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-263  
The People &c.,  
Respondent,  
v.  
Collier Gillyard,  
Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein. Chief Judge Lippman took no part.

Mo. No. 2009-124  
In the Matter of Police Officer Manuel Gomez,  
Respondent,  
v.  
Raymond W. Kelly, &c., et al.,  
Appellants.

Motion for leave to appeal granted. Chief Judge Lippman took no part.

Mo. No. 2009-194  
The People &c.,  
Respondent,  
v.  
Shawn Green,  
Appellant.

Motion for an extension of the time within which to apply for permission to appeal pursuant to CPL 460.20 granted and motion papers treated as a timely CPL 460.20 application.

Mo. No. 2009-115  
The People &c.,  
Respondent,  
v.  
Eric Guitard,  
Appellant.

Motion for leave to appeal denied. Motion for poor person relief dismissed as academic.

Mo. No. 2009-144  
Hasty Hills Stables, Inc.,  
et al.,  
Appellants,  
v.  
Dorfman, Lynch, Knoebel & Conway,  
LLP, &c.,  
Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

Mo. No. 2009-213  
The People &c.,  
Respondent,  
v.  
Brian Henderson,  
Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

Mo. No. 2009-162  
In the Matter of Audrey I.  
et al., &c.

Motion for leave to appeal denied.

Broome County Department of  
Social Services,  
Respondent,  
William G.,  
Appellant,  
et al.,  
Respondent.

Mo. No. 2009-233  
In the Matter of George Infante,  
as Administrator of the Estate of  
Rosemary A. Infante, Deceased,  
Respondent,  
v.  
Caroline R. Dignan, M.D., as  
Medical Examiner of Monroe County  
and Paul D. Gosnick, M.D., in his  
official capacity as Deputy  
Medical Examiner,  
Appellants.

Motion by Office of the Chief Medical Examiner of the City of New York for leave to file a brief amicus curiae on the appeal herein granted and the proposed brief is accepted as filed. Two copies of the brief must be served and 24 copies filed within seven days. Judge Graffeo took no part.

Mo. No. 2009-331  
The People &c.,  
Respondent,  
v.  
George Konstantinides,  
Appellant.

Motion for assignment of counsel granted and Lynn W.L. Fahey, Esq., Appellate Advocates, 2 Rector Street, 10th Floor, New York, NY 10006 assigned as counsel to the appellant on the appeal herein.

Mo. No. 2009-134  
The People &c. ex rel. Teddy  
Lewis,  
Appellant,  
v.  
Harold Graham, &c.,  
Respondent.

Motion for leave to appeal denied.

Mo. No. 2008-1421  
Linda Marso,  
Appellant,  
v.  
Henry Novak, M.D. et al.,  
Respondents.

Motion for leave to appeal denied.

Mo. No. 2009-199  
The People &c.,  
Respondent,  
v.  
Rashad McNair,  
Appellant.

Motion for assignment of counsel  
granted and Steven Banks, Esq., The  
Legal Aid Society, 199 Water Street,  
New York, NY 10038 assigned as counsel  
to the appellant on the appeal herein.  
Chief Judge Lippman took no part.

Mo. No. 2008-1392  
In the Matter of Theresa Mooring,  
Appellant,  
v.  
American Airlines et al.,  
Respondents.  
Workers' Compensation Board,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-291  
The People &c.,  
Respondent,  
v.  
Claudell Pena, &c.,  
Appellant.

Motion for an extension of the time  
within which to apply for permission  
to appeal pursuant to CPL 460.20  
granted and motion papers treated as a  
timely CPL 460.20 application.

Mo. No. 2009-81  
In the Matter of Derek Perkins,  
Appellant,  
v.  
Robert A. Kirkpatrick, &c.,  
et al.,  
Respondents.

Motion for leave to appeal denied.

Mo. No. 2009-67  
Jose Ramirez et al.,  
Appellants,  
v.  
Mark T. Miller, et al.,  
Defendants,  
Eichner Rudd Management  
Associates, Ltd., &c.,  
Respondent.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-113  
The People &c.,  
Respondent,  
v.  
Angel Rios,  
Appellant.

Motion for leave to appeal denied.

Mo. No. 2009-74  
In the Matter of Robert Rivera,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-101  
In the Matter of Jazmone S.  
(Anonymous).

Motion for reargument of motion for  
leave to appeal denied.  
Chief Judge Lippman took no part.

Administration for Children's  
Services,  
Respondent;  
Philip J. (Anonymous),  
Appellant.  
(And Three Other Proceedings.)

Mo. No. 2009-157  
The People &c. ex rel. Rolando  
Santiago,  
Appellant,  
v.  
David Unger, &c.,  
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-102  
In the Matter of Harold J. Scott,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-30  
Andrea Smith,  
Appellant,  
v.  
State Farm Fire and Casualty  
Company, et al.,  
Respondents,  
et al.,  
Defendant.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-224  
Lylane Sum,  
Appellant,  
v.  
Tishman Speyer Properties, Inc.,  
et al.,  
Respondents.

Motion by Service Employees  
International Union, Local 32BJ for  
leave to file a brief amicus curiae on  
the appeal herein granted and the  
proposed brief is accepted as filed.

Mo. No. 2009-127  
Superior Ice Rink, Inc.,  
Respondent,  
v.  
Nescon Contracting Corp., &c.,  
et al.,  
Defendants,  
Merchants Mutual Marine Insurance  
Company,  
Appellant.

Motion for leave to appeal dismissed  
upon the ground that the order sought  
to be appealed from does not finally  
determine the action within the  
meaning of the Constitution.

Mo. No. 2009-259  
The People &c.,  
Respondent,  
v.  
William Taylor,  
Appellant.

Motion for an extension of the time  
within which to apply for permission  
to appeal pursuant to CPL 460.20  
granted and motion papers treated as a  
timely CPL 460.20 application.  
Chief Judge Lippman took no part.

Mo. No. 2009-123  
In the Matter of Transport  
Workers Union, Local 100, &c.,  
Appellant,  
v.  
New York City Transit Authority,  
Respondent.

Motion for leave to appeal denied with  
one hundred dollars costs and  
necessary reproduction disbursements.

Mo. No. 2009-133  
The People &c. ex rel. John  
Trisvan,  
Appellant,  
v.  
Harold Graham, &c.,  
Respondent.

Motion for leave to appeal denied.

Mo. No. 2009-60  
The People &c.,  
Respondent,  
v.  
Eddie Valentin,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-70  
Wallkill Medical Development,  
LLC, et al.,  
Appellants,  
v.  
Sweet Constructors, LLC,  
Respondent.

Motion for leave to appeal dismissed  
upon the ground that the order sought  
to be appealed from does not finally  
determine the action within the  
meaning of the Constitution.

Mo. No. 2009-106  
Raymond L. Weiss and Jane Weiss,  
Appellants,  
v.  
Allstate Insurance Company,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal denied.

Mo. No. 2009-120  
The People &c. ex rel. Leroy  
Whitley,  
Appellant,  
v.  
Warden, &c., et al.,  
Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-143  
In the Matter of Leroy Whitley,  
Appellant,  
v.  
Matthew D'Emic, et al.,  
Respondents.

Motion for leave to appeal denied.  
Motion for poor person relief  
dismissed as academic.

Mo. No. 2009-297  
The People &c.,  
Appellant,  
v.  
Juwanna Wrotten,  
Respondent.

Motion for assignment of counsel  
granted and Richard M. Greenberg,  
Esq., Office of the Appellate  
Defender, 11 Park Place, Suite 1601,  
New York, NY 10007 assigned as counsel  
to the respondent on the appeal  
herein.

Mo. No. 2009-62  
In the Matter of Richard Zeis,  
Respondent,  
v.  
April Slater,  
Appellant.

Motion for leave to appeal denied.