

COURT OF APPEALS NEW FILINGS

Jurisdictional Statements of Appeals filed  
In the New York Court of Appeals from  
March 8, 2002 through March 14, 2002

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 March 8, 2002 through March 14, 2002 the following jurisdictional statements for appeals were filed:

FROST (KEVIN), PEOPLE v:

1<sup>st</sup> Dept. App. Div. order of 12/4/01; affirmance; leave to appeal granted by Smith, J., 2/28/02;  
CRIMES AND CRIMINAL PROCEDURE; IDENTIFICATION OF DEFENDANT AFTER INDEPENDENT SOURCE HEARING; DEFENDANT'S EXCLUSION FROM CERTAIN EX PARTE HEARINGS; COURTROOM CLOSURE DURING PARTS OF TRIAL;  
Supreme Court, New York County, conviction of criminal possession of a weapon in the second and third degrees; App. Div. affirmed.

HERNANDEZ, et al. v HAMMONS, et al.:

1<sup>ST</sup> Dept. App. Div. order of 9/13/01; affirmance; leave to appeal granted by App. Div., 2/21/02;

CIVIL PROCEDURE - ATTORNEYS FEES AND COSTS; NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES LIABILITY FOR ATTORNEYS FEES AND COSTS AS AGENT OF THE STATE (CPLR, ARTICLE 86);

Supreme Court, New York County, denied plaintiffs' motion for attorneys fees and costs; App. Div. affirmed.

MATTINGLY v AES CORPORATION, et al.:

4<sup>TH</sup> Dept. App. Div. order of 2/1/02; modification with dissents; sua sponte examination whether the order appealed from is final;

TORT; STRICT LIABILITY (LABOR LAW §240[1]); SUMMARY JUDGMENT - "EXCEPTIONALLY DANGEROUS CONDITION"; HANDRAIL AS NOT A SAFETY DEVICE ENUMERATED IN THE STATUTE;

Supreme Court, Niagara County, inter alia, denied defendants' cross-motion for summary judgment; App. Div. modified, granted that part of the cross-motion for summary judgment dismissing the Labor Law §240[1] claim.

MC COY v FEINMAN, et al.:

4<sup>TH</sup> Dept. App. Div. of 2/1/02; affirmance with dissents;

CIVIL PROCEDURE - LEGAL MALPRACTICE; STATUTE OF LIMITATIONS - CALCULATION OF DATE ON WHICH CAUSE OF ACTION ACCRUED; "CONTINUOUS REPRESENTATION" DOCTRINE;

Supreme Court, Erie County, granted defendants' motion for summary judgment; App. Div. affirmed; dissenter would reverse, deny the motion and reinstate the complaint.

WRIGHT (DONALD), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 8/2/01; reversal; leave to appeal granted by Ciparick, J., 12/19/01; Rule 500.4 review pending; CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE; DWI - "PRETEXT" STOP;

Warren County Court conviction of driving while intoxicated; App. Div. reversed, granted the motion to suppress and dismissed the indictment.

ANONYMOUS (EVEYLN X.), MATTER OF, v CLINTON COUNTY DEPARTMENT OF SOCIAL SERVICES, et al.:

3rd Dept. App. order of 1/24/02; modification/affirmance; appeal taken pursuant to 5601(b); sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right, whether the portion of the order appealed from addressing the contempt order is moot and whether it is a final order;

DOMESTIC RELATIONS - NEGLECT; BASIS FOR FAMILY COURT DETERMINATION OF PARENTAL NEGLECT; APPEALS - CIVIL CONTEMPT INCARCERATION - MOOTNESS;

Clinton County Family Court, by its order of 10/7/99 adjudicated William "X" to be a neglected child by Susan "X"; by its order of 2/10/00 adjudicated the children to be neglected; App. Div., inter alia, modified the 10/7/99 order and reversed so much of it as adjudicated William "X" to be neglected by Susan "X" and affirmed the 2/10/00 order.