

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements filed
In the New York Court of Appeals from
January 17 through February 2, 2006

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 preliminary appeal 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 500.23 and direct any questions to the Clerk's Office.

For January 27, 2006 through February 2, 2006 the following preliminary appeal statements were filed:

STEVEN B., MATTER OF [MAKEBA S.]:

1ST Dept. App. Div. order of 12/19/05; affirmance with dissents;
Rule 500.11 review pending;

PARENT AND CHILD - CUSTODY - WHETHER FAMILY COURT ABUSED ITS DISCRETION IN DENYING MOTHER'S REQUEST FOR AN ADJOURNMENT OF CUSTODY PROCEEDING;

Family Court, New York County granted father's petition pursuant to Family Court Act article 6 for custody of the subject children; App. Div. affirmed.

DE LEON, PEOPLE, ex rel., v. RIVERA:

3RD Dept. App. Div. order of 12/29/05; denial of writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS;
App. Div. denied application for a writ of habeas corpus.

KEAVEY v. NEW YORK STATE DORMITORY AUTHORITY:

4TH Dept. App. Div. order of 12/22/05; modification with dissents; Rule 500.11 review pending;

TORTS - LABOR - SAFE PLACE TO WORK - WHETHER SLIPPING INTO A GAP BETWEEN INSULATION BOARDS STACKED EIGHT FEET HIGH IS ONE OF THE EXTRAORDINARY ELEVATION RISKS ENVISIONED BY LABOR LAW § 240(1) - WHETHER SUMMARY JUDGMENT WAS PROPERLY GRANTED TO DEFENDANT AS TO PLAINTIFF'S LABOR LAW §§ 240(1) AND 241(6) CAUSES OF ACTION;

Supreme Court, Erie County granted defendant's motion for summary judgment in part and denied the motion with respect to plaintiff's Labor Law § 240(1) cause of action, and granted plaintiff's cross motion for summary judgment on liability on the section 240(1) cause of action; App. Div. modified by granting defendant's motion for summary judgment in its entirety, dismissing the complaint and denying plaintiff's cross motion for partial summary judgment on liability on the Labor Law § 240(1) cause of action, and affirmed the order as modified.

MITCHELL, MATTER OF, v. HUDSON:

2ND Dept. App. Div. order 11/1/05; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - ARTICLE 78
PROCEEDING AGAINST TRIAL JUDGE SEEKING VARIOUS FORMS OF RELIEF INCLUDING VACATUR OF CONVICTION; APPEAL - DISMISSAL OF APPEAL FOR FAILURE TO PAY FILING FEE;

App. Div. dismissed petitioner's CPLR article 78 petition in the nature of mandamus upon petitioner's failure to comply with the court's prior order granting petitioner 120 days within which to pay the filing fee and stating that the proceeding would be dismissed if he failed to do so.

PROFESSIONAL STAFF CONGRESS-CITY UNIVERSITY OF NEW YORK v. NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD, et al.:

1ST Dept. App. Div. order of 6/7/05; leave to appeal granted by Court of Appeals, 1/17/06;

CIVIL SERVICE - PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT - IMPROPER EMPLOYER PRACTICE - CONTINUATION OF TERMS OF EXPIRED AGREEMENT (CIVIL SERVICE LAW § 209-a[1][e]) - "TRIBOROUGH LAW" - CONTINUATION OF UNION'S PURPORTED WAIVER OF RIGHT TO BARGAIN ABOUT UNIVERSITY'S INTELLECTUAL PROPERTY POLICY; DEFERENCE, IF ANY, OWED TO PUBLIC EMPLOYMENT RELATIONS BOARD (PERB);

App. Div. granted the Professional Staff Congress-City University of New York's petition to set aside PERB's March 26, 2004 determination dismissing the Professional Staff Congress-CUNY's improper labor charge in its entirety, and remanded to PERB for a determination not inconsistent with the court's decision and order.

SWINTON (JOSEPH), PEOPLE v.:

2ND Dept. App. Div. order of 9/19/05; modification; leave to appeal granted by Smith, R. S., J., 1/20/06; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - ASSAULT - RECKLESS ENDANGERMENT OF A CHILD - CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE - SUFFICIENCY OF EVIDENCE OF DEPRAVED INDIFFERENCE; PARENT AND CHILD - INFANT RAISED ON STRICT VEGETARIAN DIET; Supreme Court, Queens County judgment convicting defendant of assault in the first degree, reckless endangerment in the first degree and endangering the welfare of a child; App. Div. modified by vacating the conviction of reckless endangerment in the first degree, vacating the sentence imposed thereon, and dismissing that count of the indictment.

SWINTON (SILVA), PEOPLE v.:

2ND Dept. App. Div. order of 9/19/05; modification, leave to appeal granted by Smith, R. S., J., 1/20/06; Rule 500.11 review pending;

CRIMES AND CRIMINAL PROCEDURE - ASSAULT - RECKLESS ENDANGERMENT OF A CHILD - CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE - SUFFICIENCY OF EVIDENCE OF DEPRAVED INDIFFERENCE; PARENT AND CHILD - INFANT RAISED ON STRICT VEGETARIAN DIET; Supreme Court, Queens County, judgment convicting defendant of assault in the first degree, reckless endangerment in the first degree and endangering the welfare of a child; App. Div. modified by vacating the conviction of reckless endangerment in the first degree, vacating the sentence imposed thereon, and dismissing that count of the indictment.