

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements filed
In the New York Court of Appeals from
February 3 through February 9, 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 February 3, 2006 through February 9, 2006 the following preliminary appeal statements were filed:

CATHOLIC CHARITIES OF THE DIOCESE OF ALBANY, et al. v. SERIO:
3RD Dept. App. Div. order of 1/12/06; affirmance with dissents;
INSURANCE - HEALTH INSURANCE - WHETHER WOMEN'S HEALTH AND
WELLNESS ACT (WHWA) (L 2002, ch 554), WHICH REQUIRES EMPLOYERS
THAT PROVIDE GROUP INSURANCE COVERAGE FOR PRESCRIPTIONS TO
INCLUDE PRESCRIPTION CONTRACEPTIVES IN THAT COVERAGE (INSURANCE
LAW §§ 3221[1], [16], 4303[cc]), VIOLATES THE FEDERAL OR STATE
CONSTITUTIONAL RIGHTS OF FAITH-BASED ORGANIZATIONS THAT PROVIDE
HUMAN SERVICES AND ARE OPPOSED TO CONTRACEPTION ON RELIGIOUS
GROUNDS; PREEMPTION - HUMAN RIGHTS LAW (EXECUTIVE LAW § 296[11])
RELIGIOUS CORPORATIONS LAW §§ 5, 26;
Supreme Court, Albany County granted defendant's cross motion for
summary judgment dismissing the complaint and declared that the
WHWA does not violate New York State law or plaintiffs'
constitutional rights under the Federal and New York
Constitutions; App. Div. affirmed.

FEINGOLD (LARRY), PEOPLE v.:

1ST Dept. App. Div. order of 10/6/05; affirmance; leave to appeal granted by Graffeo, J., 1/31/06;

CRIMES AND CRIMINAL PROCEDURE - RECKLESS ENDANGERMENT - CIRCUMSTANCES EVINCING A DEPRAVED INDIFFERENCE TO HUMAN LIFE - SUFFICIENCY OF EVIDENCE OF DEPRAVED INDIFFERENCE; GAS EXPLOSION IN APARTMENT BUILDING CAUSED BY DEFENDANT'S SUICIDE ATTEMPT; Supreme Court, New York County judgment convicting defendant of reckless endangerment in the first degree; App. Div. affirmed.

FEUSTEL, MATTER OF, v. ROSENBLUM, et al.:

2ND Dept. App. Div. order of 12/12/05; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ABATEMENT AND REVIVAL - ANOTHER ACTION PENDING - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING PROCEEDING BROUGHT PURSUANT TO PUBLIC OFFICERS LAW § 36 TO REMOVE RESPONDENTS FROM PUBLIC OFFICE ON THE GROUND THAT PETITIONER HAD PREVIOUSLY FILED A SIMILAR DECLARATORY JUDGMENT ACTION PENDING IN SUPREME COURT (CPLR 3211[a][4]);

App. Div. granted motions by certain respondents to dismiss this proceeding brought pursuant to Public Officers Law § 36, denied the petition and dismissed the proceeding.

HALPERIN, et al. v. BOARD OF APPEALS ON ZONING OF CITY OF NEW ROCHELLE, et al.:

2ND Dept. App. Div. order of 12/27/05; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

MUNICIPAL CORPORATIONS - ZONING - VARIANCE - CHALLENGE TO APPELLATE DIVISION ORDER CONFIRMING DETERMINATIONS BY RESPONDENT CITY OF NEW ROCHELLE BOARD OF APPEALS ON ZONING (BOARD OF APPEALS) THAT DECLINED TO APPLY CRITERIA FOR DETERMINING AN APPLICATION FOR USE VARIANCE TO APPLICATION FOR PARKING VARIANCE AND GRANTED THE APPLICATION BY A RELIGIOUS INSTITUTION FOR CERTAIN AREA VARIANCES; ENVIRONMENTAL CONSERVATION - ENVIRONMENTAL IMPACT STATEMENT - WHETHER RESPONDENT BOARD OF APPEALS FAILED TO TAKE REQUISITE "HARD LOOK" AT RELIGIOUS INSTITUTION'S APPLICATION FOR CERTAIN AREA VARIANCES AND IMPROPERLY DELEGATED ITS DECISION MAKING RESPONSIBILITIES TO CONSULTANTS AND OTHER BOARDS OR AGENCIES; PUBLIC OFFICERS - ALLEGED VIOLATION OF OPEN MEETINGS LAW (PUBLIC OFFICERS LAW §§ 103, 105);

App. Div. confirmed three determinations of respondent Board of Appeals that declined to apply the criteria for determining an application for a use variance to an application for a parking variance and, after a hearing, approved a Final Environmental Impact Statement, and, in effect, declined to compel the preparation of a Supplemental Environmental Impact Statement in connection with an application for permission to construct a house of worship, and granted the application of the respondent Young Israel of New Rochelle for certain area variances in

connection with the construction project; otherwise denied the petition; and dismissed as academic so much of the hybrid CPLR article 78 proceeding and action for declaratory judgment as sought a judgment declaring that the City Council of the City of New Rochelle exceeded its authority when it enacted City of New Rochelle Zoning Ordinance § 331-4.

O'BRIEN, MATTER OF, v. SPITZER:

2ND Dept. App. Div. order of 10/17/05; affirmance; leave to appeal granted by App. Div., 1/25/06;

ADMINISTRATIVE LAW - PUBLIC OFFICERS - DUTY TO DEFEND OR INDEMNIFY STATE EMPLOYEE - WHETHER COURT-APPOINTED REFEREE IN A MORTGAGE FORECLOSURE ACTION, WHO WAS SUED IN HIS OFFICIAL CAPACITY IN A FEDERAL CIVIL RIGHTS ACTION, WAS AN EMPLOYEE OF THE STATE ENTITLED TO REPRESENTATION PURSUANT TO PUBLIC OFFICER'S LAW § 17 OR AN INDEPENDENT CONTRACTOR NOT ENTITLED TO SUCH REPRESENTATION;

Supreme Court, Suffolk County granted a CPLR article 78 petition challenging respondent's determination denying petitioner's request for representation pursuant to Public Officers Law § 17, and directed respondent to provide the petitioner with such representation; App. Div. affirmed.

ARNALDO R., MATTER OF, (ANONYMOUS):

1ST Dept. App. Div. order of 12/29/05; reversal with dissents; sua sponte examination whether the two-justice dissent at the Appellate Division was on an issue of law;

INFANTS - JUVENILE DELINQUENTS - CHALLENGE TO APPELLATE DIVISION ORDER REVERSING FACT-FINDING ORDER AS AGAINST THE WEIGHT OF THE EVIDENCE, VACATING THE ORDER OF DISPOSITION AND DISMISSING THE PETITION;

Family Court, Bronx County order of disposition adjudicating appellant a juvenile delinquent, upon a fact-finding determination that he committed acts which, if committed by an adult, would constitute the crime of sexual abuse in the first degree, and placing him on probation for a period of 15 months; App. Div. reversed the fact-finding order as against the weight of the evidence, vacated the dispositional order and dismissed the petition.

VAN DEUSEN (TAMMI), PEOPLE v.:

3RD Dept. App. Div. order of 6/9/05; affirmance; leave to appeal granted by Smith, R.S., J., 1/30/06;

CRIMES AND CRIMINAL PROCEDURE - PLEA OF GUILTY - WHETHER DEFENDANT IS ENTITLED TO WITHDRAW PLEA - FAILURE OF TRIAL COURT TO INFORM DEFENDANT BEFORE PLEA ABOUT MANDATORY PERIOD OF POST-RELEASE SUPERVISION - WHETHER HARMLESS ERROR ANALYSIS IS APPLICABLE WHERE TERM OF SENTENCE IMPOSED, PLUS DURATION OF POST-RELEASE SUPERVISION, WAS NOT LONGER THAN MAXIMUM PRISON TERM ACCEPTED BY DEFENDANT'S PLEA;

County Court, Chenango County judgment convicting defendant of robbery in the first degree; App. Div. affirmed.