

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
January 5 through January 11, 2007

Each week, the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11.

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

CASTRICONE, MATTER OF, v. WELCH:

4TH Dept. App. Div. order of 12/5/06; dismissal of motion for permission to appeal to App. Div. and denial of motion for poor person relief; sua sponte examination whether the Appellate Division order finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support the appeal taken as of right;

PRISONS AND PRISONERS - WHETHER CHALLENGE TO PRE-SENTENCE REPORT WAS PRESERVED FOR FURTHER REVIEW;

Supreme Court, Orleans County denied petitioner's article 78 petition challenging the accuracy of a pre-sentence report.

VICTOR M., MATTER OF (ANONYMOUS):

1ST Dept. App. Div. order of 12/7/06; affirmance with dissents; sua sponte examination whether the double dissent at the Appellate Division is on a question of law; JUVENILE DELIQUENTS - SUPPRESSION HEARING - WHETHER FINDING THAT OFFICER'S OBSERVATION OF APPELLANT GAMBLING IN A HALLWAY OF A "CLEAN HALL BUILDING" PROVIDED PROBABLE CAUSE FOR AN ARREST AND SUBSEQUENT SEARCH OF APPELLANT; WHETHER AS AN ALTERNATIVE GROUND FOR SEARCH, OFFICER HAD PROBABLE CAUSE TO BELIEVE APPELLANT HAD COMMITTED VIOLATIONS OF TRESPASS AND LOITERING; Family Court, Bronx County adjudicated that appellant committed an act which if done by an adult would constitute the crime of criminal possession of a controlled substance in the fifth degree; App. Div. affirmed.

MAYOR OF THE CITY OF NEW YORK v. COUNCIL OF THE CITY OF NEW YORK et al.:

1ST Dept. App. Div. order of 12/5/06; affirmance with dissents; LOCAL LAWS - PREEMPTION BY STATE - WHETHER CIVIL SERVICE LAW § 201 (12), AS PART OF THE TAYLOR LAW, PREEMPTS LOCAL LAWS 18 AND 19 OF 2001, WHICH AMENDED THE NEW YORK CITY COLLECTIVE BARGAINING LAW TO INCLUDE CERTAIN EMERGENCY MEDICAL TECHNICIANS AND FIRE ALARM DISPATCHERS AS PART OF THE UNIFORMED SERVICE OF THE FIRE DEPARTMENT FOR PURPOSES OF THE BARGAINING PROCESS; WHETHER MUNICIPAL HOME RULE LAW § 23(2) (f) AND NEW YORK CITY CHARTER § 38(5) REQUIRE APPROVAL BY REFERENDUM OF LOCAL LAWS 18 AND 19; Supreme Court, New York County denied the mayor's motion for summary judgment and granted the cross motions for summary judgment of the Council of the City of New York and of intervenors-defendants to declare the local laws valid and enforceable; App. Div. affirmed.

NAZARIO v. ST. BARNABAS HOSPITAL, et al.:

1ST Dept. App. Div. order of 11/21/06; affirmance; sua sponte examination whether any basis lies for an appeal as of right; JUDGMENTS - SUMMARY JUDGMENT - WHETHER DEFENDANT ESTABLISHED THE ABSENCE OF ANY TRIABLE ISSUE OF FACT AS TO PLAINTIFF'S MEDICAL MALPRACTICE AND INFORMED CONSENT CLAIMS; Supreme Court, Bronx County granted the motion by defendant Goetz for summary judgment dismissing the complaint as against him; App. Div. affirmed.