

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
January 26 through February 1, 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.

ESTATE OF ROSE BB. (ANONYMOUS), DECEASED, MATTER OF:

3RD Dept. App. Div. order of 12/21/06; affirmance; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
EXECUTORS AND ADMINISTRATORS - COUNSEL FEES - ALLEGED DUE PROCESS VIOLATION IN AWARD OF ATTORNEYS' FEES;
Surrogate's Court, Ulster County awarded attorneys' fees to respondent; App. Div. affirmed.

CLAPES, et al., MATTER OF, v. TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 11/22/06; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
TAXATION - PERSONAL INCOME TAX - ARTICLE 78 PROCEEDING TO REVIEW RESPONDENT TAX APPEALS TRIBUNAL'S DETERMINATION SUSTAINING A PERSONAL INCOME TAX ASSESSMENT IMPOSED AGAINST PETITIONERS UNDER TAX LAW ARTICLE 22 - WHETHER PAYMENTS RECEIVED BY NONRESIDENT PETITIONER IN CONNECTION WITH CERTAIN DEPARTURE AGREEMENTS NEGOTIATED WITH PETITIONER'S NEW YORK EMPLOYER CONSTITUTED INCOME FROM NEW YORK SOURCES; PROCEEDING AGAINST OFFICER OR BODY;

App. Div. confirmed determination of respondent Tax Appeals Tribunal and dismissed the petition.

ELLIOTT, MATTER OF, v. BUTLER, &c., et al.:

3RD Dept. App. Div. order of 11/2/06; affirmance; leave to appeal granted by Court of Appeals, 1/16/07; Rule 500.11 review pending; COURTS - JURISDICTION - ALLEGED ERROR IN DISMISSING ARTICLE 78 PROCEEDING FOR PETITIONER'S FAILURE TO OBTAIN PERSONAL JURISDICTION OVER A RESPONDENT AS REQUIRED BY AN ORDER TO SHOW CAUSE;

Supreme Court, Albany County granted respondents' motion to dismiss the CPLR article 78 petition and dismissed the petition; App. Div. affirmed.

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

2ND Dept. App. Div. order of 1/9/07; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PUBLIC OFFICERS - REMOVAL FROM OFFICE - WHETHER RESPONDENT VILLAGE MAYOR'S AND TRUSTEES' CONDUCT ROSE TO A LEVEL OF MALFEASANCE TO WARRANT REMOVAL FROM PUBLIC OFFICE PURSUANT TO PUBLIC OFFICERS LAW § 63 - ALLEGED JURISDICTIONAL AND DUE PROCESS VIOLATIONS RELATED TO PROCEEDING;

App. Div. denied the petition and dismissed the proceeding on the merits.

INDELICATO, MATTER OF, v. TOWN OF LLOYD, et al.:

3RD Dept. App. Div. order of 11/22/06; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPAL CORPORATIONS - ZONING - VARIANCE - DENIAL OF VARIANCE FOR LANDLOCKED PARCEL - ACCESS TO PUBLIC HIGHWAY ONLY BY DEEDED RIGHT-OF-WAY - TOWN LAW § 280-a - TOWN OF LLOYD ZONING ORDINANCE - NO "OPEN DEVELOPMENT AREA" DESIGNATIONS BY TOWN BOARD - CLAIMED TAKING OF REAL PROPERTY WITHOUT DUE PROCESS OF LAW;

Supreme Court, Ulster County granted petitioner's CPLR article 78 petition, vacated the May 12, 2005 Findings of Fact and Decision of the Zoning Board of Appeals of the Town of Lloyd (ZBA), and remitted the matter to the ZBA for reconsideration; App. Div. reversed and dismissed the petition.

KAPLAN, MATTER OF, v. JULIAN, &c., et al.:

4TH Dept. App. Div. order of 12/22/06; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; MUNICIPAL CORPORATIONS - UTICA REGIONAL WATER BOARD (PUBLIC AUTHORITIES LAW § 1226-e) - WHETHER UTICA COMMON COUNCIL HAD AUTHORITY TO REPLACE PETITIONER AS MEMBER OF THE REGIONAL WATER BOARD - CHALLENGE TO PUBLIC AUTHORITIES LAW § 1226-e AS VIOLATING ARTICLE IX, § 2(b) OF THE NEW YORK CONSTITUTION;

Supreme Court, Oneida County granted respondents' motion to dismiss a CPLR article 78 petition and dismissed the petition; App. Div. affirmed.