

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
March 9 through March 15, 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.

BROWN (EDWARD), PEOPLE, ex rel.:

11/3/06 order of Pine, J., 4TH Dept. App. Div.; denial of writ of habeas corpus; sua sponte examination whether there is any jurisdictional basis for an appeal as of right from an order issued by a single App. Div. justice;
HABEAS CORPUS - SCOPE OF REMEDY - DENIAL BY APPELLATE DIVISION OF APPLICATION - CHALLENGE TO CRIMINAL CONVICTION;
App. Div. Justice granted petitioner poor person status and denied his application for a writ of habeas corpus.

LONG ISLAND LIGHTING COMPANY, INC. v. ALLIANZ UNDERWRITERS
INSURANCE COMPANY et al.:

Supreme Court, New York County judgment of 1/24/07, bringing up for review 1ST Dept. App. Div. order of 12/8/05; modification with dissents; sua sponte examination whether the judgment appealed from finally determines the action within the meaning of the Constitution;

INSURANCE - EXCESS COVERAGE - FAILURE OF INSURED TO COMPLY WITH NOTICE PROVISIONS IN POLICIES - OCCURRENCE "REASONABLY LIKELY" TO INVOLVE THE EXCESS POLICIES; ENVIRONMENTAL CONTAMINATION - LIABILITY FOR CLEAN UP COSTS; DECLARATORY JUDGMENT ACTION AGAINST EXCESS INSURERS;

Supreme Court, New York County granted the motion of Century Indemnity Company for partial summary judgment, and severed and dismissed the claim for coverage of the Syosset landfill Superfund Site against the remaining Century policies; granted the cross motions of General Reinsurance Corp. and Protective National Insurance Company of Omaha for partial summary judgment, and severed and dismissed the claim for coverage of the Syosset landfill Superfund Site against each of their policies; and ordered that the remainder of the action shall continue; App. Div. modified, to declare that defendants Century Indemnity Company and General Reinsurance Corporation are not obliged to defend or indemnify plaintiffs in connection with the Syosset Landfill site; Supreme Court, New York County dismissed all of plaintiffs' claims for coverage against defendants Century Indemnity Insurance Company, Continental Casualty Company, General Reinsurance Corporation, and Northern Assurance Company of America in connection with the Syosset Landfill site.

LOREN (DEAN), APPLICATION FOR ADMISSION AS AN ATTORNEY, MATTER OF:

1ST Dept. App. Div. order of 2/9/07; denial of application; 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;

ATTORNEY AND CLIENT - ADMISSION TO PRACTICE - MOTION FOR LEAVE TO RENEW APPLICATION FOR ADMISSION TO PRACTICE;

App. Div. denied petitioner's motion for, among other things, leave to renew his application for admission to practice as an attorney and counselor-at-law in the State of New York, and for poor person relief.

MADDOX, MATTER OF, v. STATE UNIVERSITY OF NEW YORK AT ALBANY:

3RD Dept. App. Div. order of 10/13/06; denial of motion for reconsideration; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether either the March 7, 2005 or October 13, 2006 order appealed from finally determines the proceeding within the meaning of the Constitution;

COURTS - JURISDICTION - WHETHER COURT PROPERLY DISMISSED PETITION IN A CPLR ARTICLE 78 PROCEEDING FOR LACK OF PERSONAL JURISDICTION; APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION OR PERMISSION TO APPEAL TO THE COURT OF APPEALS;

Supreme Court, Albany County granted respondents' motion to dismiss the petition and dismissed the petition; App. Div. affirmed and denied subsequent motion for reconsideration or leave to appeal to the Court of Appeals.

MOODY v. SOROKINA:

4TH Dept. App. Div. order of 2/2/07; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

PARENT AND CHILD - CUSTODY - MOTHER EMIGRATED TO UNITED STATES TO MARRY FATHER - WHETHER CUSTODY DETERMINATION WAS IN BEST INTEREST OF CHILD; MAINTENANCE; EQUITABLE DISTRIBUTION;

Supreme Court, Jefferson County, among other things, awarded the parties joint custody of their child with primary placement with plaintiff and visitation with defendant; App. Div. modified by awarding defendant the sum of \$8,000 as equitable distribution of the parties' 2001 Jeep Grand Cherokee, and remitted the matter to Supreme Court, Jefferson Co. for further proceedings.

MOSKOWITZ (EDWARD), MATTER OF, AN ATTORNEY:

2ND Dept. App. Div. orders of 11/30/05 and 12/19/06; sua sponte examination whether an appeal as of right lies pursuant to CPLR 5601(d) from the November 30, 2005 App. Div. order and whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER FINDING ATTORNEY GUILTY OF PROFESSIONAL MISCONDUCT AND SUSPENDING HIM FROM THE PRACTICE OF LAW IN NEW YORK STATE FOR THREE YEARS; SUMMARY JUDGMENT - ALLEGED FAILURE OF GRIEVANCE COMMITTEE TO PLEAD OR PROVE THE REQUISITE ELEMENT OF INTENT IN DISCIPLINARY RULE 1-102(A) (4);

App. Div. granted Grievance Committee's motion to confirm special referee's report and suspended respondent from the practice of law for three years.

PORTER (ANTHONY R.), PEOPLE v.:

4TH Dept. App. Div. order of 2/2/07; affirmance with dissent; leave to appeal granted by Gorski, J., 3/6/07;

CRIMES AND CRIMINAL PROCEDURE - RIGHT TO COUNSEL - WHETHER DEFENDANT UNEQUIVOCALLY INVOKED HIS RIGHT TO COUNSEL BY STATING "I THINK I NEED AN ATTORNEY"; SUPPRESSION HEARING - WHETHER TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENT MADE TO POLICE AFTER HE STATED "I THINK I NEED AN ATTORNEY"; ALLEGED ILLEGAL WARRANTLESS SEARCH OF PREMISES WHERE DEFENDANT STAYING;

Niagara County Court convicted defendant after jury trial of murder in the second degree and criminal possession of a weapon in the third degree; App. Div. affirmed.

RAFFELLINI v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY:

2ND Dept. App. Div. order of 10/24/06; affirmance; leave to appeal granted by App. Div., 3/5/07;

INSURANCE - AUTOMOBILE INSURANCE - UNDERINSURED MOTORIST ENDORSEMENT - "SERIOUS INJURY" THRESHOLD - WHETHER LACK OF "SERIOUS INJURY" MAY BE RAISED AS A DEFENSE IN AN ACTION TO RECOVER DAMAGES UNDER THE SUPPLEMENTARY UNDERINSURANCE ENDORSEMENT OF AN AUTOMOBILE POLICY;

Supreme Court, Kings County granted plaintiff's cross motion to strike the fifth affirmative defense alleging that plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d); App. Div. affirmed.