

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
May 25 through May 31, 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.

HENDRIX, MATTER OF, v GOORD:

3RD Dept. App. Div. order of 1/25/07; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PRISONS AND PRISONERS - CALCULATION OF SENTENCE - WHETHER, WHERE PETITIONER WAS SENTENCED AS A PERSISTENT VIOLENT FELONY OFFENDER UNDER PENAL LAW § 70.08, IT WAS MANDATORY THAT HIS NEW SENTENCE RUN CONSECUTIVE TO THE UNDISCHARGED TERM OF IMPRISONMENT REMAINING ON HIS PRIOR SENTENCES (PENAL LAW § 70.25[2-a]);
Supreme Court, Chemung County dismissed petitioner's article 78 proceeding seeking to challenge the computation of his sentence; App. Div. affirmed.

HOUSEHOLD FINANCE REALTY CORPORATION OF NEW YORK v GONZALEZ et al.:

3RD Dept. App. 4/26/07; affirmance; 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;

MORTGAGES - FORECLOSURE - NONPAYMENT OF REAL ESTATE TAXES;
SUMMARY JUDGMENT; DUE PROCESS;
Supreme Court, Schoharie County, among other things, granted plaintiff's motion for summary judgment; App. Div. affirmed.

WALLACE B.O., MATTER OF, v CHRISTINE S.-O.:

4TH Dept. App. Div. order 4/20/07; 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;

PARENT AND CHILD - VISITATION - FEES - WHETHER FAMILY COURT ERRED IN DIRECTING THAT RESPONDENT PAY NINETY PERCENT OF LAW GUARDIAN'S FEES IN UNDERLYING FAMILY COURT ACT ARTICLE 6 PROCEEDING AND FIFTY PERCENT OF THE LAW GUARDIAN'S FEES ON TWO PRIOR APPEALS; WHETHER FAMILY COURT IMPROPERLY APPOINTED GUARDIAN AD LITEM;

Family Court, Oneida County, determined, among other things, that respondent was responsible for 90 percent of the fees of the guardian ad litem for services rendered in the underlying proceeding and for 50 percent of the fees of the guardian ad litem for services rendered on two prior appeals; App. Div. affirmed.

PEEK, MATTER OF, v DENNISON:

4TH Dept. App. Div. order of 4/20/07; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PAROLE - REVOCATION - ARTICLE 78 PROCEEDING TO REVIEW DETERMINATION REVOKING PAROLE - WHETHER RESPONDENT IMPROPERLY DENIED PETITIONER A PRELIMINARY HEARING; EXHAUSTION OF ADMINISTRATIVE REMEDIES; PRESERVATION OF ISSUE FOR REVIEW; DUE PROCESS;

App. Div. on transfer from Supreme Court, Monroe County, confirmed respondent's determination revoking petitioner's release to parole and imposing a 15-month time assessment.