

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
November 23 through November 29, 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.

FALK &c. et al. v CHITTENDEN &c.:

2ND Dept. App. Div. order of 12/12/06; affirmance; leave to appeal granted by Court of Appeals, 11/19/07;

ATTORNEY AND CLIENT - DISQUALIFICATION - ACTION FOR DECLARATORY JUDGMENT DISQUALIFYING DEFENDANT POLICE OFFICER'S COUNSEL IN AN UNDERLYING DISCIPLINARY PROCEEDING; WHETHER CONFLICT OF INTEREST EXISTS REQUIRING ATTORNEY DISQUALIFICATION; STANDING - WHETHER POLICE SUPERVISOR WHO BROUGHT DISCIPLINARY CHARGES HAS STANDING TO SEEK ATTORNEY'S DISQUALIFICATION BASED ON SUPERVISOR'S PREVIOUS CONSULTATION WITH ATTORNEY;

Supreme Court, Westchester County granted defendant's motion for summary judgment and dismissed the declaratory judgment action; App. Div. affirmed.

FINLEY (ROBERT), PEOPLE v:

4TH Dept. App. Div. order of 7/6/07; affirmance; leave to appeal granted by Kaye, Ch.J., 11/16/07;

CRIMES AND CRIMINAL PROCEDURE - PROMOTING PRISON CONTRABAND - WHETHER MARIJUANA IS "DANGEROUS CONTRABAND" WITHIN THE MEANING OF PENAL LAW § 205.00(4) - WHETHER EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN DEFENDANT'S CONVICTION OF ATTEMPTED PROMOTING PRISON CONTRABAND IN THE FIRST DEGREE (PENAL LAW § 205.25[2]); JURORS - SELECTION OF JURY - DENIAL OF CHALLENGE FOR CAUSE;

Orleans County Court judgment convicting defendant, upon a jury verdict, of promoting prison contraband in the first degree and unlawful possession of marijuana; App. Div. affirmed.

GERARD, O/B/O COLARUSSO, PEOPLE ex rel. v KRALIK, et al.:

2ND Dept. App. Div. order of 10/9/07; grant of petition for writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - AVAILABILITY OF RELIEF - WRIT SUSTAINED BY APPELLATE DIVISION - RELEASE OF DETAINEE - NO PERIOD OF POST-RELEASE SUPERVISION MENTIONED IN SENTENCING MINUTES OR ORDER OF COMMITMENT;

App. Div. sustained writ of habeas corpus and directed respondent Superintendent of Rockland County Jail to immediately release detainee Colarusso.

LEWIS, PEOPLE ex rel., v GRAHAM:

Supreme Court, Cayuga County order of 7/20/07; denial of petition for writ of habeas corpus; sua sponte examination whether there is a jurisdictional predicate for a direct appeal pursuant to CPLR 5601(b)(2);

HABEAS CORPUS - WHEN REMEDY AVAILABLE - ISSUES RAISED IN PETITION COULD ALSO BE RAISED IN MOTION TO VACATE JUDGMENT OF CONVICTION OR ON DIRECT APPEAL - CLAIM THAT INDICTMENT IS JURISDICTIONALLY DEFECTIVE;

Supreme Court denied petition for a writ of habeas corpus.

PEOPLE &c. v GRASSO:

1ST Dept. App. Div. order of 5/8/07; reversal; leave to appeal granted by App. Div., 10/23/07;

ATTORNEY GENERAL - POWERS - WHETHER THE ATTORNEY GENERAL HAS AUTHORITY TO ASSERT CAUSES OF ACTION AGAINST DIRECTORS AND OFFICERS OF NOT-FOR-PROFIT CORPORATIONS THAT ARE NOT EXPRESSLY AUTHORIZED BY THE NOT-FOR-PROFIT CORPORATION LAW;

Supreme Court, New York County denied defendant Grasso's motion to dismiss the first, fourth, fifth and sixth causes of action alleged in the complaint; App. Div. reversed and granted the motion.

COMMITTEE TO SAVE ST. BRIGID'S, INC., et al. v EGAN, et al.:
1ST Dept. App. Div. order of 11/15/07; affirmance; sua sponte
examination whether a substantial constitutional question is
directly involved to support an appeal as of right;
RELIGIOUS CORPORATIONS AND ASSOCIATIONS - DEMOLITION OF CHURCH
BUILDING - RES JUDICATA - REVOCATION OF DEMOLITION PERMITS -
ALLEGED VIOLATION OF RELIGIOUS CORPORATION LAW § 5 - BREACH OF
FIDUCIARY DUTY - PARISHIONERS' STANDING TO SUE UNDER NOT-FOR-
PROFIT CORPORATION LAW § 623;
Supreme Court, New York County dismissed the complaint; App. Div.
affirmed.