

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 18 through April 24, 2008

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.

HARRIS, PEOPLE, ex rel. v CONWAY:

1ST Dept. App. Div. order of 2/26/08; affirmance; sua sponte examination whether there is any basis to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - PROPER VENUE FOR APPLICATION FOR WRIT OF HABEAS CORPUS;

Supreme Court, New York County denied petitioner's application for a writ of habeas corpus and dismissed the proceeding; App. Div. affirmed.

SAMUEL, et al. v DRUCKMAN & SINEL LLP, et al.:

1ST Dept. App. Div. order of 4/8/08; modification and affirmance with dissents; sua sponte examination whether the order finally determines the action within the meaning of the Constitution; ATTORNEY AND CLIENT - COMPENSATION - WHETHER ATTORNEY WHO REFERRED A MEDICAL MALPRACTICE ACTION TO OTHER ATTORNEYS IS ENTITLED TO A ONE-THIRD SHARE OF THE "ENHANCED" LEGAL FEE AWARDED UNDER JUDICIARY LAW § 474-a(2) OR TO A ONE-THIRD SHARE OF THE FEE AS CALCULATED UNDER THE STATUTORY SLIDING SCALE APPLICABLE IN MALPRACTICE ACTIONS; Supreme Court, New York County denied defendants' motion and plaintiffs' cross motion for summary judgment as well as plaintiffs' request to have the matter referred to the judge who had approved the compromise settlement for award of legal fees in the underlying medical malpractice action; App. Div. modified by granting defendants' motion for summary judgment on their first counterclaim to the extent it sought one third of the \$805,767.30 legal fee awarded under Judiciary Law § 474-a(2) in the underlying medical malpractice action, granted to the same extent plaintiffs' cross motion for summary judgment declaring the rights of the parties, and otherwise affirmed.

SHEMESH (MENASHE), PEOPLE v.:

1ST Dept. App. Div. order of 1/15/08; affirmance with dissents; leave to appeal granted by McGuire, J., 4/15/08; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - GRAND JURY - RIGHT TO APPEAR BEFORE GRAND JURY - DISMISSAL OF INDICTMENT PURSUANT TO CPL 190.50; Supreme Court, New York County granted defendant's motion to dismiss the indictment and dismissed the indictment with leave to the people to re-present; App. Div. affirmed.

THEN (JOSE), PEOPLE v:

1ST Dept. App. Div. order of 1/3/08; reversal; leave to appeal granted by Ciparick, J., 4/14/08; CRIMES AND CRIMINAL PROCEDURE - SENTENCE - DRUG LAW REFORM ACT (DLRA) (L 2005, ch 643) - WHETHER DEFENDANT WAS ELIGIBLE FOR RESENTENCING UNDER THE DLRA ON HIS 1999 CONVICTION FOR CRIMINAL SALE OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE; Supreme Court, New York County judgment resentencing defendant, upon his 1999 conviction of criminal sale of a controlled substance in the second degree, to a term of five years; App. Div. reversed and reinstated the original sentence of five years to life.

ABRAHAM XX, MATTER OF:

11/15/07 Supreme Court, Broome County judgment, bringing up for review a prior nonfinal 3RD Dept. App. Div. order of 1/18/07; modification and affirmance; leave to appeal granted by Court of Appeals, 3/25/08;

TRUSTS - SUPPLEMENTAL NEEDS TRUSTS - REIMBURSEMENT OF STATE FOR MEDICAID EXPENSES - WHETHER THE STATE IS ENTITLED TO RECOVER FROM THE REMAINDER OF A SUPPLEMENTAL NEEDS TRUST (SNT) MEDICAID EXPENDITURES MADE ON BEHALF OF AN INDIVIDUAL FROM THE PERIOD BEGINNING THE DAY AFTER A MALPRACTICE VERDICT AWARDED DAMAGES TO THAT INDIVIDUAL AND ENDING THE DAY BEFORE THE SNT WAS FUNDED; Supreme Court, Broome County partially granted petitioner's motion for summary judgment seeking a refund of certain sums paid to respondent from the remainder of a supplemental needs trust; App. Div. modified by reversing so much of the order and judgment as partially granted petitioner's motion and refunded certain sums paid to respondent, remitted the matter to Supreme Court for further proceedings not inconsistent with the court's decision and affirmed as so modified; thereafter, Supreme Court dismissed petitioner's claim to obtain a refund from the State of New York in the sum of \$34,633.64.