

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**July 11 through July 17, 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.**

DOE et al. v ROMAN CATHOLIC DIOCESE OF ROCHESTER, et al:  
4<sup>TH</sup> Dept. App. Div. order of 5/2/08; modification and affirmance;  
leave to appeal granted by App. Div., 7/3/08;

TORTS - BREACH OF FIDUCIARY DUTY - VIABILITY OF CAUSE OF ACTION  
FOR BREACH OF FIDUCIARY DUTY AGAINST PRIEST THAT PROVIDED  
MARRIAGE COUNSELING TO A WOMAN WITH WHOM HE ALLEGEDLY HAD AN  
ADULTEROUS AFFAIR;

Supreme Court, Monroe County granted defendants' motions to dismiss the complaint; App. Div. modified by denying the motion of defendant Peter M. DeBellis in part and reinstating the breach of fiduciary duty cause of action of plaintiff Jane Doe against him and by denying the motion of defendants Roman Catholic Diocese of Rochester and Bishop Matthew H. Clark in part and reinstating the negligent retention and supervision claims of plaintiff Jane Doe against defendant Roman Catholic Diocese of Rochester, and affirmed the order as so modified.

MOYNIHAN v STATE OF NEW YORK:

Supreme Court order of 6/27/08; sua sponte examination whether any jurisdictional basis exists for a direct appeal as of right pursuant to CPLR 5601(b)(2);

CRIMES AND CRIMINAL PROCEDURE - SENTENCE - CHALLENGE TO PENAL LAW § 70.45(3) - NON-JUDICIAL OFFICER'S IMPOSITION OF CONDITIONS OF POST-RELEASE SUPERVISION;

Supreme Court, Franklin County declared that Penal Law § 70.45(3) does not unconstitutionally delegate a judicial function to a non-judicial officer and dismissed the declaratory judgment action.

TORIOLA, MATTER OF v SUPREME COURT &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 5/20/08; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other basis exists for an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION, MANDAMUS AND CERTIORARI - CPLR ARTICLE 78 PROCEEDING TO, AMONG OTHER THINGS, COMPEL THE APPELLATE TERM, SECOND AND ELEVENTH JUDICIAL DISTRICTS, TO ANNUL CERTAIN ORDERS ISSUED BY THAT COURT AND CIVIL COURT, QUEENS COUNTY - WHETHER EXTRAORDINARY REMEDIES SOUGHT BY PETITIONER ARE AVAILABLE;

App. Div. granted that branch of the Kahen respondents' cross motion to dismiss the proceeding, granted that branch of the cross motion to enjoin petitioner from making any additional motions or commencing any additional proceedings in that court regarding a particular parcel of real property without leave of court, and otherwise denied the cross motion; denied petitioner's motions for, among other things, entry of judgment against respondents; and dismissed the proceeding.

NEW YORK STATE TUG HILL COMMISSION v NEW YORK STATE DIVISION OF HUMAN RIGHTS et al.:

4<sup>TH</sup> Dept. App. Div. order of 6/6/08; modification and confirmation of determination; Rule 500.11 review pending; CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - AGE - SUBSTANTIAL EVIDENCE SUPPORTING DETERMINATION OF COMMISSIONER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS - BACKPAY AWARD - OFFSET OR DEDUCTION OF PENSION BENEFITS;

App. Div. granted a petition pursuant to Executive Law § 298 in part and modified a determination of respondent NYS Division of Human Rights, which found after a hearing that petitioner unlawfully discriminated against respondent former employee, by reducing the award of compensatory damages for mental anguish and humiliation to \$15,000; confirmed the determination as so modified; granted the cross petitions in part; and directed petitioner to pay respondent former employee backpay and compensatory damages with interest.

