



*State of New York
Court of Appeals*

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NOTICE TO THE BAR

Amicus Curiae Participation

On October 17, 2013, this Court granted leave to appeal in Matter of Sorrentino v Fischer. The case has been placed on the Court's Alternative Procedure for Selected Appeals pursuant to section 500.11 of this Court's Rules of Practice.

In this matter, petitioner was charged with violating a prison disciplinary rule. After a hearing at which petitioner's request to call witnesses was denied, petitioner was found guilty. Petitioner commenced an article 78 proceeding to annul the determination. The Appellate Division annulled the determination and remitted to respondent Commissioner of Corrections and Community Service for a new hearing. The Appellate Division held that petitioner's regulatory right to call witnesses had been violated because the reasons for the witnesses' purported refusals to testify were not evident from the record and the hearing officer had not conducted an independent inquiry (106 AD3d 1309).

Petitioner argues that expungement, rather than remittal for a new hearing, is the proper remedy. Petitioner asserts that he is entitled to the remedy of expungement because the denial of his request to call certain witnesses constituted a constitutional, and not merely a regulatory, violation of his right to present witnesses in his defense.

The Court invites amicus to address the issue whether under the circumstances of this case appellant was entitled to a new hearing or expungement.

Amicus motions must comply with section 500.23 of the Court's Rules of Practice. Particular attention should be paid to section 500.23(a)(2) of the Rules. The text of the Rule is available on the Court's website at:

<http://www.courts.state.ny.us/ctapps/500rules.htm.#Amicus>

Questions may be directed by telephone to the Clerk's Office at (518) 455-7705.