

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**December 28, 2018 through January 3, 2019**

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. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**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.**

CHAMBERLAIN et al. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.:

3<sup>RD</sup> Dept. App. Div. order of 11/1/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Taxation--Personal Income Tax--Taxpayers who were domiciled in Connecticut and also had a residence and worked in New York City were determined to be "statutory residents" of New York State and New York City during the relevant tax periods who should have filed New York Resident Income Tax Returns without any credit for taxes paid to Connecticut--taxpayers claim that New York's residency scheme pursuant to Tax Law §§ 605(b)(1)(B), 612 and 620 violates the United States Commerce Clause as double taxation; summary judgment;**

Supreme Court, Albany County, among other things, granted defendants' motion for summary judgment dismissing the complaint; App. Div. affirmed.

EDELMAN et al. v NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/26/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; **Taxation--Personal Income Tax--Taxpayers who were domiciled in Connecticut and also had a residence and worked in New York State were determined to be "statutory residents" of New York State during the relevant tax periods who should have filed New York Resident Income Tax Returns without any credit for taxes paid to Connecticut on their intangible income--taxpayers claim that New York's residency scheme pursuant to Tax Law §§ 605(b)(1)(B) results in double taxation in violation of the United States Commerce Clause; dismissal and nonsuit;** Supreme Court, New York County, granted defendants' motion to dismiss the complaint for failure to state a cause of action, and denied plaintiffs' motion to convert defendants' motion into a motion for summary judgment pursuant to CPLR 3211(c); App Div. affirmed.

MISTRETTA, MATTER OF v KANE, et al.:

2<sup>ND</sup> Dept. App. Div. judgment of 6/8/98; confirmation of determination; sua sponte examination whether the appeal taken as of right was timely taken and whether a substantial constitutional question is directly involved to support an appeal as of right; **Proceeding Against Body or Officer--Dismissal of Petition--CPLR article 78 proceeding brought by police officer suspended for one year;** App. Div. confirmed the 7/3/97 determination of respondent Commissioner of Police of the Nassau County Police Department which, after a hearing, found that petitioner was guilty of three of five charges and specifications and suspended him from the position of Police Officer, without pay, for a period of one year, and dismissed the proceeding on the merits.

PETTUS v BOARD OF DIRECTORS, OWNERS 800 GRAND CONCOURSE:

Civil Court of the City of New York, Bronx County, decision of 12/17/18; denial of request to file claim; sua sponte examination whether any jurisdictional basis exists for an appeal as of right; **Courts--Vexatious Pro Se Litigation--Small Claims Part--Permission required to file papers;**

Civil Court of the City of New York, Bronx County, on proposed notice of motion requesting permission to file papers in support of a claim (after dismissal of prior claims with direction to the clerk of the court not to accept new filings by claimant without permission from the court), stated that the proposed motion fails to state any recognizable relief, and ordered that claimant may not use the Small Claims Part to prosecute the claim.

VELEZ (JOSE), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 8/8/18; affirmance; leave to appeal granted by Fahey, J., 12/19/18;

**Crimes--Evidence--DNA Identification Tests--Whether electronic raw data underlying results of DNA test conducted by the New York City Office of the Chief Medical Examiner is discoverable in a criminal proceeding;**

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of burglary in the second degree, petit larceny, and criminal mischief in the fourth degree, and imposed sentence; App. Div. affirmed.