

COURT OF APPEALS NEW FILINGS

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

May 22, 2015 through May 28, 2015

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.

BROWNLEE, MATTER OF v ANNUCCI et al.:

4TH Dept. App. Div. order of 5/12/15; dismissal of motion; sua sponte examination whether the App. Div. order finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
APPEAL - CHALLENGE TO ORDER DISMISSING AS PREMATURE UNDER 22 NYCRR 1000.13(f) PETITIONER'S MOTION FOR AN EXTENSION OF TIME TO PERFECT AN APPEAL FROM A 1/12/15 SUPREME COURT ORDER;
App. Div. dismissed as premature petitioner's motion for an extension of time to perfect the appeal taken from an order of Supreme Court, Seneca County, entered on 1/12/15.

DAVIDSON v STATE OF NEW YORK:

3RD Dept. App. Div. order of 3/11/15; dismissal of motion; sua sponte examination whether the App. Div. order finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEALS - APPELLATE DIVISION - DISMISSAL OF MOTION FOR POOR PERSON RELIEF AND ASSIGNMENT OF COUNSEL;

Court of Claims granted defendant's motion to dismiss the claim and dismissed the claim; App. Div. dismissed appellant's motion for poor person relief and assignment of counsel on the ground that the appeal was previously dismissed for failure to timely perfect.

COUNTY OF GENESEE, MATTER OF v SHAH:

4TH Dept. App. Div. order of 5/1/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONER AND REIMBURSE PETITIONER FOR THOSE EXPENDITURES;

Supreme Court, Genesee County, in a CPLR article 78 proceeding and a declaratory judgment action, among other things, directed respondents-defendants to pay petitioner-plaintiff's claims for reimbursement of overburden expenditures; App. Div. modified the judgment by denying the petition-complaint in its entirety and granting judgment in favor of respondents-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of section 1 of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional, and affirmed the judgment as modified.

COUNTY OF ONEIDA, MATTER OF v SHAH:

4TH Dept. App. Div. order of 5/1/15; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PARTIES - CAPACITY TO SUE - PROCEEDING SEEKING REIMBURSEMENT FOR MEDICAID OVERBURDEN EXPENDITURES - WHETHER COUNTIES ARE PERSONS WITHIN THE MEANING OF THE STATE AND FEDERAL CONSTITUTIONS SO THAT THEY MAY RAISE DUE PROCESS CLAIMS AGAINST THE STATE; PETITIONER'S ENTITLEMENT TO RELIEF IN THE NATURE OF MANDAMUS, DIRECTING RESPONDENTS TO SEARCH THEIR RECORDS, LOCATE ALL UNREIMBURSED CLAIMS FOR OVERBURDEN EXPENDITURES MADE BY PETITIONER AND REIMBURSE PETITIONER FOR THOSE EXPENDITURES;

Supreme Court, Oneida County, in a CPLR article 78 proceeding and a declaratory judgment action, among other things, directed respondents-defendants to pay petitioner-plaintiff's pending claims for reimbursement of overburden expenditures in the amount of \$3,123,878.56; App. Div. modified by denying the petition-complaint in its entirety and granting judgment in favor of respondents-defendants as follows: It is ADJUDGED and DECLARED that section 61 of part D of section 1 of chapter 56 of the Laws of 2012 has not been shown to be unconstitutional, and affirmed the judgment as modified.

HOWARD (QUANAPARKER), PEOPLE v:

4TH Dept. App. Div. order of 2/6/15; affirmance; leave to appeal granted by Court of Appeals, 5/12/15;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) WHETHER THE COURTS BELOW ERRED IN DECLINING TO DEPART FROM THE SERIOUS PHYSICAL INJURY OVERRIDE'S PRESUMPTIVE LEVEL THREE RISK DESIGNATION;

County Court, Erie County, determined that defendant is a level 3 risk pursuant to SORA; App. Div. affirmed.

LEE, MATTER OF v PEOPLE OF THE STATE OF NEW YORK:

1ST Dept. App. Div. judgment of 5/7/15; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO APPELLATE DIVISION ORDER DENYING APPLICATION PURSUANT TO CPLR ARTICLE 78 AND DISMISSING THE PETITION - ALLEGED REQUIREMENT THAT PROSECUTOR INFORM GRAND JURY AND COURT OF FINDINGS OF FIREARMS DISCHARGE REVIEW BOARD;

App. Div. denied petitioner's application pursuant to CPLR article 78 and dismissed the petition.

POPE v CITY OF NEW YORK:

1ST Dept. App. Div. order of 3/19/15 and Supreme Court, New York County, order of 8/12/14; sua sponte examination whether the 3/19/15 order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; and whether the 8/12/14 Supreme Court order appealed from finally determines the action within the meaning of the Constitution and whether the only question involved on the appeal is the validity of a statutory provision of the State or of the United States under the Constitution of the State or the United States;

APPEAL - POOR PERSON - WHETHER THE APPELLATE DIVISION ERRED IN DENYING PLAINTIFF'S MOTION FOR POOR PERSON RELIEF;

Supreme Court, New York County, granted plaintiff's motion to the extent of directing that defendant produce certain individuals for deposition within 60 days, and granted defendant's motion to the extent of striking the language from a 3/4/14 order that stated "court reporter to be provided by the City and shall be deducted from any recovery that is recovered by plaintiff in this matter due to plaintiff's poor person status," and directing that plaintiff bear the expenses associated with the depositions; App. Div. denied plaintiff's motion for leave to prosecute, as a poor person, the appeals from the orders of Supreme Court entered on or about 3/4/14 and 8/12/14, respectively, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for other relief.