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COURT OF APPEALS NEW FILINGS

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

January 24, 2020 through January 30, 2020

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.

ARROYO, MATTER OF v O'NEILL, &c., et al.:
1ST Dept. App. Div. order of 9/17/19; modification with dissents; leave to appeal granted by App. Div., 12/26/19; Rule 500.11 review pending;
Civil Service--Termination of Employment--Whether the penalty of termination and forfeiture of petitioner's retirement benefits is so disproportionate to misconduct as to shock the conscience;
Supreme Court, New York County, transferred the CPLR article 78 proceeding to the App. Div.; App. Div. modified, to vacate the penalty of dismissal and forfeiture of petitioner's retirement benefits, and remanded the proceeding to respondents for determination of a lesser penalty, and otherwise confirmed the determination.

BISONO (JOSE L.), PEOPLE v:
2ND Dept. App. Div. order of 10/23/19; affirmance; leave to appeal granted by Fahey, J., 1/2/20; Rule 500.11 review pending;
Crimes--Appeal--Whether defendant validly waived the right to appeal;
Supreme Court, Queens County, imposed 5/26/16, upon his plea of guilty; App. Div. affirmed.

COHEN v COHEN:
2ND Dept. App. Div. order of 11/20/19; modification; sua sponte examination of whether the 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;
Parent, Child and Family--Custody--Whether requiring noncustodial parent to make all reasonable efforts to ensure children's compliance with religious requirements violates the free exercise, establishment, and due process clauses of the First and Fourth Amendments of the U.S. Constitution--Whether reasonable efforts condition lacks a sound and substantial basis in the record;
Supreme Court, Rockland County, (7/18/18) judgment of divorce; App. Div. modified.

DEEM ex rel. M.D. AND N.D. v DiMELLA-DEEM:
2ND Dept. App. Div. paper of 1/7/20; sua sponte examination of whether any jurisdictional basis exists for an appeal as of right;
Appeal--Appealable paper;
Justice of the App. Div. declined to sign proposed order to show cause.

HIMMELSTEIN, McCONNELL, GRIBBEN, DONOGHUE & JOSEPH, LLP, et al. v MATTHEW BENDER & COMPANY, INC, &c.:
1ST Dept. App. Div. order of 5/2/19; affirmance; leave to appeal granted by Court of Appeals, 1/14/20;
Consumer Protection--Deceptive Acts and Practices--Whether plaintiffs stated a cause of action under General Business Law § 349 where the only injury alleged to have resulted from defendant's allegedly deceptive business practices is the amount that plaintiffs paid for the product; Dismissal--Complaint--Whether plaintiffs stated a cause of action for breach of contract, breach of express warranty, or breach of implied covenant of good faith and fair dealing;
Supreme Court, New York County, granted defendant's motion to dismiss the complaint pursuant to CPLR 3211(a); App. Div. affirmed.