COURT OF APPEALS NEW FILINGS

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

January 30, 2015 through February 5, 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.

DANIEL (SPARKLE), PEOPLE v:
1ST Dept. App. Div. order of 11/6/14; reversal; leave to appeal granted by Clark, J., 1/22/15;
CRIMES - CONFESSION - CUSTODIAL INTERROGATION - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT STATEMENTS DEFENDANT MADE FOLLOWING THE ADMINISTRATION OF MIRANDA WARNINGS HAD TO BE SUPPRESSED BECAUSE THEY WERE THE RESULT OF A CONTINUING CUSTODIAL INTERROGATION THAT BEGAN BEFORE THE WARNINGS WERE ADMINISTERED AND CONTINUED WITHOUT A PRONOUNCED BREAK;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of murder in the second degree and sentenced her to a term of 25 years to life; App. Div. reversed, granted defendant's motion to suppress statements and remanded the matter for a new trial.

KIRSCHNER, MATTER OF v FISHER:
1ST Dept. App. Div. order of 5/20/14; affirmance; leave to appeal granted by Court of Appeals, 1/20/15;
TRUSTS - CONSTRUCTION - GRANTOR RETAINED ANNUITY TRUSTS (GRATs) - FORMULA CLAUSE - APPLICABILITY AND INTERPRETATION OF EPTL 2-1.13(a)(1) - RESORT TO STATUTORY HISTORY - WHETHER EPTL 2-1.13(a)(1) APPLIES TO DISPOSITIONS BEYOND THOSE "CREATED WITH THE SPECIFIC GOAL OF TAKING ADVANTAGE OF SPOUSAL EXEMPTIONS BASED ON THE FEDERAL ESTATE TAX"; WHETHER THE COURTS BELOW CORRECTLY HELD THAT THE FRACTIONAL SHARE PROVISION IN THE GRATs AT ISSUE WAS UNAMBIGUOUS, THAT EPTL 2-1.13 WAS INAPPLICABLE, THAT THE VALUE OF TRUST ASSETS "INCLUDABLE IN THE GRANTOR'S GROSS ESTATE FOR [F]EDERAL ESTATE TAX PURPOSES" AND THUS REQUIRED TO BE DISTRIBUTED PURSUANT TO THE GRANTOR'S WILL WAS ZERO, WHERE THE CO-EXECUTORS OF GRANTOR'S ESTATE ELECTED NOT TO PAY ESTATE TAX, AS PERMITTED UNDER PERTINENT LEGISLATION, AND THAT ALL TRUST ASSETS THEREFORE HAD TO BE DIVIDED EQUALLY BETWEEN THE GRANTOR'S THREE CHILDREN;
Surrogate's Court, New York County, construed formula clauses in trust agreements relating to two grantor retained annuity trusts (GRATs) to require that the remaining assets in the GRATs pass in equal shares to grantor's three children; App. Div. affirmed.

MAGGIPINTO, AN ATTORNEY, MATTER OF:
2ND Dept. App. Div. order of 12/10/14; suspension; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CLAIMED DUE PROCESS AND EQUAL PROTECTION VIOLATIONS;
App. Div., denied attorney's motion to adjourn indefinitely the continued hearing of the disciplinary proceeding until after August 31, 2013 and, thereafter, among other things, suspended attorney from the practice of law for five years, commencing 1/9/15.

NYC C.L.A.S.H, INC., MATTER OF v NEW YORK STATE OFFICE OF PARKS, RECREATION and HISTORIC PRESERVATION, et al.:
3RD Dept. App. Div. order of 12/31/14; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ADMINISTRATIVE LAW - VALIDITY OF REGULATION - SEPARATION OF POWERS - REGULATION EXCEEDING DELEGATED AUTHORITY - WHETHER RESPONDENT NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION EXCEEDED ITS DELEGATED AUTHORITY, AND THUS VIOLATED THE SEPARATION OF POWERS DOCTRINE, BY PROMULGATING A RULE ESTABLISHING SMOKE-FREE AREAS IN CERTAIN OUTDOOR LOCATIONS UNDER ITS JURISDICTION;
Supreme Court, Albany County, partially granted petitioner's application to, among other things, declare invalid 9 NYCRR 386.1; App. Div. modified by reversing so much of the judgment as partially granted petitioner's application, dismissed the petition, and declared that 9 NYCRR 386.1 is not unconstitutional.

PARSON, JR. (ANTHONY), PEOPLE v:
4TH Dept. App. Div. order of 11/21/14; affirmance; leave to appeal granted by Fahey, J., 1/21/15;
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - FAILURE TO ADVANCE MORE VIGOROUS CHALLENGE TO POLICE OFFICER'S TESTIMONY AT SUPPRESSION HEARING REGARDING REASON FOR STOPPING DEFENDANT'S VEHICLE - STOP FOR ALLEGED VIOLATIONS OF VEHICLE AND TRAFFIC LAW § 375(22) AND (30); UNLAWFUL SEARCH AND SEIZURE - CHALLENGE TO LAWFUL BASIS FOR STOP OF DEFENDANT'S VEHICLE AND SEARCH OF HIS PERSON AND HIS CAR - WHETHER STATEMENTS MADE BY DEFENDANT SHOULD HAVE BEEN SUPPRESSED;
County Court, Erie County, convicted defendant, upon his guilty plea, of criminal possession of a weapon in the second degree; App. Div. affirmed.

SOLOMON R., MATTER OF (ANONYMOUS)
2ND Dept. App. Div. order of 12/17/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the proceeding within the meaning of the Constitution;
GUARDIAN AND WARD - REMOVAL OF GUARDIAN - ALLEGATIONS OF MISCONDUCT CONCLUSORY OR MINOR - WHETHER A GUARDIAN SHOULD BE REMOVED IMMEDIATELY DUE TO CLAIMED FAILURE TO COMPLY WITH THE STATUTORY PERIODIC REPORTING REQUIREMENT; WHETHER A HEARING IS NECESSITATED ON THE INCAPACITATED PERSON'S CONDITION; TRUSTS - CONSTRUCTIVE TRUST - WHETHER THERE WAS A BASIS TO IMPOSE A CONSTRUCTIVE TRUST ON ASSETS TRANSFERRED TO WARD'S FAMILY;
Supreme Court, Queens County, denied nonparty Usher P.'s motion to remove respondent Michael R. as guardian of the person and property of Solomon R. pursuant to Mental Hygiene Law § 81.35, to impose a constructive trust on certain funds of Solomon R. that were transferred to Solomon R.'s family pursuant to a 9/29/05 order of the same court, and for a hearing on the issue of the adequacy of the care being provided to Solomon R.; App. Div. affirmed.

SMITH (CHARLES), PEOPLE v:
1ST Dept. App. Div. order of 11/13/14; affirmance; leave to appeal granted by Pigott, J., 1/27/15;
CRIMES - TRIAL - CROSS-EXAMINATION OF POLICE WITNESSES - USE OF FACTUAL ALLEGATIONS IN FEDERAL CIVIL RIGHTS LAWSUITS AGAINST ARRESTING OFFICERS TO SHOW THAT OFFICERS WERE ACCUSED OF FABRICATING CHARGES IN DRUG SALE CASES SIMILAR TO DEFENDANT'S CASE - LIMITATION OF CROSS EXAMINATION BASED UPON IRRELEVANT OR COLLATERAL MATTERS; INSTRUCTIONS - CIRCUMSTANTIAL EVIDENCE CHARGE - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT THE TRIAL COURT PROPERLY DECLINED TO GIVE A CIRCUMSTANTIAL EVIDENCE CHARGE BECAUSE THE PEOPLE'S CASE WAS NOT BASED ENTIRELY ON CIRCUMSTANTIAL EVIDENCE;

Supreme Court, New York County, convicted defendant, after a jury trial, of resisting arrest, and sentenced him to a term of three months; thereafter, the same court convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree, and sentenced him, as a second drug felony offender, to a term of two years; App. Div. affirmed.

YONAMINE, MATTER OF v NEW YORK CITY POLICE DEPARTMENT, et al.:
1ST Dept. App. Div. order of 10/28/14; affirmance; sua sponte examination whether the Appellate Division order finally determines the proceeding and whether a substantial constitutional question is directly involved to support an appeal as of right;
CONTEMPT - CIVIL CONTEMPT - ORDER REQUIRING CERTIFICATION OF COMPLIANCE WITH FOIL REQUEST - WHETHER PETITIONER FAILED TO DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE, AS REQUIRED FOR A FINDING OF CIVIL CONTEMPT, RESPONDENTS' DISOBEDIENCE WITH A JANUARY 20, 2012 SUPREME COURT ORDER REQUIRING THEM TO CERTIFY THAT THEY HAD DISCLOSED ALL DOCUMENTS RESPONSIVE TO PETITIONER'S FREEDOM OF INFORMATION LAW (FOIL) REQUEST AND THAT A DILIGENT SEARCH HAD BEEN CONDUCTED FOR DOCUMENTS THAT COULD NOT BE LOCATED;
Supreme Court, New York County, denied petitioner's motion to hold respondents in civil contempt for disobedience of a 1/20/12 Supreme Court order that, among other things, required respondents to certify that they had disclosed all documents responsive to petitioner's Freedom of Information Law request and that a diligent search had been conducted for documents that could not be located; App. Div. affirmed.