

COURT OF APPEALS NEW FILINGS

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

February 9, 2018 through February 15, 2018

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.

ADAMO, et al. v CITY OF ALBANY:

3RD Dept. App. Div. order of 12/7/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Contracts--Breach or Performance of Contract--Whether amended complaint stated a claim that defendant City of Albany (the City) breached collective bargaining agreements with police officer unions purportedly granting union retirees and their spouses, including plaintiffs, reimbursement of Medicare Part B premiums; motions and orders--motion to dismiss--whether Supreme Court erred by considering the City's affidavit without treating the City's motion to dismiss as a motion for summary judgment pursuant to CPLR 3211 (c);

Supreme Court, Albany County, granted defendant City's motion to dismiss the amended complaint and dismissed the amended complaint; App. Div. affirmed.

HYRA, MATTER OF v JACOBELLIS, &c., et al.:

2ND Dept. App. Div. order of 3/1/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Proceeding Against Body or Officer--Mandamus--Whether CPLR article 78 proceeding, which sought to compel respondent Justice of the Carmel Town Court to reinstate certain criminal charges formerly pending in that court, was properly dismissed as time barred; alleged equal protection violation and deprivation of the right to the effective assistance of counsel; Supreme Court, Putnam County, denied the petition and dismissed the CPLR article 78 proceeding; App. Div. affirmed.

MASON H., MATTER OF:

3RD Dept. App. Div. order of 10/19/17; affirmance; leave to appeal granted by Court of Appeals, 1/16/18; Rule 500.11 review pending; Parent, Child and Family--Termination of Parental Rights--Whether petitioner failed to meet its burden of proof that respondent abandoned the subject child; petitioner's only witness addressed respondent's failure to communicate with the child, but not whether respondent had any direct contact with the child; Social Services Law § 384-b; Family Court, Broome County, granted petitioner's application, in a proceeding pursuant to Social Services Law § 384-b, to adjudicate the subject child to be abandoned by respondent, and terminated respondent's parental rights; App. Div. affirmed.

McCULLOCH &c., MATTER OF v MELVIN H. &c.:

4TH Dept. App. Div. order of 12/22/17; dismissal of appeal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Appeal--Academic and Moot Questions--Whether the Appellate Division properly dismissed the appeal as moot; constitutional law--due process of law--whether respondent was denied right to due process; mental health--whether respondent was denied meaningful representation in proceeding seeking permission to administer medication to respondent over his objection; Supreme Court, Oneida County, granted petitioner's application for authorization to administer medication to respondent over his objection; App. Div. dismissed the appeal as moot.