

COURT OF APPEALS NEW FILINGS

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

February 23, 2018 through March 1, 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.

ALVAREZ (OMAR), PEOPLE v:

1ST Dept. App. Div. order of 9/28/17; denial of writ of error coram nobis; leave to appeal granted by Wilson, J., 2/8/18;

Crimes--Right to Counsel--Effective Representation--Whether appellate counsel's deficient performance, including failing to request that the Appellate Division reduce defendant's sentence in the interest of justice, deprived defendant of the effective assistance of counsel;

App. Div. denied defendant's application for a writ of error coram nobis.

PEOPLE ex rel. JONES v LEE, &c.:

3RD Dept. App. Div. order of 2/1/18; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Habeas Corpus--When Remedy Available;
Supreme Court, Ulster County, in a proceeding pursuant to CPLR article 70, denied petitioner's application for a writ of habeas corpus.

MATTER OF MANN, AN ATTORNEY (ATTORNEY GRIEVANCE COMMITTEE FOR THE THIRD JUDICIAL DEPARTMENT; MANN):

3RD Dept. App. Div. order 1/18/18; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Attorney and Client--Disciplinary Proceedings--Censure; claimed due process violations and unconstitutionality of Judiciary Law § 90 and 22 NYCRR 1200.7 (New York Rule of Professional Conduct 1.7);
App. Div. granted petitioner Grievance Committee's motion to confirm the Referee's report, denied respondent's cross motion to disaffirm the report, deemed established respondent's professional misconduct as set forth in the petition of charges, and censured respondent.

MATTER OF EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION (TERWILLIGER, &c., v BEAZER EAST, INC., &c, et al.):

4TH Dept. App. Div. order of 5/5/17; reversal; leave to appeal granted by Court of Appeals, 2/15/18;
Products Liability--Exposure to Toxic Substances--Injuries to decedent exposed to asbestos and coke oven emissions while employed at the Bethlehem Steel plant--whether the coke oven batteries constructed at the Bethlehem Steel plant were “products” subject to products liability theories rather than structures resulting from performance of a contract for construction services; negligence--duty to warn about product hazards; summary judgment;
Supreme Court, Erie County, denied the motion of defendant Honeywell International, Inc., successor in interest to the Wilputte Coke Oven Division of Allied Chemical Corporation (Honeywell), for summary judgment dismissing the complaint against it; App. Div. reversed, granted defendant Honeywell's motion for summary judgment and dismissed the complaint against it.