

COURT OF APPEALS NEW FILINGS

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

March 1 through March 7, 2019

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.

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. et al. v CUOMO, &c., et al.:
3RD Dept. App. Div. orders of 12/27/18, 12/19/18, 11/13/18, 10/23/18 and 8/7/18; denial of various motions in whole or in part, and affirmance of the Supreme Court order; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the App. Div. orders of 12/19/18, 11/13/18, 10/23/18 and 8/7/18 finally determine the action within the meaning of the Constitution; **Constitutional Law--Appropriations--Action seeking a declaratory judgment that the bill establishing the budgets for the Legislature and the Judiciary for the 2016-2017 fiscal year was unconstitutional, and seeking an injunction permanently enjoining respondents from making certain disbursements under the bill, including judicial salary increases;**

Supreme Court, Albany County, among other things, granted defendants' cross motion for summary judgment on plaintiffs' only remaining claim; App. Div. denied various motions pertaining to the appeal and then affirmed the Supreme Court order.

CITY OF NEW YORK v TRI-RAIL CONSTRUCTION, INC., et al.:

1ST Dept. App. Div. order of 7/3/18; reversal; leave to appeal granted by Court of Appeals, 2/21/19; Rule 500.11 review pending;

Parties--Capacity to Sue--Whether plaintiff City of New York has capacity to sue for negligent destruction of property; City sought money damages for injury to trees caused by defendants;

Supreme Court, New York County, denied defendants' motion to dismiss the complaint; App. Div. reversed and granted the motion to dismiss the complaint.

HOLZ (DAVID M.), PEOPLE v:

4TH Dept. App. Div. order of 12/21/18; affirmance; leave to appeal granted by Whalen, J., 2/25/19;

Crimes--Appeal--Whether Supreme Court's denial of suppression of evidence relating to a burglary count to which defendant did not plead guilty was reviewable on appeal from a judgment rendered on separate burglary count charged in the same indictment; application of CPL 710.70(2);

Supreme Court, Monroe County, convicted defendant of burglary in the second degree; App. Div. affirmed.

JOHNSON v BILOW:

3RD Dept. App. Div. order of 2/1/19; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Appeal--Appealable Paper--Order denying motion for poor person relief;
App. Div. denied the motion for permission to proceed as a poor person.

JOHNSON v UHLER, &c.:

Supreme Court, Franklin County, order of 2/11/19; denial of motion; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any basis exists for an appeal as of right from the Supreme Court;

Habeas Corpus--Petition--Motion for poor person relief;

Supreme Court denied petitioner's motion for poor person status.

LYNCH, &c., et al. v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. order of 6/28/18; reversal; leave to appeal granted by Court of Appeals, 2/19/19;

Civil Service--Retirement and Pension Benefits--Whether police officers employed by the New York City Police Department who are tier 3 and tier 3 revised plan members of the New York City Police Pension Fund are eligible for the child care leave credit set forth in Administrative Code § 13-218(h); summary judgment; declaratory judgment;

Supreme Court, New York County, granted plaintiff's motion for summary judgment to the extent of declaring that defendants violated Administrative Code of City of NY § 13-218(h); App. Div. reversed, denied plaintiff's motion for summary judgment, and granted defendants' cross motion for summary judgment dismissing the complaint.

PEYTON, MATTER OF v NEW YORK CITY BOARD OF STANDARDS AND APPEALS:

1ST Dept. App. Div. order of 10/16/18; reversal; leave to appeal granted by App. Div., 2/21/19;

Administrative Law--Collateral Estoppel--Whether doctrine of collateral estoppel barred CPLR article 78 proceeding challenging respondent New York City Board of Standards and Appeals' resolution upholding New York City Department of Buildings' decision granting permit for construction of a nursing home on multiple-building zoning lot where petitioners reside; Municipal Corporations--Zoning--Whether respondent erred in calculating zoning lot's open space ratio by including as open space roof-top garden to which petitioners did not have access;
Supreme Court, New York County, denied the petition and dismissed the CPLR article 78 proceeding; App. Div. reversed and granted the petition to the extent of annulling the resolution and denying the permit.