

COURT OF APPEALS NEW FILINGS

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

March 23, 2018 through March 29, 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.

OBOT v DENNIS EVCHICH AGENCY, INC.:

4TH Dept. App. Div. order of 2/2/18; affirmance; sua sponte examination 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;

Courts--Small Claims--Whether Town Court properly dismissed plaintiff's claim for failure to sue the proper party;

Amherst Town Court, judgment dismissed plaintiff's claim and dismissed defendant's counterclaim; County Court, Erie County, affirmed; App. Div. affirmed.

PATOUHAS, MATTER OF v COLANGELO, &c., et al.:

2ND Dept. App. Div. order of 6/7/17; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
Proceeding Against Body or Officer--Prohibition--In proceeding seeking to prohibit respondent Justice of Supreme Court, Westchester County, from presiding over divorce action pending in that court, and from enforcing certain orders issued in the action, whether petitioner established a clear legal right to the relief sought; alleged due process violation;

App. Div. denied the petition and dismissed the CPLR article 78 proceeding.

WEISSBROD GURVEY v STATE OF NEW YORK, et al.:

1ST Dept. App. Div. order of 2/20/18; dismissal; sua sponte examination 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;

Appeal--Dismissal--Whether the Appellate Division properly dismissed the appeal for failure to timely perfect; alleged deprivation of plaintiff's constitutional rights under the First, Fifth and Fourteenth Amendments;

Supreme Court, New York County, among other things, granted certain defendants' motions to dismiss the complaint insofar as asserted against them and denied plaintiff's motions for various relief; App. Div., among other things, granted defendants' motion to dismiss plaintiff's appeal from failure to timely perfect.

WILLIAMS et al. v BEEMILLER, INC., &c., et al.:

4TH Dept. App. Div. order of 2/9/18; reversal;

Courts--Jurisdiction--Long Arm Jurisdiction--Whether exercise of personal jurisdiction over defendant under New York's long-arm statute (see CPLR 302[a][3]) comports with federal due process; defendant, out-of-state dealer of firearms, sold a gun in Ohio that was transported to New York and used in a shooting that injured plaintiff; whether jurisdiction over defendant can be obtained under an agency or alter ego theory;

Supreme Court, Erie County, denied the motion of defendant Brown for summary judgment dismissing the first amended complaint against him; App. Div. reversed, granted the motion, and dismissed the first amended complaint against defendant Brown.