

COURT OF APPEALS NEW FILINGS

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

May 4, 2018 through May 10, 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.

CLARK, &c., MATTER OF v VILLEGAS, &c.:

1ST Dept. App. Div. order of 8/15/17; leave to appeal granted by Court of Appeals, 3/29/18;

Proceeding Against Body or Officer--Prohibition--whether Appellate Division properly granted writ of prohibition to prohibit enforcement of a Supreme Court order that directed Department of Corrections and Community Supervision to credit respondent with 1,282 days of jail time; whether CPLR article 78 proceeding is proper vehicle to challenge jail time credit calculation;

App. Div. granted a CPLR article 78 petition to prohibit the enforcement of an order of Supreme Court, Bronx County, which ordered respondent New York State Department of Corrections and Community Supervision to credit respondent Dewayne Robinson with 1,282 days of jail time.

JOHNSON v DAVID, &c.:

1ST Dept. App. Div. order of 4/3/18; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Appeal--Appellate Division--Motion for poor person and other relief;

App. Div. denied plaintiff's motion for leave to prosecute the appeal as a poor person, for leave to have the appeal heard on the original record and upon a reproduced appellant's brief, and for related relief.

JOHNSON, MATTER OF v ECKERT, &c.:

4TH Dept. App. Div. order of 11/9/17; confirmed determination; sua sponte examination whether (1) the 3/16/18 App. Div. order finally determines the proceeding within the meaning of the Constitution; and (2) whether a substantial constitutional question is directly involved in the 11/9/7 App. Div. order to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--CPLR article 78 proceeding seeking to annul determination, following a tier II hearing, that petitioner violated certain inmate rules; prisoner's right to refuse medical treatment; alleged due process violation;

Supreme Court, Erie County, transferred the CPLR article 78 proceeding to the App. Div.; App. Div. confirmed a determination of respondent finding that petitioner had violated various inmate rules, and dismissed the CPLR article 78 proceeding.

JOHNSTON v JOHNSTON:

3RD Dept. App. Div. order of 12/21/17; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Husband and Wife and Other Domestic Relationships--Divorce--whether evidence was sufficient to establish cause of action for divorce pursuant to Domestic Relations Law § 170 (7); alleged unconstitutionality of Domestic Relations Law § 170 (7);

Supreme Court, Schoharie County, among other things, awarded husband a divorce and distributed the marital assets; App. Div. affirmed.

WESLOWSKI, MATTER OF v DAY, &c., et al.:

Supreme Court, Rockland County, judgment of 4/4/14; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right, whether the 4/4/18 Supreme Court judgment appealed from finally determines the proceeding within the meaning of the Constitution, and whether the 2/17/16 nonfinal App. Div. order brought up for review necessarily affects the 4/4/18 judgment as required by CPLR 5601(d);

Proceeding Against Body or Officer--Right to Jury Trial--Proceeding pursuant to CPLR article 78 to review a determination of the Rockland County Records Access Appeals Officer regarding disclosure of public records pursuant to the Freedom of Information Law upon petitioner's prepayment of certain estimated costs;
Supreme Court directed the County to deliver various document copies to petitioner, at various prepayment amounts.