

COURT OF APPEALS NEW FILINGS

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

September 7, 2018 through September 13, 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.

BOHLEN, MATTER OF v DiNAPOLI:

3RD Dept. App. Div. order of 8/9/18; annulled determination; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Civil Service--Retirement and Pension Benefits--Whether New York State Retirement System properly excluded longevity allowance payments from petitioners' final average salaries in calculating retirement benefits; application of Retirement and Social Security Law § 431;

App. Div. annulled the determination, granted the CPLR article 8 petition, and remitted the matter to respondents for further proceedings.

SMITH (SAMUEL J.), PEOPLE v:

4TH Dept. App. Div. order of 6/29/18; affirmance with dissents; leave to appeal granted by Carni, J., 8/17/18;

Crimes--Instructions--Missing witness charge--whether the proponent of a missing witness charge has the initial burden of proving that the missing witness has noncumulative testimony to offer on behalf of the opposing party—only other witness identifying defendant as shooter was the victim; right to counsel—claimed ineffective representation;

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of attempted murder in the second degree, assault in the first degree and criminal use of a firearm in the first degree, and imposed sentence; App. Div. affirmed.