

COURT OF APPEALS NEW FILINGS

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

November 27, 2015 through December 3, 2015

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.

ADIRONDACK HEALTH-UIHLEIN LIVING CENTER, et al., MATTER OF v SHAH, &c., et al.:

Supreme Court, Monroe County, judgment of 10/21/15, bringing up for review 4TH Dept. App. Div. orders of 2/6/15; reversals; sua sponte examination whether the judgment 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;
PROCEEDING AGAINST BODY OR OFFICER - MANDAMUS - CPLR ARTICLE 78
PROCEEDING AND DECLARATORY JUDGMENT ACTION SEEKING TO COMPEL RESPONDENTS TO REIMBURSE PETITIONERS FOR MEDICAID PAYMENTS OWED PURSUANT TO 10 NYCRR 86-2.40(m)(10) AND CHALLENGING THE LEGALITY AND CONSTITUTIONALITY OF THAT REGULATION;

Supreme Court, Monroe County, granted a CPLR article 78 petition, issued a writ of mandamus by which respondents were ordered to effectuate all case mix adjustments to petitioners' Medicaid rates due in January 2013 and July 2013, with an award for petitioners' attorneys' fees to be determined (11/20/13 order); Supreme Court then directed respondents to make future case mix adjustment payments in January and July of each calendar year (2/3/14 order); App. Div. reversed the 11/20/13 order and dismissed those parts of the amended petition seeking to prohibit respondents-defendants from enforcing 10 NYCRR 86-2.40(m)(10); App. Div. reversed the 2/3/14 order and vacated the sixth decretal paragraph; Supreme Court, among other things, vacated its 3/30/15 order, granted petitioner's fee application and awarded petitioners \$75,000 as agreed between the parties, for attorneys' fees.

BETHUNE (JAMAR), PEOPLE v:

2ND Dept. App. Div. order of 7/22/15; affirmance; leave to appeal granted by Fahey, J., 11/13/15;
CRIMES - TRIAL - RESETTLEMENT OF TRIAL TRANSCRIPTS - WHETHER TRIAL JUDGE ERRED IN FAILING TO CONDUCT A RECONSTRUCTION HEARING BEFORE SETTLING THE TRIAL TRANSCRIPT TO ALTER THE COURT'S SUPPLEMENTAL CHARGE TO THE JURY - NO AFFIDAVIT FROM STENOGRAPHER EXPLAINING DISCREPANCY IN TRANSCRIPTION VERSIONS CERTIFIED APPROXIMATELY FIVE YEARS APART - NO SPECIFIC KNOWLEDGE OF DISCREPANCY CIRCUMSTANCES BY TRIAL JUDGE; CLAIMED ERRONEOUS SUPPLEMENTAL JURY INSTRUCTIONS ON THE ISSUE OF INTENT; WHETHER JURY VERDICT FINDING DEFENDANT GUILTY OF INTENTIONAL MURDER IN THE SECOND DEGREE WAS AGAINST THE WEIGHT OF THE EVIDENCE; Supreme Court, Kings County, convicted defendant, upon a jury verdict, of murder in the second degree and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

FLETCHER (CLIFFTON), PEOPLE v:

2ND Dept. App. Div. order of 7/29/15; affirmance with a two-Justice dissent; leave to appeal granted by Hall, J., 11/2/15; Rule 500.11 review pending;
CRIMES - SUPPRESSION HEARING - DEFENDANT SEARCHED AFTER POLICE OFFICER OBSERVED A "RECTANGULAR SHAPE" UNDER DEFENDANT'S CLOTHING WHICH THE OFFICER BELIEVED COULD BE THE "OUTLINE" OF A FIREARM HANDLE - WHETHER CIRCUMSTANCES GAVE RISE TO A REASONABLE SUSPICION TO STOP AND FRISK DEFENDANT; CLAIMED INEFFECTIVE ASSISTANCE OF COUNSEL - TRIAL ATTORNEY FAILED TO CHALLENGE STRIKING OF TWO PROSPECTIVE AFRICAN-AMERICAN JURORS; CLAIMED IMPROPER STATEMENTS BY PROSECUTOR IN SUMMATION; Supreme Court, Kings County, convicted defendant, upon a jury verdict, of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

ESTATE OF GROCHOCKI, MATTER OF (GREENLEAF v NEW YORK STATE OFFICE OF VICTIM SERVICES):

3RD Dept. App. Div. order of 10/16/15; grant 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 - VARIOUS MOTIONS BY PARTIES AT APPELLATE DIVISION; PRELIMINARY INJUNCTION; APPOINTMENT OF GUARDIAN AD LITEM;

Surrogate's Court, Broome County, found effective petitioner's renunciations of his interest in his mother's estate; App. Div. granted motion by respondent New York State Office of Victim Services for preliminary injunction pending appeal, denied petitioner's motion to dismiss the motion for a preliminary injunction and for further relief, denied petitioner's motion for appointment of a guardian ad litem, and granted petitioner's motion to proceed as a poor person only to the extent of waiving filing fees.

MATTER OF KOZIOL, A SUSPENDED ATTORNEY:

3RD Dept. App. Div. order of 10/5/15; confirmation of letter of caution; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - LETTER OF CAUTION - CLAIMED CONSTITUTIONAL VIOLATIONS;

App. Div. confirmed the letter of caution issued by the Committee on Professional Standards and denied attorney's motion for, among other things, review thereof.

STEAM PIPE EXPLOSION AT 41ST STREET AND LEXINGTON AVENUE, MATTER OF (TASSA v TEAM INDUSTRIAL SERVICES, INC.):

1ST Dept. App. Div. order of 4/21/15; modification; leave to appeal granted by App. Div. 10/27/15; Rule 500.11 review pending; DISCLOSURE - DISCOVERY AND INSPECTION - MOTION TO COMPEL INSPECTION OF CONFIDENTIAL SETTLEMENT AGREEMENT - WHETHER DEFENDANT/THIRD PARTY DEFENDANT TEAM INDUSTRIAL SERVICES, INC.'S (TIS) LITIGATION FILES, INCLUDING A CONFIDENTIAL SETTLEMENT AGREEMENT PERTAINING TO AN UNRELATED TEXAS ACTION, WERE "MATERIAL AND NECESSARY" TO THE PROSECUTION BY OR DEFENSE OF DEFENDANTS/THIRD PARTY PLAINTIFFS CONSOLIDATED EDISON, INC. AND CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (COLLECTIVELY, CON ED);

Supreme Court, New York County, denied Con Ed's motion to compel TIS to produce its litigation file pertaining to an unrelated action in Texas, in which TIS was one of several defendants; thereafter, Supreme Court granted Con Ed's motion to renew, and upon renewal, adhered to the previous order (12/9/13 order); App. Div. modified the 12/9/13 order by granting Con Ed's motion to compel.

TODD, MATTER OF v NEW YORK CITY HEALTH AND HOSPITALS CORPORATION
OFFICE OF LEGAL AFFAIRS, CLAIMS DIVISION:

1st Dept. App. Div. order of 6/4/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - NOTICE OF CLAIM - LATE NOTICE - ACTION AGAINST HOSPITAL CENTER - WHETHER SUPREME COURT CONSIDERED THE RELEVANT STATUTORY FACTORS AND EXERCISED ITS DISCRETION IN A PROVIDENT MANNER IN DENYING THE PETITION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM;

Supreme Court, New York County, denied the petition for leave to file a late notice of claim; App. Div. affirmed.