



*State of New York
Court of Appeals*

Vol. 42 - No. 49
12/21/22

*Lisa Le Cours
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

December 9, 2022 through December 15, 2022

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.

MATTER OF COLON v TEACHERS' RETIREMENT SYSTEM:

1st Dept. App. Div. order of 10/25/22; reversal; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right in the order appealed;

Civil Service—Retirement and Pension Benefits—Whether the May 2020 amendments to the Retirement and Social Security Law enacted in response to the COVID-19 pandemic (*see* Retirement and Social Security Law former § 607-I, as added by L 2020, ch 89, § 4), are unconstitutional under the New York State Constitution; whether petitioner was entitled to ordinary death benefits under the statute; whether respondent retirement system properly suspended petitioner's application for ordinary death benefits prior to receiving an application for accidental death benefits;

Supreme Court, New York County, in a proceeding brought under CPLR article 78,

granted the petition to annul respondent's August 10, 2020 determination, which denied petitioner's application for ordinary death benefits under the decedent's pension plan, to the extent of directing respondent to pay the ordinary death benefits to petitioner and to recalculate the accidental death benefits to the decedent's statutory beneficiary; App. Div. reversed, denied petition, and dismissed proceeding.

MATTER OF JAIME v CITY OF NY:

1st Dept. App. Div. order of 5/19/22; affirmance; leave to appeal granted by the Court of Appeals, 11/22/22;

Municipal Corporations—Notice of Claim—When determining whether to grant a petition for leave to serve a late notice of claim under General Municipal Law § 50-e(5), whether “actual knowledge of the essential facts constituting the claim” may be properly imputed to a municipality because its employees are alleged to have committed an intentional tort or witnessed an unintentional tort;

Supreme Court, Bronx County, granted the petition for leave to file a late notice of claim, App. Div. affirmed.

MATTER OF OROZCO v CITY OF NY:

1st Dept. App. Div. order of 12/16/21; affirmance; leave to appeal granted by the Court of Appeals 11/22/22;

Municipal Corporations—Notice of Claim—When determining whether to grant a petition for leave to serve a late notice of claim under General Municipal Law § 50-e(5), whether “actual knowledge of the essential facts constituting the claim” may be properly imputed to a municipality because its employees are alleged to have committed an intentional tort;

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