

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
April 11 through April 17, 2008

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.

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.

DANIELS, MATTER OF v SUPREME COURT, MONROE COUNTY et al.:
sua sponte examination whether an appeal as of right lies where the appeal is not taken from an appealable paper pursuant to CPLR 5512;
CHALLENGE TO ALLEGED FAILURE OF COURT OF ORIGINAL INSTANCE TO DECIDE APPELLANT'S CPLR ARTICLE 78 PETITION;

GARCIA, MATTER OF v SELSKY:

3RD Dept. App. Div. order of 2/21/08; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO APPELLATE DIVISION JUDGMENT CONFIRMING A DETERMINATION THAT PETITIONER VIOLATED PRISON DISCIPLINARY RULES;
App. Div. confirmed a determination that petitioner violated several prison disciplinary rules.

HAWKINS (BRYAN), PEOPLE v:

4TH Dept. App. Div. order of 2/8/08; affirmance with dissents; leave to appeal granted by Scudder, J., 3/31/08;
CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - SUFFICIENCY OF THE EVIDENCE; EVIDENCE - CHAIN OF CUSTODY - ADMISSIBILITY OF BLOOD SAMPLE; ALLEGED SANDOVAL ERROR;
CHALLENGE TO SENTENCE;
Supreme Court, Monroe County convicted defendant, upon a jury verdict, of murder in the second degree (two counts) and burglary in the second degree; App. Div. affirmed.

LEE (JAMES MELVIN) v HON. JUDITH S. KAYE, et al.:

1ST Dept. App. Div. order of 3/20/08; denial of motion to vacate; 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;
MOTIONS AND ORDERS - MOTION TO VACATE PRIOR ORDER;
App. Div. denied petitioner's motion to vacate that court's 3/22/07 order and reinstate the CPLR article 78 proceeding.

LUCIDO v MANCUSO, et al.:

2ND Dept. App. Div. order of 2/1/08; reversal; leave to appeal granted by App. Div., 4/9/08;
NEGLIGENCE - WRONGFUL DEATH CAUSE OF ACTION - WHETHER THE "PALPABLY INSUFFICIENT OR PATENTLY DEVOID OF MERIT" STANDARD APPLIES TO MOTIONS MADE PURSUANT TO CPLR 3025(b) FOR LEAVE TO AMEND A COMPLAINT TO ADD A CAUSE OF ACTION FOR WRONGFUL DEATH OR WHETHER SUCH MOTIONS MUST BE SUPPORTED WITH AN EVIDENTIARY SHOWING BY COMPETENT MEDICAL PROOF THAT A DEFENDANT'S CONDUCT CAUSED THE DECEDENT'S DEATH;
Supreme Court, Westchester County denied that branch of plaintiff's renewed motion which was for leave to amend the complaint, among other things, to add a cause of action alleging wrongful death; App. Div. reversed and granted the motion.

SUFFOLK REGIONAL OTB, MATTER OF, et al. v NEW YORK STATE RACING AND WAGERING BOARD, et al. (AND FOUR OTHER RELATED PROCEEDINGS):
3RD Dept. App. Div. order of 11/29/07; modification and affirmance; leave to appeal granted by Court of Appeals, 3/25/08; HORSE RACING - OFF-TRACK BETTING - SIMULCASTING HORSE RACING - PAYMENTS TO REGIONAL HARNESS TRACKS - VALIDITY OF NEW YORK STATE RACING AND WAGERING BOARD'S "DARK DAY," "SEPARATE CALCULATION," AND "MAINTENANCE OF EFFORT" DETERMINATIONS - RACING, PARI-MUTUEL WAGERING AND BREEDING LAW §§ 1017 AND 1017-a; ADMINISTRATIVE LAW - RULE MAKING - INTERPRETIVE STATEMENTS - WHETHER THE DETERMINATIONS AT ISSUE SHOULD HAVE BEEN ENACTED IN ACCORDANCE WITH THE STATE ADMINISTRATIVE PROCEDURE ACT;
Supreme Court, Albany County dismissed petitioners' applications to review three determinations of respondent New York State Racing and Wagering Board concerning certain payments to be made by petitioners to regional harness tracks; App. Div. modified by reversing so much of the judgment as dismissed that part of the petitions challenging the maintenance of effort determination and the dark day payment determination, granted the petitions and annulled the determinations to that extent and affirmed as so modified.

10 EAST REALTY, LLC, MATTER OF, et al. v VILLAGE OF VALLEY STREAM, et al.:

2ND Dept. App. Div. order of 3/18/08; modification and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - MUNICIPAL PARKING LOT - WHETHER THE "GIFT OR LOAN" CLAUSE OF THE STATE CONSTITUTION (NY CONST ART VIII, § 1) PROHIBITED A VILLAGE FROM TAKING A PURCHASE MONEY MORTGAGE IN CONNECTION WITH ITS SALE OF A MUNICIPAL PARKING LOT TO A PRIVATE ENTITY;
Supreme Court, Nassau County denied a CPLR article 78 petition to review a determination authorizing respondent Incorporated Village of Valley Stream to close on the sale of a municipal parking lot and to enter into a purchase money mortgage with respondent 1 E. Lincoln Realty Corp., and dismissed the proceeding; App. Div. modified by deleting the provision of the judgment denying that branch of the petition which was to annul so much of the determination as authorized respondent Incorporated Village of Valley Stream to enter into a purchase money mortgage with respondent 1 E. Lincoln Realty Corp., and substituting therefor a provision granting that branch of the petition; affirmed the judgment as so modified; and annulled so much of the determination as authorized respondent Incorporated Village of Valley Stream to enter into a purchase money mortgage with respondent 1 E. Lincoln Realty Corp.