

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
October 10 through October 16, 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.

BOTTORFF, MATTER OF v SHAHEEN, et al.:

4TH Dept. App. Div. order of 8/21/08; dismissal; 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;
CHALLENGE TO APPELLATE DIVISION ORDER GRANTING MOTION TO DISMISS AN ORIGINAL CPLR ARTICLE 78 PROCEEDING COMMENCED IN THE APPELLATE DIVISION;
App. Div. granted a motion by respondents Shaheen, Hansell and Swarts to dismiss the CPLR article 78 proceeding, and dismissed the proceeding.

CALLAHAN, et al. v CAREY &c., et al. (AND ANOTHER ACTION):

1ST Dept. App. Div. order of 7/1/08; reversal and denial of motion; leave to appeal granted by App. Div., 9/30/08;

MUNICIPAL CORPORATIONS - SHELTER TERMINATION SANCTION NOTICES ISSUED TO HOMELESS ADULTS - PROVISION OF SUCH NOTICES TO THE LEGAL AID SOCIETY AS COUNSEL FOR THE HOMELESS ADULTS - COMPLIANCE WITH CONSENT DECREE;

Supreme Court, New York County granted plaintiffs' motion to continue prior interim orders requiring the City of New York to furnish plaintiffs' counsel with copies of shelter termination notices at the same time they are issued to residents of homeless shelters; App. Div. reversed and denied plaintiffs' motion.

MARTE (NOEL), PEOPLE v:

2ND Dept. App. Div. order of 6/17/08; affirmance; leave to appeal granted by Pigott, Jr., J., 10/1/08;

CRIMES AND CRIMINAL PROCEDURE - IDENTIFICATION OF DEFENDANT - WHETHER IDENTIFICATION THAT IS NOT THE PRODUCT OF STATE ACTION IS SUBJECT TO SUPPRESSION; SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - LEGALITY OF IMPOSITION OF CONSECUTIVE SENTENCES ON ASSAULT AND ROBBERY COUNTS - APPRENDI v NEW JERSEY (530 US 466);

Supreme Court, Kings County denied, after a hearing, that branch of defendant's omnibus motion which was to suppress identification testimony; thereafter, the same court convicted defendant of assault in the first degree and robbery in the first degree, upon jury verdict, and imposed sentence; App. Div. affirmed.