

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office
July 17 through July 23, 2009

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.

ADAIR, et al. v MUNICIPAL UTILITY COMMISSION OF THE VILLAGE OF BATH, et al.:

4TH Dept. App. Div. order of 6/5/09; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether CPLR 5602 provides a jurisdictional basis for an appeal as of right;

CONTRACT - BREACH OF CONTRACT ACTION AGAINST EMPLOYER BY RETIRED EMPLOYEES ALLEGING IMPROPER CHANGE OF HEALTH INSURANCE COVERAGE - WHETHER RETIREES WERE OBLIGATED TO USE THE GRIEVANCE PROCEDURE UNDER THE COLLECTIVE BARGAINING AGREEMENT; ARBITRATION; DISMISSAL AND NONSUIT;

Supreme Court, Steuben County denied defendants' motion to dismiss the complaint and directed defendants to file and serve an answer to the amended complaint; App. Div. affirmed.

ALEJANDRO (TOMMY), MATTER OF:

1ST Dept. App. Div. order of 6/11/09; disbarment; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER OF DISBARMENT;
App. Div. disbarred attorney.

CHIEF JUDGE OF THE STATE OF NEW YORK et al. v GOVERNOR, et al.:

Supreme Court, New York County order of 6/16/09; dismissal of certain causes of action; sua sponte examination whether appellants are aggrieved parties within the meaning of CPLR 5511 and whether the only question involved on the appeal is the validity of a statutory provision of the state or of the United States;
CONSTITUTIONAL LAW - LEGISLATIVE INACTION IN FUNDING JUDICIAL SALARY INCREASES - COMPENSATION CLAUSE (NY CONSTITUTION ARTICLE VI, § 25[a]) - SEPARATION OF POWERS DOCTRINE;
Supreme Court, as relevant here, declared that plaintiffs' first two causes of action fail to state a viable claim of a constitutional violation, dismissed those causes of action and directed the clerk to enter judgment accordingly.

HUNTER, MATTER OF v COMMISSIONER OF THE DIVISION OF HOUSING AND COMMUNITY RENEWAL:

1ST Dept. App. Div. order of 5/14/09; dismissal of appeal; 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 - DISMISSAL OF APPEAL;
Supreme Court, New York County denied petitioner's CPLR article 78 petition seeking to compel respondent to take certain steps regarding an apartment rented by petitioner, and dismissed the proceeding; App. Div. denied petitioner's motion for reargument of the court's 10/14/08 order denying petitioner's motion for consolidation of the appeal with appeals from any subsequent orders, granted respondent's cross motion to dismiss the appeal, and dismissed the appeal.

HYDE, MATTER OF v WHITNEY (AND ANOTHER PROCEEDING):

3RD Dept. App. Div. order of 4/2/09; affirmance; leave to appeal granted by Court of Appeals, 6/9/09; Rule 500.11 review pending;
TRUSTS - ACCOUNTING - CHALLENGE TO APPELLATE DIVISION ORDER AFFIRMING DENIAL OF MOTION BY NON-OBJECTING TRUST BENEFICIARIES TO HAVE COUNSEL FEES INCURRED BY TRUSTEES IN DEFENDING AGAINST OBJECTIONS TO INTERMEDIATE ACCOUNTINGS MADE BY OTHER TRUST BENEFICIARIES CHARGED SOLELY TO THE OBJECTING BENEFICIARIES' INTERESTS IN THE TRUSTS RATHER THAN TO THE TRUST ASSETS GENERALLY
- SCPA 2110;

Surrogate's Court, Warren County, among other things, denied the cross motion of respondents Mary W. Renz, Franklin Todd Renz, Gavin W. Renz and Mary Eliza Pruyn Renz-Uitti for reallocation of trustees' counsel fees incurred by the trustees in defending against objections to the intermediate accountings brought by respondents Louis H. Whitney, Charlotte P. Whitney and Louis H. Whitney II in proceeding Nos. 1 and 2; thereafter, the same court, judicially settled the intermediate accounts in proceeding Nos. 1 and 2; App. Div. affirmed.

LARABEE v GOVERNOR OF THE STATE OF NEW YORK, et al.:

1ST Dept. App. Div. order of 6/2/09; affirmance of both orders; sua sponte examination whether respondents-appellants are aggrieved parties within the meaning of CPLR 5511; CONSTITUTIONAL LAW - LEGISLATIVE INACTION IN FUNDING JUDICIAL SALARY INCREASES - COMPENSATION CLAUSE (NY CONSTITUTION ARTICLE VI, § 25[a]) - EQUAL PROTECTION OF THE LAWS - SEPARATION OF POWERS DOCTRINE - ALLEGED UNCONSTITUTIONAL PRACTICE OF "LINKAGE" OF CONSIDERATION OF JUDICIAL PAY RAISES WITH UNRELATED MATTERS; DAMAGES - REQUEST FOR DAMAGES IN THE AMOUNT OF COST-OF-LIVING ADJUSTMENTS TO ANNUAL COMPENSATION FOR CERTAIN TIME PERIOD; Supreme Court, New York County, among other things, granted defendants' motion to dismiss the complaint to the extent of dismissing the complaint as against defendant Governor and dismissing plaintiff's first cause of action as against the remaining defendants, and denied the motion to the extent it sought dismissal of the second cause of action; thereafter, the same court granted plaintiffs' motion for summary judgment on their second cause of action declaring that the remaining defendants through the practice of linkage unconstitutionally abused their power by depriving the Judiciary of any increase in compensation for approximately 10 years and directing that the remaining defendants proceed in good faith to adjust judicial compensation to reflect the increase in the cost of living since 1998, with leave to apply for consideration of other remedies should the remaining defendants fail to act within 90 days; App. Div. affirmed.

H.M. (ANONYMOUS), MATTER OF v E.T. (ANONYMOUS):

2ND Dept. App. Div. order of 5/26/09; reversal with dissents; COURTS - JURISDICTION - WHETHER FAMILY COURT HAS SUBJECT MATTER JURISDICTION UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT (FAMILY COURT ACT ARTICLE 5-B) TO ENTERTAIN A PETITION BROUGHT BY A CHILD'S BIRTH MOTHER AGAINST HER FORMER SAME-SEX PARTNER, WHO LACKS LEGAL TIES TO THE BIRTH MOTHER AND BIOLOGICAL AND LEGAL TIES TO THE CHILD, FOR AN ORDER ADJUDICATING THE FORMER PARTNER A PARENT OF THE CHILD AND DIRECTING HER TO PAY CHILD SUPPORT;

Family Court, Rockland County Support Magistrate order dismissing petition (the 3/7/07 order); Family Court (1) granted petitioner's objections to the 3/7/07 order and reversed that order (the 9/11/07 order) and (2) estopped respondent from denying her responsibility for support of the infant, declared respondent a parent of the child for that purpose and referred the matter to Support Magistrate for a hearing to determine the child support amount (the 3/23/08 order); thereafter, the Support Magistrate set the amount of child support (the 2/9/09 order); App. Div. reversed the 9/11/07 order, denied petitioner's objections, reinstated the 3/7/07 order and vacated the 3/25/08 and 2/9/09 orders.