

COURT OF APPEALS NEW FILINGS

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

**April 22 through April 28, 2011**

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.**

MUNGRO (MICHAEL), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/18/10; affirmance; leave to appeal granted by Jones, J., 3/15/11; Rule 500.11 review pending;  
CRIMES - RIGHT TO SPEEDY TRIAL - POST-READINESS DELAY  
ATTRIBUTABLE TO PEOPLE - PERIOD OF TIME DEFENDANT IS DETAINED IN ANOTHER JURISDICTION WITH PEOPLE'S KNOWLEDGE - PEOPLE'S DILIGENCE IN OBTAINING DEFENDANT'S PRESENCE FROM OHIO FOR TRIAL IN NEW YORK - CPL 30.30(4)(e); ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; SUFFICIENCY OF THE EVIDENCE;  
Erie County Court convicted defendant, upon a jury verdict, of robbery in the first degree; App. Div. affirmed.

TOWN OF OYSTER BAY v KIRKLAND, &c., et al.:

2<sup>ND</sup> Dept. App. Div. order of 2/15/11; modification and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ADMINISTRATIVE LAW - FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT PLAINTIFF'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES SUPPORTED DISMISSAL OF CAUSES OF ACTION SEEKING A DECLARATION THAT (1) PLAINTIFF TOWN WAS NOT A PROPER RESPONDENT AND WAS NOT SUBJECT TO PROVISIONS OF HUMAN RIGHTS LAW IT WAS CHARGED WITH VIOLATING IN AN ADMINISTRATIVE COMPLAINT FILED BY RESPONDENT NEW YORK STATE DIVISION OF HUMAN RIGHTS (DHR) AND (2) THE ADMINISTRATIVE COMPLAINT WAS VOID BECAUSE IT CONSTITUTED REVERSE DISCRIMINATION AGAINST RESIDENTS OF PLAINTIFF TOWN; CIVIL RIGHTS - STATE DIVISION OF HUMAN RIGHTS - CONSTITUTIONALITY OF INVESTIGATIVE AND ADJUDICATIVE POWERS - SUMMARY JUDGMENT DISMISSING OTHER CAUSES OF ACTION - EXECUTIVE LAW § 295(6)(a) AND (b);

Supreme Court, Nassau County, in separate orders, (1) denied plaintiff's motion for a preliminary injunction and granted defendant's motion to dismiss the amended complaint, (2) dismissed the amended complaint, and (3) granted plaintiff's motion for reargument and, upon reargument, adhered to its original determination (2/23/10 order); App. Div.(1) modified the Supreme Court judgment by adding thereto provisions declaring that the New York State Division of Human Rights acted within its authority in initiating the administrative complaint on its own and that Executive Law § 295(6)(a) and (b) are not collectively unconstitutional, and affirmed the judgment as so modified; and (2) affirmed the February 23, 2010 order insofar as appealed from.

STANLEY (DIANE R.), MATTER OF v MATTAR:

Surrogate's Court, Erie County order of 3/17/11; approving amount of settlement, among other things; sua sponte examination whether the order appealed from finally determines the proceedings within the meaning of the Constitution and, if it does, whether a substantial constitutional question is directly involved in the prior nonfinal Appellate Division order(s) to support the appeal taken pursuant to CPLR 5601(d);

CONSTITUTIONAL LAW - FULL FAITH AND CREDIT - WHETHER THE FULL FAITH AND CREDIT CLAUSE OF THE U.S. CONSTITUTION BARRED THE SURROGATE'S COURT FROM REVIEWING A SETTLEMENT AGREEMENT ENTERED INTO IN CONNECTION WITH A WRONGFUL DEATH ACTION IN FLORIDA AND APPROVED BY A FLORIDA STATE COURT, WHERE THE SETTLEMENT AGREEMENT WAS EXPRESSLY CONDITIONED UPON APPROVAL OF BOTH THE FLORIDA COURT AND THE SURROGATE'S COURT;

Surrogate's Court, Erie County, among other things, in separate orders, (1) denied petitioner's request that the court limit its role and that of the guardians ad litem with respect to settlement agreements approved by a Florida state court and expressly made subject to and conditioned upon the approval of the Surrogate's Court, (2) directed that the applications filed by petitioners on June 11, 2009 shall go forward, (3) determined that petitioner's amended pleadings were untimely filed, and (4) granted a guardian ad litem's petition for appointment of other members of his law firm to assist him in performing duties relative to his appointment as guardian ad litem; App. Div. affirmed, in separate orders; thereafter, Surrogate's Court, among other things, approved the amount of the settlement and the allocation of the settlement proceeds, and directed the guardians ad litem to submit final attorney fee submissions and petitioners to respond to such submissions by dates certain.

SULLIVAN v HARNISCH, et al.:

1<sup>ST</sup> Dept. App. Div. order of 12/21/10; modification; leave to appeal granted by App. Div., 4/28/11; Rule 500.11 review pending; EMPLOYMENT RELATIONSHIPS - AT-WILL EMPLOYMENT - CLAIMED WRONGFUL DISCHARGE OF EMPLOYEE WHO MADE INTERNAL INQUIRIES INTO HIS SUPERIOR'S SECURITIES TRADING ACTIVITY - RETALIATION; Supreme Court, New York County denied defendants' motion for summary judgment dismissing plaintiff's second, third, fourth, fifth and eighth causes of action and granted plaintiff's motion pursuant to CPLR 3211(a)(7) to dismiss defendants' first counterclaim; App. Div. modified to the extent of granting defendants' motion to dismiss the second cause of action and denying plaintiff's motion to dismiss the first counterclaim, and otherwise affirmed.

TOWN OF WATERFORD, MATTER OF v NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION:

Supreme Court, Albany County judgment of 4/15/11; RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - EXEMPTIONS - WHETHER FOIL'S DEFINITION OF "AGENCY" LIMITS THE APPLICATION OF THE INTER-AGENCY/INTRA-AGENCY EXEMPTION TO COMMUNICATIONS WITHIN AND BETWEEN STATE AND MUNICIPAL GOVERNMENTAL AGENCIES AND PRECLUDES ITS APPLICATION TO COMMUNICATIONS BETWEEN STATE AND FEDERAL GOVERNMENTAL AGENCIES; Supreme Court, Albany County partially granted petitioner's application, in a CPLR article 78 proceeding, to annul a determination of respondent partially denying petitioner's Freedom of Information Law requests, and otherwise dismissed the

petition; App. Div. modified by reversing so much of the judgment as (1) granted that part of the petitioner's application for disclosure of certain records as not falling within the inter-agency/intra-agency exemption, and (2) dismissed that part of the petitioner's application for disclosure of portions of Records 228 and 239 and the entirety of Records 242 and 243; granted the petition to the extent of disclosing said records; and remitted the matter to Supreme Court for further proceedings not inconsistent with the Court's decision; thereafter, Supreme Court concluded that various specified records qualify as exempt communication under Public Officer's Law § 87(2)(g).

WILLIAMS (MARCELLE E.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. orders of 12/30/10; reversals with dissents; leave to appeal granted by Scudder, J., 3/25/11 (two orders); Rule 500.11 review pending;

CRIMES - SUPPRESSION HEARING - WHETHER MONEY SEIZED FROM DEFENDANT'S POCKET BY A POLICE OFFICER SHOULD HAVE BEEN SUPPRESSED AS FRUIT OF AN UNLAWFUL ARREST; GUILTY PLEA ON SEPARATE INDICTMENT INDUCED BY PROMISE OF SENTENCE TO RUN CONCURRENTLY WITH SENTENCE IMPOSED ON PRIOR CONVICTION; Supreme Court, Monroe County convicted defendant, upon a jury verdict, of burglary in the second degree; App. Div. reversed, granted that part of the defendant's motion seeking to suppress physical evidence and granted a new trial; in a separate judgment, Supreme Court convicted defendant, upon a guilty plea, of criminal possession of a weapon in the third degree; App. Div. vacated the plea and remitted the matter to Supreme Court for further proceedings.