

COURT OF APPEALS NEW FILINGS

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

August 31, 2012 through September 6, 2012

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.

ABREU, MATTER OF v FISCHER (A.D. NO. TP11-01936):

4TH Dept. App. Div. judgment of 6/8/12; confirmation of determinations; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether any other jurisdictional basis exists to support an appeal as of right;

PRISONS AND PRISONERS - DISCIPLINE OF INMATES - CHALLENGE TO ADMINISTRATIVE DETERMINATIONS FINDING THAT PETITIONER VIOLATED VARIOUS INMATE RULES;

App. Div. confirmed respondent's determinations, after Tier III hearings, that petitioner had violated various inmate rules, and dismissed the CPLR article 78 petition.

ROMANELLO v INTESA SANPAOLO, S.P.A and STEFAN:

1ST Dept. App. Div. order of 7/7/12; modification; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - DISABILITY - ALLEGED VIOLATIONS OF NEW YORK STATE HUMAN RIGHTS LAW AND NEW YORK CITY HUMAN RIGHTS LAW - FAILURE TO GRANT INDEFINITE MEDICAL LEAVE - EMPLOYER'S DUTY TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS TO IDENTIFY A REASONABLE ACCOMMODATION - RETALIATION - MOTION TO DISMISS;

Supreme Court, New York County granted defendants' motion to dismiss the first through fifth and eighth and ninth causes of action, and denied the motion as to the seventh cause of action; App. Div. modified to grant the motion as to the seventh cause of action, and otherwise affirmed.

SAPERSTON, MATTER OF v HOLDAWAY:

4TH Dept. App. Div. order of 3/23/12; modification; Rule 500.11 review pending;

PARENT AND CHILD - CUSTODY - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT FAMILY COURT'S DETERMINATION WITH RESPECT TO PRIMARY PHYSICAL CUSTODY LACKS A SOUND AND SUBSTANTIAL BASIS IN THE RECORD; RELOCATION OF CHILD;

Family Court, Erie County granted the parties joint custody of their child and designated father the primary residential parent in Family Court Act article 6 proceeding; App. Div. modified by awarding primary physical custody of the child to mother, and remitted to Family Court for further proceedings to fashion an appropriate visitation schedule; Family Court incorporated Parenting Time/Access Agreement into final order on petition for custody and visitation.