

COURT OF APPEALS NEW FILINGS

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

March 8, 2013 through March 14, 2013

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.

BOARD OF MANAGERS OF FRENCH OAKS CONDOMINIUM, MATTER OF v TOWN OF AMHERST, et al.:

4TH Dept. App. Div. order of 2/1/13; affirmance with dissents; TAXATION - ASSESSMENT - CHALLENGE TO APPRAISAL - NONCOMPLIANCE WITH 22 NYCRR 202.59 - VIOLATIONS OF THE UNIFORM STANDARD PRACTICES OF THE APPRAISAL PROFESSION, ETHICS RULE U-7, AND 19 NYCRR 1106.1 - COURT'S ALLEGED ABUSE OF DISCRETION IN ADOPTING ASSESSMENT BASED ON THE APPRAISAL;

Supreme Court, Erie County, in proceedings pursuant to RPTL article 7, among other things, determined the value of the French Oaks Condominium after a hearing before a referee; App. Div. affirmed.

MITCHEL D. G. (ANONYMOUS), PEOPLE ex rel. v INTERFAITH MEDICAL CENTER:

2ND Dept. App. Div. order of 12/19/12; denial of petition; sua sponte examination whether the matter has been rendered moot by appellant's release from Interfaith Medical Center and whether a substantial constitutional question is directly involved in the App. Div. order, and whether any other jurisdictional basis exists to support an appeal as of right;

HABEAS CORPUS - WHEN REMEDY AVAILABLE - INVOLUNTARY ADMINISTRATION OF ANTI-PSYCHOTIC AND OTHER MEDICATIONS;

App. Div. denied petitioner's application for a writ of habeas corpus.

JOHNSON (SHARMELLE), PEOPLE v:

1ST Dept. App. Div. order of 11/5/12; affirmance; leave to appeal granted by Abdus-Salaam, J., 2/28/13; Rule 500.11 review pending; CRIMES - PLEA OF GUILTY - SUFFICIENCY OF ALLOCUTION - WHETHER DEFENDANT'S PLEA ALLOCUTION NEGATED AN ESSENTIAL ELEMENT OF THE CRIME CHARGED; RAPE IN THE SECOND DEGREE - WHETHER VICTIM WAS "MENTALLY INCAPACITATED" DUE TO THE INFLUENCE OF AN INTOXICATING SUBSTANCE ADMINISTERED TO HER (PENAL LAW §§ 130.30[2] AND 130.00[6]);

Supreme Court, New York County convicted defendant, upon his guilty plea, of rape in the second degree, and sentenced him, as a second felony offender, to a term of four years; App. Div. affirmed.

McCRA Y (TERENCE), PEOPLE v:

3RD Dept. App. Div. order of 1/17/13; affirmance with dissents; leave to appeal granted by McCarthy, J., 3/5/13; CRIMES - DISCLOSURE - WHETHER COUNTY COURT ERRED IN NOT TURNING OVER TO DEFENDANT CERTAIN OF THE RAPE VICTIM'S MENTAL HEALTH RECORDS; EVIDENCE - VICTIM'S PRIOR SEXUAL CONDUCT - CROSS-EXAMINATION ABOUT HYPERSEXUALITY - RAPE SHIELD LAW - LIMITATION OF DEFENSE COUNSEL'S CROSS-EXAMINATION DESIGNED TO ELICIT TESTIMONY ABOUT THE VICTIM'S ERRATIC BEHAVIOR - DENIAL OF MOTION TO COMPEL PROSECUTION TO OBTAIN CERTAIN OF THE VICTIM'S HOSPITALIZATION RECORDS; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - COUNSEL'S FAILURE TO OBJECT TO ADMISSION OF CERTAIN EVIDENCE OR REQUEST LIMITING INSTRUCTIONS; Albany County Court convicted defendant of rape in the first degree; App. Div. affirmed.