

COURT OF APPEALS NEW FILINGS

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

October 18, 2013 through October 24, 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.

DAVIS, et al. v BOEHEIM, et al.:

4TH Dept. App. Div. order of 10/4/13; affirmance with dissents; LIBEL AND SLANDER - OPINIONS - WHETHER STATEMENTS ALLEGED TO HAVE BEEN MADE BY COLLEGE BASKETBALL COACH CONSTITUTE ACTIONABLE STATEMENTS OF FACT OR NONACTIONABLE STATEMENTS OF OPINION; PREANSWER MOTION TO DISMISS COMPLAINT; Supreme Court, Onondaga County, granted defendants' motion to dismiss the complaint, and dismissed the complaint; App. Div. affirmed.

DOERR v GOLDSMITH:

1ST Dept. App. Div. order of 10/3/13; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;
ANIMALS - LIABILITY FOR INJURIES - DOG COLLIDING WITH BICYCLIST - NEGLIGENCE CAUSE OF ACTION AGAINST DOG'S OWNER;
Supreme Court, New York County, denied defendant Smith's motion for summary judgment dismissing the complaint as against her;
App. Div. affirmed.

MOSS (DWIGHT), PEOPLE v:

4TH Dept. App. Div. order of 6/14/13; affirmance; leave to appeal granted by Court of Appeals, 10/15/13; Rule 500.11 review pending;
CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) (CORRECTION LAW ART. 6-c) - WHETHER COURTS BELOW PROPERLY DETERMINED THAT DEFENDANT WAS A PRESUMPTIVE RISK LEVEL THREE OFFENDER BASED ON HIS PRIOR CONVICTIONS - CLAIMED UPWARD DEPARTURE WITHOUT REQUEST FROM THE PEOPLE OR NOTICE TO DEFENDANT;
Supreme Court, Monroe County, determined that defendant is a level three risk pursuant to the Sex Offender Registration Act;
App. Div. affirmed.