

COURT OF APPEALS NEW FILINGS

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

December 6, 2013 through December 12, 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.

CAPPON, MATTER OF v CARBALLADA &c.:

4TH Dept. App. Div. order of 9/27/13; reversal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - CPLR ARTICLE 78 PROCEEDING TO ANNUL RESPONDENT'S DETERMINATION THAT HE VIOLATED ROCHESTER CITY CODE § 90-16(a)(2)(d) WHICH REQUIRES OWNERS OF RENTAL PROPERTIES TO OBTAIN A VALID CERTIFICATE OF OCCUPANCY (CO) WITHIN A PERIOD OF 90 DAYS PRIOR TO THE EXPIRATION OR TERMINATION OF AN EXISTING CO;

Supreme Court, Monroe County granted the petition; App. Div. reversed and dismissed the petition.

GONZALES (JOHN), PEOPLE v:

2ND Dept. App. Div. order of 10/2/13; reversal with dissents; leave to appeal granted by Angiolillo, J., 11/25/13; sua sponte examination whether the App. Div. order of reversal "was on the law alone or upon the law and such facts which, but for the determination of law, would not have led to reversal" (CPL 450.90[2][a]);

CRIMES - ARREST - WARRANTLESS ARREST OF DEFENDANT WHO OPENED HIS APARTMENT DOOR TO SEE WHO WAS KNOCKING AND TRIED TO CLOSE IT WHEN HE SAW IT WAS THE POLICE;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of sexual abuse in the first degree, and imposed sentence; App. Div. reversed, granted that branch of defendant's omnibus motion which was to suppress his statements to law enforcement officials, and ordered a new trial.

HEMPHILL v STATE OF NEW YORK:

Court of Claims judgment of 10/25/13; dismissal; sua sponte examination whether there is a basis for a direct appeal pursuant to CPLR 5601(b)(2);

STATE - CLAIM AGAINST STATE - ACTION TO RECOVER DAMAGES FOR WRONGFUL CONFINEMENT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ARISING FROM CLAIMANT'S ALLEGED 14-DAY CONFINEMENT TO HIS PRISON CELL PENDING DISPOSITION OF CERTAIN DISCIPLINARY CHARGES; PRISONS AND PRISONERS;

Court of Claims dismissed the claim.