

COURT OF APPEALS NEW FILINGS

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

July 29, 2016 through August 4, 2016

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.

DONMEZ, MATTER OF v NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, et al.:

1st Dept. App. Div. order of 5/26/16; dismissal; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
APPEAL - ACADEMIC AND MOOT QUESTIONS - CHALLENGE TO APPELLATE DIVISION ORDER DISMISSING AS MOOT APPEAL CHALLENGING AGENCY DETERMINATION TO SUSPEND PETITIONER'S PEDICAB DRIVER LICENSE FOR FAILURE TO PAY FINES BY A CERTAIN DATE;

Supreme Court, New York County, denied a CPLR article 78 petition challenging the determination of respondent Department of Consumer Affairs to suspend petitioner's pedicab driver license for failure to pay fines, if he did not pay the fines by a certain date, without a further hearing; App. Div. dismissed appeal as moot.

DONMEZ, MATTER OF v NEW YORK CITY DEPARTMENT OF CONSUMER AFFAIRS, et al.:

1ST Dept. App. Div. judgment of 5/26/16 and order of 11/24/15; confirmation of determination, denial of petition and dismissal of proceeding (App. Div. judgment), and partial grant of motion to enlarge record (App. Div. order); sua sponte examination whether a substantial constitutional question is directly involved to support the appeal taken as of right from the Appellate Division judgment and whether the App. Div. order finally determines the proceeding within the meaning of the Constitution;

ADMINISTRATIVE LAW - JUDICIAL REVIEW - VIOLATION OF PEDICAB REGULATIONS - CHALLENGE TO APPELLATE DIVISION JUDGMENT THAT CONFIRMED ADMINISTRATIVE DETERMINATION THAT PETITIONER COMMITTED TWO VIOLATIONS OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK AND IMPOSED A \$500 FINE PER VIOLATION - ALLEGED CONSTITUTIONAL VIOLATIONS CAUSED BY PEDICAB STOPS;

App. Div. granted petitioner's motion to enlarge the record with six items only to the extent of permitting petitioner to file a supplemental record containing the document attached to the moving papers as "Exhibit F"; thereafter, App. Div. confirmed respondent's determination dated 6/28/13, which upheld the decision of the administrative law judge finding, after a hearing, that petitioner committed two violations of the Administrative Code of the City of New York and imposed a fine of \$500 per violation; denied the petition; and, dismissed the proceeding brought pursuant to CPLR article 78.

PASTOR (NATALIO), PEOPLE v:

1ST Dept. App. Div. order of 2/11/16; affirmance; leave to appeal granted by Manzanet-Daniels, J., 7/28/16; Rule 500.11 review pending;

CRIMES - PLEA OF GUILTY - WHETHER PLEA WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE WHERE TRIAL COURT FAILED TO CORRECT DEFENDANT'S COUNSEL'S ASSERTION THAT DEPORTATION OR DENIAL OF NATURALIZATION CONSEQUENCES OF THE PLEA WERE "NOT RELEVANT TO THIS CASE" AND FAILED TO ADVISE DEFENDANT ABOUT A POSSIBLE JUSTIFICATION DEFENSE MENTIONED IN THE PRESENTENCE REPORT;

Supreme Court, Bronx County, convicted defendant, upon his guilty plea, of assault in the second degree, and sentenced him to a term of nine months; App. Div. affirmed.