

COURT OF APPEALS NEW FILINGS

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

**December 16, 2016 through December 22, 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.**

CMRG RESTAURANT GROUP, LLC, d/b/a LARRY FLYNT'S HUSTLER CLUB, et al. V STATE OF NEW YORK, et al.:

1<sup>ST</sup> Dept. App. Div. order of 11/3/16; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

TAXATION - SALES AND USE TAXES - CHALLENGE TO "AMUSEMENT TAX" (TAX LAW § 1105[f][1]) AND "CABARET TAX" (TAX LAW § 1105[f][3]) AS UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED TO PLAINTIFF MEN'S ENTERTAINMENT CLUB;

Supreme Court, New York County, granted defendants' motion to dismiss the complaint, and denied plaintiffs' motion for preliminary and permanent injunctions; App. Div. modified solely to declare Tax Law § 1105(f)(1) and (3) constitutional, and otherwise affirmed.

MATTER OF FLOYD v GLENN GARDENS ASSOCIATES, HPD:

1<sup>ST</sup> Dept. App. Div. order of 9/29/16; denial of motion; sua sponte examination whether the order finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

APPEAL - APPELLATE DIVISION - DENIAL OF MOTION FOR RECONSIDERATION;

Supreme Court, New York County, denied petitioner's CPLR article 78 petition and dismissed the proceeding; App. Div. denied petitioner's motion for reconsideration of the Appellate Division's 6/16/16 order denying her motion for a stay, and denying, with leave to renew, petitioner's application for leave to prosecute the appeal as a poor person.

RAMSARAN (GANESH R.), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 7/14/16; reversal; leave to appeal granted by Pigott, J., 11/28/16; Rule 500.11 review pending;

CRIMES - RIGHT TO COUNSEL - WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR (1) FAILING TO OBJECT TO COMMENTS MADE BY THE PROSECUTOR DURING SUMMATION THAT MISCHARACTERIZED THE NATURE OF DNA EVIDENCE, (2) FAILING TO OBJECT TO IRRELEVANT AND PREJUDICIAL TESTIMONY, AND (3) PRESENTING A CONFUSING SUMMATION;

County Court, Chenango County, convicted defendant of murder in the second degree and imposed sentence; App. Div. reversed and remitted the matter for a new trial.