

COURT OF APPEALS NEW FILINGS

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

October 20, 2017 through October 26, 2017

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.

HUTZENLAUB, MATTER OF v VENETTOZZI, &c., et al.:

3RD Dept. App. Div. order of 8/10/17; confirmation of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Prisons and Prisoners--Discipline of Inmates--Violation of prison rule; whether hearing officer properly denied prisoner's request to call witnesses; alleged due process violations; alleged bias of hearing officer; assistance of counsel; collection of evidence;

Supreme Court, Albany County, transferred the CPLR article 78 proceeding to the App. Div.; App. Div. confirmed the determination of the Commissioner of Corrections and Community Supervision finding petitioner guilty of violating a prison disciplinary rule.

LOBELLO v NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY:

4TH Dept. App. Div. order 7/7/17; modification; leave to appeal granted by App. Div., 9/29/17;

Insurance--Disclaimer of Coverage--Whether the two-year limitations period set forth in the homeowner's insurance policy at issue ran from the date of burglary or from the date the insurer denied coverage for the loss--"date of loss" interpreted as date of claim denial; dismissal of affirmative defense; Supreme Court, Oswego County, among other things, granted in part defendant's cross motion for summary judgment; App. Div. modified by granting that part of plaintiff's motion seeking to dismiss defendant's affirmative defense of expiration of the two-year limitations period set forth in the policy, denying defendant's cross motion in its entirety and reinstating the complaint with respect to the loss of 9/29/09 and granting that part of the plaintiff's motion to compel defendant to produce unredacted claim notes for the 9/24/09 claim through the date of the denial letters, 9/30/11, and as so modified, affirmed.

PALACIOS, MATTER OF v SINGAS, et al.:

2ND Dept. App. Div. judgment of 9/27/17; denial of petition; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; Proceeding against Body or Officer--Prohibition--CPLR article 78 proceeding to prohibit respondents from retrying petitioner in a criminal action entitled People v Jose Palacios, pending in County Court, Nassau County, on the ground that to do so would subject him to double jeopardy; mistrial; alleged gross misconduct of an individual acting on petitioner's behalf --unavailability of complainant at trial; App. Div. denied the CPLR article 78 petition and dismissed the proceeding.