

COURT OF APPEALS NEW FILINGS

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

December 24 through December 30, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

DEPONCEAU, MATTER OF v FISCHER:

3RD Dept. App. Div. order of 12/3/10; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved or any jurisdictional basis otherwise exists to support an appeal as of right;

PRISONS AND PRISONERS - CHALLENGE TO APPELLATE DIVISION ORDER DENYING A MOTION FOR A SUBPOENA DUCES TECUM;
App. Div. denied a motion for a subpoena duces tecum.

METROPOLITAN TAXICAB BOARD OF TRADE v THE NEW YORK CITY TAXI & LIMOUSINE COMMISSION:

1ST Dept. App. Div. order of 3/16/10; affirmance; leave to appeal granted by Court of Appeals, 12/14/10;

MUNICIPAL CORPORATIONS - REGULATION OF TAXICAB BUSINESS - NEW YORK CITY TAXI & LIMOUSINE COMMISSION (TLC) AMENDED RULES (1) ESTABLISHING THE AMOUNT OF VEHICLE LEASE CAPS BY RAISING THE LEASE AMOUNT FOR HYBRID AND FUEL EFFICIENT VEHICLES AND LOWERING THE LEASE AMOUNT FOR NON-FUEL EFFICIENT VEHICLES AND (2) PROVIDING THAT TAXICAB LEASE AMOUNTS MUST BE CALCULATED SO THAT SALES AND RENTAL TAXES OWED BY TAXI DRIVERS ARE INCLUDED WITHIN THE AMOUNT OF THE APPLICABLE STATUTORY LEASE CAP - WHETHER THE TLC ACTED ARBITRARILY AND CAPRICIOUSLY BY FAILING TO CONSIDER INDUSTRY COSTS WHEN PROMULGATING THE AMENDMENTS - WHETHER THE TLC RULE AMENDMENTS REGARDING SALES TAXES VIOLATE THE STATE TAX LAWS; Supreme Court, New York County denied a CPLR article 78 petition seeking to annul amendments to the New York City Taxi & Limousine Commission's rules and granted respondents' motion to dismiss the petition; App. Div. affirmed.

SPCA OF UPSTATE NEW YORK, INC. v AMERICAN WORKING COLLIE ASSOCIATION, et al.:

3RD Dept. App. Div. order of 6/3/10; reversal; leave to appeal granted by Court of Appeals, 12/16/10;

COURTS - JURISDICTION - LONG-ARM JURISDICTION - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT, "CONSISTENT WITH THIS STATE'S NARROW APPROACH TO LONG-ARM JURISDICTION IN DEFAMATION CASES," DEFENDANTS IN THIS DEFAMATION ACTION WERE NOT SUBJECT TO JURISDICTION UNDER CPLR 302(a)(1) - ALLEGEDLY DEFAMATORY WRITINGS INDIVIDUAL DEFENDANT POSTED FROM VERMONT, WHERE SHE RESIDED, ONTO WEBSITE OF DEFENDANT NOT-FOR-PROFIT CORPORATION, WHICH IS INCORPORATED IN OHIO BUT HAS MEMBERS THROUGHOUT THE UNITED STATES, INCLUDING NEW YORK; Supreme Court, Warren County denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendants' motion and dismissed the complaint.

WALSH, MATTER OF v SCOPETTA:

2ND Dept. App. Div. order of 5/25/10; affirmance; leave to appeal granted by Court of Appeals, 12/14/10;

CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT (ADR) - WHETHER A FIREFIGHTER'S INJURIES THAT RESULTED FROM AN ASSAULT BY A FELLOW FIREFIGHTER MAY BE DEEMED TO HAVE RESULTED FROM A SERVICE-RELATED ACCIDENT AS A MATTER OF LAW FOR PURPOSES OF AN AWARD OF ADR BENEFITS;

Supreme Court, Kings County denied those branches of the CPLR article 78 petition that sought to annul the determination of the New York City Fire Department Article 1-B Pension Fund dated April 21, 2008, which denied petitioner/plaintiff's application for accident disability retirement benefits based on injuries sustained by him as a result of an assault against him, and to compel the New York City Fire Department Article 1-B Pension Fund to grant his application for accidental disability retirement benefits, and dismissed the hybrid CPLR article 78 proceeding in the nature of mandamus and action for declaratory relief, among other things; App. Div. affirmed.