

COURT OF APPEALS NEW FILINGS

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

August 26 through September 1, 2011

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.

FLORES (RAMON), PEOPLE v:

4th Dept. App. Div. order of 4/1/11; modification; leave to appeal granted by Pigott, J., 8/10/11;

CRIMES - DISCLOSURE - WHETHER DEFENDANT IS ENTITLED TO PRODUCTION OF CHILD VICTIM'S VIDEOTAPED GRAND JURY TESTIMONY - CPL 240.45 - ROSARIO MATERIAL; CLAIMED MULTIPLICITOUS COUNTS IN INDICTMENT AND INEFFECTIVE ASSISTANCE OF COUNSEL;

Niagara County Court convicted defendant, upon a jury verdict, of sexual abuse in the first degree, two counts of rape in the first degree, two counts of attempted sodomy in the first degree, and sodomy in the first degree; App. Div. modified by reversing that part of the judgment convicting defendant of attempted sodomy in the first degree under count three of the indictment and dismissing that count of the indictment, and affirmed as so modified.

LORA (RAFAEL), PEOPLE v:

1ST Dept. App. Div. order of 6/14/11; reversal and dismissal; motion to dismiss appeal pending;
CRIMES - LESSER INCLUDED OFFENSE - INTENTIONAL MANSLAUGHTER AND RECKLESS MANSLAUGHTER - WHETHER THERE WAS NO REASONABLE VIEW OF THE EVIDENCE THAT DEFENDANT DID NOT INTEND TO CAUSE SERIOUS PHYSICAL INJURY IN SHOOTING AT THE VICTIM BUT ACTED RECKLESSLY IN DOING SO; WEIGHT OF THE EVIDENCE;
Supreme Court, Bronx County convicted defendant, after a nonjury trial, of manslaughter in the second degree, and sentenced him to a term of 1 to 3 years; App. Div. reversed "on the law and on the facts" and dismissed the indictment.

MESSINA, MATTER OF v HUDSON NEWS COMPANY, et al.:

3RD Dept. App. Div. order of 2/10/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
WORKERS' COMPENSATION - ADVANCE PAYMENT - DIRECTION THAT EMPLOYER'S CARRIER PAY THE FULL AMOUNT OF CLAIMANT'S LIFETIME PERMANENT PARTIAL DISABILITY AWARD INTO THE AGGREGATE TRUST FUND - WORKERS' COMPENSATION LAW §§ 27(2) AND 15(3)(w) - NO CAP ON AWARD - CLAIMED DUE PROCESS VIOLATIONS;
App. Div. affirmed decision of the Workers' Compensation Board filed 3/29/10 which directed the employer's workers' compensation carrier to make a deposit into the aggregate trust fund pursuant to Workers' Compensation Law § 27(2).

SOARES, &c., MATTER OF v HERRICK, &c.:

3RD Dept. App. Div. judgment of 8/4/11; grant of CPLR article 78 petition;
PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHEN REMEDY AVAILABLE - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT A CPLR ARTICLE 78 PROCEEDING IN THE NATURE OF PROHIBITION LIES TO REVIEW THE TRIAL COURT ORDERS DISQUALIFYING THE DISTRICT ATTORNEY AND APPOINTING A SPECIAL DISTRICT ATTORNEY PURSUANT TO COUNTY LAW § 701;
App. Div. granted a CPLR article 78 petition in the nature of prohibition; vacated two Albany County Court orders that, among other things, disqualified the District Attorney from further prosecuting a criminal case against respondents and appointed a Special District Attorney; and prohibited respondent Albany County Court Judge from taking any action in reliance on those orders.

WRIGHT, MATTER OF VENISZEE:

4TH Dept. App. Div. order of 7/20/11; denial of motion for leave to reargue or renew a motion to vacate the dismissal of an appeal; 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 to support an appeal as of right;

APPEAL - CHALLENGE TO APPELLATE DIVISION ORDER DENYING
PETITIONER'S MOTION FOR LEAVE TO REARGUE OR RENEW A MOTION TO
VACATE THE DISMISSAL OF HIS APPEAL;

App. Div. denied petitioner's motion for leave to reargue or to
renew a motion to vacate the dismissal of the appeal taken to
that court from a Monroe County Family Court order dated 3/15/10,
which was denied by the App. Div. by order entered 5/17/11.