

COURT OF APPEALS NEW FILINGS

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

April 13, 2012 through April 19, 2012

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.

COHEN, et al. v CUOMO, et al.:

Supreme Court, New York County judgment of 4/13/12; denial of petition and issuance of declaratory judgment;
ELECTIONS - REDISTRICTING PLAN - WHETHER THE NEW YORK LEGISLATURE VIOLATED ARTICLE III, SECTION 4 OF THE NEW YORK CONSTITUTION BY USE OF TWO DIFFERENT COUNTING METHODOLOGIES IN DIFFERENT PARTS OF THE STATE, CREATING AN ADDITIONAL DISTRICT IN THE UPSTATE REGION; Supreme Court, New York County denied petition, and declared that the formula prescribed in article III, § 4 of the New York State Constitution does not forbid New York from increasing the size of the New York State Senate to 63 seats in 2012.

GARDNER, MATTER OF v COXSACKIE-ATHENS CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION:

3RD Dept. App. Div. judgment of 2/16/12; grant of petition and annulment of determination; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the App. Div. order finally determines the proceeding within the meaning of the Constitution;

PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78 PROCEEDING TO ANNUL DETERMINATION OF RESPONDENT SCHOOL DISTRICT TERMINATING PETITIONER'S EMPLOYMENT BASED ON INAPPROPRIATE BEHAVIOR IN RESPONSE TO STUDENTS ENGAGING IN AN AUTHORIZED SENIOR PRANK; APPLICATION OF WAITING PERIOD PROVISION OF EDUCATION LAW § 3813 TO CIVIL SERVICE LAW § 76 APPEAL; PRESERVATION OF CHALLENGE TO WRITTEN DESIGNATION REQUIREMENT OF CIVIL SERVICE LAW § 75(2); APPOINTMENT OF HEARING OFFICER;

App. Div. annulled the determination terminating petitioner's employment as head custodian of Coxsackie-Athens High School, and granted the petition to the extent of restricting petitioner to his former position with back pay and benefits.

K2 INVESTMENT GROUP, LLC, et al. v AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY:

1ST Dept. App. Div. order of 1/3/12; affirmance with dissents; sua sponte examination whether the two-justice dissent at the App. Div. provides a jurisdictional basis to support an appeal as of right by K2 Investment Group, LLC and ATAS Management Group; INSURANCE - MALPRACTICE INSURANCE - DISMISSAL OF CAUSES OF ACTION ALLEGING BAD FAITH BASED UPON INSURER'S ALLEGED GROSS DISREGARD OF ITS INSURED'S INTERESTS;

Supreme Court, New York County judgment in plaintiffs' favor against defendant on the causes of action to enforce a default judgment, and dismissing the causes of action alleging bad faith; App. Div. affirmed.

KOEHL, MATTER OF v LEMPKE:

4TH Dept. App. Div. order of 1/26/12; denial of motion for reimbursement of costs; 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;

MOTIONS -APPELLATE DIVISION ORDER DENYING PETITIONER'S MOTION FOR REIMBURSEMENT OF ALL COSTS EXPENDED IN LITIGATING A CPLR ARTICLE 78 PROCEEDING;

App. Div. denied petitioner's motion for reimbursement of all costs expended in litigating a CPLR article 78 proceeding.

KOZIOL, MATTER OF v WALSH-HOOD, &c., et al.:

3RD Dept. App. Div. judgment of 2/23/12; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - MANDAMUS - CLEAR LEGAL RIGHT TO RELIEF - ABSENCE OF ADEQUATE REMEDY AT LAW - JUDGES ALLEGEDLY ACTING IN EXCESS OF JURISDICTION - ALLEGED DUE PROCESS VIOLATIONS - ALLEGED COURT SYSTEM BIAS - CLAIM THAT DOMESTIC RELATIONS LAW §§ 236 AND 240 ARE UNCONSTITUTIONAL - CHILD SUPPORT AND CUSTODY DISPUTE;
App. Div. dismissed a CPLR article 78 petition to, among other things, prohibit respondents from enforcing certain orders of child support and custody.

SAPERSTON, MATTER OF v HOLDAWAY:

4TH Dept. App. Div. order of 3/23/12; modification; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the two-justice dissent at the App. Div. is on a question of law;
PARENT AND CHILD - CUSTODY - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT FAMILY COURT'S DETERMINATION WITH RESPECT TO PRIMARY PHYSICAL CUSTODY LACKS A SOUND AND SUBSTANTIAL BASIS IN THE RECORD;
Family Court, Erie County granted the parties joint custody of their child and designated the father the primary residential parent in this proceeding pursuant to Family Court Act article 6;
App. Div. modified by awarding primary physical custody of the child to mother, affirmed the order as so modified, and remitted to Family Court for further proceedings to fashion an appropriate visitation schedule.

UHL (CHRISTOPHER M.), MATTER OF:

3RD Dept. App. Div. orders of 2/27/12 and 10/6/11; denial of motion to vacate disbarment order; disbarment order; sua sponte examination whether the 2/27/12 App. Div. 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;
ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - CHALLENGE TO APPELLATE DIVISION ORDER DISBARRING ATTORNEY WHO WAS CONVICTED IN FEDERAL COURT OF SIX COUNTS OF TAX EVASION AND AN ORDER DENYING A MOTION TO VACATE THE DISBARMENT ORDER;
App. Div., among other things, disbarred respondent effective immediately and, thereafter, denied respondent's motion to vacate the disbarment order.

WILLIAMS (BILL), PEOPLE v:

2ND Dept. App. Div. order of 1/10/12; modification; leave to appeal granted by Smith, J., 4/5/12;
CRIMES - WITNESSES - EXPERT WITNESS - WHETHER THE TRIAL COURT ERRED IN ADMITTING EXPERT TESTIMONY REGARDING SEXUAL ABUSE OF CHILDREN - EXPERT TESTIMONY CONCERNING TYPICAL CONDUCT OF SEXUAL ABUSERS AND CONSISTENCY OF COMPLAINANT'S BEHAVIOR WITH CHILD SEX ABUSE SYNDROME; EFFECTIVENESS OF DEFENSE COUNSEL;
Supreme Court, Kings County convicted defendant, after a nonjury trial, of rape in the first degree, criminal sexual act in the first degree, sexual conduct against a child in the second degree, sexual abuse in the second degree, and endangering the welfare of a child, and sentenced him, as a persistent violent felony offender, to indeterminate terms on the various counts, with some of the terms to run consecutively to each other, and all other terms to run concurrently, for an aggregate sentence of imprisonment of 66 years to life; App. Div. modified, (1) by vacating the convictions of sexual abuse in the second degree under counts 8 and 15-17 of the indictment, vacating the sentences imposed on those counts of the indictment, and dismissing those counts of the indictment, and (2) by providing that the sentence imposed upon defendant's conviction of course of sexual conduct against a child in the second degree shall run concurrently with all other sentences.