

COURT OF APPEALS NEW FILINGS

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

August 19, 2016 through August 25, 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.

GLICKMAN, MATTER OF LAFFIN (AND TWO OTHER PROCEEDINGS):

3RD Dept. App. Div. order of 8/18/16; reversal with a two-Justice dissent;

ELECTIONS - DESIGNATING PETITIONS - VALIDITY - NY CONSTITUTION, ARTICLE III, SECTION 7 - WHETHER CANDIDATE'S REGISTERING TO VOTE IN WASHINGTON, D.C. IN 2014 PRECLUDED HIM, AS A MATTER OF LAW, FROM ESTABLISHING THE REQUISITE FIVE-YEAR CONTINUOUS RESIDENCY IN NEW YORK - WHETHER CANDIDATE MET THE CONSTITUTIONAL REQUIREMENT THAT HE RESIDE IN THE SENATE DISTRICT FOR ONE YEAR IMMEDIATELY PRECEDING THE ELECTION;

Supreme Court, Albany County, among other things, granted petitioners' application, in proceeding No. 3 pursuant to Election Law § 16-102, to declare invalid the designating petitions naming Steven Glickman as the Democratic Party and Working Families Party candidate for the public office of State Senator for the 55th Senate District in the September 13, 2016 primary election; App. Div. reversed, dismissed the petition in proceeding No. 3, granted the petitions in proceedings Nos. 1 and 2, and declared valid the designating petitions naming Steven Glickman as the Democratic Party and Working Families Party candidate for the public office of State Senator for the 55th Senate District in the September 13, 2016 primary election.

MAKI v BASSETT HEALTHCARE, et al.:

3RD Dept. App. Div. order of 7/21/16; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

JUDGMENTS - RES JUDICATA - COLLATERAL ESTOPPEL - WHETHER THE COURTS BELOW ERRED IN DETERMINING THAT PLAINTIFF'S CLAIMS IN THIS ACTION WERE BARRED BY RES JUDICATA AND COLLATERAL ESTOPPEL BECAUSE THEY AROSE FROM THE SAME SERIES OF TRANSACTIONS AS PLAINTIFF'S PRIOR STATE AND FEDERAL ACTIONS, BOTH OF WHICH WERE DISMISSED; WHETHER SUPREME COURT ABUSED ITS DISCRETION IN AWARDING DEFENDANTS REASONABLE COSTS AND ATTORNEYS' FEES PURSUANT TO CPLR 8303-a;

Supreme Court, Delaware County, granted defendants' motion for summary judgment dismissing the complaint, determined that plaintiff's complaint was frivolous and directed defendants to submit an application for attorneys' fees and costs, and enjoined plaintiff from bringing any actions based on medical treatment during 2008 and 2009 rendered to him by these defendants without prior court approval; thereafter, Supreme Court denied plaintiff's motion to renew or vacate or modify the prior Supreme Court order, and awarded defendants \$6,389 in attorneys' fees; App. Div. affirmed.

MESTECKY, MATTER OF v CITY OF NEW YORK, et al.:

1ST Dept. App. Div. judgment of 11/5/15; confirmation of determinations; leave to appeal granted by App. Div., 3/22/16; PROCESS - SERVICE OF PROCESS - NOTICES OF VIOLATION (NOVs) ISSUED BY NEW YORK CITY DEPARTMENT OF BUILDINGS (DOB) - WHETHER DOB INSPECTOR'S ONE ATTEMPT AT PERSONAL SERVICE OF NOVs AT THE PREMISES WHERE THE VIOLATIONS OCCURRED SATISFIED THE "REASONABLE ATTEMPT" REQUIREMENT SET FORTH IN NEW YORK CITY CHARTER § 1049-a(d)(2)(b) SO THAT RESORT TO "AFFIX AND MAIL" SERVICE WAS APPROPRIATE - WHETHER REFERENCE TO CPLR ARTICLE 3 IN THE NEW YORK CITY CHARTER'S "AFFIX AND MAIL" PROVISION INCORPORATES THE "DUE DILIGENCE" REQUIREMENT OF CPLR ARTICLE 3; WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE DETERMINATIONS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE NOT AFFECTED BY AN ERROR OF LAW, AND ARE NOT ARBITRARY AND CAPRICIOUS;

App. Div. confirmed four determinations of respondent Environmental Control Board, which collectively sustained seven NOVs against petitioner and denied his applications to vacate default judgments regarding two other NOVs; denied the CPLR article 78 petition; and dismissed the proceeding.