

COURT OF APPEALS NEW FILINGS

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

January 25 through January 31, 2019

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.

APPLEWHITE, MATTER OF v NEW YORK STATE BOARD OF PAROLE:

3RD Dept. App. Div. order of 12/27/18, affirmance with dissents;

Parole--Denial--Whether respondent Board of Parole properly considered “consistent community opposition” in denying petitioner’s request for parole release; application of Executive Law § 259-i;

Supreme Court, Sullivan County, dismissed petitioner's CPLR article 78 application to review a determination of respondent denying petitioner's request for parole release; App. Div. affirmed.

BILL BIRDS, INC., et al. v STEIN LAW FIRM, P.C. et al.:

2ND Dept. App. Div. order of 8/15/18; reversal; leave to appeal granted by Court of Appeals, 1/15/19;

Attorney and Client--Misconduct by Attorney--Whether plaintiffs raised a triable issue of fact on their claim alleging a violation of Judiciary Law § 487; plaintiffs alleged that defendants engaged in a pattern of legal delinquency;

Supreme Court, Queens County, denied that branch of defendants' motion for summary judgment dismissing the cause of action alleging a violation of Judiciary Law §487; App. Div. reversed and granted that branch of defendants' motion for summary judgment dismissing the cause of action alleging a violation of Judiciary Law §487.

ESPOSITO (MONIQUE), PEOPLE v:

App. Term 2nd, 11th, and 13 Judicial Districts order of 8/3/18; reversal; leave to appeal granted by Feinman, J., 1/14/19; Rule 500.11 review pending;

Crimes--Accusatory Instrument--Whether misdemeanor information was jurisdictionally defective because it failed to establish that defendant was driving the vehicle in question--defendant found two blocks away from vehicle collision site made statement to police officer that she was chasing her boyfriend and hit a tree; motor vehicles--operating vehicle while under influence of alcohol;

Criminal Court of the City of New York, Richmond County, convicted defendant, upon a jury verdict, of common-law driving while intoxicated and resisting arrest, and imposed sentence; App. Div. reversed and dismissed the information.

WILL OF FIELDS, DECEASED, MATTER OF (FIELDS v PALMERI):

1ST Dept. App. Div. orders of 9/25/18 and 12/27/18; dismissal of appeal and denial of motion to restore appeal; sua sponte examination of whether the orders appealed from finally determine the action within the meaning of the Constitution;

Appeal--Dismissal--Order dismissing appeal in Surrogate's Court proceeding; dismissal of objections to probate;

Surrogate's Court, New York County, granted petitioner's motion seeking dismissal of objections to probate and directed settlement of the probate decree; App. Div. (9/25/18 order), among other things, dismissed the appeal; and thereafter (12/27/18 order), denied objectant-appellant's motion to restore the appeal.

MEYERS (VINCENT), PEOPLE v:

2ND Dept. App. Div. order of 6/27/18; affirmance; leave to appeal granted by Garcia, J., 12/10/18; Rule 500.11 review pending;

Crimes--Trial--Jury Notes--Whether trial court failed to comply with CPL 310.30 and People v O’Rama requirements with regard to note from the jury belatedly discovered in the court file--whether there was a mode of proceedings error; whether verdict was against the weight of the evidence; whether there was ineffective assistance of counsel regarding a suppression hearing;

Supreme Court, Nassau County, convicted defendant, upon a jury verdict, of two counts of robbery in the second degree, assault in the second degree, criminal possession of stolen property in the fourth degree, criminal possession of stolen property in the fifth degree, two counts of criminal mischief in the fourth degree, and harassment in the second degree, and imposed sentence; App. Div. affirmed.

SHAWE v KRAMER LEVIN NAFTALIS & FRANKEL LLP, et al.:

1ST Dept. App. Div. order of 12/13/18; affirmance; sua sponte examination of 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;

Libel and Slander--Opinions--Fair Comment--Action against lawyers commenting on litigation matters; pre-answer motion to dismiss the complaint;

Supreme Court, New York County, granted defendants' motion to dismiss the complaint (2/20/18 order); dismissed the complaint with prejudice (3/5/18 judgment); and denied plaintiff's motion for leave to renew defendants' motion to dismiss the complaint (4/23/18 order); App. Div. affirmed.

VILLAGE OF SOLVAY v ZAHRAN, et al.:

4TH Dept. App. Div. order of 9/28/18; affirmance; sua sponate examination whether the order 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;

Injunctions--Preliminary Injunction--Action by village to prevent renovation and occupancy of a commercial building without permits and approvals required by the village code and zoning law; claimed constitutional violations;

Supreme Court, Onondaga County, granted plaintiff's motion for a preliminary injunction; App. Div. affirmed.

WESLOWSKI v ZUGIBE, &c., et al.:

2ND Dept. App. Div. order of 12/19/18; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right; **Employment Relationships--Constructive Discharge--Action by attorney formerly employed in the Rockland County Attorney's office, alleging breach of collective bargaining agreement, breach of oral promise to pay accumulated leave, and violations of the New York Human Rights Law and various rights under the New York State Constitution; dismissal and nonsuit;**

Supreme Court, Rockland County, granted those branches of defendants' motions to dismiss the first, second, fourth, fifth, sixth and seventh causes of action insofar as asserted against each defendant, and denied such motions insofar as they sought dismissal of plaintiff's third cause of action; App. Div. modified by (1) reversing so much of the order as appealed from, and granting those branches of the defendants' motions as sought to dismiss the third cause of action as asserted against each defendant, and (2) affirming so much of the order as cross-appealed from (granting those branches of defendants' motions to dismiss the remaining causes of action as asserted against each defendant).