

COURT OF APPEALS NEW FILINGS

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

**April 26 through May 2, 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.**

HARDY (EDWARD), PEOPLE v:

App. Term 2<sup>nd</sup>, 11<sup>th</sup>, and 13<sup>th</sup> Judicial Districts order of 2/1/19; affirmance; leave to appeal granted by Fahey, J., 4/18/19;

**Crimes--Complaint--Whether local criminal court information can be amended by adding to or altering the factual allegations contained therein; application of CPL 100.45 and People v Easton (307 NY 336, 338 [1954]); date on which crime allegedly took place had not yet occurred when information was filed;**

Criminal Court of the City of New York, Queens County, convicted defendant of criminal contempt in the second degree, App. Term affirmed.

MATTER OF THE ESTATE OF HARTUNG:

4<sup>th</sup> Dept. App. Div. order of 3/22/19; affirmance; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

**Executors and Administrators--Whether Surrogate's Court erred in awarding interim legal fees to public administrator; alleged constitutional violations;**

Surrogate's Court, Onondaga County, among other things, awarded legal fees to counsel for the public administrator; App. Div. affirmed.

JONES v STATE OF NEW YORK:

3<sup>rd</sup> Dept. App. Div. order of 4/18/19; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**State--Court of Claims--Action by prison inmate against the State alleging wrongdoing by prison staff; alleged denial of right to access the courts, equal protection and due process;**

Court of Claims granted defendant's motion to dismiss the claim; App. Div. affirmed.

SCHWEIG, et al., MATTER OF v CITY OF NEW ROCHELLE, et al.:

2<sup>nd</sup> Dept. App. Div. order of 3/13/19; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

**Constitutional Law--Taking of Property--Whether change in zoning law to increase required lot size constituted an unconstitutional taking without compensation; Municipal Corporations--Zoning--whether denial of area variance was arbitrary, capricious and without a rational basis;**

Supreme Court, Westchester County, denied the petition to review a determination of the City of New Rochelle Board of Appeals on Zoning dated November 10, 2015, denying an area variance, and dismissed the CPLR article 78 proceeding and the cause of action to recover damages for an unconstitutional taking of property; App. Div. affirmed.