

COURT OF APPEALS NEW FILINGS

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

**April 16, 2021 through April 22, 2021**

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.**

MATTER OF DAGAN B.:

4<sup>TH</sup> Dept. App. Div. order of 3/19/21; affirmance and dismissal of appeals; sua sponte examination of whether the orders appealed from finally determine the proceeding and whether any basis exists for the appeal taken as of right;

**Parent, Child and Family--Whether respondent's parental rights were properly terminated;**

Family Court, Ontario County, in a proceeding pursuant to Family Court Act article 10, among other things, continued the subject child's placement with petitioner until the completion of the next permanency hearing (8/8/18 order); thereafter, among other things, continued the subject child's placement with petitioner until the completion of the next permanency hearing (12/6/18 order); and thereafter, in a proceeding pursuant to Social Services Law § 384-b, among other things, terminated respondent's parental rights with respect to the subject child (9/11/19 order); App. Div. affirmed 9/11/19 order and dismissed the appeals from the 8/8/18 and 12/6/18 orders.

GESMER, MATTER OF v ADMINISTRATIVE BOARD OF THE NEW YORK STATE UNIFIED COURT SYSTEM, et al.:

3<sup>RD</sup> Dept. App. Div. order of 3/9/21; modified and affirmance;

**Judges--Certification of Retired Justice to Remain in Office--Whether Supreme Court properly annulled the determination of respondent Administrative Board of the New York State Unified Court System denying certification to 46 of 49 elected Supreme Court Justices who had reached the mandatory retirement age of 70 or more as of December 31, 2020, and who had applied for certification for a two-year period (see N. Y. Const, art VI, § 25[b]; Judiciary Law § 115[1]);**

Supreme Court, Suffolk County, denied respondents' motion to dismiss the petition/complaint (12/11/20 order); and thereafter, partially granted petitioner's application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment, to annul a determination of respondent Administrative Board of the New York State Unified Court System denying certification for certain appellate Supreme Court justices; App. Div. 1) dismissed the appeal from the 12/11/20 order, and 2) modified the judgment by reversing so much thereof as partially granted the petition and annulled the determination of respondent Administrative Board of the New York State Unified Court System; dismissed the petition to that extent, and declared that petitioners have not established a violation of N.Y. Constitution, article VI, §§ 4(e) and 25(b), Judiciary Law § 115 or Executive Law article 15; and as so modified, affirmed.

LIUNI, MATTER OF v GANDER MOUNTAIN, et al.:

3<sup>RD</sup> Dept. App. Div. order of 11/12/20; affirmance; leave to appeal granted by Court of Appeals, 3/25/21;

**Workers' Compensation--Award--Whether an award of workers' compensation benefits for a schedule of loss of use attributable to an injury to one part of a qualifying limb must be offset by a prior award for an injury involving a different part of the same qualifying limb;**

Workers' Compensation Board, ruled that claimant was entitled to a 5 percent schedule loss of use of his left arm; App. Div. affirmed.

MATTER OF LONG (A SUSPENDED ATTORNEY):

3<sup>RD</sup> Dept. App. Div. order of 2/25/21; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

**Attorney and Client--Disciplinary Proceedings;**

App. Div., suspended respondent from the practice of law indefinitely, pending final resolution of disciplinary proceedings in the State of Oregon.

MARTIN, et al. v TOTAL REALTY ASSOCIATION, INC.:

2<sup>ND</sup> Dept. App. Div. order of 3/22/21; denied motion to dismiss; sua sponte examination on whether the order appealed from finally determines the proceeding and whether any basis exists for the appeal taken as of right;

**Motions and Orders;**

App. Div. denied as academic respondent's motion to dismiss an appeal as untimely taken.