

COURT OF APPEALS NEW FILINGS

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

**June 10 through June 16, 2011**

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.**

BURKHART v MODICA, et al.:

4<sup>TH</sup> Dept. App. Div. order of 2/10/11; affirmance; sua sponte 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;

ATTORNEY AND CLIENT - ATTORNEY'S LIEN - ACTION ASSERTING CAUSES OF ACTION BASED ON, AMONG OTHER THINGS, JUDICIARY LAW §§ 487(1) AND 475 AND SEEKING TO RECOVER DAMAGES BASED ON ALLEGATIONS THAT PLAINTIFF WAS UNLAWFULLY DEPRIVED OF ATTORNEYS' FEES CLAIMED TO HAVE BEEN EARNED BY REPRESENTING A CLIENT IN A FEDERAL ACTION; SANCTIONS; CLAIMED DUE PROCESS VIOLATIONS;

Supreme Court, Wayne County granted defendants' motions to dismiss the complaint; App. Div. affirmed and remitted the matter to Supreme Court for further proceedings.

ECHOSTAR SATELLITE CORP., MATTER OF v TAX APPEALS TRIBUNIAL:

3<sup>RD</sup> Dept. App. Div. judgment of 12/9/10; confirmation of determination; leave to appeal granted by Court of Appeals, 6/7/11;

TAXATION - SALES AND USE TAXES - WHETHER SATELLITE TELEVISION PROGRAMMING PROVIDER'S PURCHASES OF EQUIPMENT IT THEN SUPPLIES TO CUSTOMERS TO ALLOW THEM ACCESS TO SATELLITE PROGRAMMING CONSTITUTE PURCHASES FOR RESALE WITHIN THE MEANING OF TAX LAW § 1101(b)(4)(i), WHICH EXEMPTS SUCH PURCHASES FOR RESALE FROM SALES AND USE TAXES;

App. Div. confirmed a determination of respondent Tax Appeals Tribunal that sustained the denial of a sales and use tax refund, and dismissed the CPLR article 78 petition.

HOLMES (WILLIE, JR.), PEOPLE &c.:

4<sup>TH</sup> Dept. App. Div. order of 12/30/10; affirmance; leave to appeal granted by Ciparick, J., 5/25/11; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - STANDING - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT THE PEOPLE MAY RAISE THE ISSUE OF STANDING FOR THE FIRST TIME ON APPEAL;

Supreme Court, Monroe County convicted defendant, upon his guilty plea, of criminal possession of a weapon in the second degree; App. Div. affirmed.

PUTNAM/NORTHERN WESTCHESTER BOCES, MATTER OF v WESTCHESTER COUNTY HUMAN RIGHTS COMMISSION et al.:

2<sup>ND</sup> Dept. App. Div. judgment of 2/8/11; grant of petition; leave to appeal granted by Court of Appeals, 6/2/11;

CIVIL RIGHTS - DISCRIMINATION BASED ON MARITAL STATUS - HEALTH PLAN PROVIDING BENEFITS ONLY TO SAME-SEX DOMESTIC PARTNERS - DISCRIMINATION AGAINST OPPOSITE-SEX DOMESTIC PARTNERS - CHALLENGE TO APPELLATE DIVISION RULING THAT (1) COMPLAINANT FAILED TO MEET HER BURDEN TO ESTABLISH A PRIMA FACIE CASE OF DISCRIMINATION BASED UPON MARITAL STATUS BECAUSE ELIGIBILITY FOR DOMESTIC PARTNER HEALTH CARE BENEFITS DID NOT TURN ON EMPLOYEES' MARITAL STATUS, AND (2) HEALTH PLAN MET ITS BURDEN TO SET FORTH A LEGITIMATE, NONDISCRIMINATORY REASON FOR EXTENDING DOMESTIC PARTNER BENEFITS ONLY TO SAME-SEX COUPLES WHERE THE REASON WAS THAT, UNLIKE OPPOSITE-SEX DOMESTIC PARTNERS, SAME-SEX DOMESTIC PARTNERS CANNOT OBTAIN BENEFITS OFFERED TO EMPLOYEES' SPOUSES BY BECOMING LAWFULLY MARRIED IN THIS STATE;

App. Div. granted the CPLR article 78 petition and annulled the determination of the Westchester County Human Rights Commission dated 1/6/09, which adopted the findings and recommendations of an Administrative Law Judge, made after a hearing, finding that petitioners violated Westchester County Human Rights Law § 700.03 by unlawfully discriminating against the complainant on the basis of her sexual orientation and marital status and that the

complainant is entitled to domestic partner health care benefits for her opposite-sex domestic partner to the same extent as if he were her same-sex domestic partner, enjoined the petitioners from maintaining their policy of extending health care benefits to same-sex domestic partners and not to opposite-sex domestic partners, and awarded the complainant damages in the principal sum of \$24,178.

STATE OF NEW YORK v MYRON P.:

3<sup>RD</sup> Dept. App. Div. order of 5/5/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;  
MENTAL HEALTH - PROCEEDINGS BY STATE OF NEW YORK SEEKING AN ORDER AUTHORIZING RESPONDENT'S CIVIL MANAGEMENT PURSUANT TO MENTAL HYGIENE LAW ARTICLE 10 - CONFINEMENT OF SEX OFFENDER IN SECURE FACILITY AFTER SERVICE OF PRISON TIME - INVOLUNTARY HOSPITALIZATION - RIGHT TO JURY TRIAL;  
Supreme Court, Albany County found respondent to be a dangerous sex offender and confined him to a secure treatment facility;  
App. Div. affirmed.