

COURT OF APPEALS NEW FILINGS

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

September 30 through October 6, 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.

CLINTON COUNTY, et al., MATTER OF v ADIRONDACK PARK AGENCY, et al.:

3RD Dept. App. Div. order of 7/14/11; modification; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;
MUNICIPAL CORPORATIONS - HOME RULE POWERS - PROCEEDING TO REVIEW CERTAIN 2008 AMENDMENTS TO THE REGULATIONS RELATED TO THE ADIRONDACK PARK AGENCY ACT (EXECUTIVE LAW § 804[9]) AFFECTING EXPANSION OF SHORELINE STRUCTURES, SUBDIVISIONS INVOLVING WETLANDS, PARCELS DIVIDED BY ROADS AND HUNTING AND FISHING CABINS; CAPACITY OF MUNICIPAL PETITIONERS TO SUE; ALLEGED VIOLATIONS BY ADIRONDACK PARK AGENCY OF HOME RULE PROTECTIONS, SEPARATION OF POWERS DOCTRINE AND AUTHORITY GRANTED TO IT BY THE NEW YORK LEGISLATURE;

Supreme Court, Essex County, among other things, partially dismissed petitioners' application, in a combined proceeding pursuant to CPLR article 78 and action for declaratory judgment to, among other things, review certain regulations promulgated by respondent Adirondack Park Agency; App. Div. modified by striking the declarations and dismissing the petition in its entirety, and affirmed as so modified.

D'ANGELO, MATTER OF v SCOPPETTA, &c., et al.:

2ND Dept. App. Div. order of 2/15/11; affirmance; leave to appeal granted by Court of Appeals, 9/20/11;

CIVIL SERVICE - DISCIPLINARY PUNISHMENT - ARTICLE 78 PROCEEDING CHALLENGING A DETERMINATION OF RESPONDENT FIRE COMMISSIONER RESULTING IN PLACEMENT OF A LETTER AND ADVISORY MEMORANDUM IN PETITIONER FIREFIGHTER'S EQUAL EMPLOYMENT OPPORTUNITY OFFICE FILE - WHETHER INCORPORATION OF LETTER INTO EMPLOYEE'S FILE TRIGGERED THE STATUTORY PROTECTIONS OF CIVIL SERVICE LAW § 75;

Supreme Court, Kings County granted the petition to the extent of annulling respondent Fire Commissioner's determination and directing that a letter dated 6/5/08 be expunged from petitioner's Equal Employment Opportunity Office file; App. Div. affirmed.

MARACLE (AMBER), PEOPLE v (APPEAL NO. 1):

4TH Dept. App. Div. order of 6/10/11; dismissal of appeal in part and affirmance; leave to appeal granted by Pigott, J., 9/23/11;

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL WAS KNOWING, INTELLIGENT AND VOLUNTARY WHERE SHE PLEADED GUILTY TO EVERY COUNT IN AN INDICTMENT AND WAIVED HER RIGHT TO APPEAL IN RETURN FOR A PROMISED SENTENCE OF PROBATION BUT RECEIVED THE MAXIMUM SENTENCE ON EACH COUNT AFTER SHE FAILED TO SATISFY CONDITIONS PLACED UPON THE PROMISED SENTENCE OF PROBATION; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL;

Supreme Court, Erie County convicted defendant, upon her guilty plea, of grand larceny in the second degree and four counts of forgery in the second degree; App. Div. dismissed the appeal from the judgment insofar as it imposed sentence on the conviction of four counts of forgery in the second degree and affirmed the judgment.

MARACLE (AMBER), PEOPLE v (APPEAL NO. 2):

4TH Dept. App. Div. order of 6/10/11; affirmance; leave to appeal granted by Pigott, J., 9/23/11;

CRIMES - APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL WAS KNOWING, INTELLIGENT AND VOLUNTARY WHERE SHE PLEADED GUILTY TO EVERY COUNT IN AN INDICTMENT AND WAIVED HER RIGHT TO APPEAL IN RETURN FOR A PROMISED SENTENCE OF PROBATION BUT RECEIVED THE MAXIMUM SENTENCE ON EACH COUNT AFTER SHE FAILED TO SATISFY CONDITIONS PLACED UPON THE PROMISED SENTENCE OF PROBATION; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL;

Supreme Court, Erie County resentenced defendant upon her conviction of four counts of forgery in the second degree; App. Div. affirmed.