

COURT OF APPEALS NEW FILINGS

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

**March 2, 2012 through March 8, 2012**

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.**

BECK-NICHOLS, MATTER OF v BIANCO, et al.:

4<sup>TH</sup> Dept. App. Div. judgment of 11/10/11; annulled determination; leave to appeal granted by Court of Appeals, 2/21/12;  
PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78  
PROCEEDING TO ANNUL DETERMINATION OF RESPONDENT SCHOOL DISTRICT  
TERMINATING PETITIONER'S EMPLOYMENT BASED ON FAILURE TO COMPLY  
WITH THE DISTRICT'S RESIDENCY POLICY; STANDARD OF REVIEW;  
Supreme Court, Erie County transferred the proceeding to App.  
Div.; App. Div. annulled the determination terminating  
petitioner's employment as a production control manager with  
respondent School District of Niagara Falls, and granted the  
petition.

FORECLOSURE OF TAX LIENS BY CITY OF ROCHESTER, MATTER OF (DUVALL; CITY OF ROCHESTER):

4<sup>TH</sup> Dept. App. Div. order of 2/17/12; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution; TAXATION - TAX LIENS - FORECLOSURE OF TAX LIENS - ADEQUACY OF NOTICE TO FORMER PROPERTY OWNER OF FORECLOSURE ACTION; Supreme Court, Monroe County denied petitioner's application to vacate a judgment of foreclosure and the tax foreclosure deed; App. Div. affirmed.

MALDONADO, MATTER OF v KELLY:

1<sup>ST</sup> Dept. App. Div. order of 7/28/11; affirmance; leave to appeal granted by Court of Appeals, 2/21/12; CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - ACCIDENTAL DISABILITY RETIREMENT (ADR) - WHETHER THE APPELLATE DIVISION ERRED IN HOLDING THAT CREDIBLE EVIDENCE EXISTED TO SUPPORT THE MEDICAL BOARD'S DETERMINATION AND REBUT THE STATUTORY PRESUMPTION THAT PETITIONER'S DISABILITY WAS RELATED TO HIS SERVICE AS A POLICE OFFICER AT THE WORLD TRADE CENTER SITE FOLLOWING SEPTEMBER 11, 2011; Supreme Court, New York County denied a CPLR article 78 petition seeking, among other things, to annul respondent's determination denying petitioner's application for accidental disability retirement (ADR) benefits, and dismissed the proceeding; App. Div. affirmed.

MONTAS v JJC CONSTRUCTION CORPORATION, et al.:

1<sup>ST</sup> Dept. App. Div. order of 2/23/12; affirmance with dissents; NEGLIGENCE - PROXIMATE CAUSE - WHETHER TRIAL COURT ERRED IN GRANTING DEFENDANTS' MOTIONS FOR A DIRECTED VERDICT - SUFFICIENCY OF EVIDENCE FROM WHICH JURY COULD HAVE FOUND DEFENDANTS NEGLIGENT IN PERMITTING CONSTRUCTION DEBRIS TO ACCUMULATE ON A PEDESTRIAN WALKWAY; MUNICIPAL CORPORATIONS - TORT LIABILITY; Supreme Court, Bronx County granted defendants' motions to dismiss the complaint at the close of evidence at trial; App. Div. affirmed.

NORRIS (ELBERT), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 12/20/11; affirmance; leave to appeal granted by Graffeo, J., 2/29/12; CRIMES - SENTENCE - CONCURRENT AND CONSECUTIVE TERMS - WHETHER, UPON VACATING DEFENDANT'S ORIGINAL SENTENCE, SUPREME COURT HAD THE AUTHORITY TO RUN HIS NEW DETERMINATE PRISON TERMS CONCURRENTLY, DESPITE THEIR PREVIOUS CONSECUTIVE DESIGNATION - MULTIPLE DRUG OFFENSES BEFORE THE RESENTENCING COURT FOR POSSIBLE MODIFICATION PURSUANT TO THE 2004 DRUG LAW REFORM ACT;

Supreme Court, Kings County, after a hearing, among other things, granted defendant's motion for resentencing and specified that, upon resentencing, the court would impose upon him, as a second felony drug offender previously convicted of a violent felony, on his class B felony drug sale convictions, a determinate prison term of six years on each of the sale counts, followed by three years of post-release supervision, the terms to run consecutively to each other for an aggregate sentence of 24 years imprisonment, to run concurrently with defendant's indeterminate sentence on his conspiracy conviction; App. Div. affirmed and remitted the matter to Supreme Court for further proceedings.

ROULAN v COUNTY OF ONONDAGA et al.:

4<sup>th</sup> Dept. App. Div. order of 12/30/11; modification with dissents;

ATTORNEY AND CLIENT - ASSIGNMENT OF COUNSEL - ACTION SEEKING DECLARATION THAT VARIOUS SECTIONS OF THE ASSIGNED COUNSEL PLAN IN ONONDAGA COUNTY ARE INVALID - PLAN ESTABLISHED PURSUANT TO COUNTY LAW ARTICLE 18-B THROUGH A CONTRACT WITH THE ONONDAGA COUNTY BAR ASSOCIATION; DECLARATORY JUDGMENT; CRIMINAL DEFENDANT'S RIGHT TO COUNSEL;

Supreme Court, Onondaga County, in essence, granted plaintiff's motion to renew and, upon renewal, adhered to its prior order denying plaintiff's motion for partial summary judgment on his declaratory judgment cause of action, denied plaintiff's motion for summary judgment on his breach of contract claim, and granted defendants' motion for summary judgment dismissing plaintiff's complaint in its entirety; App. Div. modified, by denying defendants' cross-motion for partial summary judgment dismissing the declaratory judgment cause of action, reinstating that cause of action and granting judgment in favor of defendants declaring "that the assigned counsel plan established by defendant Onondaga County Bar Association Assigned Counsel Program, Inc., is valid with the exception of section D(2) under the 'Assignment by Court and Client Eligibility' heading"; and by granting plaintiff's motion for partial summary judgment on the declaratory judgment cause of action in part and granting judgment in favor of plaintiff declaring "that section D(2) under the 'Assignment by Court and Client Eligibility' heading of the assigned counsel plan is invalid."