

COURT OF APPEALS NEW FILINGS

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

February 8, 2013 through February 14, 2013

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.

BRANDES, A DISBARRED ATTORNEY, MATTER OF:

2ND Dept. App. Div. order 12/17/12; denial of motions; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether a jurisdictional basis exists for an appeal as of right pursuant to Judiciary Law § 90(8);

ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDING - DISBARMENT - WHETHER APPELLATE DIVISION ABUSED ITS DISCRETION IN DENYING ATTORNEY'S MOTIONS FOR REINSTATEMENT;

App. Div. denied attorney's motions for reinstatement.

ELMER (CAROL), PEOPLE v:

3RD Dept. App. Div. order of 8/23/12; dismissal; leave to appeal granted by Graffeo, J., 1/29/13;
APPEAL - WHETHER TIME TO APPEAL FROM AN ORAL ORDER DISMISSING CERTAIN COUNTS OF AN INDICTMENT BEGINS TO RUN ON THE DATE OF THE ORAL ORDER OR AFTER SERVICE OF A COPY OF THE ORAL ORDER;
County Court, St. Lawrence County partially granted defendant's motion to dismiss the indictment; App. Div. dismissed the People's appeal as untimely taken.

GAIED, MATTER OF v NEW YORK STATE TAX APPEALS TRIBUNAL:

3RD Dept. App. Div. judgment of 12/27/12; confirmation of determination, with dissents; Rule 500.11 review pending;
TAXATION - PERSONAL INCOME TAX - MAINTENANCE OF PERMANENT PLACE OF ABODE - SUBSTANTIAL EVIDENCE;
App. Div. confirmed the determination of respondent Tax Appeals Tribunal, which sustained a deficiency of personal income tax imposed under Tax Law article 22, and dismissed the petition.

JOHNSON (TODD), PEOPLE v:

1ST Dept. App. Div. order of 10/9/12; affirmance; leave to appeal granted by Graffeo, J., 2/4/13;
CRIMES - ARREST - PROBABLE CAUSE - DISORDERLY CONDUCT COMMITTED IN PRESENCE OF POLICE OFFICER (CPL 140.10[1][a]; PENAL LAW § 240.20[6]) - WHETHER THE APPELLATE DIVISION ERRED AS A MATTER OF LAW IN RULING THAT DEFENDANT'S FAILURE TO OBEY A POLICE OFFICER'S DIRECTION TO MOVE FROM THE STORE FRONT WHERE HE WAS CONGREGATING WITH THREE OTHER MEN PROVIDED PROBABLE CAUSE TO ARREST HIM FOR DISORDERLY CONDUCT, "GIVEN THE INFORMATION THE OFFICER HAD ABOUT ... GANG PROBLEMS THAT HAD OCCURRED AT THAT LOCATION IN THE PAST AND THE GANG BACKGROUND OF SEVERAL OF THE MEN" - INTERPRETATION OF PENAL LAW § 240.20 THAT ALLEGEDLY RENDERS IT UNCONSTITUTIONALLY VAGUE;
Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree, and sentenced him, as a second felony drug offender, to a term of two years; App. Div. affirmed.

KOLBE, et al. v TIBBETTS, et al.:

4TH Dept. App. Div. order of 12/21/12; reversal with dissents;
CIVIL SERVICE - RETIREMENT AND PENSION BENEFITS - HEALTH INSURANCE - WHETHER THE TERMS OF THE RESPECTIVE COLLECTIVE BARGAINING AGREEMENTS IN EFFECT AT THE TIME EACH SCHOOL DISTRICT EMPLOYEE PLAINTIFF RETIRED, PROVIDING THAT THE RETIREE WAS ENTITLED TO SAME HEALTH INSURANCE COVERAGE AS THE BARGAINING UNIT, PREVENTED THE SCHOOL DISTRICT FROM REDUCING BENEFITS PROVIDED TO PLAINTIFFS WHEN BENEFITS FOR REPRESENTED EMPLOYEES WERE REDUCED;

Supreme Court, Niagara County granted plaintiffs' motion for summary judgment, denied defendants' cross motion for summary judgment, and declared, among other things, that defendants are obligated to maintain plaintiffs' health insurance coverage equivalent to that in effect at the time each plaintiff retired; App. Div. reversed, denied plaintiffs' motion for summary judgment, vacated the declarations in favor of plaintiffs, granted defendants' cross motion for summary judgment, and declared that defendants are not obligated to maintain health insurance coverage equivalent to that in effect at the time each plaintiff retired.