

COURT OF APPEALS NEW FILINGS

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

**March 15, 2013 through March 21, 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.**

BALDWIN UNION FREE SCHOOL DISTRICT, MATTER OF v COUNTY OF NASSAU (AND TWO OTHER PROCEEDINGS):

2<sup>nd</sup> Dept. App. Div. order of 2/27/13; reversal;

CONSTITUTIONAL LAW - VALIDITY OF STATUTE - WHETHER LOCAL LAW NO. 18 (2010) OF COUNTY OF NASSAU VIOLATES THE NEW YORK CONSTITUTION AND MUNICIPAL HOME RULE LAW;

Supreme Court, Nassau County in effect denied the petition and dismissed the proceeding in Matter No. 1, searched the record and awarded summary judgment to the defendants/respondents declaring that Local Law No. 18 (2010) of County of Nassau does not violate either the New York Constitution or the Municipal Home Rule Law; in effect, denied that branch of the cross motion by plaintiffs in Matter No. 2 which was for summary judgment declaring that

Local Law No. 18 (2010) or County of Nassau violates the New York Constitution and Municipal Home Rule Law, and declared that Local Law No. 18 (2010) of County of Nassau does not violate either the New York Constitution or the Municipal Home Rule Law; and, in effect, denied the petition and dismissed the proceeding in Matter No. 3, searched the record and awarded summary judgment to defendants/respondents declaring that Local Law No. 18 (2010) of County of Nassau does not violate either the New York Constitution or the Municipal Home Rule Law, and declared that Local Law No. 18 (2010) of County of Nassau does not violate either the New York Constitution or the Municipal Home Rule Law; App. Div. reversed, granted that branch of plaintiffs' cross motion in Matter No. 2 which was for summary judgment declaring that Local Law No. 18 (2010) of County of Nassau violates the New York Constitution and the Municipal Home Rule Law; upon searching the record, awarded petitioners/plaintiffs in Matter Nos. 1 and 3 summary judgment declaring that Local Law 18 (2010) of County of Nassau violates the New York Constitution and the Municipal Home Rule Law; denied the petitions in Matter Nos. 1 and 3 as academic, and declared that Local Law No. 18 (2010) of County of Nassau violates the New York Constitution and the Municipal Home Rule Law.

CURRY, MATTER OF v EVANS:

3<sup>RD</sup> Dept. App. Div. order of 11/8/12; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

PRISONS AND PRISONERS - CALCULATION OF SENTENCE - INCLUSION OF UNDISCHARGED PORTION OF PRIOR SENTENCE IN CALCULATING RELEASE DATE;

Supreme Court, Albany County dismissed petitioner's CPLR article 78 application to prohibit the Department of Corrections and Community Supervision from including the undischarged portion of a prior sentence in the calculation of petitioner's sentence; App. Div. affirmed.

MATTER OF DONOFRIO, AN ATTORNEY:

2<sup>ND</sup> Dept. App. Div. order of 1/9/13; sua sponte examination whether any jurisdictional basis exists for appeal as of right; ATTORNEY AND CLIENT - DISCIPLINARY PROCEEDINGS - SUSPENSION - WHETHER APPELLATE DIVISION ABUSED ITS DISCRETION IN IMPOSING SUSPENSION - WHETHER SPECIAL REFEREE'S REPORT HAD A SUFFICIENT BASIS IN LAW;

App. Div., among other things, granted petitioner's motion to confirm the Special Referee's report and suspended respondent from the practice of law for two years.

GOLB (RAPHAEL), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 1/29/13; modification; leave to appeal granted by Pigott, J., 3/11/13;  
CRIMES - INSTRUCTIONS - DEFINITION OF "FRAUD," "DEFRAUD," "BENEFIT," AND "INJURE" - WHETHER DEFENDANT'S PROSECUTION, AND THE JURY INSTRUCTIONS GIVEN, FOR THE IDENTIFY THEFT, CRIMINAL IMPERSONATION AND FORGERY COUNTS VIOLATED HIS FIRST AMENDMENT RIGHTS; AGGRAVATED HARASSMENT - WHETHER AGGRAVATED HARASSMENT IS COMMITTED WHEN COMMUNICATIONS OF THE TYPE BARRED BY THE STATUTE ARE NOT SENT TO THE VICTIM CRITICIZED IN THOSE COMMUNICATIONS; UNAUTHORIZED USE OF A COMPUTER - WHETHER VIOLATIONS OF INTERNET TERMS OF SERVICE AGREEMENT CONSTITUTES THE CRIME OF UNAUTHORIZED USE OF A COMPUTER; EVIDENCE - WHETHER THE VERDICT IS SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE;  
Supreme Court, New York County convicted defendant, after a jury trial, of two counts of identify theft, 14 counts of criminal impersonation, ten counts of forgery, three counts of aggravated harassment, and one count of unauthorized use of a computer, and sentenced him to an aggregate term of six months; App. Div. modified to the extent of vacating the identity theft conviction under count one.