

COURT OF APPEALS NEW FILINGS

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

**October 25, 2013 through October 31, 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.**

TYRONE D., MATTER OF v STATE OF NEW YORK:

4<sup>TH</sup> Dept. App. Div. order of 5/3/13; affirmance; leave to appeal granted by Court of Appeals, 10/10/13;  
CRIMES - SEX OFFENDERS - CIVIL COMMITMENT OR SUPERVISION - DENIAL OF MOTION FOR CHANGE OF VENUE - WHETHER MENTAL HYGIENE LAW ARTICLE 10 ALLOWS FOR A CHANGE OF VENUE NOT ONLY FOR TRIALS UNDER THAT ARTICLE, BUT ALSO FOR ANNUAL REVIEW HEARINGS; WHETHER PETITIONER WAIVED HIS RIGHT TO AN ANNUAL REVIEW HEARING; RELIANCE ON EXPERT REPORT WITHOUT TESTIMONY; ALLEGED INEFFECTIVE ASSISTANCE OF COUNSEL; SUFFICIENCY OF THE EVIDENCE THAT PETITIONER IS A DANGEROUS SEX OFFENDER REQUIRING CONFINEMENT; Supreme Court, Oneida County, denied petitioner's motion to change venue for his annual review hearing from Oneida County to New York County and, in a separate order, continued his commitment to a secure treatment facility; App. Div. affirmed.

FAZIO (GEORGE), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 5/16/13; affirmance; leave to appeal granted by Court of Appeals, 10/15/13;

CRIMES - SEX OFFENDERS - SEX OFFENDER REGISTRATION ACT (SORA) - NUMBER OF VICTIMS RISK FACTOR - WHETHER CHILDREN DEPICTED IN PORNOGRAPHIC IMAGES MAY BE FOUND TO CONSTITUTE SEPARATE VICTIMS IN DETERMINING A SORA RISK LEVEL;

County Court, Albany County, classified defendant as a risk level II sex offender pursuant to the Sex Offender Registration Act; App. Div. affirmed.

MARGERUM, et al. v CITY OF BUFFALO, et al.:

4<sup>TH</sup> Dept. App. Div. order of 7/5/13; modification; leave to appeal granted by Court of Appeals, 10/17/13;

CIVIL RIGHTS - DISCRIMINATION IN EMPLOYMENT - CLAIM THAT CITY DEFENDANTS DISCRIMINATED AGAINST CERTAIN FIREFIGHTERS BY ALLOWING PROMOTIONAL ELIGIBILITY LISTS CREATED PURSUANT TO THE CIVIL SERVICE LAW TO EXPIRE SOLELY ON THE GROUND THAT PLAINTIFFS, WHO WERE NEXT IN LINE FOR PROMOTION, ARE CAUCASIAN - REDUCTION OF RECOVERY FOR ECONOMIC DAMAGES; NOTICE OF CLAIM (GENERAL MUNICIPAL LAW § 50-i); LIABILITY OF CITY UNDER HUMAN RIGHTS LAW UNDER STANDARD SET IN RICCI v DeSTEFANO (557 US 557);

Supreme Court, Erie County, awarded economic damages to twelve of the thirteen plaintiffs; App. Div. modified by reducing the awards of economic damages to twelve individual plaintiffs.

NEW YORK STATEWIDE COALITION OF HISPANIC CHAMBERS OF COMMERCE, et al. MATTER OF v NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE, et al.:

1<sup>ST</sup> Dept. App. Div. order of 7/30/13; affirmance; leave to appeal granted by Court of Appeals, 10/17/13;

ADMINISTRATIVE LAW - VALIDITY OF REGULATION - SEPARATION OF POWERS - REGULATION EXCEEDING DELEGATED AUTHORITY - WHETHER RESPONDENT NEW YORK CITY BOARD OF HEALTH EXCEEDED ITS DELEGATED AUTHORITY, AND THUS VIOLATED THE SEPARATION OF POWERS DOCTRINE, BY PROMULGATING THE SUGARY DRINKS PORTION CAP RULE, WHICH PROHIBITS CERTAIN FOOD SERVICE ESTABLISHMENTS FROM SERVING SUGARY DRINKS IN SIZES LARGER THAN 16 OUNCES (NY CITY HEALTH CODE [24 RCNY] § 81.53) - WHETHER A RATIONAL BASIS IN THE RECORD SUPPORTS THE REGULATION;

Supreme Court, New York County, among other things, granted the petition and declared invalid respondent New York City Board of Health's amendment to New York City Health Code § 81.53 barring the sale of sugary drinks in a cup or container able to contain more than 16 fluid ounces, and enjoined respondents from implementing or enforcing it; App. Div. affirmed.

RANFTLE (DECEASED), MATTER OF:

1<sup>ST</sup> Dept. App. Div. order of 7/2/13; affirmance; leave to appeal granted by App. Div., 10/15/13; Rule 500.11 review pending;

WILLS - PROBATE - JURISDICTION OF SURROGATE BASED ON DECEDENT'S DOMICILE;

Surrogate's Court, New York County, dismissed a petition for, among other things, leave to submit objections to the probate of the last will of decedent H. Kenneth Ranftle; App. Div. affirmed.

WILLIAMS, MATTER OF v HON. R.A.W., et al.:

1<sup>ST</sup> Dept. App. Div. orders of 6/20/13 and 9/26/13; sua sponte examination whether the 9/26/13 Appellate Division order denying reargument finally determines the proceeding within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - CHALLENGE TO AN APPELLATE DIVISION ORDER DISMISSING PETITIONER'S CPLR ARTICLE 78 PETITION AND AN APPELLATE DIVISION ORDER DENYING PETITIONER'S MOTION FOR REARGUMENT;

App. Div. denied petitioner's application for an order pursuant to CPLR article 78 and dismissed his petition; App. Div. then denied petitioner's motion for reargument.