

COURT OF APPEALS NEW FILINGS

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

**June 13, 2014 through June 19, 2014**

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.**

BRANCH, &c. v COUNTY OF SULLIVAN:

3<sup>RD</sup> Dept. App. Div. order of 12/12/13; affirmance; leave to appeal granted by Court of Appeals, 6/12/14;  
COLLEGES AND UNIVERSITIES - COMMUNITY COLLEGE - WRONGFUL DEATH ACTION BY ADMINISTRATOR OF ESTATE OF A STUDENT WHO HAD A FATAL HEART ATTACK IN A COLLEGE DORMITORY BASED ON, AMONG OTHER THINGS, THE FAILURE TO PROVIDE AN AUTOMATED EXTERNAL DEFIBRILLATOR ON CAMPUS - WHETHER THE COUNTY OWED A DUTY OF CARE TO DECEDENT STUDENT BASED ON ITS STATUS AS A LOCAL SPONSOR OF THE COMMUNITY COLLEGE PURSUANT TO EDUCATION LAW, ARTICLE 63;  
Supreme Court, Sullivan County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

CAZA (KAREN M.), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 3/27/14; affirmance; leave to appeal granted by McCarthy, J., 6/5/14; Rule 500.11 review pending; CRIMES - PLEA BARGAINING - ENFORCEMENT OF AGREEMENT - CONDITIONAL SENTENCING COMMITMENT - FAILURE TO COMPLY WITH PREPARATION OF PRESENTENCE INVESTIGATION REPORT; County Court, Essex County, convicted defendant, upon her guilty plea, of two counts of attempted forgery in the second degree; App. Div. affirmed.

ISRAEL (DANIEL), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 11/7/13; affirmance; leave to appeal granted by Lippman, Ch.J., 6/12/14; CRIMES - EVIDENCE - OTHER UNCHARGED CRIMES - WHETHER THE TRIAL COURT ERRED IN PERMITTING THE PEOPLE TO INTRODUCE REBUTTAL EVIDENCE OF TWO UNCHARGED CRIMES WHERE THE WITNESSES LACKED DIRECT KNOWLEDGE OF PROVOCATION (PEOPLE v SANTERELLI, 49 NY2d 241); WHETHER IN THE CONTEXT OF AN EXTREME EMOTIONAL DISTURBANCE DEFENSE, INCIDENTS OF UNCHARGED VIOLENCE MAY BE ADMISSIBLE EVEN IF THE DEGREE OF VIOLENCE IS NOT COMMENSURATE WITH THE CONDUCT UNDERLYING THE CHARGES; Supreme Court, New York County, convicted defendant, upon a jury verdict, of murder in the second degree, attempted murder in the first degree, attempted assault in the first degree, assault in the first and second degrees, reckless endangerment in the first degree and two counts of criminal possession of a weapon in the second degree, and sentenced him to an aggregate term of 35 years to life; App. Div. affirmed.

JORDAN, MATTER OF v LEVINE, et al.:

2<sup>ND</sup> Dept. App. Div. order of 4/30/14; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; PROCEEDING AGAINST BODY OR OFFICER - PROHIBITION - WHEN REMEDY AVAILABLE - TRIAL ERRORS - MANDAMUS - CLEAR LEGAL RIGHT TO RELIEF SOUGHT; Supreme Court, Kings County, in a CPLR article 78 proceeding in the nature of prohibition to, among other things, prohibit respondent Civil Court Judge from presiding over an underlying holdover proceeding, and in the nature of mandamus to compel respondent Civil Court Judge to take certain action regarding determinations made on 10/20/11, and 12/14/11, in effect, denied the petition and dismissed the proceeding; App. Div. affirmed.

PACQUETTE (DEAN), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 12/3/13; affirmance; leave to appeal granted by Lippman, Ch.J., 6/5/14; CRIMES - IDENTIFICATION OF DEFENDANT - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT THE IDENTIFICATION OF DEFENDANT BY A "GHOST OFFICER" IN A "BUY AND BUST" CASE WAS CONFIRMATORY AND, THUS, DID NOT REQUIRE CPL 710.30(1)(b) NOTICE;

Supreme Court, New York County, convicted defendant, after a jury trial, of criminal sale of a controlled substance in the third degree, and sentenced him to a term of five years; App. Div. affirmed.

ESTATE OF MONACO, MATTER OF:

4<sup>TH</sup> Dept. App. Div. order of 5/9/14; affirmance with two-Justice dissent; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether the two-Justice dissent is on a question of law;

Surrogates's Court, Erie County, denied the Estate's motion to compel Eugene Allen Monaco to produce his income tax records from the years 1980 to 1995, or for authorization to obtain such records from the New York State Department of Taxation and Finance; App. Div. affirmed.

TIPALDO v LYNN:

1<sup>ST</sup> Dept. App. Div. order of 8/24/10; modification; leave to appeal granted by Court of Appeals, 6/5/14;

LABOR - WHISTLEBLOWER LAW (CIVIL SERVICE LAW § 75-b) - RETALIATORY PERSONNEL ACTION AGAINST CITY DEPARTMENT OF TRANSPORTATION (DOT) EMPLOYEE WHO REPORTED TO THE DEPARTMENT OF INVESTIGATION (DOI) THAT TWO OF HIS SUPERVISORS VIOLATED BIDDING RULES - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT IT WAS FUTILE FOR PLAINTIFF TO FIRST REPORT THE ALLEGED VIOLATION TO THE INTERNAL DOT "APPOINTING AUTHORITY," AS REQUIRED BY THE STATUTE, BECAUSE THE SAME PEOPLE WHO COMMITTED THE ALLEGED VIOLATION WERE THE "APPOINTING AUTHORITY," AND THAT PLAINTIFF'S INFORMAL REPORT TO HIS IMMEDIATE SUPERVISORS AND HIS FORMAL REPORT TO THE DOI "SATISFACTORILY MET" THE STATUTORY REQUIREMENT; INTEREST - INTEREST ON AWARD - PRE-DETERMINATION INTEREST - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT PRE-DETERMINATION INTEREST IS AVAILABLE TO A PREVAILING PLAINTIFF IN AN ACTION BROUGHT UNDER CIVIL SERVICE LAW § 75-b;

Supreme Court, New York County, granted defendants' motion for summary judgment dismissing the complaint and denied plaintiff's cross motion for partial summary judgment on the issue of liability; App. Div. reversed, denied defendants' motion, granted plaintiff's cross motion and remanded the matter for a determination of damages; Supreme Court awarded plaintiff \$175,000 in back pay without interest; App. Div. modified, to the extent of ordering defendants to reinstate plaintiff to the same position held by him before the retaliatory personnel action, or to an equivalent position, and remanded the matter to Supreme Court to recalculate the award in accordance with the App. Div. order; Supreme Court, among other things, awarded plaintiff back pay, interest, attorneys' fees and costs.