

COURT OF APPEALS NEW FILINGS

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

January 11 through January 17, 2019

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.

MATTER OF TYRELL FF. (JAQUASISA GG.):

3RD Dept. App. Div. order of 11/21/18; dismissal of appeal, with dissents; Rule 500.11 review pending; sua sponte examination whether the two-Justice dissent at the Appellate Division is on a question of law and whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

Appeal--Academic and Moot Questions--Whether mootness exception applies to appeal from Family Court order continuing temporary removal of subject child; parent, child and family--abused or neglected child--whether a respondent in a proceeding under Family Court Article 10 may consent to the temporary removal of the subject child absent an admission of imminent risk;

Family Court, Schenectady County, in a proceeding pursuant to Family Court Act, Article 10, temporarily removed the subject child from respondent's custody; App. Div. dismissed the appeal as moot.

FRANCIS (GERALD), PEOPLE v:

1ST Dept. App. Div. order of 9/6/18; affirmance; leave to appeal granted by Rivera, J., 12/18/18;

Crimes--Sentence--Whether CPL 470.15 (1) prevents an intermediate appellate court from reviewing the denial of a defendant's CPL 440.20 motion for resentencing if it finds that the denial of the motion was not "adverse" to defendant; defendant who received an illegally low sentence moved for resentencing with the ultimate intention to withdraw his guilty plea on the basis that it was not knowing and voluntary;

Supreme Court, New York County, denied defendant's CPL 440.20 motion to set aside his sentence; App. Div. affirmed.

MANKO v LENOX HILL HOSPITAL:

2ND Dept. App. Div. orders of 12/17/18 and 1/7/19; denial of motions; sua sponte examination whether the orders appealed from finally determine the action within the meaning of the Constitution and whether any basis exists for an appeal as of right;

Appeal--Appellate Division--Denial of motions to vacate prior orders;

App. Div. (12/17/18 order), among other things, denied a motion to vacate the dismissal of appeals from an 11/3/16 order of Supreme Court, Kings County; and a 4/20/17 judgment of the same court, and to extend the time to perfect the appeals; thereafter, App. Div. (1/7/19 order), among other things, denied appellant's renewed motion to recall and vacate so much of an 8/26/16 App. Div. order as dismissed an appeal from a 5/7/15 Supreme Court, Kings County, order, and to reinstate the appeal.

MATTER OF STEINBERG:

1ST Dept. App. Div. order of 12/11/18; suspension of attorney; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Attorney and Client--Disciplinary Proceedings--Suspension of attorney--claimed due process violations;

App. Div. granted the Grievance Committee's motion to affirm the Referee's sanction report to the extent of affirming the Referee's findings of fact and conclusions of law, disaffirmed the sanction recommendation, and suspended respondent from the practice of law for a period of one year.