Vol. 37 - No. 29
7/21/17

COURT OF APPEALS NEW FILINGS

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

July 14, 2017 through July 20, 2017

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.

BAILEY (PRINCESAM), PEOPLE v:
1ST Dept. App. Div. order of 3/21/17; affirmance; leave to appeal granted by Fahey, J., 6/29/17;
Crimes--Jurors--Repeated use of racial epithet by defendant's counsel as strategy in cross examination of victim affected juror--request for mistrial by defendant's counsel based on allegedly "grossly unqualified" juror--whether trial court erred in failing to conduct an individual inquiry of the juror involved; evidence--whether trial court erred in permitting extensive gang-related testimony;
Supreme Court, New York County, convicted defendant, after a jury trial, of assault in the second degree, and sentenced him, as a second violent felony offender, to a term of seven years; App. Div. affirmed.

KEVIN McK., MATTER OF v ELIZABETH A.E.:
1ST Dept. App. Div. order of 6/20/17; affirmance; sua sponte examination of whether the order appealed from 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;
Parent, Child and Family--Custody--Whether father was entitled to counsel to represent him in custody proceeding; claimed due process violations; Uniform Child Custody Jurisdiction and Enforcement Act;
Family Court, New York County, dismissed without prejudice father's petitions seeking to modify a custody order and to enforce a visitation order; App. Div. affirmed.

R. F. SCHIFFMANN ASSOCIATES, INC., et al. v BAKER & DANIELS LLP, et al.:
1ST Dept. App. Div. order of 2/10/17; modification; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;
Interest--Prejudgment interest (CPLR 5001); Contract--late payment fees--invoices sent to law firm for consulting expert services--whether the Appellate Division erred in failing to award prejudgment interest and late payment fees to plaintiffs;
Supreme Court, New York County, among other things, dismissed plaintiffs' breach of contract claim, declined to award the fees, and dismissed all claims as against defendant Weaver Popcorn Company; thereafter, awarded plaintiffs $82,202.58, representing principal in the sum of $48,200, plus prejudgment interest at the rate of 9% from 2/1/04 to 12/13/12, less costs, as against Baker & Daniels LLP; App. Div. modified the 12/2/15 order to award late fees to the extent indicated in the decision, and modified the 5/26/16 order to award interest at 18% instead of 9%, and, as so modified, affirmed both orders.