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COURT OF APPEALS NEW FILINGS

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

October 23, 2020 through October 29, 2020

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.

JOHNSON, MATTER OF v CITY OF NEW YORK; WORKERS' COMPENSATION BOARD:
3RD Dept. App. Div. order of 2/6/20; affirmance; leave to appeal granted by Court of Appeals, 10/20/20;
Workers' Compensation--Award--Whether an award of workers' compensation benefits for a schedule of loss of use (SLU) attributable to an injury to one part of a qualifying limb must be offset by a prior award for an injury involving a different part of the same qualifying limb;
Workers' Compensation Board, among other things, ruled that claimant sustained a 30% schedule loss of use of his left leg and a 0% schedule loss of use of his right leg as a result of a February 2006 accident; App. Div. affirmed.

KONKUR v UTICA ACADEMY OF SCIENCE CHARTER SCHOOL; TURKISH CULTURAL CENTER AND HIGH WAY EDUCATION , INC.:
4TH Dept. App. Div. order of 3/13/20; reversal; leave to appeal granted by Court of Appeals, 10/15/20;
Labor--Hours and Wages--Whether the Appellate Division erred in dismissing plaintiff's cause of action pursuant to Labor Law § 198-b on the ground that the statute does not provide for a private right of action;
Supreme Court, Oneida County, among other things, denied in part the motion of defendant High Way Education, Inc., doing business as Turkish Cultural Center, incorrectly sued as Turkish Cultural Center and Highway Education, Inc., to dismiss the complaint against it; App. Div. reversed order insofar as appealed from and dismissed plaintiff's complaint against defendant High Way Education, Inc. in its entirety.

MILLER, MATTER OF v ANNUCCI, &c, et al.:
3RD Dept. App. Div. order of 11/7/19; dismissal; leave to appeal granted by Court of Appeals, 9/15/20; Rule 500.11 review pending;
Appeal--Timeliness--Whether the Appellate Division properly dismissed the appeal as untimely;
Supreme Court, Albany County, dismissed complaint/petition; App. Div. dismissed the appeal as untimely taken.

ROMINE v LAURITO et al.:
3RD Dept. App. Div. order of 9/18/20; dismissal; 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;
Motions and Orders;
Supreme Court, Ulster County, denied motions to reargue and renew; App. Div. denied motion to vacate dismissal of appeal and for extension of time to perfect appeal.

STATE OF NEW YORK, MATTER OF v KERRY K. (ANONYMOUS):
2ND Dept. App. Div. order of 9/2/20; 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;
Crimes--Sex Offenders--Civil Commitment or Supervision--Where sex offender is awaiting retrial on the issue of mental abnormality, whether Mental Hygiene Law requires that sex offender be detained pending the new trial; alleged due process violation;

Supreme Court, Suffolk County, committed appellant to a secure treatment facility pending the completion of a new trial on the issue of mental abnormality, and, if necessary, a new dispositional hearing; App. Div. affirmed.