NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
January 5 – 9, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts January 5 – 9, 2026, and Posted on the New York Appellate Digest Website on Monday, January 12, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report .

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APPEALS, ATTORNEYS, FORECLOSURE.

FOR THE FIRST TIME IN NEW YORK, COUNSEL WAS SANCTIONED IN THE AMOUNT OF $5000 FOR SUBMITTING AI-GENERATED BRIEFS CITING 23 "FAKE" DECISIONS; IN ADDITION, COUNSEL AND HIS CLIENT WERE EACH SANCTIONED IN THE AMOUNT OF $2500 FOR FILING A FRIVOLOUS APPEAL (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Fisher, in a matter of first impression, determined (1) counsel for the defendant in this foreclosure action should be sanctioned for submitting appellate briefs generated by AI which cited 23 "fake" appellate decisions, and (2) counsel for the defendant and the defendant should be sanctioned for filing a frivolous appeal: Defendant's counsel was sanctioned in the amount of $5000 for the AI generated briefs and $2500 for the frivolous appeal. Defendant was sanctioned in the amount of $2500 for the frivolous appeal:

… [R]ecognizing this as the first appellate-level case in New York addressing sanctions for the misuse of GenAI, we find the imposition of a monetary sanction on defense counsel Joshua A. Douglass in the amount of $5,000 to be appropriate under the circumstances, with the further goal of deterring future frivolous conduct by defendant and the bar at large … . To be clear, attorneys and litigants are not prohibited from using GenAI to assist with the preparation of court submissions.

The issue arises when attorneys and staff are not sufficiently trained on the dangers of such technology, and instead erroneously rely on it without human oversight. As with the work from a paralegal, intern or another attorney, the use of GenAI in no way abrogates an attorney's or litigant's obligation to fact check and cite check every document filed with a court. To do otherwise may be sanctionable, depending on the facts and particular circumstances of each case. * * *

Although defense counsel signed the papers filed with this Court …, it is … not unnoticed that the metadata of numerous documents indicate they originated from a program in his client's name. Such result would be consistent with defendant filing papers pro se before Supreme Court, and defense counsel's apparent unfamiliarity during oral argument with certain papers he allegedly filed during the pendency of this appeal. Given the baseless nature of this appeal, and recognizing that sanctions must be goal oriented to deter future conduct to prevent the waste of judicial resources and continued vexatious litigation of specific individuals too … , we conclude that an additional sanction of $2,500 shall be imposed on defense counsel … and $2,500 shall be imposed on defendant … for pursing this appeal. Deutsche Bank Natl. Trust Co. v LeTennier, 2026 NY Slip Op 00040, Third Dept 1-8-25

Practice Point: For the first time in New York an attorney was sanctioned for submitting AI-generated briefs which cited "fake" decisions.

Practice Point: Here both counsel and his client were sanctioned for filing a frivolous appeal. It was clear that the client played a role in creating the AI-generated briefs.

January 8, 2026

CRIMINAL LAW, JUDGES, APPEALS.

THE PROBATION CONDITION PROHIBITING ASSOCIATION WITH GANGS WAS STRICKEN BECAUSE THE CONDITION WAS NOT RELEVANT TO THE UNDERLYING OFFENSE OR DEFENDANT'S REHABILITATION; THE ISSUE SURVIVES A WAIVER OF APPEAL AND A LACK OF PRESERVATION (FIRST DEPT).

The First Department, striking a probation condition, determined the condition prohibiting defendant's association with gangs was not related to defendant's rehabilitation: The First Department noted that the issue survives a waiver of appeal and a lack of preservation:

Defendant's appeal waiver does not foreclose her challenges to the legality of the conditions of her probation under Penal Law § 65.10(1) and do not require preservation … . …

… [T]he probation condition requiring defendant to "[r]efrain from wearing or displaying gang paraphernalia and having any association with a gang or members of a gang if directed by the Department of Probation" must be stricken because there is no evidence that defendant's actions were connected to gang activity or that she had a history of gang membership, rendering this condition neither reasonably related to her rehabilitation nor necessary to ensure that she leads a law-abiding life (… Penal Law § 65.10[1]). People v Johnson, 2026 NY Slip Op 00029, First Dept 1-6-25

Practice Point: The appellate courts are striking probation conditions not shown to be relevant to the underlying offense or criminal history.

Same issue and result in People v Seymore, 2026 NY Slip Op 00028, First Dept 1-6-25

January 6, 2026

CRIMINAL LAW, JUDGES.

ALTHOUGH THE JUDGE DID NOT COMMIT TO CONCURRENT SENTENCES, THE PLEA AGREEMENT CONTEMPLATED CONCURRENT SENTENCES AND THE JUDGE'S STATEMENTS CREATED CONFUSION ON THE ISSUE; IN THE INTEREST OF JUSTICE, AND TAKING INTO ACCOUNT THE CONTENTS OF THE PRESENTENCE REPORT, THE CONSECUTIVE SENTENCES WERE VACATED AND CONCURRENT SENTENCES WERE IMPOSED (THIRD DEPT).

The Third Department, directing that defendant's sentences be served concurrently, not consecutively, determined that the plea agreement contemplated the imposition of concurrent sentences and the judge's confusing and ambiguous language in the plea colloquy warranted modification of the sentence:

We recognize that the imposition of consecutive sentences was authorized under Penal Law § 70.25 (2) … , and that County Court did not make any express sentencing commitment to defendant. However, the plea agreement contemplated the imposition of concurrent sentences, County Court stated during the plea proceedings that the maximum term of imprisonment defendant faced on a class C violent felony was 15 years, and the court used confusing and ambiguous language during the plea colloquy regarding the possibility of consecutive sentencing … . In light of the confusion, defendant seeks vacatur of his plea or modification of the sentence to reflect a concurrent sentence. On this record, and after accounting for the circumstances set forth in the PSR, we find that the imposition of concurrent sentences is appropriate and modify the judgment accordingly … . People v Bonville, 2026 NY Slip Op 00039, Third Dept 1-8-25

Practice Point: Here it is possible the defendant entered the plea agreement with the understanding that the sentences would run concurrently. Although the judge did not commit to concurrent sentences, the judge's statements on the issue were confusing and ambiguous. The Third Department, in the interest of justice, after reviewing the presentence report, imposed concurrent sentences.

January 8, 2026

CRIMINAL LAW, JUDGES.

THE UNDERLYING OFFENSE AND DEFENDANT'S LIMITED HISTORY OF ALCOHOL ABUSE DID NOT WARRANT A PROBATION CONDITION REQUIRING CONSENT TO SEARCHES FOR WEAPONS, DRUGS AND OTHER CONTRABAND (FIRST DEPT).

The First Department struck the probation condition requiring defendant's consent to searches for weapons, drugs and other contraband:

The court improperly imposed, as a condition of defendant's probation, a requirement that he consent to a search by his probation officer of his person, vehicle, or home for weapons, drugs, drug paraphernalia, and other contraband. Defendant was not armed with a weapon during the underlying offense and had no history of violence or use of weapons … . Defendant did not have a history of abusing illicit substances and was not assessed as being in need of drug abuse treatment … . Although defendant admitted to a limited history of alcohol abuse, before and at the time of the instant offense, the consent-search condition, as written, "is not limited to conform" to the "certain limited circumstances where alcohol becomes contraband for the purposes of" that condition … . People v Aquirre, 2026 NY Slip Op 00025, First Dept 1-6-25

Practice Point: The First Department struck a probation condition requiring consent to searches for weapons, drugs and other contraband, which was not justified by the underlying offense or defendant's limited history of alcohol abuse.

January 6, 2026

CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA), CONSTITUTIONAL LAW.

THE SIX-YEAR DELAY BETWEEN DEFENDANT'S SEXUAL-MISCONDUCT GUILTY PLEA AND THE SORA RISK-ASSESSMENT HEARING DID NOT DEPRIVE DEFENDANT OF HIS RIGHT TO DUE PROCESS OF LAW (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, over a two-judge concurrence, determined that the six-year delay between defendant's guilty plea to sexual misconduct and the SORA risk-level assessment hearing did not deprive defendant of his right to due process of law:

Defendant pled guilty to one count of sexual misconduct, a sex offense requiring registration under the Sex Offender Registration Act (SORA). Nevertheless, defendant was not notified of his SORA registration requirements, and approximately six years passed from the time of his plea before this mistake was brought to the attention of the Board of Examiners of Sex Offenders. After a full, albeit delayed, SORA proceeding, defendant was designated a level one sex offender, the least restrictive designation available, with the required twenty-year registration period ordered nunc pro tunc from the date of his release. Defendant claims that the delay between his plea and his SORA hearing violated his substantive due process rights. We disagree and hold that defendant failed to make the required showing that the delay prejudiced his ability to present his case to the SORA court and for that reason, we affirm. People v Collier, 2026 NY Slip Op 00074, CtApp 1-8-26

Practice Point: Consult this opinion for a discussion of the substantive and procedural due process protections raised by a six-year delay in holding a SORA risk-level assessment hearing.

January 8, 2026

FAMILY LAW, RELIGION.

A MARRIAGE WITHOUT FIRST OBTAINING A MARRIAGE LICENSE WILL BE DEEMED VALID IN NEW YORK IF THE MARRIAGE IS "SOLEMNIZED;" HERE THE CEREMONY PERFORMED BY THE COPTIC ORTHODOX CHURCH WAS DEEMED A "FAMILY BLESSING," NOT A "MARRIAGE," BECAUSE THE "SOLEMNIZATION" REQUIREMENTS WERE NOT MET (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Kern, determined the parties in this divorce proceeding had never been married:

In this action for divorce, we are asked to determine whether the parties are validly married under the New York Domestic Relations Law despite not obtaining a marriage license prior to their alleged wedding ceremony. Pursuant to Domestic Relations Law § 25, a marriage is not void for failure to obtain a marriage license if the marriage is solemnized. A marriage is solemnized under Domestic Relations Law § 12 when a couple solemnly declares in the presence of a clergyman, magistrate, or one-day marriage officiant and attending witness or witnesses that they take each other as spouses. Even when the parties do not make this solemn declaration that they take each other as spouses, a marriage will still be valid without a license pursuant to Domestic Relations Law § 12 when the marriage is solemnized in the manner used and practiced in the couple's respective denomination. As we find that neither of these scenarios occurred, we hold that the parties are not validly married pursuant to the Domestic Relations Law.

On July 29, 2017, the parties took part in a baptism of their son at a Coptic Orthodox Church performed by Bishop Anba David of the Coptic Orthodox Diocese of New York and New England and attended by the church's priest, Father Gregory Saroufeem. After the baptism was completed, plaintiff was asked if she wished to be baptized into the Coptic Orthodox Church. She assented, and after plaintiff underwent certain preparations, the Bishop performed the baptism.

After the second baptism, plaintiff contends that the Bishop asked if she and defendant wished to be married, she and defendant agreed, and the Bishop performed an impromptu wedding ceremony. Defendant contends that the

ceremony was a family blessing and not a marriage. It is undisputed that the parties did not have a marriage license, did not exchange rings, made no vows during the ceremony and did not execute a certificate of marriage, among other traditional requirements of the Coptic Church. Funti v Andrews, 2026 NY Slip Op 00012, First Dept 1-6-25

Practice Point: A marriage entered into without first obtaining a marriage license is valid in New York if the marriage is "solemnized." Consult this opinion for a description of the :solemnization" requirements (which were not met here).

January 6, 2026

HUMAN RIGHTS LAW, EMPLOYMENT LAW, CIVIL PROCEDURE, MUNICIPAL LAW.

THE DISMISSAL OF PLAINTIFF'S FEDERAL EMPLOYMENT DISCRIMINATION (RETALIATION) ACTION PURSUANT TO THE NEW YORK STATE HUMAN RIGHTS LAW PRECLUDED A RELITIGATION OF THE RETALIATION CLAIMS IN STATE COURT PURSUANT TO THE NEW YORK CITY HUMAN RIGHTS LAW (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Shulman, determined plaintiff's employment discrimination (retaliation) cause of action pursuant to the New York City Human Rights Law (NYCHRL) was collaterally estopped by the dismissal of plaintiff's action in federal court pursuant to the New York State Human Rights Law (NYSHRL):

Plaintiff asserts that his cooperation in [an] investigation [of another employee] provoked animus from his supervisors … who allegedly retaliated by reducing his business opportunities and ultimately terminating him.

Plaintiff alleged seven discrete adverse employment actions: (1) the artificial depression of his revenue; (2) denial of his request to transfer to a new position; (3) reassignment of his clients; (4) denial of funding to attend conferences; (5) a negative performance review; (6) no bonus in 2015; and (7) termination in August 2016. * * *

The City HRL is "uniquely broad and remedial," requiring courts to construe its provisions "independently from similar or identical provisions of New York state or federal statutes" … . However, the requirement to interpret the City HRL under a more liberal lens does not relieve plaintiff of his burden to produce evidence of a retaliatory motive behind the adverse actions.

* * * Plaintiff's arguments … invite relitigating facts already adjudicated by two federal courts after full and fair litigation. The federal courts expressly found no retaliatory animus after reviewing extensive evidence. … [T]his compels preclusion.

We emphasize that the City HRL's liberal construction rule lowers the causation threshold, not the evidentiary one. Once the federal record established the absence of any retaliatory motive, no genuine factual issue remained even under the City HRL's mixed-motive framework. To allow this case to go to a jury under the guise of liberal construction finds no support in the record. Abromavage v Deutsche Bank Sec. Inc., 2026 NY Slip Op 00052, First Dept 1-8-25

Practice Point: Here the federal courts' dismissal of plaintiff's employment discrimination (retaliation) claims pursuant to the New York State Human Rights Law (NYSHRL) precluded relitigation of those claims in state court pursuant to the New York City Human Rights Law (NYCHRL). Consult this opinion for insight into when collateral estoppel will be invoked to preclude a state action under the NYCHRL which raises retaliation claims identical to those dismissed by the federal courts under the NYSHRL. Although the NYCHRL lowers the causation threshold in comparison with the NYSHRL, it does not lower the evidentiary threshold.

January 8, 2026

JUDGES. CIVIL PROCEDURE, EVIDENCE, FORECLOSURE.

DEFENDANT DID NOT OPPOSE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT IN THIS FORECLOSURE ACTION; THE JUDGE SHOULD NOT HAVE DENIED THE MOTION ON AN EVIDENTIARY GROUND NOT RAISED BY THE DEFENDANT (FIRST DEPT).

The First Department, reversing Supreme Court, determined the judge in this foreclosure action should not have denied plaintiff's motion for summary judgment on an evidentiary ground which was not raised by the defendant:

Plaintiff … moved for summary judgment, submitting an affirmation by counsel, to which the loan documents were annexed, and an affidavit from the same first vice president, which did not attach the subject loan documents. The affiant attested that defendant failed to make monthly payments and that defendant owed plaintiff $2,302,848.55 through June 15, 2024. He did not attest that he based his knowledge of the default and amount due on his review of any records. Defendant did not oppose plaintiff's motion.

… Although it is the movant's burden to establish its entitlement to summary judgment and the failure of the nonmovant to oppose summary judgment does not obviate the movant's need to establish its prima facie case … , "a court should not examine the admissibility of evidence submitted in support of a motion for summary judgment unless the nonmoving party has specifically raised that issue in its opposition to the motion" … . This is because courts "are not in the business of blindsiding litigants, who expect us to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made" … .

On its original motion, plaintiff established its prima facie entitlement to summary judgment by establishing, through the affidavit of a first vice president who was also the loan officer in charge of the loan's collection and enforcement, the existence of the consolidated note, consolidated mortgage, and the existence and amount of defendant's default … . Defendant did not oppose the motion and thus did not raise any objections as to the admissibility of plaintiff's evidence, and the court should not have raised evidentiary objections sua sponte … . Valley Natl.

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Bank v Community Prot. Church of Co-op City, Inc., 2026 NY Slip Op 00036, First Dept 1-6-25

Practice Point: A judge should not, sua sponte, deny a motion for summary judgment on a ground not raised by the nonmoving party.

January 6, 2026