

# NEW YORK APPELLATE DIGEST, INC.

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts February 16 – 20, 2026, and Posted on the New York Appellate Digest Website on Tuesday , February 24, 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. Copyright 2026 New York Appellate Digest, Inc.

Weekly Reversal  
Report  
February 16 – 20,  
2026

## Contents

CIVIL PROCEDURE, CIVIL RIGHTS LAW, DEFAMATION, ENVIRONMENTAL LAW.....	7
THE DEFAMATION SUIT BY PLAINTIFF MARINA OWNER AGAINST AN ENVIRONMENTAL ADVOCACY ORGANIZATION AND A PUBLISHER WAS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP); DEFENDANT WAS ABLE TO SHOW ONE PUBLISHED STATEMENT WAS FALSE; THEREFORE THE ACTION CAN PROCEED WITH RESPECT TO THAT ONE STATEMENT (SECOND DEPT). .....	7
CIVIL PROCEDURE, CONTRACT LAW, FRAUD. ....	9
ALTHOUGH A JURY TRIAL WAIVER IN A CONTRACT IS NOT ENFORCED WHERE A COUNTERCLAIM ASSERTS FRAUDULENT INDUCEMENT, HERE THE FRAUDULENT- INDUCEMENT COUNTERCLAIM SOUGHT RESCISSION OF THE CONTRACT, EQUITABLE RELIEF WHICH MUST BE TRIED BY THE COURT; THE MOTION TO STRIKE DEFENDANTS’ JURY-TRIAL DEMAND SHOULD HAVE BEEN GRANTED (FIRST DEPT). ....	9
CIVIL PROCEDURE, INSURANCE LAW, NEGLIGENCE.....	10
THE MOTION TO INTERVENE BY AN INSURER SEEKING SUBROGATION FOR A CLAIM ALREADY PAID IN THIS VEHICLE-ACCIDENT CASE WAS TIMELY UNDER THE RELATION- BACK DOCTRINE; THE PAID CLAIM STEMMED FROM THE ACCIDENT WHICH IS THE SUBJECT OF THE ONGOING LITIGATION; THE MOTION TO INTERVENE SHOULD HAVE BEEN GRANTED (SECOND DEPT).....	10
CIVIL PROCEDURE. ....	11
ALTHOUGH DEFENDANT HAD JURISDICTIONAL GROUNDS FOR VACATING THE JUDGMENT, HE WAIVED ANY JURISDICTIONAL ISSUES BY PARTICIPATING IN AN EXAMINATION UNDER OATH BEFORE MOVING TO VACATE THE JUDGMENT (SECOND DEPT).....	11
CRIMINAL LAW, APPEALS.....	12
IF A DEFENDANT’S GUILTY PLEA CASTS DOUBT UPON DEFENDANT’S GUILT OR THE VOLUNTARINESS OF THE PLEA, THE JUDGE MUST “INQUIRE FURTHER;” THIS ISSUE CAN BE APPEALED IN THE ABSENCE OF PRESERVATION BY A MOTION TO WITHDRAW THE PLEA OR VACATE THE CONVICTION; HOWEVER THIS EXCEPTION TO THE PRESERVATION REQUIREMENT DOES NOT APPLY IF A DEFENDANT FIRST RAISES A QUESTION ABOUT HIS GUILT AT SENTENCING (CT APP). ....	12

Table of Contents

CRIMINAL LAW, APPEALS..... 14

IN 2024, ERLINGER V US HELD THAT A JURY MUST DETERMINE WHETHER A LOOKBACK PERIOD RELEVANT TO ENHANCED SENTENCING HAS BEEN TOLLED; BECAUSE THE SENTENCING COURT DETERMINED THAT ERLINGER APPLIED, AND BECAUSE THE SENTENCING COURT DID NOT HAVE THE POWER TO EMPANEL A JURY FOR RESENTENCING, DEFENDANT WAS NOT SENTENCED AS A PERSISTENT VIOLENT FELONY OFFENDER; ON APPEAL THE MAJORITY HELD THAT THE ERLINGER ISSUE (I.E. WHETHER ERLINGER APPLIED) WAS NOT PRESERVED FOR APPEAL BY THE PEOPLE BECAUSE THEY EXPRESSLY DECLINED TO ARGUE IT; THE DISSENT ARGUED THE ISSUE HAD BEEN PRESERVED AND THE COURT SHOULD HAVE CONSIDERED IT (FIRST DEPT).  
..... 14

CRIMINAL LAW, APPEALS, EVIDENCE. .... 16

THE COURT OF APPEALS CANNOT REVIEW AN APPELLATE DIVISION’S WEIGHT-OF-THE-EVIDENCE RULING ABSENT THE APPELLATE DIVISION’S MANIFEST FAILURE TO CONSIDER THE ISSUE OR THE APPLICATION OF AN INCORRECT LEGAL STANDARD; NOT THE CASE HERE (CT APP). .... 16

CRIMINAL LAW, ATTORNEYS, EVIDENCE..... 17

DEFENSE COUNSEL LEFT A PROFFER SESSION MIDWAY THROUGH THE PROCEEDINGS; DURING THE PROFFER SESSION DEFENDANT MADE AN INCRIMINATORY STATEMENT WHICH WAS USED TO IMPEACH HIS CREDIBILITY AT TRIAL; DEFENDANT’S MOTION TO VACATE HIS CONVICTION ON INEFFECTIVE-ASSISTANCE GROUNDS SHOULD HAVE BEEN GRANTED (FIRST DEPT). .... 17

CRIMINAL LAW, ATTORNEYS, VEHICLE AND TRAFFIC LAW. .... 18

DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO REQUEST A JURY CHARGE FOR “IMPAIRMENT” WHICH WAS APPLIED BY THE THIRD DEPARTMENT IN A RECENT VEHICULAR MANSLAUGHTER CASE; IT WAS NOT CLEAR THE “IMPAIRMENT” CHARGE IN THE VEHICULAR MANSLAUGHTER CASE WAS APPLICABLE IN THE INSTANT “DRIVING WHILE ABILITY IMPAIRED BY DRUGS” CASE (CT APP). .... 18

CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE. .... 20

THE SECOND DEPARTMENT REVERSED SUPREME COURT AND FOUND THERE WAS “GOOD CAUSE” FOR THE 27-YEAR DELAY BETWEEN THE HOMICIDE AND DEFENDANT’S ARREST FOR MURDER (SECOND DEPT)..... 20

Table of Contents

CRIMINAL LAW, EVIDENCE, JUDGES..... 21

EVEN WHERE EVIDENCE OF AN UNCHARGED CRIME IS “INEXTRICABLY INTERTWINED” WITH THE NARRATIVE OF CHARGED CRIME, IT MAY BE INADMISSIBLE BECAUSE ITS PREJUDICIAL EFFECT OUTWEIGHS ITS PROBATIVE VALUE; HERE THE COMPLAINANT’S TESTIMONY ABOUT A PRIOR UNCHARGED SEX ACT SHOULD NOT HAVE BEEN ADMITTED (FIRST DEPT). ..... 21

CRIMINAL LAW, EVIDENCE. .... 22

ALTHOUGH DEFENDANT WAS ARRESTED OUTSIDE THE HOME, HE WAS COERCED INTO TO LEAVING BY A SHOW OF FORCE BY THE POLICE; THEREFORE THE WARRANTLESS ARREST VIOLATED PAYTON; WHETHER THE TENANT’S SUBSEQUENT CONSENT TO SEARCH WAS VOLUNTARY WAS DECIDED BY THE APPELLATE DIVISION USING THE WRONG CRITERIA; MATTER REMITTED (CT APP). ..... 22

CRIMINAL LAW, JUDGES, CONSTITUTIONAL LAW. .... 24

THE MISTRIAL, GRANTED AFTER THE JURY WAS SWORN, DID NOT TRIGGER THE DOUBLE-JEOPARDY BAR TO FURTHER PROSECUTION BECAUSE THE JUDGE’S INQUIRY REVEALED THAT A JUROR’S COMMENTS, AND THE OTHER JURORS’ REACTIONS TO THOSE COMMENTS, IRREPARABLY TAINTED THE JURY (THIRD DEPT). ..... 24

CRIMINAL LAW, JUDGES, EVIDENCE..... 25

THE JUDGE’S QUESTIONING OF WITNESSES, GUIDANCE OF THE PROSECUTION, AND OBVIOUS BI AS IN FAVOR OF THE PROSECUTION DEPRIVED DEFENDANT OF A FAIR TRIAL (SECOND DEPT). ..... 25

CRIMINAL LAW, JUDGES, FAMILY LAW, EVIDENCE. .... 26

THE YOUTH PART OF COUNTY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT “EXTRAORDINARY CIRCUMSTANCES” WARRANTED GRANTING THE PEOPLE’S MOTION TO PREVENT REMOVAL OF THE 17-YEAR-OLD’S PROSECUTION TO FAMILY COURT (CT APP). ..... 26

CRIMINAL LAW, JUDGES, VEHICLE AND TRAFFIC LAW. .... 27

THE JUDGE COMMITTED A MODE OF PROCEEDINGS ERROR BY FAILING TO ACCURATELY AND FULLY INFORM THE DEFENDANT OF THE CONTENTS OF A JURY NOTE (CT APP)..... 27

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW..... 29

THE ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH DRIVING WHEN HIS ABILITY WAS IMPAIRED BY MARIJUANA WAS FACIALLY SUFFICIENT; TWO-JUDGE DISSENT (CT APP)..... 29

[Table of Contents](#)

CRIMINAL LAW, VEHICLE AND TRAFFIC LAW..... 30

THE STANDARD FOR “IMPAIRMENT BY ALCOHOL AND DRUGS” IS THE SAME AS FOR “IMPAIRMENT BY ALCOHOL” IN THE VEHICLE AND TRAFFIC LAW’S DWI SCHEME; THE THIRD DEPARTMENT’S APPLICATION OF THE HIGHER “INTOXICATION” STANDARD TO “IMPAIRMENT BY ALCOHOL AND DRUGS” WAS REJECTED (CT APP). ..... 30

CRIMINAL LAW,, CONSTITUTIONAL LAW. .... 32

THE INVOLVEMENT OF A VAN IN A ROAD RAGE SHOOTING THREE WEEKS BEFORE THE TRAFFIC STOP AND AN INCIDENT WHERE A TRAFFIC AGENT WAS NEARLY STRUCK BY THE VAN 24 HOURS BEFORE THE STOP PROVIDED “REASONABLE SUSPICION” THAT THE DRIVER OF THE VAN AT THE TIME OF THE STOP WAS THE DRIVER DURING THE ROAD-RAGE AND TRAFFIC-AGENT INCIDENTS (CT APP). ..... 32

EDUCATION-SCHOOL LAW. .... 33

THE NEW YORK CLASSROOM-SIZE REGULATIONS FOR STUDENTS WITH DISABILITIES ARE MUTUALLY-EXCLUSIVE ALTERNATIVES, NOT DISTINCT REQUIREMENTS WHICH MUST BE INDEPENDENTLY FULFILLED (CT APP). ..... 33

EMPLOYMENT LAW, CONTRACT LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW, COPYRIGHT, TRADE SECRETS, CIVIL PROCEDURE. .... 34

THIS LAWSUIT BY AN EMPLOYER AGAINST AN EMPLOYEE WHO ALLEGEDLY USED PLAINTIFF’S PROPRIETARY INFORMATION AFTER RESIGNING PRESENTS FACT-SPECIFIC ISSUES IN THE CONTEXT OF RESTRICTIVE COVENANTS IN THE EMPLOYMENT CONTRACT, COPYRIGHT LAW (PRE-EMPTION OF STATE LAW CLAIMS), TRADE SECRETS, AND THE PROPRIETY OF A PRELIMINARY INJUNCTION; ALL OF THESE COMPLEX ISSUES CANNOT BE FAIRLY SUMMARIZED HERE; THE DECISION IS WORTH CONSULTING (SECOND DEPT). ..... 34

EMPLOYMENT LAW, HUMAN RIGHTS LAW, CIVIL PROCEDURE. .... 36

EMPLOYMENT DISCRIMINATION CASES ARE REVIEWED UNDER “NOTICE PLEADING” STANDARDS WHERE ONLY FAIR NOTICE OF THE NATURE OF THE CLAIM AND ITS GROUNDS ARE REQUIRED; HERE PLAINTIFF’S ALLEGATION THAT A SUPERVISOR STATED SHE RECEIVED HIGH EVALUATIONS BECAUSE SHE ENGAGED IN SEXUAL RELATIONS WITH HER SUPERIORS WAS SUFFICIENT TO SURVIVE DISMISSAL (FIRST DEPT)..... 36

EMPLOYMENT LAW, HUMAN RIGHTS LAW, CIVIL PROCEDURE..... 37

PLAINTIFF’S CLAIMS OF DISCRIMINATORY NON-PROMOTION AND TERMINATION PURSUANT TO THE NYC AND NYS HUMAN RIGHTS LAW WERE SUFFICIENT AT THE PLEADING STAGE AND SHOULD NOT HAVE BEEN DISMISSED (FIRST DEPT). ..... 37

[Table of Contents](#)

EMPLOYMENT LAW, NEGLIGENCE, WORKERS' COMPENSATION..... 38

PLAINTIFF WAS INJURED WORKING UNDER GTLF’S SUPERVISION; GTLF HAD HIRED ATRIUM, PLAINTIFF’S GENERAL EMPLOYER, TO HANDLE CERTAIN ASPECTS OF PLAINTIFF’S EMPLOYMENT, INCLUDING PAYROLL AND WORKERS’ COMPENSATION INSURANCE; PLAINTIFF RECEIVED WORKERS’ COMPENSATION BENEFITS FROM ATRIUM FOR A WORK-RELATED INJURY; GTLF, AS PLAINTIFF’S SPECIAL EMPLOYER, CANNOT BE SUED IN NEGLIGENCE BY PLAINTIFF (SECOND DEPT)..... 38

FAMILY LAW, EVIDENCE. .... 39

THE FINDING THAT MOTHER HAD ABUSED THE CHILDREN WAS BASED ON VIDEO EVIDENCE PURPORTING TO SHOW MOTHER’S EX-BOYFRIEND ABUSING ONE OF THE CHILDREN; THE COURT OF APPEALS REVERSED, FINDING THAT THE VIDEO EVIDENCE WAS NOT AUTHENTICATED (CT APP)..... 39

FAMILY LAW, JUDGES, CIVIL PROCEDURE. .... 41

THE JUDGE FAILED TO COMMUNICATE WITH THE OHIO COURT AFTER LEARNING OF ANOTHER CUSTODY-RELATED PROCEEDING THERE AND FAILED TO CONSIDER WHETHER IT SHOULD EXERCISE TEMPORARY EMERGENCY JURISDICTION BASED ON ALLEGATIONS OF DOMESTIC VIOLENCE IN MOTHER’S PETITION (FIRST DEPT)..... 41

FAMILY LAW, JUDGES..... 42

FAMILY COURT SHOULD NOT HAVE DELEGATED ITS AUTHORITY TO DETERMINE PARENTAL ACCESS BY CONDITIONING ACCESS ON THE CONSENT OF THE CHILDREN (SECOND DEPT). .... 42

FORECLOSURE, CIVIL PROCEDURE. .... 43

THE MORTGAGE DEBT WAS ACCELERATED WHEN THE FIRST FORECLOSURE ACTION WAS BROUGHT IN 2008; THE DEFENDANTS SUBSEQUENTLY ENTERED A LOAN MODIFICATION AGREEMENT IN 2008 WHICH DEACCELERATED THE DEBT AND RESET THE STATUTE OF LIMITATIONS; THE DEFENDANTS DEFAULTED AGAIN IN 2009; IN 2018 THE DEBT WAS ACCELERATED AGAIN BY THE FILING OF THE INSTANT FORECLOSURE ACTION; BECAUSE THE SIX-YEAR STATUTE OF LIMITATIONS STARTS RUNNING FROM EACH MISSED PAYMENT, THE 2018 FORECLOSURE ACTION WAS TIMELY BROUGHT (THIRD DEPT). .... 43

FORECLOSURE, CONSTITUTIONAL LAW. .... 44

RETROACTIVE APPLICATION OF THE FORECLOSURE ABUSE PROTECTION ACT (FAPA) DOES NOT VIOLATE THE TAKINGS CLAUSE OF THE US AND NY CONSTITUTIONS (THIRD DEPT)..... 44

[Table of Contents](#)

FREEDOM OF INFORMATION LAW (FOIL), MUNICIPAL LAW. .... 45

THE FOIL REQUEST FOR THE NAMES AND EMAIL ADDRESSES OF THE SUBSCRIBERS TO A TOWN’S ONLINE ALERT SYSTEM SHOULD HAVE BEEN DENIED AS AN UNWARRANTED INVASION OF PRIVACY (CT APP). .... 45

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE. .... 47

PLAINTIFF ALLEGED DEFENDANT NEGLIGENTLY PERFORMED A ROBOTIC ASSISTED LAPAROSCOPIC ADRENALECTOMY; PLAINTIFF’S EXPERT, A GENERAL SURGEON WHO WAS EXPERIENCED IN LAPAROSCOPIC SURGERY, BUT NOT ROBOTIC SURGERY, SHOULD NOT HAVE BEEN PRECLUDED FROM TESTIFYING; THE LACK OF EXPERIENCE WITH ROBOTIC SURGERY WENT TO THE WEIGHT OF THE TESTIMONY, NOT ITS ADMISSIBILITY (SECOND DEPT)..... 47

NEGLIGENCE..... 48

THE HOTEL, IN RESPONSE TO A REQUEST FROM FAMILY MEMBERS, ASSUMED A DUTY TO CHECK ON A GUEST WHO HAD THREATENED SUICIDE; THE HOTEL FULFILLED THAT DUTY; THE HOTEL, HOWEVER, DID NOT ASSUME A DUTY TO IMMEDIATELY CALL FOR EMERGENCY ASSISTANCE; THE HOTEL WAS NOT LIABLE FOR THE GUEST’S SUICIDE (CT APP). .... 48

ZONING, RELIGION. .... 49

THE TOWN ZONING BOARD OF APPEALS MADE NO ATTEMPT TO ACCOMMODATE THE PROPOSED RELIGIOUS USE OF A SINGLE FAMILY HOME; MATTER REMITTED (SECOND DEPT)..... 49

CIVIL PROCEDURE, CIVIL RIGHTS  
LAW, DEFAMATION, ENVIRONMENTAL LAW.

THE DEFAMATION SUIT BY PLAINTIFF MARINA OWNER AGAINST AN ENVIRONMENTAL ADVOCACY ORGANIZATION AND A PUBLISHER WAS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP); DEFENDANT WAS ABLE TO SHOW ONE PUBLISHED STATEMENT WAS FALSE; THEREFORE THE ACTION CAN PROCEED WITH RESPECT TO THAT ONE STATEMENT (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the action by plaintiff marina-owner against defendant environmental advocacy organization and defendant publisher was a strategic lawsuit against public participation (SLAPP). Therefore the burden shifted to plaintiff to demonstrate there was a substantial basis in law to allege that published statements were false. The Second Department found that all but one of the statements were truthful on nonactionable statements of opinion. The claim that the marina would encompass four times the area of the present marina was the one statement for which there was a substantial basis in law for claiming it to be defamatory:

In 1992, New York enacted legislation to provide protection from a strategic lawsuit against public participation (hereinafter SLAPP suit) that is, a lawsuit characterized as having little merit, brought in retaliation for making public comment on matters of civic significance (see Civil Rights Law §§ 70-a, 76-a ...). The anti-SLAPP law ... accomplishes its protective goal by providing expedited processes for a defendant to obtain dismissal of a SLAPP suit (see CPLR 3211 [g]; 3212 [h]) and by allowing awards of counsel fees and damages to a defendant targeted by a such a lawsuit (see Civil Rights Law § 70-a). When a defendant moves to dismiss a complaint under CPLR 3211 (g), it is the defendant's initial burden to show that the lawsuit is indeed a SLAPP suit ... . If that burden is met, the motion to dismiss must be granted unless the plaintiff can demonstrate that its action has "a substantial basis in law, which requires such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact"

## Table of Contents

... . Under this unique framework, “which is, in effect, an accelerated summary judgment procedure” ... , a court is required to consider the pleadings as well as affidavits submitted by the parties setting forth the relevant facts (see CPLR 3211 [g] [2]). \* \* \*

As for the question of whether the instant action constitutes a SLAPP suit, we find that it does. \* \* \*

... [T]he burden shifted to plaintiff to demonstrate that its defamation claim had a substantial basis in law. In an effort to satisfy this burden, plaintiff asserted that five of the claims contained within the published statement were false. Supreme Court disagreed, siding with defendants’ position that each of the contested claims was either truthful or a nonactionable expression of opinion. We concur with the court relative to all but one of the claims. A portion of the statement indicated that plaintiff “wants to replace 8,600 square feet of dock . . . with 34,000 feet of commercial marina for 93 motorized boat slips. That’s a four-fold increase.” ... [T]he record reveals that, in arriving at those figures, [defendant] used inconsistent measurements. ... [W]e are satisfied that plaintiff met its corresponding burden of establishing that part of its defamation claim had a substantial basis in law, and as a result defendants’ motions to dismiss should have been denied to the extent of allowing the defamation claim to proceed as to that one statement. [USL Mar., LLC v Adirondack Wild: Friends of the Forest Preserve, 2026 NY Slip Op 00953, Second Dept 2-18-26](#)

Practice Point: Consult this opinion for insight into how the expedited summary-judgment procedure works for a lawsuit that meets the criteria for a strategic lawsuit against public participation (SLAPP). Here plaintiff met its burden to proceed on one allegedly defamatory statement.

February 18, 2026

## CIVIL PROCEDURE, CONTRACT LAW, FRAUD.

ALTHOUGH A JURY TRIAL WAIVER IN A CONTRACT IS NOT ENFORCED WHERE A COUNTERCLAIM ASSERTS FRAUDULENT INDUCEMENT, HERE THE FRAUDULENT-INDUCEMENT COUNTERCLAIM SOUGHT RESCISSION OF THE CONTRACT, EQUITABLE RELIEF WHICH MUST BE TRIED BY THE COURT; THE MOTION TO STRIKE DEFENDANTS' JURY-TRIAL DEMAND SHOULD HAVE BEEN GRANTED (FIRST DEPT).

The First Department, reversing the denial of plaintiff's motion to strike defendants' jury demand, determined defendants were not entitled to a jury trial on the counterclaims. Defendants asserted fraudulent inducement and sought rescission of the contract in addition to seeking damages as an alternative. Because rescission in equitable relief, a jury trial is not available:

... [D]efendants are not entitled to a jury trial on their counterclaims. Generally, a party asserting a fraudulent inducement claim may pursue a jury trial, notwithstanding the existence of a jury waiver clause, when that party primarily seeks money damages ... . Here, by contrast, defendants' counterclaims seek rescission of the contract and side letter agreement, with damages only sought in the alternative. As the Court of Appeals has held, "[a]ll issues pertaining to [an] equitable defense and counterclaim, whether matters of fact or law, [are] to be determined by the court under CPLR 4101" ... and "[r]escission claims, of course, are equitable in nature" ... . Accordingly, defendants' counterclaims must be tried by the court, not a jury, by virtue of the equitable relief they seek. [Penske v National Holding Corp., 2026 NY Slip Op 00978, First Dept 2-19-26](#)

Practice Point: Where a cause of action seeks equitable relief, here rescission of a contract, it must be tried by the court, not a jury, even if damages are demanded in the alternative.

February 19, 2026

## CIVIL PROCEDURE, INSURANCE LAW, NEGLIGENCE.

THE MOTION TO INTERVENE BY AN INSURER SEEKING SUBROGATION FOR A CLAIM ALREADY PAID IN THIS VEHICLE-ACCIDENT CASE WAS TIMELY UNDER THE RELATION-BACK DOCTRINE; THE PAID CLAIM STEMMED FROM THE ACCIDENT WHICH IS THE SUBJECT OF THE ONGOING LITIGATION; THE MOTION TO INTERVENE SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the insurer, Utica, which paid out \$775,000 to plaintiff under an uninsured motorist policy purchased by plaintiff's employer, was entitled intervene seeking subrogation in a lawsuit stemming from the same accident. Although the motion to intervene was untimely, it should have been granted under the relation-back doctrine. Plaintiff was struck by a vehicle while working at a construction site:

... Utica's subrogation cause of action is not time-barred, as it merely seeks reimbursement for coverage tendered for the plaintiff's personal injuries. This cause of action arises out of the same occurrence that gave rise to the plaintiff's causes of action and includes the same questions of liability related to the accident. It is, therefore, similar enough to the plaintiff's causes of action that the defendants were thereby placed on notice of the insurer's claim ... . \* \* \*

“Subrogation is the principle by which an insurer, having paid losses of its insured, is placed in the position of its insured so that it may recover from the third party legally responsible for the loss” ... . “Subrogation is an equitable doctrine that allows an insurer to ‘stand in the shoes of its insured to seek indemnification from third parties whose wrongdoing has caused a loss for which the insurer is bound to reimburse” ... . “Thus, the insurer can only recover if the insured could have recovered and its claim as subrogee is subject to whatever defenses the third party might have asserted against its insured” ... .

Here, Utica's cause of action for subrogation has common questions of law and fact with the plaintiff's causes of action, as Utica concedes that the proposed complaint “mirrors, in all respects, the complaint in the within suit.” By intervention, Utica stands in the shoes of the plaintiff. Utica would be bound by the

## [Table of Contents](#)

judgment in this case and, without intervention, its interests are not represented. Further, there would be no prejudice to the defendants, as intervention would not cause delay, a need for additional discovery, or motion practice. [Steward v Brooklyn Pier 1 Residential Owner, LP, 2026 NY Slip Op 00933, Second Dept 2-18-26](#)

Practice Point: Here the relation-back doctrine was applied to render a motion to intervene timely.

Practice Point: Consult this decision for insight into the criteria for a subrogation action.

February 18, 2026

## CIVIL PROCEDURE.

### ALTHOUGH DEFENDANT HAD JURISDICTIONAL GROUNDS FOR VACATING THE JUDGMENT, HE WAIVED ANY JURISDICTIONAL ISSUES BY PARTICIPATING IN AN EXAMINATION UNDER OATH BEFORE MOVING TO VACATE THE JUDGMENT (SECOND DEPT).

The Second Department, reversing Supreme Court, determined that defendant had waived any jurisdictional (improper service and notice) issues by participating in an examination under oath in connection with the underlying renewal-judgment enforcement proceeding. Defendant had defaulted in the renewal-judgment proceeding and summary judgment had been awarded to plaintiff. After participating in the examination under oath, the defendant moved to vacate the renewal judgment, arguing the court lacked jurisdiction to render the judgment. Supreme Court granted the motion:

“[I]mproper service of a motion provides a complete excuse for default on a motion and deprives the court of jurisdiction to entertain the motion” ... , and “the failure to provide a defendant with proper notice of a motion renders the resulting order and judgment entered upon that order nullities, warranting vacatur pursuant to CPLR 5015(a)(4)” ... .

## [Table of Contents](#)

However, “[w]hen a defendant participates in a lawsuit on the merits, he or she indicates an intention to submit to the court’s jurisdiction over the action, and by appearing informally in this manner, the defendant confers in personam jurisdiction on the court” . . . .

Here, the defendant made an informal appearance in the action by appearing for the examination under oath in connection with the enforcement of the renewal judgment, which went to the merits of this action. [Bharath v Sitaram, 2026 NY Slip Op 00872, Second Dept 2-18-26](#)

Practice Point: Here defendant waived any jurisdictional issues related to improper service and notice by participating in an examination under oath.

February 18, 2026

## CRIMINAL LAW, APPEALS.

IF A DEFENDANT’S GUILTY PLEA CASTS DOUBT UPON DEFENDANT’S GUILT OR THE VOLUNTARINESS OF THE PLEA, THE JUDGE MUST “INQUIRE FURTHER;” THIS ISSUE CAN BE APPEALED IN THE ABSENCE OF PRESERVATION BY A MOTION TO WITHDRAW THE PLEA OR VACATE THE CONVICTION; HOWEVER THIS EXCEPTION TO THE PRESERVATION REQUIREMENT DOES NOT APPLY IF A DEFENDANT FIRST RAISES A QUESTION ABOUT HIS GUILT AT SENTENCING (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, over a two-judge concurring opinion, resolving a split of Appellate Division authority, determined that a defendant who pleads guilty but subsequently claims innocence at sentencing must, to preserve the issue for appeal, make a motion to withdraw his plea or vacate his judgment of conviction:

In *People v Lopez* (71 NY2d 662 [1988]), we articulated a narrow exception to the rule that defendants must move before the trial court—either to withdraw their plea or vacate their judgment of conviction—to preserve their challenge to the factual

## Table of Contents

sufficiency of their plea allocution. The Lopez exception applies “where the defendant’s recitation of the facts underlying the crime pleaded to clearly casts significant doubt upon the defendant’s guilt or otherwise calls into question the voluntariness of the plea” . . . . If that occurs, and the trial court accepts the plea without inquiring further, “the defendant may challenge the sufficiency of the allocution on direct appeal, notwithstanding that a formal postallocution motion was not made” . . . .

Defendant now asks us to resolve a question that has divided the Appellate Division: does the Lopez exception apply where, as here, defendant has merely claimed at sentencing that he is not guilty of the crime to which he had previously pleaded guilty? We now clarify that, because the Lopez exception arises from a court’s duty to inquire further where a defendant’s statements prior to entry of the plea cast serious doubt on its validity, the exception does not apply to defendant’s postplea statements made at sentencing. As a result, defendant’s argument that his plea was not knowing and voluntary is unpreserved for our review because defendant did not first move to withdraw his plea or vacate his judgment of conviction. \* \* \*

... [W]e hold that statements made at sentencing challenging the factual basis of a plea do not trigger the [judge’s] duty to inquire. ... [T]he Lopez exception to the preservation doctrine does not apply. The Lopez exception is based on the trial court’s constitutional duty to ensure, prior to accepting a plea, that a defendant’s plea is voluntary, knowing, and intelligent . . . . Inasmuch as the Lopez exception . . . arises from a trial court’s failure to perform its mandatory “duty to inquire further” prior to accepting a questionable plea... , it does not apply here. [People v Rios, 2026 NY Slip Op 00963, CtApp 2-19-26](#)

Practice Point: There is no exception to the preservation requirement when a defendant first raises doubts about his guilt or the voluntariness of his plea at sentencing, as opposed to at the time of the plea. The issue must be preserved by a motion to withdraw the plea or vacate the conviction.

February 19, 2026

## CRIMINAL LAW, APPEALS.

IN 2024, ERLINGER V US HELD THAT A JURY MUST DETERMINE WHETHER A LOOKBACK PERIOD RELEVANT TO ENHANCED SENTENCING HAS BEEN TOLLED; BECAUSE THE SENTENCING COURT DETERMINED THAT ERLINGER APPLIED, AND BECAUSE THE SENTENCING COURT DID NOT HAVE THE POWER TO EMPANEL A JURY FOR RESENTENCING, DEFENDANT WAS NOT SENTENCED AS A PERSISTENT VIOLENT FELONY OFFENDER; ON APPEAL THE MAJORITY HELD THAT THE ERLINGER ISSUE (I.E. WHETHER ERLINGER APPLIED) WAS NOT PRESERVED FOR APPEAL BY THE PEOPLE BECAUSE THEY EXPRESSLY DECLINED TO ARGUE IT; THE DISSENT ARGUED THE ISSUE HAD BEEN PRESERVED AND THE COURT SHOULD HAVE CONSIDERED IT (FIRST DEPT).

The First Department, over a comprehensive dissent, affirming Supreme Court, determined the People did not preserve the argument that the defendant should have been sentenced as a persistent violent felony offender (PVF) because *Erlinger v US*, 602 US 821, did not apply. The sentencing court determined Erlinger did apply. Because Erlinger held that a jury must determine whether the lookback period for PVF status has been extended by tolling, and because Supreme Court did not have the power to empanel a jury for resentencing, Supreme Court determined defendant could not be sentenced as a PVF. Defendant was sentenced as a second violent felony offender. The dissent argued the People had preserved the Erlinger issue and the First Department should have considered it:

Contrary to the dissent’s conclusion, the purpose of the preservation requirement was not served here. By expressly declining to argue that Erlinger does not apply, the People deprived defendant and the court of the opportunity to “probe [the] relevant. . . legal issues” regarding Erlinger’s applicability . . . .

### **From the dissent:**

The primary question on this appeal is whether, under the United States Supreme Court’s recent decision in *Erlinger v United States* (602 US 821 [2024]), the Fifth

## [Table of Contents](#)

and Sixth Amendments’ guarantee of a jury trial extends to the calculation of periods of tolling in measuring the lookback period used in determining whether a defendant is subject to enhanced sentencing as a recidivist felon — in this case, as a persistent violent felony (PVF) offender, to whom a 10-year lookback period applies ... If it is constitutionally required that a jury determine the tolling, New York’s procedure for making persistent violent felony offender determinations will be substantially disrupted, as Criminal Procedure Law (CPL) § 400.15(7) ... provides that such determinations “must” be made at a hearing “before the court without a jury.” The impact on New York’s criminal justice system — which, according to the amicus curiae, held in custody approximately 13,500 second felony offenders and approximately 1,500 persistent felony offenders as of January 1, 2021, collectively accounting for approximately 43.8% of all state prisoners — would be grave.

In my view ... the sentencing court erroneously concluded that Erlinger applied to the tolling determination required to bring one of defendant’s two prior violent felony convictions within the 10-year lookback period. Because the court correctly concluded that it had no power under the CPL to empanel a jury to make a tolling determination, it sentenced defendant as a second violent felony offender, based solely on his more recent violent felony conviction, which was within the lookback period without the need for a tolling determination. The People appeal to us from the court’s application of Erlinger, seeking to have the sentence vacated and the matter remanded so that defendant can be resentenced as a PVF offender. [People v Moore, 2026 NY Slip Op 00859, First Dept 2-17-16](#)

Practice Point: The People, as well as a defendant, must preserve issues for appeal. Here the People argued defendant should have been sentenced as a persistent violent felony offender (PVF) because Erlinger, a US Supreme Court ruling that a jury must decide lookback issues for enhanced sentencing, did not apply. The sentencing court applied Erlinger and did not sentence defendant as a PVF because a jury could not be empaneled. The People expressly declined to argue that Erlinger did not apply at resentencing and therefore did not preserve the issue for appeal.

February 17, 2026

## CRIMINAL LAW, APPEALS, EVIDENCE.

### THE COURT OF APPEALS CANNOT REVIEW AN APPELLATE DIVISION'S WEIGHT-OF-THE-EVIDENCE RULING ABSENT THE APPELLATE DIVISION'S MANIFEST FAILURE TO CONSIDER THE ISSUE OR THE APPLICATION OF AN INCORRECT LEGAL STANDARD; NOT THE CASE HERE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, affirming the Appellate Division, determined the record did not support the appellant's argument that the Appellate Division failed to consider the weight-of-the-evidence or did so using an incorrect legal principle. Therefore the Court of Appeals could not review the weight of the evidence:

On appeal, the Appellate Division unanimously affirmed the judgment (220 AD3d 1223 [4th Dept 2023]). The Court held that the verdict was not against the weight of the evidence, stating that, “[a]lthough a different verdict would not have been unreasonable,” the jury did not “fail[ ] to give the evidence the weight it should be accorded” . . . . .

In *Baque*, we recently clarified the Appellate Division's role in reviewing the weight of the evidence in a case involving purely circumstantial evidence. In a circumstantial evidence case, the jury must conclude that “the inference of guilt is the only one that can fairly and reasonably be drawn from the facts, and that the evidence excludes beyond a reasonable doubt every reasonable hypothesis of innocence” (Baque, 43 NY3d at 29 ...). Observing that the Appellate Division's function in conducting a weight review was to “independently assess all of the proof,” we explained that the Appellate Division, like the jury, must conclude that the evidence gives rise to such an inference . . . . We further reiterated in *Baque* that this Court has no power to review the Appellate Division's decision regarding the weight of the evidence unless that Court “manifestly failed to consider the issue or did so using an incorrect legal principle” . . . . \* \* \*

Here, the Appellate Division expressly rejected defendant's weight of the evidence challenge and did so by citing *Bleakley* and [People v Danielson \(9 NY3d 342, 349](#)

[2007])—citations that we noted in Baque indicated that the Appellate Division applied the correct legal standard . . . .

... [W]e assume that the Appellate Division appropriately conducts its weight of the evidence review in a circumstantial evidence case, unless its decision manifestly demonstrates otherwise . . . . .

... [T]he Appellate Division cited . . . cases . . . indicating that the Appellate Division deferred to the jury’s credibility determinations and that it did not view this as an appropriate case in which to substitute its own credibility determinations for that of the jury . . . . .

In sum, Baque did not alter the longstanding principle that this Court “cannot review a weight of the evidence challenge unless the intermediate appellate court manifestly failed to consider the issue or did so using an incorrect legal principle” . . . . [People v Anderson, 2026 NY Slip Op 00967, CtApp 2-29-26](#)

Practice Point: Consult this opinion for the criteria for a Court-of-Appeals review of an Appellate Division’s weight-of-the-evidence ruling.

February 19, 2026

## CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL LEFT A PROFFER SESSION MIDWAY THROUGH THE PROCEEDINGS; DURING THE PROFFER SESSION DEFENDANT MADE AN INCRIMINATORY STATEMENT WHICH WAS USED TO IMPEACH HIS CREDIBILITY AT TRIAL; DEFENDANT’S MOTION TO VACATE HIS CONVICTION ON INEFFECTIVE-ASSISTANCE GROUNDS SHOULD HAVE BEEN GRANTED (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant’s motion to vacate his conviction based upon ineffective assistance of counsel should have been granted. Defense counsel left a proffer session midway through the proceedings:

## [Table of Contents](#)

Supreme Court erred in finding that defendant failed to satisfy his burden of establishing that he received ineffective assistance of counsel when his counsel absented himself from a proffer session midway through the session. Absent an express waiver from defendant, counsel had an obligation to be present during the session and to “be alert to, and to avert if he could, the possibility that defendant’s cooperation would hurt rather than help him” . . . . Under the circumstances, where counsel advanced no sound strategic reason behind his decision to leave the proffer session, his absence deprived defendant of meaningful representation at a critical stage in the proceeding . . . . Defendant was prejudiced by counsel’s absence, because a statement defendant made during the proffer session implicating himself in the burglaries for which he was ultimately tried and convicted for, was successfully used by the prosecution to impeach defendant’s credibility at the trial . . . . [People v Anonymous, 2026 NY Slip Op 00980, First Dept 2-19-26](#)

Practice Point: A proffer session is a critical stage of a criminal proceedings at which a defendant may incriminate himself. Here defense counsel’s leaving a proffer session midway constituted ineffective assistance warranting vacation of the conviction.

February 19, 2026

**CRIMINAL LAW, ATTORNEYS, VEHICLE AND TRAFFIC LAW.**

**DEFENSE COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO REQUEST A JURY CHARGE FOR “IMPAIRMENT” WHICH WAS APPLIED BY THE THIRD DEPARTMENT IN A RECENT VEHICULAR MANSLAUGHTER CASE; IT WAS NOT CLEAR THE “IMPAIRMENT” CHARGE IN THE VEHICULAR MANSLAUGHTER CASE WAS APPLICABLE IN THE INSTANT “DRIVING WHILE ABILITY IMPAIRED BY DRUGS” CASE (CT APP).**

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, determined that defense counsel was not ineffective for failing to request a jury instruction based upon a recent Third Department appellate decision [*People v Caden N*, 189

## [Table of Contents](#)

AD2d at 90-91] which was not clearly applicable. The Third Department had held that the standard for “impairment by drugs” in a vehicular manslaughter case was the higher standard used for “intoxication by alcohol” [a ruling rejected by Court of Appeals in [People v Dondorfer, 2026 NY Slip Op 00823, CtApp 2-17-26](#)]. The charges in the instant case were “driving while ability impaired by drugs,” not vehicular manslaughter:

Defendant argues that Caden N. established a clear right within the Third Department to a jury charge in Vehicle and Traffic Law § 1192 (4) and (4-a) cases that defines impairment by drugs consistent with the higher standard of intoxication by alcohol from Cruz [48 NY2d at 422, 428]. But as the Third Department itself explained below, the holding and reasoning of Caden N. were carefully limited to the statutory scheme for vehicular manslaughter, and at the time of defendant’s trial, no court in this State had extended the reasoning of Caden N. to charges under Vehicle and Traffic Law § 1192 (4) or (4-a) . . . . Further, the model jury instructions—on which this Court has advised both counsel and trial courts to rely . . .—were not revised to account for Caden N. until December 2021, three months after defendant’s trial . . . . Even then, the CJI [Criminal Jury Instructions] Committee advised in an explanatory note that “Caden N. did not explicitly discuss whether the standard for impairment for purposes of a prosecution for [vehicular] manslaughter in the second degree was also the standard to be applied in a prosecution for only VTL 1192 (4),” and that, “until an appellate court decides otherwise,” a trial court may “decide to apply Caden N.’s definition of impairment for a vehicular manslaughter or assault charge and the impaired ‘to any extent’ definition for a VTL driving while impaired by the use of a drug or combination of [substances] charge” . . . . [People v Ambrosio, 2026 NY Slip Op 00824, CtApp 2-17-26](#)

Practice Point: Here defense counsel was not ineffective for failing to request a jury charge which was not clearly applicable to the offense.

February 17, 2026

## CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

### THE SECOND DEPARTMENT REVERSED SUPREME COURT AND FOUND THERE WAS “GOOD CAUSE” FOR THE 27-YEAR DELAY BETWEEN THE HOMICIDE AND DEFENDANT’S ARREST FOR MURDER (SECOND DEPT).

The Second Department, reversing Supreme Court, in a detailed full-fledged opinion by Justice Wan, determined defendant’s due process rights were not violated by a 27-year delay between the homicide and defendant’s arrest for murder. The opinion is necessarily fact-specific. The facts were analyzed using the “Taranovich factors” for determining whether a defendant’s right to a speedy trial or due process right to prompt prosecution has been violated. The facts are too complex to fairly summarize here:

“The Court of Appeals has articulated the following factors to consider when determining whether a defendant’s right to a speedy trial or due process right to prompt prosecution has been violated: (1) the extent of the delay, (2) the reason for the delay, (3) the nature of the underlying charge, (4) whether there has been an extended period of pretrial incarceration, and (5) whether there is any indication that the defense has been prejudiced by the delay” (hereinafter the Taranovich factors) (... see *People v Taranovich*, 37 NY2d 442, 445). “The Taranovich framework is a holistic one” ... . Thus, “[n]o one factor or combination of the factors is necessarily decisive or determinative of the prompt prosecution claim, but rather the particular case must be considered in light of all the factors as they apply to it” ... . “Where, as here, there has been a protracted preindictment delay over a period of years, the burden is on the prosecution to establish good cause” ... . [People v Grant, 2026 NY Slip Op 00910, Second Dept 2-18-26](#)

Practice Point: Consult this decision for insight into how the “Taranovich factors” are applied to the facts to determine whether there is “good cause” for an extensive delay in prosecution, here 27 years.

February 18, 2026

## CRIMINAL LAW, EVIDENCE, JUDGES.

EVEN WHERE EVIDENCE OF AN UNCHARGED CRIME IS “INEXTRICABLY INTERTWINED” WITH THE NARRATIVE OF CHARGED CRIME, IT MAY BE INADMISSIBLE BECAUSE ITS PREJUDICIAL EFFECT OUTWEIGHS ITS PROBATIVE VALUE; HERE THE COMPLAINANT’S TESTIMONY ABOUT A PRIOR UNCHARGED SEX ACT SHOULD NOT HAVE BEEN ADMITTED (FIRST DEPT).

The Frist Department, reversing the conviction in this sexual abuse prosecution, determined the evidence of a prior sex act with the complainant was much more prejudicial than probative. The evidence was therefore inadmissible:

Prior to the commencement of jury selection for the second trial, the People made a Molineux application to allow the complainant to testify about an alleged prior oral sexual encounter with defendant. The People argued, inter alia, that this evidence was “inextricably intertwined” with the complainant’s testimony as to the charges of sexual abuse, provided relevant background, and put the complainant’s testimony “into a believable context.” Supreme Court granted the People’s motion. The court concluded that the proposed testimony was “inextricably woven [in]to the narrative.” ...

Supreme Court erred in granting the People’s Molineux application. Even if the People established some non-propensity basis for introducing this evidence, “the prejudicial nature of that evidence far outweighed any probative value” ... . [People v Nieves, 2026 NY Slip Op 00979, First Dept 2-19-26](#)

Practice Point: Here in this sexual abuse prosecution, the complainant’s testimony about a prior, uncharged sex act was deemed much more prejudicial than probative. Therefore the testimony was inadmissible, despite the argument that it was “inextricably intertwined” with the narrative of the crime or provided relevant background.

February 19, 2026

## CRIMINAL LAW, EVIDENCE.

ALTHOUGH DEFENDANT WAS ARRESTED OUTSIDE THE HOME, HE WAS COERCED INTO TO LEAVING BY A SHOW OF FORCE BY THE POLICE; THEREFORE THE WARRANTLESS ARREST VIOLATED PAYTON; WHETHER THE TENANT’S SUBSEQUENT CONSENT TO SEARCH WAS VOLUNTARY WAS DECIDED BY THE APPELLATE DIVISION USING THE WRONG CRITERIA; MATTER REMITTED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Halligan, over a three-judge dissent, determined (1) the Fourth Department properly held that the warrantless arrest of the defendant outside the home violated Payton (445 US 573) and (2) the Fourth Department used the wrong criteria when it ruled the tenant’s consent to search the premises after defendant’s arrest was voluntary. The case was remitted to the Fourth Department for a ruling on the validity of the consent to search applying the correct criteria:

... Fifteen members of the Monroe County SWAT team and additional uniformed officers arrived at the apartment in an armored vehicle called a BearCat. The SWAT team members wore body armor and camouflage tactical clothing and carried assault rifles. The defendant did not live in the apartment but had been there for approximately 18 hours and stayed overnight the prior evening. An officer admitted that the police chose not to obtain an arrest warrant for the defendant because they wanted to interview him before his right to counsel attached.

A police investigator testified that upon seeing the defendant through the apartment window, he shouted at him to “come on out, house is surrounded . . . come out empty handed and come out with your hands up.” The defendant . . . exited the building, at which point he was taken into custody. Officers then entered the apartment and ordered the tenant and her cousin to “come out with [their] hands up” and lie face down with “guns to [them].” The tenant testified that she was scared; she and her cousin were handcuffed; and the police separated them and put the tenant into the back of a police patrol car, where she could not see her cousin and remained for approximately five to seven minutes. An officer obtained the tenant’s consent to search. \* \* \*

## Table of Contents

When officers subject someone to a display of authority that induces them to exit the home under coercion, the sanctity of the home has been invaded to the same extent as if the officers had physically entered. Such a show of force violates Payton and renders an arrest unlawful . . . . \* \* \*

... [T]he Appellate Division applied an incorrect legal standard in considering the validity of the tenant's consent. *People v Gonzalez* (39 NY2d 122, 128-130 [1976]) sets forth the factors that should be considered in determining whether the consent was voluntary. Those include "whether the consenter is in custody or under arrest"; "the circumstances surrounding the custody or arrest," including whether the person was "confronted by a large number of police agents"; whether the person was handcuffed; "the background of the consenter," including their age and prior experience with police; "whether the consenter has been . . . evasive or uncooperative with the law enforcement authorities"; and "whether [the person] was advised of [their] right to refuse to consent" . . . . The Appellate Division instead recited and applied the factors set forth in *People v Borges* (69 NY2d 1031, 1033 [1987]), which go to whether voluntary consent was attenuated from an illegal arrest, not whether the consent itself was voluntary. [People v Shaw, 2026 NY Slip Op 00961, CtApp 2-19-26](#)

Practice Point: If a person is coerced by the police into leaving his home by a show of force, a warrantless arrest outside the home violates Payton and is illegal.

Practice Point: Consult this opinion for insight into when a consent to search obtained by the police can be considered voluntarily given.

February 19, 2026

## CRIMINAL LAW, JUDGES, CONSTITUTIONAL LAW.

### THE MISTRIAL, GRANTED AFTER THE JURY WAS SWORN, DID NOT TRIGGER THE DOUBLE-JEOPARDY BAR TO FURTHER PROSECUTION BECAUSE THE JUDGE’S INQUIRY REVEALED THAT A JUROR’S COMMENTS, AND THE OTHER JURORS’ REACTIONS TO THOSE COMMENTS, IRREPARABLY TAINTED THE JURY (THIRD DEPT).

The Third Department, dismissing the defendant’s (respondent’s) prohibition petition, in a full-fledged opinion by Justice Mackey, determined that the mistrial granted after the jury had been sworn did trigger the double-jeopardy bar to further prosecution because the trial judge (the respondent) properly found “there was manifest necessity for the mistrial.” Comments made by juror No. 5, and other jurors reactions to the comments, irreparably tainted the jury:

... CPL 280.10 authorizes the court to declare a mistrial “[u]pon motion of the people, when there occurs during the trial, either inside or outside the courtroom, gross misconduct by . . . a juror, resulting in substantial and irreparable prejudice to the people’s case” . . . \* \* \*

... [J]uror No. 5’s comments and flagrant disregard for respondent’s admonitions resulted in “substantial and irreparable prejudice” to the People’s case (CPL 280.10 [2]). Although each juror averred that they could nevertheless remain fair and impartial, the record supports respondent’s contrary conclusion in light of the hesitation of many jurors to disclose juror No. 5’s conduct, the denial of others as to having heard any of the subject comments at all and another juror who gave contradictory answers about what he had heard, notwithstanding respondent’s instructions to report improper attempts to influence the jury. [Matter of Guiden v Jose-Decker, 2026 NY Slip Op 00942, Third Dept 2-19-26](#)

Practice Point: Consult this opinion for insight into the procedure to be followed by the judge before granting a mistrial after the jury has been sworn. To avoid the double-jeopardy bar to further prosecution, the record must demonstrate “a manifest necessity for a mistrial.”

February 19, 2026

## CRIMINAL LAW, JUDGES, EVIDENCE.

### THE JUDGE’S QUESTIONING OF WITNESSES, GUIDANCE OF THE PROSECUTION, AND OBVIOUS BIAS IN FAVOR OF THE PROSECUTION DEPRIVED DEFENDANT OF A FAIR TRIAL (SECOND DEPT).

The Second Department, reversing defendant’s conviction and ordering a new trial, determined the evidence supported the convictions but the judge’s questioning of witnesses and obvious bias in favor of the prosecution deprived defendant of a fair trial. The issue was not preserved for appeal but the Second Department considered it in the interest of justice:

“[A] trial judge is permitted to question witnesses to clarify testimony and to facilitate the progress of trial, and, if necessary, to develop factual information,’ so long as the judge does not take on the function or appearance of an advocate” . . . . Here, the Supreme Court engaged extensively in its own areas of inquiry, asked numerous leading questions of the People’s witnesses, including the complainant and a police officer, as to their observations of the defendant, elicited identification testimony, and guided the prosecution at length in its questioning.

Viewing the record as a whole, the Supreme Court improperly took on the function and appearance of an advocate. The court’s conduct left the impression that its opinion favored the credibility of the People’s witnesses and the merits of the People’s case . . . , thus depriving the defendant of a fair trial . . . . [People v Morales, 2026 NY Slip Op 00913, Second Dept 2-18-26](#)

Practice Point: A judge’s involvement in a prosecution which rises to the level of an advocate for the prosecution’s case deprives a defendant of a fair trial.

February 18, 2026

## CRIMINAL LAW, JUDGES, FAMILY LAW, EVIDENCE.

### THE YOUTH PART OF COUNTY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT “EXTRAORDINARY CIRCUMSTANCES” WARRANTED GRANTING THE PEOPLE’S MOTION TO PREVENT REMOVAL OF THE 17-YEAR-OLD’S PROSECUTION TO FAMILY COURT (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Troutman, affirming the Appellate Division, over a three-judge dissenting opinion, determined the youth part of County Court did not abuse its discretion in granting the People’s motion to prevent removal of the 17-year-old defendant’s prosecution to Family Court. Under the State’s Raise the Age legislation, the People’s motion to prevent removal to Family Court can be granted in “extraordinary circumstances:”

Although [county court] found that defendant and his accomplices entered the victim’s home with the intent to commit a robbery and, during the course of the robbery, struck the victim several times in the face with a shotgun, the court noted further that the violent nature of the alleged crimes was not by itself a basis for preventing removal on the ground of extraordinary circumstances. Rather, the court opined that it was also required to consider whether defendant was amenable to Family Court services. In that regard, the court found that defendant had several mental health diagnoses but, at the same time, had been receiving services for five years. Based on those considerations, the court concluded that the People had demonstrated extraordinary circumstances sufficient for the case to remain in the youth part.

The Appellate Division affirmed on the basis that defendant participated in a violent home invasion involving weapons and injuries to the victim, and that, despite the Family Court services provided to him over the five years of his involvement with the criminal justice system, he “made no appreciable positive response and continues to engage in escalating criminal behavior” . . . . Thus, the Appellate Division concluded that, “under the totality of the circumstances, and taking into account the mitigating factors and the substantial aggravating factors, the court did not abuse its discretion in determining that extraordinary

circumstances exist warranting that this case remain in the youth part” ... . [People v Guerrero, 2026 NY Slip Op 00826, CtApp 2-17-26](#)

Practice Point: Consult this opinion for insight into when “extraordinary circumstances” will justify granting the People’s motion to prevent removal of a 17-year-old’s prosecution from the youth part of County Court to Family Court.

February 17, 2026

## CRIMINAL LAW, JUDGES, VEHICLE AND TRAFFIC LAW.

### THE JUDGE COMMITTED A MODE OF PROCEEDINGS ERROR BY FAILING TO ACCURATELY AND FULLY INFORM THE DEFENDANT OF THE CONTENTS OF A JURY NOTE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, determined the judge committed a mode of proceedings error by not fully explaining the contents of a jury note. The defendant testified that he was sitting in his parked car, with the engine running for heat, listening to music because he didn’t want to disturb his family in a nearby house. The police noticed the car running and found the defendant asleep with an open beer in his hand. Defendant was charged with DWI and other offenses. The jury sent out notes seeking clarification of the term “operate” asking whether “operation” requires an intent to drive the vehicle or whether merely having the engine running constitutes “operation.”

The court ... read the note into the record as follows:

“We the jury would like clarification on the law regarding the first three charges. There is a portion that states the operation is intent to move the vehicle. There was, however, another segment. That segment, stated that operation is if the engine is running.”

When it read the note to the parties it omitted a question from the jury ... . The full note stated:

“We would like clarification on the law regarding the first 3 charges. There is a portion that states that operation is intent to move the vehicle. There was however

## Table of Contents

another segment that segment that stated that operation is if the engine is running. Are both correct?” ... .

When the court read [another] portion of the note aloud, the court again altered the jury language. The court stated:

“And, then they also said the law for consumption of alcohol beverages in certain motor vehicles does not seem to contain a section that includes solely the engine running, which is also correct, and I will just read them that charge. Is that acceptable?”

But the note read:

“Also, the law for [Consumption] of Alcoholic Beverages in certain motor vehicles does not seem to contain the section that includes solely the engine is running. Is this also correct?. \* \* \*

The court’s failure to read the jury note verbatim, or otherwise create a record demonstrating that the parties had received a copy of the note, deprived Mr. Galindo [defendant] of meaningful notice of the precise contents of the substantive jury note. By omitting the question “Are both correct?”, the court obscured the nature of the jury’s inquiry with respect to the “operates” element shared by the three counts of intoxication and the unlicensed operation charge. The jury’s question strongly suggests it wanted to know whether the “operates” instruction contained two distinct conditions either one of which could satisfy the “operates” element. Put differently, the jury’s question crystallizes its inquiry: whether intent to move the vehicle was necessary or a running engine was sufficient to meet the definition of operation. Had Mr. Galindo been accurately apprised of the contents of the jury note, he would have had the opportunity to provide input into how the court resolved the jury’s inquiry. Instead, Mr. Galindo was deprived of meaningful notice, and rereading the original CJI instruction responsible for the jury’s initial confusion did not adequately address the jury’s question. [People v Galindo, 2026 NY Slip Op 00965, CtApp 2-19-26](#)

Practice Point: Here the judge’s failure to read out the jury note verbatim constituted a mode of proceedings error.

February 19, 2026

## CRIMINAL LAW, VEHICLE AND TRAFFIC LAW.

### THE ACCUSATORY INSTRUMENT CHARGING DEFENDANT WITH DRIVING WHEN HIS ABILITY WAS IMPAIRED BY MARIJUANA WAS FACIALLY SUFFICIENT; TWO-JUDGE DISSENT (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Rivera, over a two-judge dissenting opinion, determined that the accusatory instrument charging defendant with driving while his ability was impaired by marijuana was facially sufficient. The court noted that the Report of Refusal (re: a chemical test for drugs) could not be considered and that, because defendant waived prosecution by information, the less demanding standard for a misdemeanor complaint was applied:

In the accusatory instrument, defendant’s arresting officer made the following factual allegations:

“I observed the defendant driving a car . . . (the key was in the ignition, the engine was running, and the defendant was behind the wheel);”I know defendant was under the influence of drugs because I smelled an odor of marijuana coming from the defendant’s clothing. I observed that the defendant had watery and bloodshot eyes, and I observed that the defendant had ash containing marijuana on his pants. The defendant stated, in substance: I had two puffs of marijuana before you stopped me.“I advised the defendant of his rights regarding the taking of a test to determine the presence of drugs in his urine and the defendant refused to take the test.” \* \* \*

... The arresting officer observed physical manifestations of the effects of marijuana—specifically, that defendant had watery and bloodshot eyes. Additionally, defendant refused a urine test to determine the presence of drugs in his system. Lower courts have consistently held that such refusal, when considered along with the other allegations in the accusatory instrument, is relevant to determining reasonable cause to believe that the defendant drove while intoxicated or impaired . . . . . [A] defendant’s refusal to take a chemical test evince consciousness of guilt. [People v Morel, 2026 NY Slip Op 00822, CtApp 2-17-26](#)

Practice Point: Here the Report of Refusal was not incorporated into the accusatory instrument and therefore could not be considered in determining the sufficiency of the accusatory instrument.

Practice Point: Because defendant waived prosecution by information, the less demanding standard for the sufficiency of a misdemeanor complaint was applied.

Practice Point: A refusal to take a chemical test evinces a consciousness of guilt and can be considered in analyzing the sufficiency of an accusatory instrument.

February 17, 2026

## CRIMINAL LAW, VEHICLE AND TRAFFIC LAW.

### THE STANDARD FOR “IMPAIRMENT BY ALCOHOL AND DRUGS” IS THE SAME AS FOR “IMPAIRMENT BY ALCOHOL” IN THE VEHICLE AND TRAFFIC LAW’S DWI SCHEME; THE THIRD DEPARTMENT’S APPLICATION OF THE HIGHER “INTOXICATION” STANDARD TO “IMPAIRMENT BY ALCOHOL AND DRUGS” WAS REJECTED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, determined the standard for “impairment” in the context of “aggravated driving while ability impaired by a combination of drugs and alcohol” is the same as for “impairment by alcohol.” The Court of Appeals affirmed the Fourth Department’s rejection of the Third Department’s application of the higher “intoxication” in the context of impairment by drugs:

After the car he was driving with his fifteen-year-old daughter as a passenger was stopped by police, defendant admitted to drinking “a couple of strong beers” and smoking marijuana. He failed several standard field sobriety tests, and an officer certified as a drug recognition expert determined, based on a 12-step evaluation, that defendant was impaired by the combination of alcohol and cannabis and was unable to safely operate a vehicle. The People presented an indictment to the grand jury charging defendant with aggravated driving while ability impaired by a combination of drugs and alcohol with a child in the vehicle (Vehicle and Traffic

## Table of Contents

Law § 1192 [2-a] [b], [4-a]). For purposes of that charge, the prosecutor defined impaired as follows:

“A person’s ability to operate a motor vehicle is impaired by the combined influence of alcohol and drugs when that combination of alcohol and drugs has actually impaired, to any extent, the physical and mental abilities which such person is expected to possess in order to operate a motor vehicle as a reasonable and prudent driver.” \* \* \*

... [I]n *People v Caden N.* [189 AD3d 84, 90-91], the Third Department held that *Cruz’s* [48 NY2d at 427-428] definition of impairment applied only “in the limited context” of driving while ability impaired by alcohol (Vehicle and Traffic Law § 1192 [1]) and instead defined impairment for drug consumption in accordance with the *Cruz* standard for alcohol intoxication ... . Relying on *Caden N.*, defendant argues that for offenses involving drug use, or drug and alcohol use combined, courts should define impairment using *Cruz’s* intoxication standard. We disagree with that approach and hold that “impaired” should be interpreted consistently across Vehicle and Traffic Law § 1192 in accordance with the definition that this Court gave that term in *People v Cruz* and therefore affirm. [People v Dondorfer, 2026 NY Slip Op 00823, CtApp 2-17-26](#)

Practice Point: The standard for “impairment” in the context of a Vehicle and Traffic Law violation for “impairment by alcohol and drugs” is the same as for “impairment by alcohol.” The higher “intoxication” standard applied by the Third Department for impairment by drugs was rejected.

February 17, 2026

## CRIMINAL LAW,, CONSTITUTIONAL LAW.

### THE INVOLVEMENT OF A VAN IN A ROAD RAGE SHOOTING THREE WEEKS BEFORE THE TRAFFIC STOP AND AN INCIDENT WHERE A TRAFFIC AGENT WAS NEARLY STRUCK BY THE VAN 24 HOURS BEFORE THE STOP PROVIDED “REASONABLE SUSPICION” THAT THE DRIVER OF THE VAN AT THE TIME OF THE STOP WAS THE DRIVER DURING THE ROAD-RAGE AND TRAFFIC-AGENT INCIDENTS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Halligan, determined “reasonable suspicion” supported a traffic stop of a van which had been involved in a road rage shooting three weeks before and had sped away from a traffic agent, nearly striking the agent, 24 hours before the stop. The driver who was involved in the road-rage and ticket-agent incidents had not been identified at the time of the stop:

Although police must have individualized suspicion that the driver or occupant of a vehicle has committed a crime to conduct a traffic stop, information about a car’s involvement in prior criminal activity may support a finding of reasonable suspicion . . . . Such prior activity contributes to a determination of reasonable suspicion when it occurs with sufficient temporal and geographic proximity to the stop to infer that the person who was driving the car during the prior crime is also driving at the time of the stop . . . . .

The officers who stopped the defendant on May 18th had information from a license plate search indicating that a white Dodge Caravan with a license plate number matching the defendant’s vehicle was involved in a road rage shooting in Washington Heights on April 28th. Although that information was nearly three weeks old, the officers also knew from their conversation with the traffic agent that less than 24 hours before the stop and in the same neighborhood, someone driving the same car had evaded a parking ticket and nearly hit the traffic agent as they drove away. Because the driver during the traffic infraction sped away, almost hitting the traffic agent, the officers could have reasonably inferred that the driver during the parking violation was also the driver during the shooting and fled to avoid repercussions from the shooting. Thus, in addition to inferring that there was

a connection between the vehicle and the two incidents, they also reasonably inferred that the same person was driving that vehicle during both incidents. Moreover, the officers knew from the vehicle’s registration that it was privately owned, which significantly narrowed the universe of potential drivers ... . [People v Zubidi, 2026 NY Slip Op 00964, CtApp 2-19-26](#)

Practice Point: Here circumstantial evidence that the same driver of an identified van was involved in a road-rage shooting and in nearly striking a traffic agent was deemed to provide “reasonable suspicion” supporting a traffic stop of the van three weeks after the road-rage incident and 24 hours after the traffic-agent incident.

February 19, 2026

## EDUCATION-SCHOOL LAW.

### THE NEW YORK CLASSROOM-SIZE REGULATIONS FOR STUDENTS WITH DISABILITIES ARE MUTUALLY-EXCLUSIVE ALTERNATIVES, NOT DISTINCT REQUIREMENTS WHICH MUST BE INDEPENDENTLY FULFILLED (CT APP).

The Court of Appeals, answering a certified question from the Second Circuit, in a full-fledged opinion by Judge Singas, determined that the list of classroom options for special classes for students with disabilities in the classroom-size regulations are mutually exclusive. A student’s committee on special education (CSE) need only choose one of the listed alternatives that best meets the student’s needs:

Plaintiff is the mother of O.F., who has cerebral palsy, visual impairment, a seizure disorder, and scoliosis. ... . In 2021, the CSE determined during its annual review that a 12:1+(3:1) placement “would be ... appropriate” ... . The CSE considered and rejected other class options as inappropriate for O.F. \* \* \*

Plaintiff filed a due process complaint challenging, among other things, the 2021 IEP’s 12:1+(3:1) classroom recommendation. \* \* \*

The Second Circuit certified the following question for our review: “When a student is covered by more than one class size regulation under [8 NYCRR 200.6 (h) (4)], do the varying restrictions serve as distinct requirements that must be

independently fulfilled or as a list of class size options from which the DOE may pick?” ... \* \* \*

... 8 NYCRR 200.6 (h) (4) provides alternatives. We thus conclude that the regulation requires a CSE to exercise its knowledge and expertise to select the listed alternative that would best serve a student’s individual needs. [Cruz v Banks, 2026 NY Slip Op 00821, CtApp 2-17-26](#)

February 17, 2026

EMPLOYMENT LAW, CONTRACT LAW, CIVIL PROCEDURE, CONSTITUTIONAL LAW, COPYRIGHT, TRADE SECRETS, CIVIL PROCEDURE.

THIS LAWSUIT BY AN EMPLOYER AGAINST AN EMPLOYEE WHO ALLEGEDLY USED PLAINTIFF’S PROPRIETARY INFORMATION AFTER RESIGNING PRESENTS FACT-SPECIFIC ISSUES IN THE CONTEXT OF RESTRICTIVE COVENANTS IN THE EMPLOYMENT CONTRACT, COPYRIGHT LAW (PRE-EMPTION OF STATE LAW CLAIMS), TRADE SECRETS, AND THE PROPRIETY OF A PRELIMINARY INJUNCTION; ALL OF THESE COMPLEX ISSUES CANNOT BE FAIRLY SUMMARIZED HERE; THE DECISION IS WORTH CONSULTING (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the Copyright Act pre-empted some but not all of plaintiff’s breach of confidentiality and breach of employment contract claims, defendants’ cross-motions to dismiss sounding in unfair competition should not have granted; the complaint stated a cause of action for unfair competition based on misappropriation of proprietary information; the complaint stated a cause of action for violation of a restrictive covenant prohibiting disclosure of trade secrets; the record was insufficient to support Supreme Court’s ruling that plaintiff engaged in overreaching to obtain the restrictive covenants; and plaintiff’s motion for a preliminary injunction should have been granted. These complex, fact-specific issues cannot be fairly

summarized here. With regard to pre-emption and the preliminary injunction, the court wrote:

“Section 301 of the Copyright Act preempts a state law claim if: ‘(i) the work at issue comes within the subject matter of copyright and (ii) the right being asserted is equivalent to any of the exclusive rights within the general scope of copyright’” . . . . Section 106 of the Copyright Act provides copyright owners the exclusive rights, among other things, to reproduce a copyrighted work, to prepare derivative works, to distribute copies of the work to the public, and to display the work publicly . . . . “A state law right is equivalent to one of the exclusive rights of copyright if it may be abridged by an act which, in and of itself, would infringe one of the exclusive rights” . . . . A claim is not equivalent “if an extra element is required instead of or in addition to the acts of reproduction, performance, distribution or display, in order to constitute a state-created cause of action,” and in such circumstances, there is no preemption . . . . Here, contrary to the defendants’ contentions, the plaintiff sufficiently alleged an extra element—violation of a duty of confidentiality and breach of the employment agreement—in addition to acts of reproduction, adaptation, performance, distribution, or display, that renders the state right qualitatively distinct from the federal right, thereby foreclosing preemption . . . . \* \* \*

To obtain a preliminary injunction, the moving party must establish, by clear and convincing evidence, (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) that the equities balance in his or her favor” (. . . see CPLR 6301). Here, the plaintiff showed that trade secrets existed and established a likelihood of success on the merits . . . . [Premium Prods., Inc. v O’Malley, 2026 NY Slip Op 00918, Second Dept 2-18-26](#)

Practice Point: Consult this decision for insight into the wide range of issues raised by the allegation that a former employee has appropriated and used the employer’s proprietary information after resigning.

February 18, 2026

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

EMPLOYMENT DISCRIMINATION CASES ARE REVIEWED UNDER “NOTICE PLEADING” STANDARDS WHERE ONLY FAIR NOTICE OF THE NATURE OF THE CLAIM AND ITS GROUNDS ARE REQUIRED; HERE PLAINTIFF’S ALLEGATION THAT A SUPERVISOR STATED SHE RECEIVED HIGH EVALUATIONS BECAUSE SHE ENGAGED IN SEXUAL RELATIONS WITH HER SUPERIORS WAS SUFFICIENT TO SURVIVE DISMISSAL (FIRST DEPT).

The First Department, reversing Supreme Court, determined that a single remark by a supervisor may sustain an employment discrimination or hostile work environment claim. The court noted the more lenient pleading requirement for employment discrimination actions:

... [E]mployment discrimination cases are generally reviewed under notice pleading standards ... . Indeed, a “plaintiff alleging employment discrimination need not plead specific facts establishing a prima facie case of discrimination but need only give fair notice of the nature of the claim and its grounds” ... . In an action brought under the New York City Human Rights Law (NYCHRL) and the New York State Human Rights Law (NYSHRL), “[f]air notice is all that is required to survive at the pleading stage” ... . \* \* \*

Although a “single, isolated comment” or “stray remark” will not always suffice to sustain a discrimination or hostile work environment claim ... , “a single comment that objectifies women being made in circumstances where that comment would, for example, signal views about the role of women in the workplace” could be actionable ... . Here, where plaintiff alleged that her supervisor implied that she only received high evaluation scores because she was engaging in sexual relations with higher-ups, the alleged remarks and attendant hostile conduct were more than “petty slights and trivial inconveniences” ... . [Cummings v City of New York, 2026 NY Slip Op 00972, First Dept 2-19-26](#)

Practice Point: Pleading standards are more lenient in employment discrimination cases. Fair notice of the nature of the claim and its grounds are sufficient to survive dismissal.

February 19, 2026

EMPLOYMENT LAW, HUMAN RIGHTS LAW, CIVIL PROCEDURE.

PLAINTIFF’S CLAIMS OF DISCRIMINATORY NON-PROMOTION AND TERMINATION PURSUANT TO THE NYC AND NYS HUMAN RIGHTS LAW WERE SUFFICIENT AT THE PLEADING STAGE AND SHOULD NOT HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the plaintiff’s claims of discriminatory non-promotion and termination pursuant to the NYS and NYC Human Rights Law were sufficient for the pleading stage and should not have been dismissed:

Plaintiff’s allegation that he, an African American, was terminated from his job by defendant, his employer, after making one mistake while two of his white coworkers who made similar mistakes were neither reprimanded nor terminated was sufficient to state a claim for discriminatory termination under the broad protections of the State and City HRLs ... . Plaintiff specifically alleged that one of the white coworkers was an IT Help Desk Technician, the same position he held, and that the coworker performed substantially similar work under similar working conditions. He further alleged that he helped fix some of the mistakes that this coworker had made in the past. These allegations were sufficient at the pleading stage ... .

In support of his cause of action for failure to promote, plaintiff alleges that his coworker was promoted to a job that he was already performing, and that the position was not posted prior to it being filled. These allegations are sufficient to meet plaintiff’s pleading burden as this Court has previously held that it is unnecessary for a plaintiff to allege that he applied for a promotion where he has alleged that promotions were typically made unannounced and unsolicited (*id.*) or where defendant failed to advertise the position ... . [Altidor v Medical Knowledge Group LLC, 2026 NY Slip Op 00870, First Dept 2-17-26](#)

Practice Point: Consult this decision for insight into the pleading requirements for claims of discriminatory non-promotion and termination pursuant to the NYS and NYC Human Rights Law.

February 17, 2026

## EMPLOYMENT LAW, NEGLIGENCE, WORKERS' COMPENSATION.

PLAINTIFF WAS INJURED WORKING UNDER GTLF'S SUPERVISION; GTLF HAD HIRED ATRIUM, PLAINTIFF'S GENERAL EMPLOYER, TO HANDLE CERTAIN ASPECTS OF PLAINTIFF'S EMPLOYMENT, INCLUDING PAYROLL AND WORKERS' COMPENSATION INSURANCE; PLAINTIFF RECEIVED WORKERS' COMPENSATION BENEFITS FROM ATRIUM FOR A WORK-RELATED INJURY; GTLF, AS PLAINTIFF'S SPECIAL EMPLOYER, CANNOT BE SUED IN NEGLIGENCE BY PLAINTIFF (SECOND DEPT).

The Second Department, reversing Supreme Court, determined GTLF was plaintiff's special employer and Atrium was plaintiff's general employer. The Workers' Compensation Board determined plaintiff was entitled to Workers' Compensation benefits from Atrium, his general employer, for a work-related injury. Therefore, plaintiff could not sue GTLF, his special employer, in negligence based upon that work-related injury. GTLF was entitled to summary judgment:

For purposes of the Workers' Compensation Law, a person may be deemed to have more than one employer—a general employer and a special employer . . . . “The receipt of Workers' Compensation benefits from a general employer precludes an employee from commencing a negligence action against a special employer” . . . .

“In determining whether a special employment relationship exists, ‘who controls and directs the manner, details and ultimate result of the employee's work’ is a ‘significant and weighty feature,’ but is not determinative of the issue” . . . . Indeed, “[m]any factors are to be considered when deciding whether such a special employment relationship exists and not one factor is decisive” . . . . Other principal factors to be considered include “who is responsible for the payment of wages and

the furnishing of equipment, who has the right to discharge the employee, and whether the work being performed was in furtherance of the special employer's or the general employer's business" . . . . General employment will be presumed to continue unless there is a "clear demonstration of surrender of control by the general employer and assumption of control by the special employer" . . . .

Here, in addition to a transcript of the plaintiff's deposition testimony and a copy of the agreement between GTLF and Atrium, GTLF submitted an affidavit of its CEO, who averred, among other things, that after GTLF retained Atrium for "certain aspects of [the] plaintiff's employment, including payroll and Workers' Compensation insurance . . . [GTLF] maintained the same supervision and control of the plaintiff regarding his duties as a" brand ambassador. Based upon this evidence, GTLF established, prima facie, that GTLF was the plaintiff's special employer . . . . [Samuel v Petainer, 2026 NY Slip Op 00925, Second Dept 2-18-26](#)

Practice Point: Consult this decision for insight into how to determine whether an employer is a general employer or a special employer for purposes of Workers' Compensation benefits. If a worker receives Workers' Compensation benefits from the worker's general employer for a work-related injury, the employee cannot sue the special employer in negligence for that same injury.

February 18, 2026

## FAMILY LAW, EVIDENCE.

### THE FINDING THAT MOTHER HAD ABUSED THE CHILDREN WAS BASED ON VIDEO EVIDENCE PURPORTING TO SHOW MOTHER'S EX-BOYFRIEND ABUSING ONE OF THE CHILDREN; THE COURT OF APPEALS REVERSED, FINDING THAT THE VIDEO EVIDENCE WAS NOT AUTHENTICATED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, determined the finding that mother had abused her daughter and son based entirely on videos purportedly showing mother's former boyfriend abusing one of the children required reversal because the foundation evidence offered for the videos was

## Table of Contents

insufficient: There was a three-judge dissenting opinion, and a separate two-judge dissenting opinion: The majority opinion is too detailed to fairly summarize here. The majority concluded the videos, which were procured by an FBI agent from a suspected child pornographer who had, in turn, procured the videos from a hacked security camera, were not authenticated:

The videos were not discovered in the family home or on any camera or computer belonging to D.K. [the ex-boyfriend] or M.H [mother]. Instead, in the course of an FBI investigation into persons suspected of trading child pornography, the agents executed a search warrant on B.W., who lived in Syracuse. In the course of questioning by FBI Agent Martin Baranski, B.W., though not under oath or in any sworn statement, said (according to Agent Baranski's recollection) that he had been "hack[ing] into security web cameras for the past few years." B.W. further stated that in 2019 he had "hacked into a security camera" which showed what he thought was an adult male sexually abusing the man's 15-year-old stepdaughter. B.W. claimed that he "watched a lot of the security camera footage of this house" and saw "a lot" of interactions between the individuals depicted in the videos. He told Agent Baranski he had saved some videos from that camera in a particular location on his computer, along with a screenshot that contained details about the security camera login information, including a possible name, email and IP address.

Searching a digital copy of B.W.'s computer, Agent Baranski found three videos that appeared to show an adult male sexually abusing a young girl; the videos contained timestamps indicating they were recorded around the summer of 2019. Based on information from the screenshot on the suspect's computer and other investigative work, Agent Baranski was able to identify D.K.'s name and workplace; he then relayed that information to New York law enforcement. \* \* \*

The rules of evidence apply in Family Court just as much as they apply in any other court. The proponent of evidence bears the burden of demonstrating its authenticity . . . . . The failure to authenticate evidence sufficiently does not mean the evidence was false, but only that it was not properly authenticated according to the rules of evidence. . . . We do not mean to suggest that the videos here could not have been authenticated, or that child victims must testify, or that B.W., Agent Baranski, or some other person could not have offered adequate authentication testimony. But the evidence of authentication proffered here was legally

insufficient. What that means for the next case is that in Family Court, as in all our courts, evidence must be properly authenticated. [Matter of M.S. \(M.H.\), 2026 NY Slip Op 00825, CtApp 2-17-26](#)

Practice Point: The rules of evidence apply equally in Family Court. Here the finding that mother abused the children was based entirely on video evidence. Because the video evidence was not authenticated, the abuse finding was reversed.

February 17, 2026

## FAMILY LAW, JUDGES, CIVIL PROCEDURE.

### THE JUDGE FAILED TO COMMUNICATE WITH THE OHIO COURT AFTER LEARNING OF ANOTHER CUSTODY-RELATED PROCEEDING THERE AND FAILED TO CONSIDER WHETHER IT SHOULD EXERCISE TEMPORARY EMERGENCY JURISDICTION BASED ON ALLEGATIONS OF DOMESTIC VIOLENCE IN MOTHER’S PETITION (FIRST DEPT).

The First Department, reversing Family Court, determined the judge committed reversible error by failing to communicate with the Ohio court after learning of another custody-related proceeding there. In addition, the judge failed to consider whether to exercise temporary emergency jurisdiction to protect mother and child. Mother’s custody petition alleged serious domestic violence:

Family Court failed to satisfy the procedural mechanism required by the Uniform Child Custody Jurisdiction and Enforcement Act (Domestic Relations Law, art 5-A) when a custody-related proceeding is pending in another state. Specifically, after the court became aware of the Ohio proceeding, the record does not reflect that the court attempted to communicate with the Ohio court, which is a reversible error ... . \* \* \*

... Family Court failed to comply with the statutory requirement to consider, under the circumstances presented and in light of the serious allegations of domestic violence in the mother’s petition, whether it was necessary to exercise temporary emergency jurisdiction to protect the mother and the child ... . [Matter of Shelby C.V. v Joshua W.K, 2026 NY Slip Op 01002, First Dept 2-17-26](#)

## [Table of Contents](#)

Practice Point: It is reversible error for a judge to fail to communicate with a court in another jurisdiction after learning of another custody-related proceeding there.

Practice Point: Allegations of domestic violence may trigger the statutory requirement that a judge consider exercising temporary emergency jurisdiction to protect family members.

February 19, 2026

## FAMILY LAW, JUDGES.

### FAMILY COURT SHOULD NOT HAVE DELEGATED ITS AUTHORITY TO DETERMINE PARENTAL ACCESS BY CONDITIONING ACCESS ON THE CONSENT OF THE CHILDREN (SECOND DEPT).

The Second Department, reversing (modifying) Family Court, determined the court should not have delegated its authority to determine parental access by conditional parental access on the consent of the children:

... “[A] court may not delegate its authority to determine parental access to either a parent or a child” ... Here, the Family Court improperly delegated its authority to determine the father’s and the mother’s parental access with Destinee A. and Kaylee A. to those children. ... [W]e remit the matter to the Family Court ... for a new determination as to the father’s and the mother’s parental access with Destinee A. and Kaylee A. in accordance with the best interests of those children ... . [Matter of Destinee A. \(Jacquelyn M.\), 2026 NY Slip Op 00890, Second Dept 2-18-26](#)

Practice Point: A Family Court judge cannot delegate his/her/their authority to determine parental access to the parties or the children.

February 18, 2026

## FORECLOSURE, CIVIL PROCEDURE.

THE MORTGAGE DEBT WAS ACCELERATED WHEN THE FIRST FORECLOSURE ACTION WAS BROUGHT IN 2008; THE DEFENDANTS SUBSEQUENTLY ENTERED A LOAN MODIFICATION AGREEMENT IN 2008 WHICH DEACCELERATED THE DEBT AND RESET THE STATUTE OF LIMITATIONS; THE DEFENDANTS DEFAULTED AGAIN IN 2009; IN 2018 THE DEBT WAS ACCELERATED AGAIN BY THE FILING OF THE INSTANT FORECLOSURE ACTION; BECAUSE THE SIX-YEAR STATUTE OF LIMITATIONS STARTS RUNNING FROM EACH MISSED PAYMENT, THE 2018 FORECLOSURE ACTION WAS TIMELY BROUGHT (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Clark, determined the foreclosure action was timely brought. The mortgage was initially accelerated in 2008 when the first foreclosure action was brought. But later in 2008 the defendants entered a loan modification agreement. That agreement validly revoked the acceleration of the debt and reset the statute of limitations. Defendants again defaulted on the mortgage payments in 2009. They argued that the statute of limitations started running upon their 2009 default, rendering the current foreclosure action untimely. The Third Department disagreed, finding that the plaintiff was not obligated to foreclose upon the first missed payment. Rather the plaintiff could wait and accelerate the debt upon any subsequent default, subject to the forfeiture of the right to recover any missed payments which occurred more than six years before the action was brought (each missed payment triggers a six-year statute of limitations):

... [P]laintiff submitted evidence establishing that the 2008 acceleration was validly revoked through the execution of the loan modification agreement, thereby causing the statute of limitations to reset as of that date. Defendants do not dispute that, even after FAPA [Foreclosure Abuse Prevention Act], a validly executed loan modification agreement can reset the statute of limitations period on a previously accelerated loan, so long as the agreement complies with the writing requirements of General Obligations Law § 17-105 (1) ... \* \* \*

Nothing in FAPA or the General Obligations Law changed the basic rule that the statute of limitations runs separately from the due date of each unpaid installment ... , or, if the mortgagee elects to accelerate the entire debt, from the date of the acceleration ... . \* \* \*

Defendants' missed payments in 2009 gave plaintiff the right to sue to recover such payments, but did not obligate plaintiff to do so. Instead, plaintiff could wait to exercise its option to accelerate the entire amount of the debt upon any subsequent default, in which case the statute of limitations would run from the date of the acceleration ... , subject to forfeiture of the right to recover any missed payments that did not occur within six years prior to the commencement of the foreclosure action ... . [Ditech Fin. LLC v Temple, 2026 NY Slip Op 00951, Third Dept 2-19-26](#)

Practice Point: A loan modification agreement entered within six years of the 2008 acceleration of the debt deaccelerated the debt and reset the statute of limitations (a scenario not changed by the Foreclosure Abuse Prevention Act [FAPA]).

Practice Point: The six-year foreclosure statute of limitations starts running upon each missed mortgage payment. Here the 2018 foreclosure action was timely because it was brought within six years of a missed payment. Any missed payments which occurred prior to six years before the 2018 foreclosure was commenced were forfeited.

February 19, 2026

## FORECLOSURE, CONSTITUTIONAL LAW.

### RETROACTIVE APPLICATION OF THE FORECLOSURE ABUSE PROTECTION ACT (FAPA) DOES NOT VIOLATE THE TAKINGS CLAUSE OF THE US AND NY CONSTITUTIONS (THIRD DEPT).

The Third Department, reversing Supreme Court, determined retroactive application of the Foreclosure Abuse Prevention Act (FAPA) does not violate the Takings Clause of the US and NY Constitutions. The Court of Appeals has already

ruled that retroactive application of FAPA does not violate due process or the Contract Clause:

“Those who do business in [a] regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end” ... [Federal Natl. Mtge. Assn. v Marshall, 2026 NY Slip Op 00946, Third Dept 2-19-26](#)

February 19, 2026

## FREEDOM OF INFORMATION LAW (FOIL), MUNICIPAL LAW.

### THE FOIL REQUEST FOR THE NAMES AND EMAIL ADDRESSES OF THE SUBSCRIBERS TO A TOWN’S ONLINE ALERT SYSTEM SHOULD HAVE BEEN DENIED AS AN UNWARRANTED INVASION OF PRIVACY (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Rivera, determined the disclosure of the names and email addresses of subscribers to the Town’s online news alert system would constitute an unwarranted invasion of privacy:

The Town uses a notification system called “E-news” to send subscribers email alerts regarding news, updates, or announcements relating to the Town. Petitioner James Russell submitted a FOIL request to the Town seeking disclosure of the names and email addresses of all residents of the Town who subscribe to E-news. Petitioner’s FOIL request relied on the Appellate Division’s decision in *Matter of Livson v Town of Greenburgh*, which held that a neighboring town was required under FOIL to disclose a similar email subscriber list for its electronic news service because the town had failed to “articulate any privacy interest that would be at stake” (see 141 AD3d 658, 661 [2d Dept 2016]). Petitioner’s request also stated that he would not reproduce, redistribute, or circulate the names or email addresses or use the information contained therein for solicitation, fundraising, or any commercial purpose—the same conditions that the court imposed in *Livson* ... . \*

\* \*

[Table of Contents](#)

On one side of the scales, the subscribers have a strong privacy interest in keeping their names and email addresses confidential to avoid unwanted and unwelcome communications, and to minimize the risk of cybersecurity threats resulting from disclosure of such information. An email address, and the corresponding holder's name, are commonly treated as personally identifying information (PII). For example, New York's Stop Hacks and Improve Electronic Data Security Act includes email addresses, in combination with a password or security question and answer that would permit access to an online account, as an example of protected information which—if accessed or acquired without valid authorization—triggers notification to the affected persons . . . . .

Generally, individuals share their email address with people they know, or in exchange for a particular benefit or information that they consent to receive. They assume and rely on a common understanding that those with whom they share their email address will maintain that information private from third parties and the public at large, unless otherwise agreed or implied. \* \* \*

The subscribers' privacy concerns also reflect the ubiquitous use of email as a means of communicating highly sensitive private information. One's email account generally contains a large amount of personal data. For example, medical records, job applications, consumer purchase histories, tax returns, and credit card, bank account, and social security numbers are often embedded in emails, or in documents attached to emails. In addition, people often use their email addresses as a username or user ID to log in to many different websites or access online services . . . . \* \* \*

On the other side of the scales, there is no public interest served by disclosure here. Petitioner argues only that disclosure will increase public engagement on issues of community concern. [Matter of Russell v Town of Mount Pleasant, N.Y., 2026 NY Slip Op 00966, CtApp 2-19-26](#)

Practice Point: Consult this opinion for a discussion of the privacy concerns raised by the publication of one's name and email address.

February 19, 2026

## MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

PLAINTIFF ALLEGED DEFENDANT NEGLIGENTLY PERFORMED A ROBOTIC ASSISTED LAPAROSCOPIC ADRENALECTOMY; PLAINTIFF'S EXPERT, A GENERAL SURGEON WHO WAS EXPERIENCED IN LAPAROSCOPIC SURGERY, BUT NOT ROBOTIC SURGERY, SHOULD NOT HAVE BEEN PRECLUDED FROM TESTIFYING; THE LACK OF EXPERIENCE WITH ROBOTIC SURGERY WENT TO THE WEIGHT OF THE TESTIMONY, NOT ITS ADMISSIBILITY (SECOND DEPT).

The Second Department, reversing Supreme Court's dismissal of the medical malpractice complaint, determined the testimony of the plaintiff's expert, a general surgeon, should not have been precluded on the ground he was not qualified to testify about robotic surgery. The complaint alleged the defendant negligently performed a robotic assisted laparoscopic adrenalectomy:

“A medical expert need not be a specialist in a particular field in order to testify regarding accepted practices in that field, but the witness should be possessed of the requisite skill, training, education, knowledge, or experience from which it can be assumed that the opinion rendered is reliable” ... . Here, the plaintiff's expert, a board certified general surgeon, testified that he had knowledge of adrenalectomies and the splenic vein based on his education and training, had performed surgeries involving the adrenal gland, and had extensive experience performing laparoscopic surgeries, and he opined that the principles of good surgical practice with respect to the isolation, preservation, and protection of adjacent organs were the same regardless of whether a surgery was performed openly, laparoscopically, or robotically. This testimony was sufficient to demonstrate that the plaintiff's expert was qualified to render an opinion regarding the standard of care for a robotic assisted laparoscopic adrenalectomy ... . The expert's lack of experience in performing robotic assisted laparoscopic adrenalectomies goes to the weight of his testimony, not its admissibility ... . [Lynch v Wang, 2026 NY Slip Op 00887, Second Dept 2-28-26](#)

Practice Point: A medical expert need not be a specialist in a particular field to testify about accepted practices in that field. Here the plaintiff alleged defendant

negligently performed robotic surgery. Plaintiff's expert, a general surgeon who was not experienced in robotic surgery, should not have been precluded from testifying.

February 18, 2026

## NEGLIGENCE.

THE HOTEL, IN RESPONSE TO A REQUEST FROM FAMILY MEMBERS, ASSUMED A DUTY TO CHECK ON A GUEST WHO HAD THREATENED SUICIDE; THE HOTEL FULFILLED THAT DUTY; THE HOTEL, HOWEVER, DID NOT ASSUME A DUTY TO IMMEDIATELY CALL FOR EMERGENCY ASSISTANCE; THE HOTEL WAS NOT LIABLE FOR THE GUEST'S SUICIDE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Cannataro, over an extensive dissenting opinion, determined the defendant hotel, after a request from a guest's family, had assumed a duty to check on the guest who had threatened suicide in text messages to family members. The hotel fulfilled the assumed duty to check on the guest. However the hotel did not assume a duty to immediately call for emergency assistance after a subsequent request from the family. The hotel, sometime after the family's request, did procure emergency assistance. The guest was on the window ledge when police officers entered his room. He jumped from the ledge:

Plaintiffs concede that defendants did not have an underlying legal duty to prevent decedent, a hotel guest, from taking his own life. It is undisputed that defendants, as the owner and operator of the premises, are not insurers of a visitor's safety. Rather, plaintiffs' theory of liability is one of assumed duty. "[E]ven when no original duty is owed to the plaintiff to undertake affirmative action, once it is voluntarily undertaken, it must be performed with due care" ... .

... [T]o be held liable under an assumed duty theory, it is not enough that defendants undertook to perform a service and did so negligently, but their "conduct in undertaking the service [must have] somehow placed [decedent] in a

more vulnerable position than he would have been in had [defendants] never taken any action at all” ... . \* \* \*

Recognizing an assumed duty in these circumstances would create a specter of liability that discourages rather than encourages hotels from offering assistance to guests contemplating suicide. Because hotels owe no inherent duty to provide such aid, the most rational and likely way for them to avoid liability would be to implement formal policies against their employees involving themselves in efforts to render potentially life-saving aid to guests. In keeping with the State’s “interest[] in preserving life and preventing suicide” ... , the better rule is one that incentivizes both hotels and concerned parties to do all they reasonably can in these difficult and emotionally charged situations. [Beadell v Eros Mgt. Realty LLC, 2026 NY Slip Op 00962, CtApp 2-19-26](#)

Practice Point: Consult this opinion for an explanation of the circumstances under which a party which does not ordinarily owe a duty of care to another party can “assume” a duty of care in response to a request.

February 19, 2026

## ZONING, RELIGION.

### THE TOWN ZONING BOARD OF APPEALS MADE NO ATTEMPT TO ACCOMMODATE THE PROPOSED RELIGIOUS USE OF A SINGLE FAMILY HOME; MATTER REMITTED (SECOND DEPT).

The Second Department, reversing Supreme Court and remitting the matter to the town zoning board of appeals, determined the board made no attempt to accommodate the application for religious use of a single-family home. The application sought to change the use of the property from “one family” to “place of worship accessory to one family” (a synagogue):

“[W]hile religious institutions are not exempt from local zoning laws, greater flexibility is required in evaluating an application for a religious use than an application for another use and every effort to accommodate the religious use must be made” ... . “[E]ducational and religious institutions are presumed to have a

[Table of Contents](#)

beneficial effect on the community” ... . “[T]his presumption can be rebutted ‘with evidence of a significant impact on traffic congestion, property values, municipal services and the like’” ... .

Here, the record reflects that the Board denied the petitioner’s application without making any attempt to accommodate the proposed religious use ... . Despite the conditions proposed by the petitioner to mitigate the impact on the surrounding community, the Board denied the petitioner’s application in its entirety, even though the proposed religious use could have been substantially accommodated ... . Furthermore, the evidence, taken as a whole, was insufficient to rebut the presumed beneficial effect of the proposed religious use ... . [Matter of Sephardic Synagogue of Plainview v Byrne, 2026 NY Slip Op 00903, Second Dept 2-18-26](#)

Practice Point: Although religious institutions are not exempt from zoning laws, greater flexibility in evaluating a petition for religious use is required. Here no attempt was made to accommodate the change of use from “one family” to “place of worship accessory to one family” and the matter was remitted to the zoning board of appeals for such consideration.

February 18, 2026

Copyright 2026 New York Appellate Digest, Inc.