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Weekly Reversal Report
March 2 – 6, 2026

An Organized Compilation of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts March 2 – 6, 2026, and Posted on the New York Appellate Digest Website on Monday, March 9, 2026. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click On "Table of Contents" in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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APPEALS, CORRECTION LAW, DISCIPLINARY HEARINGS (INMATES).

THE REQUIREMENT IN THE LONG-TERM SOLITARY CONFINEMENT ACT (HALT ACT) THAT A HEARING BE HELD WITHIN FIVE DAYS OF PLACING AN INMATE IN A SEGREGATED HOUSING UNIT (SHU) IS "DIRECTORY," NOT MANDATORY; THEREFORE ANY ISSUE RELATED TO A DELAY IN HOLDING THE HEARING MUST BE PRESERVED FOR REVIEW AND THE INMATE MUST DEMONSTRATE PREJUDICE CAUSED BY THE DELAY (THIRD DEPT).

The Second Department, in a full-fledged opinion by Justice McShan, determined the requirement that, under the Long-Term Solitary Confinement Act (HALT Act), a disciplinary hearing be held within five days of an inmate's placement in a segregated housing (SHU) is directory, not mandatory. Therefore the issue must be preserved for review and the inmate must demonstrate prejudice resulting from any delay in holding the hearing:

… [W]hen examining the entirety of statutory provisions enacted by the HALT Act with respect to the use of segregated housing, numerous provisions expressly provide directives that limit respondent's authority to utilize segregated housing or mandating that incarcerated individuals be released or diverted to RRU [residential rehabilitation unit] … . The exclusion of any such language from the time frame in which a hearing must be held after an incarcerated individual is placed in segregated housing suggests that it was not intended to deprive respondent of his authority to proceed with a hearing in the event of a violation. We therefore find that the language requiring that a hearing be completed no later than five days after an incarcerated individual is placed in prehearing segregated confinement remains directory under the HALT Act … . Matter of Guerrero v Martuscello, 2026 NY Slip Op 01263, Third Dept 3-5-26

March 5, 2026

CIVIL PROCEDURE, NEGLIGENCE.

THE GOVERNOR'S EMERGENCY COVID-19 TOLLS OF STATUTES OF LIMITATIONS EXTENDED THE TWO-YEAR WINDOW FOR FILING CHILD VICTIMS ACT (CVA) CAUSES OF ACTION BY 228 DAYS (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Voutsinas, determined the amendment of the Child Victims Act (CVA), which enlarged to window for filing otherwise time-barred actions, did not supersede the governor's COVID-19 executive orders tolling statutes of limitations. Therefore two-year window for filing CVA actions was extended by the 228-day COVID-19 tolls and plaintiff's action was timely:

… [T]his Court concludes that the executive orders issued by the Governor and the Legislature's amendment of the CVA all functioned together to enlarge and enhance the period of time for survivors to commence CVA actions. This Court finds the contention of [defendants] that the CVA amendment supplanted the executive orders unpersuasive. The CVA amendment and the executive orders work in tandem to accommodate the peculiar difficulties precluding survivors of child sex abuse to come forward in pursuit of justice. The extended revival window

provided survivors an opportunity to avail themselves of the CVA revival window despite restrictions by the pandemic or personal trauma. To hold otherwise would belie the very intent of the CVA, which was to permit victims additional time to bring their offenders to justice.

Accordingly, this Court holds that the executive orders issued prior to the enactment of the CVA amendment apply to toll the two-year revival window for the time the executive orders were in effect. In conjunction with the executive orders issued subsequent to the CVA amendment's enactment, which this Court has recently held to be applicable, all of these executive orders impose an aggregate 228-day toll on the closing of the CVA revival window, making March 30, 2022, the latest date by which to commence a CVA action … . Finley v Diocese of Brooklyn, 2026 NY Slip Op 01183, Second Dept 3-4-26

March 4, 2026

CRIMINAL LAW, EVIDENCE, APPEALS, ATTORNEYS, JUDGES.

NONE OF DEFENDANT'S CONVICTIONS STOOD UP TO APPELLATE SCRUTINY; THE GRAND LARCENY AND CRIMINAL IMPERSONATION CONVICTIONS WERE AGAINST THE WEIGHT OF THE EVIDENCE; THE COUNTS CHARGING SCHEME TO DEFRAUD AND APPEARING AS AN ATTORNEY WITHOUT BEING ADMITTED WERE DISMISSED AS DUPLICITOUS (SECOND DEPT).

The Second Department reversed the grand larceny and criminal impersonation counts, with the People's consent, under a weight-of-the-evidence analysis. The proof demonstrated the grand larceny counts failed because the "victims" voluntarily gave defendant the money. The criminal impersonation counts failed because the defendant did not impersonate a "real person." The scheme to defraud and "appearing as an attorney without being admitted" counts were dismissed as duplicitous:

… [T]he counts of scheme to defraud in the first degree and practicing or appearing as an attorney without being admitted and registered were duplicitous.

"A count in an indictment is void as duplicitous when it charges more than one offense" … . "Even if a count is valid on its face, it is nonetheless duplicitous where the evidence presented to the grand jury or at trial makes plain that multiple criminal acts occurred during the relevant time period, rendering it nearly impossible to determine the particular act upon which the jury reached its verdict" … . Here, neither the verdict sheet nor the jury charge explained how the testimony and evidence adduced at trial applied to the three counts of scheme to defraud in the first degree or the three counts of practicing or appearing as an attorney without being admitted and registered, including which counts pertained to which of the complainants. Under the circumstances, the challenged counts were duplicitous because it is impossible to determine the particular acts upon which the jury reached its verdict with respect to each of the counts … . People v Rafikian, 2026 NY Slip Op 01232, Second Dept 3-4-26

Practice Point: Consult this decision for an example of dismissal of indictment counts as duplicitous. It was not possible to determine which allegation in the counts was the basis of the the jury's decision to convict.

March 4, 2026

CRIMINAL LAW, ATTORNEYS, JUDGES.

DEFENSE COUNSEL WAS UNAVOIDABLY DELAYED IN GETTING TO COURT AND SO INFORMED THE JUDGE; IN DEFENSE COUNSEL'S ABSENCE A JUROR REQUESTED TO BE DISCHARGED BECAUSE OF THE SUDDEN DEATH OF HER FRIEND'S SON; THE DISCHARGE OF THE JUROR WITHOUT DEFENSE COUNSEL'S CONSENT REQUIRED REVERSAL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defense motion for a mistrial should have been granted. Defense counsel, because of a child-care issue, informed the court she could not be there at 9 am but would arrive at court later in the morning. While defense counsel was absent, a juror requested to be discharged because of the sudden death of a family friend's son. The judge

discharged the juror. When defense counsel arrived she objected to the discharge of the juror without her consent and moved for a mistrial:

It is undisputed that the Supreme Court failed to adhere to the requirements of CPL 270.35. As a matter of procedure, the court, at a minimum, should have informed all parties of the substance of the inquiry and provided each side with an opportunity to be heard before making its determination to discharge the sworn juror. The court both conducted the inquiry and discharged the juror in the presence of the People and in the absence of defense counsel.

Although defense counsel was apprised with the actual specific contents of the jury note upon her arrival … , the Supreme Court's procedural errors here were inherently prejudicial, as they deprived the defendant of an opportunity to be heard before giving meaningful notice of the contents of the note, conducting the inquiry, and discharging the juror as incapacitated … . People v Dean, 2026 NY Slip Op 01218, Second Dept 3-4-26

Practice Point: Here the discharge of a juror in defense counsel's absence warranted a mistrial.

March 4, 2026

CRIMINAL LAW, JUDGES, APPEALS.

ALTHOUGH THE JUDGE INFORMED DEFENDANT HE COULD BE SUBJECT TO AN ENHANCED SENTENCE IF HE DIDN'T APPEAR FOR THE PRESENTENCE INVESTIGATION INTERVIEW OR GOT INTO TROUBLE BEFORE SENTENCING, THE JUDGE DID NOT SPECIFICALLY INFORM DEFENDANT HE WOULD BE SUBJECT TO AN ENHANCED SENTENCE IF HE DID NOT APPEAR FOR SENTENCING; SENTENCE VACATED (THIRD DEPT).

The Third Department, vacating defendant's sentence and remitting the matter, determined defendant was not specifically informed that his failure to show up for

sentencing could result in an enhanced sentence. Therefore the enhanced sentence was vacated:

In satisfaction of the indictment and other pending charges, defendant agreed to plead guilty to one count of falsely reporting an incident in the second degree and waive his right to appeal. He entered that plea upon the understanding that he would be sentenced, as a second felony offender, to two years in prison, to be followed by five years of postrelease supervision. County Court provided an oral Parker admonishment at the conclusion of the plea proceeding and warned defendant that, if he failed to appear for a scheduled presentence investigation interview or got "into further trouble, some new legal difficulties" before sentencing, it would not be bound by its sentencing commitment and could sentence him to up to four years in prison. * * *

"A sentencing court may not impose an enhanced sentence unless it has informed the defendant of specific conditions that the defendant must abide by or risk such enhancement, or give the defendant an opportunity to withdraw his or her plea before the enhanced sentence is imposed" … . As the People concede, County Court failed to "specifically inform [defendant] as part of the Parker admonishment that a consequence of failing to appear for sentencing was the imposition of a greater sentence" … . County Court therefore erred in imposing an enhanced sentence on that ground without first giving defendant an opportunity to withdraw his plea … . People v Gordon, 2026 NY Slip Op 01251, Third Dept 3-5-26

Practice Point: In order to impose a valid enhanced sentence if defendant fails to show up for sentencing, the judge must have specifically informed defendant of that possibility.. Here defendant was told he may receive an enhanced sentence if he didn't attend the presentence investigation interview, which was not sufficient.

March 5, 2026

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF ATTEMPTED TO MOVE A SCAFFOLD WHILE STANDING ON IT AND IT FELL OVER; PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) AND 241(6) CAUSES OF ACTION (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined plaintiff was entitled to summary judgment on the Labor Law 240(1) cause of action. Plaintiff was standing on a Baker scaffold, attempting to move it, when it toppled over. The scaffold did not have safety railings and plaintiff was not provided with any safety equipment.. Plaintiff's comparative negligence is irrelevant for a Labor Law 240(1) action:

The plaintiff's assigned work on the project required him to stand on top of a Baker scaffold. As the plaintiff was attempting to move the scaffold while standing on the platform of the scaffold, the scaffold toppled over and the plaintiff fell five to six feet to the floor below. * * *

… [T]he plaintiff met his prima facie burden of demonstrating a violation of Labor Law § 240(1) and that this violation was a proximate cause of his injuries by submitting a transcript of his deposition testimony in which he testified that he fell from a scaffold that did not have any safety railings and that he was not provided with any safety devices to keep him from falling … . In opposition, the defendants failed to raise a triable issue of fact. Since the plaintiff established a violation of Labor Law § 240(1) and that the violation was a proximate cause of his fall, his comparative negligence, if any, is not a defense to the cause of action alleging a violation of that statute … . * * *

… [T]he court should have granted that branch of the plaintiff's motion which was for summary judgment on the issue of liability on so much of the cause of action alleging a violation of Labor Law § 241(6) as was predicated on a violation of 12 NYCRR 23-5.18(b), as the plaintiff established, prima facie, that the manually propelled scaffold lacked safety railings … . Bustamante v BSD 370 Lexington, L.L.C., 2026 NY Slip Op 01180, Second Dept 3-4-26

Practice Point: This decision illustrates the irrelevance of comparative negligence for a Labor Law 240(1) cause of action.

March 4, 2026

LANDLORD-TENANT, CONSTITUTIONAL LAW, ADMINISTRATIVE LAW.

THE EXECUTIVE LAW WHICH MAKES A LANDLORD'S REFUSAL TO ACCEPT TENANTS WHO RECEIVE SECTION 8 VOUCHERS AN UNLAWFUL DISCRIMINATORY PRACTICE IS UNCONSTITUTIONAL BECAUSE, AS A RESULT OF ACCEPTING SECTION 8 FUNDS, LANDLORDS MUST SUBMIT TO UNREASONABLE SEARCHES OF APARTMENTS AND RECORDS (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Ceresia, determined Executive Law section 296(5)(a)(1) is unconstitutional. The statute makes a landlord's refusal to rent to tenants who receive Section 8 housing vouchers an unlawful discriminatory practice. The landlords argued "the source-of-income discrimination law is unconstitutional on its face because it, in effect, requires landlords to take part in the Section 8 program, which in turn obligates them to consent to warrantless searches of their premises and records in violation of the Fourth Amendment:"

The particulars of respondents' [landlords'] constitutional claim are as follows. By prohibiting discrimination based upon source of income, respondents argue, the Legislature has required landlords to accept Section 8 vouchers and, as a condition of participating in that program, agree to allow searches of their properties and records. More specifically, under the governing federal statutes and regulations, a potential Section 8 apartment must meet certain housing quality standards … , and in order to determine whether these standards are met, the local PHA [public housing agency] administering the program must perform an inspection of the apartment, the equipment that services the apartment and the common areas of the building before the apartment is occupied and again not less than biennially during the term of the tenancy … . Further, for purposes of assessing whether the rent charged by the landlord is reasonable, the landlord must make available to the PHA

its records concerning the apartment in question as well as the amounts of rent it charges for other units, both in the building in question and in other buildings … . The landlord must sign a standard housing assistance payment (hereinafter HAP) contract, in which it agrees to provide "full and free access" to the apartment, the premises and all relevant accounts and records. Respondents contend that these inspection mandates force them to surrender the Fourth Amendment's protections against governmental searches of private property in the absence of either voluntary consent or a warrant, neither of which are provided for here. * * *

An inspection scheme must assure that the discretion of the inspecting officers is "carefully limited in time, place, and scope" … , and we find that the Section 8 inspection regime lacks these safeguards. With respect to timing, although the regulations set benchmarks for when inspections should be performed at the outset of the tenancy and then at least once every two years thereafter there is no further guidance as to the frequency of the inspections and, indeed, they must be done whenever the PHA receives a complaint … . As for the place and scope of a search, while the regulations offer examples of interior spaces that may be searched and explain the purposes of the search, there are no limitations placed on what may be inspected. When combined with the HAP contract, which requires landlords to allow "full and free access to the contract unit and the premises, and to all accounts and other records of the owner that are relevant to the HAP contract," the place and scope of a permissible search are exceedingly broad. Under these circumstances, the inspection scheme does not provide adequate safeguards … . Matter of People of the State of N.Y. v Commons West, LLC, 2026 NY Slip Op 01253, Third Dept 3-5-26

March 5, 2026

MEDICAL MALPRACTICE, NEGLIGENCE, EVIDENCE.

PURSUANT TO THE RES IPSA LOQUITUR DOCTRINE, THERE IS A QUESTION OF FACT WHETHER EPIDURAL INJECTIONS WERE DONE NEGLIGENTLY; THE FACT THAT PLAINTIFF SIGNED A CONSENT FORM WAS NOT SUFFICIENT TO WARRANT SUMMARY JUDGMENT ON THE LACK OF INFORMED CONSENT CAUSE OF ACTION (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendants' motions for summary judgment in this medical malpractice and lack of informed consent action should not have been granted. The plaintiff raised a question of fact re: medical malpractice under the res ipsa loquitur doctrine. And the fact that plaintiff signed a consent form was not sufficient to warrant summary judgment on the lack of informed consent cause of action:

… [T]he doctrine of res ipsa loquitur was applicable to raise a triable issue of fact as to whether the defendants negligently administered the epidural injections. "To raise a triable issue of fact as to the applicability of that doctrine, a plaintiff must show that '(1) the event is of the kind that ordinarily does not occur in the absence of someone's negligence; (2) the instrumentality that caused the injury is within the defendants' exclusive control; and (3) the injury is not the result of any voluntary action by the plaintiff'" … . Here, the plaintiff raised a triable issue of fact as to whether his injury was of a kind that ordinarily does not occur in the absence of negligence, as Weingarten opined that the plaintiff would not have developed an MSSA infection if the defendants had adhered to the proper performance of "sterile techniques" in accordance with the applicable standards of care … . * * *

"'To establish a cause of action to recover damages based on lack of informed consent, a plaintiff must prove (1) that the person providing the professional treatment failed to disclose alternatives thereto and failed to inform the patient of reasonably foreseeable risks associated with the treatment, and the alternatives, that a reasonable medical practitioner would have disclosed in the same circumstances, (2) that a reasonably prudent patient in the same position would not have undergone the treatment if he or she had been fully informed, and (3) that the lack of informed consent is a proximate cause of the injury'" … . "The fact that a plaintiff signed a consent form, standing alone, does not establish a defendant's

prima facie entitlement to judgment as a matter of law" … . Here, the defendants' submissions failed to establish, prima facie, that the plaintiff was adequately informed of the reasonably foreseeable risks of the epidural injections … . Phillips v Varma, 2026 NY Slip Op 01238, Second Dept 3-4-26

Practice Point: Consult this decision for insight into the application of the res ipsa loquitur doctrine to medical malpractice.

Practice Point: Plaintiff's signing a consent form alone does not warrant granting a defendant's motion for summary judgment on a "lack of informed consent" cause of action.

March 4, 2026