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Weekly Reversal
Report
May 4 – 8, 2026

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ADMINISTRATIVE LAW, CONSTITUTIONAL LAW, REAL PROPERTY TAX
LAW (RPTL).

ALTHOUGH RPTL 421-A DOES NOT EXPLICITLY ALLOW JUDICIAL
REVIEW OF THE COMPTROLLER’S TAX RULINGS, THE CASE LAW
SUPPORTS THE AVAILABILITY OF ARTICLE 78 REVIEW; THEREFORE
THE STATUTE IS NOT UNCONSTITUTIONAL (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Clark, determined RPTL 421-a (16) (c) (x) does not foreclose judicial review of the Comptroller’s rulings concerning certain tax benefits available to property developers who provide affordable housing and pay construction workers at the statutory rate. Although the statute does not explicitly allow judicial review, the case law supports the conclusion that Article 78 review is available:

... Supreme Court has broad authority to provide relief from an administrative determination in a CPLR article 78 proceeding, both during the pendency of the proceeding and following the completion of judicial review During the pendency of such a proceeding, the court may “stay . . . the enforcement of [the] determination under review” (CPLR 7805 ...). Correspondingly, once judicial review is complete, the reviewing court is authorized to “annul or confirm . . . or modify” the determination “in whole or part” and may “direct. . . specified action by the respondent” (CPLR 7806). The court’s authority under CPLR 7806 to direct specified action by the respondent agency encompasses “any . . . directions needed to secure to the petitioner the [a]rticle 78 relief ordered” and a court’s judgment embodying those directions “is enforceable by contempt proceedings” In other words, if a reviewing court found the Comptroller’s final determination under RPTL 421-a (16) (c) (x) to have been made in violation of lawful procedure, affected by an error of law, arbitrary and capricious or lacking in substantial

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evidence (see CPLR 7803 [3], [4]), it would have broad remedial power under CPLR 7806 to annul the Comptroller’s determination, which would, in effect, render the underlying administrative judgment unenforceable, and could also direct the Comptroller to take action to secure the vacatur of the administrative judgment. [Matter of Bldg 44 Devs. LLC v State of New York, 2026 NY Slip Op 02898, Third Dept 5-7-26](#)

Practice Point: Even where a statute does not explicitly allow judicial review, the case law may support Article 78 review, rendering the statute constitutional.

May 7, 2026

ADMINISTRATIVE LAW, EMPLOYMENT LAW, MUNICIPAL LAW.

THE INSTRUCTIONS CONCERNING THE USE OF CELL PHONES DURING A POLICE-DEPARTMENT PROMOTIONAL EXAM WERE AMBIGUOUS; THEREFORE THE DETERMINATION PETITIONERS VIOLATED THE INSTRUCTIONS WAS IRRATIONAL (FIRST DEPT).

The First Department, reversing Supreme Court, in a full-fledged opinion by Justice Higgitt, determined the New York City Department of Citywide Administrative Services (DCAS), acted irrationally when it found that petitioners-police-officers had violated the prohibition of the use of cell phones before dismissal from a promotional examination. The petitioners did not use their cell phones during the exam. Rather the cell phones were used after completion of the exam but before dismissal from the exam room. The First Department held that the instructions concerning the use of cell phones were ambiguous:

Here, rationality is lacking, not for a want of evidence, but because the standard to which DCAS held petitioners was ambiguous. The notices of violations issued by DCAS specified, among other things, that petitioners breached a test-taking rule providing that, “[b]efore, during and after your test, you are not permitted to use, have turned on or have out in the open: cellular phones.” The rule does not indicate when the cell-phone prohibition begins or when it ends.... Nothing in the rule, which DCAS quoted from the instruction sheet provided to the candidates, suggests the location or locations to which the cell phone prohibition applied. The

ambiguity of the rule, coupled with the ambiguity as to when the test concluded (which the executive deputy commissioner acknowledged) and the prevalence of cell phones in the exam room, make the determinations irrational. [Matter of Bifulco v City of New York, 2026 NY Slip Op 02772, First Dept 5-5-26](#)

Practice Point: An administrative punishment for a purported rule violation will be deemed irrational if the rule is ambiguous.

May 5, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW.

NEW YORK'S "TOLLING" PROVISION FOR PREDICATE FELONIES REQUIRES ONLY A MATHEMATICAL CALCULATION TO DETERMINE HOW LONG THE TEN-YEAR LOOK-BACK IS EXTENDED BY PERIODS OF A DEFENDANT'S INCARCERATION; THEREFORE THERE IS NO NEED FOR A JURY TO MAKE FACTUAL FINDINGS BEFORE THE LOOK-BACK CALCULATION CAN BE MADE (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Webber, determined that New York "tolling provision," which extends the ten-year look-back for predicate felonies by the amount of time defendant was incarcerated, is a purely mathematical calculation that does not require consideration by a jury:

...New York's tolling provision requires a determination of whether the defendant was incarcerated and, if so, the dates of incarceration (see Penal Law §§ 70.06[1][b][iv],[v]; 70.08[1][b]). Thus, the tolling provision requires "rote arithmetic calculation to be made based on certified public records" The determination is completely objective. There is no assessment of defendant's conduct or culpability. Rather, it is a determination of the amount of time a defendant was incarcerated between a previous conviction and the instant offense. There need only be a review of the official records of incarceration—i.e., when the defendant was admitted into the facility, when the defendant was released and any time in between. [People v Young, 2026 NY Slip Op 02883, First Dept 5-7-26](#)

Practice Point: Consult this opinion for insight into the nature and application of New York’s predicate-felony “tolling” provision.

May 7, 2026

CRIMINAL LAW, EVIDENCE, JUDGES.

THE JUDGE’S ERROR IN REFUSING TO GRANT A BRIEF ADJOURNMENT WHEN THE PEOPLE BELATEDLY OFFERED A REBUTTAL WITNESS HAD A “SPILL-OVER-EFFECT” TAINTING THE OTHER COUNTS; NEW TRIAL ORDERED (THIRD DEPT).

The Third Department, reversing defendant’s conviction, determined (1) the court erred in not granting the defense an adjournment when the People belatedly offered rebuttal testimony, and (2) the “spill-over-effect” of that error tainted the convictions:

The trial court may, in the exercise of its discretion, receive belatedly disclosed rebuttal testimony, ” ‘but before doing so, it must, upon application of the We therefore conclude that County Court erred when, after granting the prosecution’s request to offer rebuttal proof on Monday, it then denied defendant’s application for any adjournment before the prosecution called its rebuttal witness Given that proof of defendant’s guilt without the rebuttal witness’ testimony was “not overwhelming,” the error cannot be deemed harmless

In determining whether an error in the proceedings relating to one count requires reversal of the conviction of other jointly tried counts, we apply “[s]pillover analysis” and evaluate “the individual facts of the case, the nature of the error and its potential for prejudicial impact on the over-all outcome” “[I]f there is a reasonable possibility that the jury’s decision to convict on the tainted counts influenced its guilty verdict on the remaining counts in a meaningful way,” reversal is required (*id.* [internal quotation marks and citations omitted]). Because resolution of all three counts here hinged on the jury’s assessment of the victims’ credibility and the veracity of the defense claims, there is a reasonable possibility that the decimation of defendant’s alibi by the rebuttal evidence meaningfully influenced the jury’s guilty verdict on the 2018 count The rebuttal proof,

received without affording defendant a brief adjournment to investigate, cast defendant's alibi witness as unscrupulous and incredible. Under these unusual circumstances, we reverse defendant's convictions and order a new trial on all counts [People v Shaver, 2026 NY Slip Op 02895, Second Dept 5-7-26](#)

Practice Point: An error affecting the proof of one count may have a "spill-over-effect" and taint the remaining counts, requiring a new trial.

May 7, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT WAS NOT ENTITLED TO VACATION OF HIS CONVICTIONS ON THE GROUND THE COUNTS WHICH WERE DISMISSED AT TRIAL HAD A PREJUDICIAL "SPILL-OVER-EFFECT" ON THE REMAINING COUNTS (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant's motion to vacate his conviction under a "prejudicial-spill-over-effect" theory should not have been granted. Defendant argued the counts which were dismissed at trial had tainted the counts for which he was convicted:

"Whether an error in the proceedings relating to one count requires reversal of convictions on other jointly tried counts is a question that can only be resolved on a case-by-case basis, with due regard for the individual facts of the case, the nature of the error and its potential for prejudicial impact on the over-all outcome" "[T]he paramount consideration in assessing potential spillover error is whether there is a reasonable possibility that the jury's decision to convict on the tainted counts influenced its guilty verdict on the remaining counts in a meaningful way" "By contrast, where the jury's decision to convict on the tainted counts had only a tangential effect on its decision to convict on the remaining counts, no reversal is warranted" "Spillover analysis is highly case-specific," requiring an evaluation of "the individual facts of the case, the nature of the error and its potential for prejudicial impact on the over-all outcome" * * *

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... [U]nder the circumstances of this case, there was no reasonable possibility that the evidence supporting the tainted counts pertaining to the robbery on November 27, 1995, had a spillover effect on the other counts As the jury's decision to convict on the tainted counts had, at most, a tangential effect upon its decision to convict on the remaining counts pursuant to the robbery on November 13, 1995, vacatur of the defendant's convictions related to the robbery on November 13, 1995, was unwarranted on the ground of spillover prejudice [People v Breland, 2026 NY Slip Op 02848, First Dept 5-6-26](#)

Practice Point: Consult this decision for insight into the argument that the counts on which defendant was convicted were tainted by the counts which were dismissed at trial.

May 6, 2026

FAMILY LAW, JUDGES.

FAMILY COURT SHOULD HAVE HELD A HEARING ON WHETHER MOTHER'S ADDRESS SHOULD BE KEPT CONFIDENTIAL; FAMILY COURT SHOULD NOT HAVE DELEGATED ITS AUTHORITY TO THE THERAPIST TO DETERMINE FATHER'S LEVEL OF PARTICIPATION IN THE CHILD'S THERAPY (FIRST DEPT).

The First Department, reversing (modifying) Family Court, determined the court should have held a hearing on whether mother's address could be kept confidential; and the court should not have delegated its authority to all the therapist to decide the extent father's participation in the child's therapy:

Section 154-b(2)(a) of the Family Court Act authorizes the court, on its own motion or upon the motion of any party or the child's attorney, to permit the party or the child to keep his or her address confidential from an adverse party if the court finds that disclosure of the address or other identifying information would pose an unreasonable risk to the health or safety of a party or the child. Thus, the statute requires a fact-specific determination as to the possible effects of such disclosure. Although the mother sought an address confidentiality order and Family

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Court acknowledged the need for a separate hearing, ultimately holding the issue in abeyance, the record is devoid of any determination as to whether disclosure of the address would pose an unreasonable risk to the child. In the absence of such a finding, the directive requiring disclosure cannot be said to reflect a proper exercise of discretion.

Family Court further erred in authorizing the father to communicate with the child's therapist and to participate in therapy at the therapist's discretion. This provision effectively delegates to the treating therapist the authority to determine whether, when, and under what circumstances the father may have contact with the child, which is an issue reserved to the court The directive also contradicts the court's finding that contact with the father would harm the child's mental health, and risks inhibiting the child's openness with the child's therapist if the child knows disclosures could be shared with or occur in the father's presence. Thus, the order undermines the therapeutic process and risks exacerbating, rather than alleviating, the child's emotional distress. [Matter of Monet O. v Leroy L.B., 2026 NY Slip Op 02788, First Dept 5-5-26](#)

Practice Point: Before determining whether a party's address should be kept confidential, Family Court should hold a hearing.

Practice Point: The Family Court should not delegate its authority to determine the level of father's participation in the child's therapy to the therapist.

May 5, 2026

NEGLIGENCE, EVIDENCE.

IN THIS SLIP AND FALL CASE, DEFENDANTS DID NOT DEMONSTRATE THE SIDEWALK DEFECT WAS TRIVIAL AS A MATTER OF LAW; CRITERIA EXPLAINED (SECOND DEPT).

The Second Department, reversing Supreme Court in this sidewalk slip and fall case, determined defendants did not demonstrate the defect was trivial as a matter of law:

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In determining whether a defect is trivial as a matter of law, the court must examine all of the facts presented, including the “width, depth, elevation, irregularity and appearance of the defect along with the time, place and circumstance of the injury” There is no “minimal dimension test” or “per se rule” that the condition must be of a certain height or depth in order to be actionable Photographs that “are acknowledged to fairly and accurately represent the accident site may be used to establish that a defect is trivial and not actionable” When “deciding in a given case whether photographs may sufficiently show triviality without objective measurement, it depends on what the photographs depict” The “persuasiveness of photographs will depend on what reasonable inferences regarding the alleged defect may be drawn from them”

Here, the evidence submitted by the defendants, including, among other things, a transcript of the plaintiff’s deposition testimony and photographs of the allegedly defective sidewalk condition, was insufficient to establish, prima facie, that the height differential was physically insignificant and that the characteristics of the defect or the surrounding circumstances did not increase the risks the alleged defect posed The evidence submitted did not include objective measurements of the dimensions of the defect, specifically, the height of the allegedly misleveled portion of the sidewalk. The evidence further failed to sufficiently quantify or estimate the dimensions of the defect. The plaintiff identified the photographs as fairly and accurately representing the allegedly defective sidewalk condition as it existed on the date of the accident. While the photographs demonstrated the irregular nature of the sidewalk . . . , it is impossible to ascertain or reasonably infer the extent of the defect from the photographs submitted [Rosario v Wyckoff Supermarket Assoc., Inc., 2026 NY Slip Op 02860, Second Dept 5-6-26](#)

Practice Point: Consult this decision for insight into the evidence required to demonstrate a sidewalk defect is trivial where no measurements are submitted in support of the summary judgment motion.

May 6, 2026

NEGLIGENCE, EVIDENCE.

THE STORM-IN-PROGRESS RULE DOES NOT APPLY TO WATER INSIDE A BUILDING TRACKED IN DURING A RAIN STORM (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Taylor, clarified and reiterated the principle that the storm-in-progress rule does not apply to tracked-in water inside a building:

... [T]his Court has not expanded the storm in progress rule to include hazards that have been tracked-in to interior spaces ... , and we decline [defendant property owner's] invitation to do so. A property owner's efforts to remove tracked-in hazards during an ongoing storm are simply not subject to the same exigencies as when removing exterior hazards. In other words, removing tracked-in hazards during an ongoing storm is not a fruitless endeavor, and therefore the suspension of a property owner's duty of care with respect to such hazards is not justified.

Rather, tracked-in conditions from a storm in progress are to be treated by the principles governing premises liability generally [Rowland v Brooklyn Hosp. Ctr., 2026 NY Slip Op 02861, Second Dept 5-6-26](#)

Practice Point: The storm-in-progress rule does not apply to water inside a building tracked in during a rain storm.

May 6, 2026

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