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EDITOR: DAVID L. FERSTENDIG

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Reporting on Significant Court of Appeals Opinions and Developments in New York Practice

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CASE LAW DEVELOPMENTS

Claimant's Death Benefits Claim Arising Out of Death of Volunteer-Spouse at World Trade Center Site Held to Be Untimely

Possible Extension of Time Available Only to "Volunteer," Not Claimant-Spouse

In *Matter of Garcia v. WTC Volunteer*, 2025 N.Y. Slip Op. 06360 (Nov. 20, 2025), the decedent, the claimant's spouse, had volunteered at the World Trade Center following the September 11, 2001 terrorist attacks. Decedent made a claim for workers' compensation benefits pursuant to Workers' Compensation Law (WCL) Article 8-A. That law was enacted to assure that those who worked as employees or volunteers at the World Trade Center (and other designated sites) after the attacks in rescue, recovery and cleanup operations could recover for the health conditions caused by exposure to hazardous material. Decedent received lifetime benefits predicated on multiple medical conditions he suffered through his work.

Decedent died on July 15, 2016. On February 21, 2020, the claimant filed a claim for workers' compensation death benefits, arguing that the decedent had died as a result of the medical conditions established in his workers' compensation claim. WCL § 28 provides, in part, that a claim for compensation must be filed "unless within two years after the accident," or "disablement" or "if death results therefrom within two years after such death." Thus, on its face, claimant's claim was untimely as it was filed more than two years after the decedent's death.

The claimant argued that her claim was saved by WCL § 168, which provides additional time to file claims. It states that "[a] claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred" within certain time frames will not be disallowed if filed by a set date depending on when the "disablement occurred," even though that date lies beyond the two-year limit in WCL § 28.

The Court of Appeals concluded, however, that WCL § 168's extension of time for the filing of certain claims, applies only to a claim by a statutorily defined "participant" in the recovery efforts. Thus, it did not provide an extension to the claimant-spouse's untimely claim barred by WCL § 28.

> The statute explicitly refers to "[a] claim by a participant," permits such participant's claim to be filed within the enumerated extended time period, and again repeats "[a]ny such participant" when stating that certain previously denied claims "shall be reconsidered by the board." The phrase "claim by a participant" does not encompass claims by the surviving beneficiaries of those individuals.

Id. at *3.

The Court found further support in the fact that other WCL provisions *did not* similarly limit their applicability to "participants."

> Workers' Compensation Law § 168's use of the phrase "[a] claim by a participant" must therefore be understood to mean that only a claim brought by a participant, and not by the survivors or beneficiaries of a participant, may benefit from the extended time limits of Workers' Compensation Law § 168. As the Appellate Division reasoned, "it was decedent who was entitled to file a claim for benefits outside of the period allowed by Workers' Compensation Law § 28." (citation omitted).

Id.

Town and Town Board Cannot Assert Facial Constitutional Challenge to Voting Rights Act

Exception to Prohibition Against Political Subdivision Suing to Invalidate State Legislation Inapplicable

In *Clarke v. Town of Newburgh,* 2025 N.Y. Slip Op. 06359 (Nov. 20, 2025), several Newburgh voters sued the Town and Town Board of Newburgh (collectively, "Newburgh") under Section 17-206 of the John R. Lewis Voting Rights Act of New

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York (NYVRA). Those provisions prohibit a political subdivision (like the Town of Newburgh) from using a method of election that dilutes the votes of members of a protected class. In the event a plaintiff establishes vote dilution, the trial court must "implement appropriate measures." The plaintiffs claimed that Newburgh's at-large system for electing Board members dilutes the voting power of Black and Hispanic residents.

Newburgh moved for summary judgment, arguing that (1) Section 17-206 is facially unconstitutional because it violates the Equal Protection Clause of the U.S. and New York Constitutions, and (2) the Town Board elections comply with the NYVRA. The trial court granted the motion but the Appellate Division reversed. Ultimately, the Court of Appeals never reached the merits of the plaintiffs' claims, instead holding that Newburgh, as a legislatively created political subdivision, could not assert a facial constitutional challenge to the NYVRA's vote-dilution provision.

The Court noted that "[t]he longstanding rule in New York is that political subdivisions—as creatures of the State that 'exist[] by virtue of the exercise of the power of the State through its legislative department'—cannot sue to invalidate State legislation (citations omitted)."; the rule is a "necessary outgrowth" of "separation of powers principles" which "demand that courts do not interfere in legislative disputes raised by legislative subordinates"; to the extent that a political subdivision would have a right to sue, it must stem "from the relevant enabling legislation or some other concrete statutory predicate."; and the rule " 'expresses the extreme reluctance of courts to intrude in the political relationships between the Legislature, the State and its governmental subdivisions' (citation omitted)." *Id.* at *2–3.

The Court referenced four limited exceptions, three of which Newburgh conceded did not apply. Thus, the only exception Newburgh argued applied was that "compliance with the statute would force the municipal challengers to violate a constitutional proscription." Based on this, "colloquially termed the 'dilemma' exception," it contended that any compliance with the NYVRA would force it to violate the Equal Protection Clauses of the U.S. and New York Constitutions. The Court of Appeals stated that it could not locate a New York case holding that the exception applied to a political subdivision, concluding that the facial invalidity challenge here did not fall within the exception:

> For a facial constitutional challenge, principles of "judicial restraint" counsel strongly against permitting subordinate units of state government from using the judiciary to second-guess the wisdom of enacted legislation. A municipality's authority to raise a challenge to a State law is at its lowest ebb when that challenge is a facial constitutional challenge, seeking to invalidate a statute in all possible applications, not merely because it allegedly placed the particular municipality in an allegedly untenable position. . . "Our capacity rule reflects a self-evident proposition about legislative intent: the 'manifest improbability' that the legislature would breathe constitutional rights into a public entity and then equip it with authority to police state legislation on the basis of those rights" (citations omitted).

Id. at *3.

The Court rejected the argument that Newburgh's compliance with the NYVRA would force it into taking an unconstitutional action, since the case has not been tried yet. Thus, it is not known whether Newburgh would be found liable and, even if was, what measures the court would implement. As a result, "to prevail on its facial challenge, Newburgh would have to show that 'every conceivable application' of the NYVRA—i.e., every possibly remedy a trial court could order—would force it to take an unconstitutional act. But that is not what Newburgh claims." *Id.* at *4.

Instead, Newburgh makes three "novel" arguments, each of which the Court found to be unavailing. Newburgh asserted that (i) because it is the defendant in this action, CPLR 3211 (a) (3) does not allow a capacity question to be raised against it. In fact, "the CPLR does not limit the circumstances under which the State may invoke this capacity bar, which is rooted in separation of powers principles and therefore analytically distinct from the 'legal capacity to sue' (see CPLR 3211 [a] [3])."; (ii) "because, in its view, the NYVRA violates the U.S. Constitution, the Supremacy Clause overcomes New York's bar prohibiting its subordinate local governments from suing it. Newburgh offers no authority for that novel proposition, which would authorize every local governmental entity to sue to challenge as unconstitutional any State legislation arguably affecting that subordinate entity."; and (iii) any changes to its election system to satisfy the NYVRA's vote dilution provisions would be unconstitutional. However, the Court maintained that that argument depends on the premise that any liability finding "would place Newburgh in the position of violating the Constitution or obeying the order of the court—when there is no order of the court compelling it to do anything. And in any event, several of the potential remedies mentioned by the NYVRA to redress a finding of vote dilution—such as longer polling hours or enhanced voter education—cannot reasonably be described as alterations of an at-large election system." *Id.*

In CVA Case, Progress Reports Prepared At Request of Diocese to Ascertain Suitability of Alleged Pedophile Priest to Return to Parish Are Discoverable

Court Holds Proposed Privileges Are Inapplicable or Were Waived

In *Maida v. Diocese of Brooklyn*, 2025 N.Y. Slip Op. 06314 (2d Dep't Nov. 19, 2025), a Child Victims Act (CVA) action, the Second Department addressed several issues. The first was with respect to the discoverability of progress reports and accompanying letters prepared at the request of a religious organization to ascertain whether an alleged pedophile priest could be safely returned to duties at a parish. The court held that the applicable privileges, including clergy-penitent, physician-patient and psychologist-patient privileges did not prevent their discoverability.

The plaintiff brought this action in 2020 against the Diocese for personal injuries he sustained while being abused

by a priest (Father James O'Brien) when he was 12–15 years old in the period 1977 to 1980. He alleged that the Diocese knew or should have known of the priest's propensity to abuse children. During discovery, the Diocese produced a redacted copy of the priest's clergy file together with a redaction and privilege log. The Diocese claimed that the redactions were made pursuant to certain CPLR article 45 privileges, including the physician-patient (CPLR 4504), the clergy-penitent (CPLR 4505), and the psychologist-patient privileges (CPLR 4507). The trial court ordered an in camera review of the unredacted clergy file and then granted the plaintiff's motion to the extent of compelling the Diocese to produce certain unredacted pages in the file.

The Second Department affirmed, finding that those privileges did not entitle the Diocese to limit its discovery responses in the way that it did. Initially, the Diocese contended that the progress reports were properly redacted pursuant to the clergy-penitent privilege since they were sent to the priest's Bishop through an Auxiliary Bishop, "to aid the Bishop in spiritually advising" the priest. The court rejected this argument because the documents "were not authored in connection with religious absolution or for spiritual advice or counseling." Rather, they related to mental health treatment, not covered by the clergy-penitent privilege, the cost of which was being paid for by the Diocese:

> Staff members expressed the hope that through their "work on Father O'Brien's behalf we will be of service to you and your diocese," further underscoring that the treatment was related more to the priest's future employment and duties with the Diocese, which are secular considerations outside the scope of CPLR 4505, than to the priest's personal spiritual counseling within the scope of the statute (citations omitted).

Id. at *3.

The Second Department similarly rejected the argument that the physician-patient and similar psychologist-patient privileges applied because they were waived by the sharing of the documents with the Diocese:

> [T]he progress reports and letters from the facility where O'Brien received mental health treatment, which were sent to Bevilacqua in 1982 and 1983, addressed O'Brien's treatment progress. One of the letters stated that "O'Brien has given us written permission to send progress reports to you." The confidentiality of those materials was waived by the permissive disclosure of the information to the Diocese.

Id. at *4.

Disclosure of the Identity of Other Alleged Sexual Abuse Victims

Another issue that arose was whether the trial court properly ordered the disclosure of the names and contact information of other alleged victims of the priest (O'Brien), as potential fact and notice witnesses, rather than redacting that information. The Second Department concurred with the First and Third Departments that have distinguished between the situation here, that is, disclosing identifying information of alleged victims beyond the plaintiff in the case, *by the same accused priest* (discoverable), and identifying information of alleged victims of *other alleged abusers* (to be redacted as not discoverable). Thus, the information sought as to alleged victims of the priest here was "discoverable, without redaction, as relevant to issues of actual or constructive notice of that priest's alleged propensity for abuse and what steps the Diocese took to prevent children from being abused by him (citations omitted)." *Id.* at *5.

Uniform Rules for Trial Courts (22 N.Y.C.R.R. § 202.5(e))

The court also cautioned that notwithstanding its decision permitting disclosure of the information without redaction to the plaintiff, " 'redaction' should not be confused with the 'confidentiality' mandated by the Uniform Rules for Trial Courts (22 NYCRR) § 202.5(e)." That rule provides that "subject to certain exceptions, papers *submitted to the court for filing* shall omit or redact confidential personal information (hereinafter CPI) that would otherwise be disclosed to the public by the filing." *Id.*

Failure to Submit Non-Military Affidavit On Motion for Default Judgment Does Not Justify Vacatur of Default Judgment

Relief Sought Here Was Not "By or On Behalf of the Service Member"

CPLR 3215 sets forth various requirements in order to enter a default judgment, such as the required supporting documentation, including proof of service of the initiating pleadings and an affidavit by the party of facts constituting the claim, the default, and the amount due. CPLR 3215(f). In addition, outside of the CPLR, the federal Servicemembers' Civil Relief Act of 2003 (SCRA) (the Act), formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940, requires that the movant, following an investigation, file an affidavit representing that the defaulting defendant was not in the military services. The purpose of this law is to protect members of the military from default judgments when they are unable to defend themselves. While the failure to submit the affidavit has been characterized as an irregularity and not a jurisdictional defect, the failure to provide the affidavit can result in the denial of a motion for leave to enter a default judgment. *See Matter of Petre v. Lucia,* 205 A.D.3d 438 (1st Dep't 2022).

The question presented in *Tri-Rail Designers & Bldrs., Inc. v. Concrete Superstructures, Inc.,* 2025 N.Y. Slip Op. 06209 (2d Dep't Nov. 12, 2025), however, was: when a default judgment *has already been (improperly) entered* against a defendant in the absence of the required non-military affidavit, is that defendant entitled to vacatur of the default judgment as of right? The First Department held that the failure to provide the non-military affidavit does not automatically warrant vacatur of an otherwise validly entered default judgment. Here, because the defaulting defendant did not purport to be a member of the United States military, the failure to include the non-military affidavit was not a basis to vacate the default judgment.

Initially, the court noted that while CPLR 5015(a) sets forth various grounds for vacating orders or judgments, it does

not provide an exhaustive list as to the circumstances when a default judgment can be vacated; a court retains an inherent discretionary power to vacate; and thus it was necessary to review the text of the Act.

The court reasoned that while the Act provides a remedy to vacate a default judgment, it is not available to "any person," but is "limited to applications made 'by or on behalf of the servicemember' and 'for the purpose of allowing the servicemember to defend the action' under certain circumstances." Here, the defendant did not assert that that he was on active military duty. Thus, the Act's protections were not available to him as a basis to vacate the default judgment. The failure to provide the non-military affidavit was a "mere irregularity."

The court stressed that its holding should not be read to remove the requirement of a non-military affidavit on a motion for leave to enter a default judgment.

Where Agency Cannot Locate Responsive Documents to FOIL Request, It Must Certify to That Effect

But Statute Does Not Specify the Form of Such a Certification

In *Matter of Madrid v. Mazur*, 2025 N.Y. Slip Op. 06284 (1st Dep't Nov. 18, 2025), the petitioner made a New York State Freedom of Information Law (FOIL) request to the New York City Police Department. The Department advised that certain records sought relating to the petitioner's arrest which had happened some 16 years earlier, could not be located after a diligent search. Public Officers Law § 89(3), governing a FOIL request, provides that where an agency cannot locate documents, it must "certify that it does not have possession of such record or that such record cannot be found after diligent search." However, the First Department noted that the statute does not

> specify the form such certification must take, and "[n]either a detailed description of the search nor a personal statement from the person who actually conducted the search is required" for the certification to be valid. Petitioner failed to articulate a factual basis for his contention that the unproduced records he sought exist (citations omitted).

Id.

CPLR 217(1) Already Provides a Very Short Four-Month Limitation Period

But There Can Be Instances Where That Period Can Be Even Shorter

CPLR 217(1) governs the statute of limitations for proceedings against a body or officer. It provides that such a proceeding "must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact, or after the respondent's refusal, upon the demand of the petitioner or the person whom he represents, to perform its duty; . . ." Significantly, however, the section sets forth an exception, and that is where "a shorter time is provided in the law authorizing the proceeding." Thus, a petitioner must not only contend with an already short limitation period, but must also be careful to ascertain whether there may be an applicable, even shorter, statute of limitations.

Barberan v. Town of Eastchester, 2025 N.Y. Slip Op. 06164 (2d Dep't Nov. 12, 2025) was an Article 78 proceeding to review a determination of the Town Board of the Town of Eastchester (Town Board) finding the petitioner, a Town police officer, guilty of 12 specifications of misconduct and incompetence, and terminating the petitioner's employment. Here, there was a shorter governing limitation period. The Westchester County Police Act, section 8, provides that a review of a disciplinary "conviction of any member of such police force" is to be presented to the court "within sixty days after the conviction." Because the petitioner failed to file the petition within 60 days of the Town Board's determination, the Appellate Division affirmed the dismissal of the petition as time-barred.

Seven-Hour Limit for Depositions Under 22 N.Y.C.R.R. § 202.20-b Excludes Time Spent On Breaks

Counsel Sanctioned for Failing to Proceed with Deposition

As we have previously discussed extensively in the Digest, effective February 1, 2021 (and as further amended July 1, 2022), the Uniform Rules for the Trial Courts were significantly amended. One provision added provides, among other things, that unless stipulated by the parties or court ordered, depositions taken by the plaintiffs, defendants, or third-party defendants are limited to ten and seven hours per deponent. The court can alter the deposition limits (number and duration) for "good cause shown." 22 N.Y.C.R.R. § 202.20-b.

In *Gomez v. Thomas*, 241 N.Y.S.3d 34 (1st Dep't 2025), plaintiff's counsel refused to proceed with the plaintiff's deposition based on a disagreement as to whether the seven-hour limit excludes the time spent on breaks, including time taken for consultation between client and counsel, or technical issues. Plaintiff's counsel insisted that it did not. The trial court disagreed and the Appellate Division affirmed, finding that reducing the seven-hour limit by breaks "would incentivize unprofessional behavior that rules like 22 NYCRR 202.20-b are meant to prevent. Under plaintiff's reading, any party could thwart depositions by, for example taking repeated breaks or conversely, taking no breaks at all. A practical and reasonable reading of 22 NYCRR 202.20-b is to exclude breaks from its seven-hour limitation." *Id.*

The First Department found plaintiff's counsel's refusal to proceed with the deposition to be frivolous. Thus, the trial court's order awarding sanctions against the plaintiff, including the payment of the defendant's counsel's reasonable attorneys' fees for appearing at the deposition "was appropriate and well within the wide latitude afforded to the court."

Wishing you a happy, healthy, peaceful and meaningful holiday season.

David

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