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Editor:
Robert S. Rosborough IV

Summarizing recent significant New York appellate cases

When a motorist is facing a DWI license revocation hearing, and subpoenas the arresting officers to the hearing, but they fail to appear, the motorist must still seek to enforce the subpoenas in Supreme Court under CPLR 2308(b) before the DMV must exclude the officers' hearsay reports or dismiss the revocation proceedings under due process. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

LABOR AND EMPLOYMENT, MINISTERIAL EXCEPTION

Sander v Westchester Reform Temple, 2025 NY Slip Op 06958 (Ct App Dec. 16, 2025)

Issue: Does an employee's off-hours speech constitute protected "recreational activities" under Labor Law § 201-d (2) (c) that would prohibit an employer from taking adverse action against the employee, and does the ministerial exception, which precludes application of employment discrimination laws to claims involving an employment relationship between a religious institution and its ministers, apply here?

Facts: Plaintiff was employed as a "'Full Time Jewish Educator' at Westchester Reform Temple. The offer letter stated that her responsibilities would include teaching in 'Jewish Learning Lab classrooms for 15 hours a week,' as well as 'family and parent education, social justice programming, field trips and other off-site programs, communications, administrative support, and writing articles for Synagogue publications.' The letter also described aspects of the Temple's 'mission,' including 'supporting the development of a strong Jewish identity' and 'bringing Torah to life and inspiring Jewish dreams.'" Shortly after she began the position, "a Rabbi at the Temple met with her about a blog post she had recently co-written. The blog post said, among other things, that the authors felt compelled to 'speak out against israel's [*sic*] most recent attack on Gaza' and 'rejected the notion that Zionism is a value of Judaism.' Plaintiff alleges that she and the Rabbi discussed the meaning of Zionism, and she assured him that she respected the Temple's position and would not share her views on the job. Plaintiff also alleges that the Rabbi subsequently expressed complete confidence in her teaching abilities. Nonetheless, Plaintiff was fired less than a week later."

Plaintiff then sued the Temple, alleging that her termination was for "legal recreational activity in violation of Labor Law § 201-d (2) (c). Defendants moved to dismiss, arguing that the complaint failed to state a cause of action because Plaintiff did not engage in a 'recreational activity' for purposes of section 201-d and her actions created a material conflict with the Temple's interests under section 201-d (3) (a), and further that Plaintiff's claim was barred by the ministerial exception and thus should be dismissed based on documentary evidence." Supreme Court dismissed the case, holding that it failed to state a claim because it alleged she was fired for the content of her blog post, not for the act of blogging. Supreme Court did not address the applicability of the ministerial exception. The Appellate Division, Second Department affirmed on the same grounds, and too declined to address the ministerial exception.

Holding: The Court of Appeals affirmed, albeit on different grounds. The Court noted that "Labor Law § 201-d . . . makes it unlawful for 'any employer or employment agency' to refuse to hire, discharge, or discriminate against an individual 'because of' certain protected activities: 'political activities outside of working hours,' 'legal use of consumable products,' 'legal recreational activities,' and 'membership in a union or any exercise of union rights.' As relevant here, the statute 'shall not be deemed to protect activity which creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or business interest.'" The legal recreational activities protection, which includes recreational cannabis use, sweeps broadly, the Court explained, "protecting any lawful, leisure-time activity for which the employee receives no compensation and which is generally engaged in for recreational purposes, including but not limited to sports, games, hobbies, exercise, reading and the viewing of television, movies, and similar material." "The legislative history sheds little guidance on what qualifies as a recreational activity, and reveals no consideration of whether, or to what extent, the statute protects expression generated in the course of what is determined to be a protected recreational activity."

The Court held, however, that it didn't need to answer that question here. Rather, the Court decided, "the ministerial exception dispositively bars Plaintiff's claim. That exception precludes application of employment discrimination legislation to claims concerning the employment relationship between a religious institution and its ministers. Requiring a religious institution to accept or retain an unwanted minister, or punishing them for failing to do so both infringes the Free Exercise Clause, which protects a religious group's right to shape its own faith and mission through its appointments and violates the Establishment Clause, which prohibits government involvement in such ecclesiastical decisions." The Court held that Plaintiff's offer letter, which described her responsibilities as including "guiding the development of programs such as 'Shabbat, Havdalah, and other teen led events and initiatives'; planning, supporting, and attending

'Confirmation' experiences; and supporting the 'Rabbi's Table initiative'" and teaching Jewish values, established that she qualified as a religious minister. As such, the ministerial exception applied and the Temple was authorized to terminate Plaintiff's employment notwithstanding Labor Law § 201-d's general protections.

DUE PROCESS, RIGHT TO CROSS EXAMINE IN ADMINISTRATIVE HEARING

***Matter of Monaghan v Schroeder*, 2025 NY Slip Op 06959 (Ct App Dec. 16, 2025)**

Issue: Can the Department of Motor Vehicles suspend a motorist's license based solely on written reports documenting the motorist's chemical test refusal when the motorist has properly subpoenaed the officers authoring the reports and the officers fail to appear as directed on the subpoena?

Facts: When John Monaghan was pulled over by State Troopers for various traffic infractions, he refused to take a chemical breath test and was arrested for DWI. "The Troopers completed, and swore to the contents of, a Report of Refusal to Submit to Chemical Test. The Report of Refusal states that when Mr. Monaghan was asked to submit to a chemical breath test, he replied, 'I refuse, I take the Fifth.' Mr. Monaghan was then read 'DWI warnings' to provide him with sufficient notice that refusal to submit to a chemical test would result in the immediate suspension and subsequent revocation of his driver's license. When asked a second time to submit to additional chemical testing, Mr. Monaghan verbally stated, 'no.' When asked a third time, Mr. Monaghan repeated that he would 'take the Fifth.'"

Mr. Monaghan's license was suspended for 15 days pending a chemical test refusal hearing, at which four elements must be established before a DMV ALJ could revoke his license: "(1) the police officer had reasonable grounds to believe that the motorist had been driving in violation of any subdivision of Vehicle and Traffic Law § 1192; (2) the motorist was lawfully arrested; (3) the motorist was given sufficient warning, in clear or unequivocal language and prior to their refusal, that refusal to submit to a chemical test or any portion thereof would result in the immediate suspension and subsequent revocation of their license or operating privilege whether or not they are found guilty of the charge; and (4) the motorist refused to submit to the chemical test or any portion thereof." When the Troopers failed to appear at the first scheduled hearing, the ALJ adjourned the hearing, and Mr. Monaghan issued subpoenas pursuant to CPLR 2302(a) to require their appearance. The Troopers, however, ignored the subpoenas and again failed to appear for the adjourned hearing.

Mr. Monaghan's counsel asked the ALJ to dismiss the proceedings against him due to the Troopers' failure to appear. The ALJ, however, declined to do so, and Mr. Monaghan did not ask for an adjournment so he could seek to enforce the subpoenas. "Over Mr. Monaghan's due process objections, the ALJ accepted the Report of Refusal into evidence and read into the record parts of Trooper Leggio's supporting deposition, in which he swore that he administered the refusal warnings to Mr. Monaghan. Mr. Monaghan then testified and denied that Trooper Leggio had read him the warnings. Mr. Monaghan also stated that he did not remember seeing Trooper Strickland. After Mr. Monaghan testified, the ALJ found that all elements for revoking Mr. Monaghan's license under Vehicle and Traffic Law § 1194 (2) (c) had been established." On administrative appeal, Mr. Monaghan argued that the revocation hearing deprived him of the due process right to cross examine the Troopers. The DMV Appeals Board affirmed the revocation. And the Appellate Division confirmed the revocation determination, "reason[ing] that Mr. Monaghan made a 'tactical decision . . . not to seek to have the issued subpoenas enforced nor did he request a further adjournment to do so' pursuant to CPLR 2308 (b). The court further held that the ALJ did not err because administrative determinations may be supported by hearsay alone and the revocation decision was supported by substantial evidence."

Holding: The Court of Appeals rejected Mr. Monaghan's argument that merely subpoenaing the Troopers, without seeking to enforce those subpoenas under CPLR 2308 (b), is enough to deprive him of due process of law and require dismissal of the revocation proceeding. The Court explained, "[t]o determine whether a petitioner has been afforded due process in an administrative proceeding, we must balance three factors: (1) the nature of the private interest affected by the State's action; (2) the risk of an erroneous deprivation and the effect of additional procedural safeguards; and (3) the governmental interest."

The Court had previously rejected in *Gray v Adduci* (73 NY2d 741 [1988]) a "motorist's due process claim reasoning that the motorist always had it within his power to subpoena the officer at any time and had made a tactical decision to only object on hearsay grounds and not seek an adjournment to subpoena the officers (Gray, 73 NY2d at 743). *Gray* left open whether serving a subpoena is enough to require the exclusion of hearsay evidence or dismissal on due process grounds, or whether the motorist must also attempt to enforce the subpoena." The Court here answered that open question, holding that a motorist must seek to enforce the properly issued subpoenas in Supreme Court before an administrative agency must exclude the hearsay reports or dismiss the revocation proceedings on due process grounds. The Court reasoned, "balancing the three due process factors, we reject the contention that Mr. Monaghan's was deprived of his due process right to cross-examine the Troopers. His private interest in retaining his driver's license and the government's interest in public safety are both significant. The due process analysis, here, turns on the benefit and burden of requiring a motorist to seek judicial enforcement of a subpoena. Mr. Monaghan chose not to avail himself of the process set forth in CPLR 2308 (b). The process of applying to enforce a nonjudicial subpoena is not so unduly burdensome as to constitute a deprivation of due process of law."

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