New York State Law Digest

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

NYSBA

PROPOSED LEGISLATION

Governor Again Vetoes Newest Registration Consent Jurisdiction Amendment

Limiting Class of Plaintiffs Who Could Sue an Authorized Foreign Corporation Not Enough to Avoid Veto

As we noted in the September 2025 *Law Digest*, two prior amendments conditioning a foreign corporation's filing for authority to do business in New York on consent to general jurisdiction here were vetoed by the governor. A third bill, this time more limiting, provided that registration constitutes consent to general jurisdiction over such authorized foreign corporation, but *only* where an action is brought by a limited class of potential plaintiffs, that is, New York residents or New York licensed businesses. However, this bill was again vetoed by the governor.

CASE LAW DEVELOPMENTS

Court of Appeals Affirms Dismissal of Plaintiff's Termination Claim Based on Ministerial Exception

Finds Plaintiff's Core Responsibilities Were as Teacher of Religion

In *Sander v. Westchester Reform Temple*, 2025 N.Y. Slip Op. 06958 (Dec. 16, 2025), the plaintiff alleged that she was fired from her employment as a teacher at the defendant Westchester Reform Temple (WRT) for co-authoring a blog post critical of Israel and Zionism. The plaintiff claims her termination violated Labor Law § 201-d(2)(c), prohibiting an employer from discharging an employee based on the employee's legal "recreational activities" (outside work hours). The trial court granted the defendants' motion to dismiss and the Appellate Division affirmed.

In affirming the dismissal, the Court of Appeals did not consider section 201-d's scope or whether the protected "recreational activities" include the public expression of one's views or blogging, leaving that issue for another day. Instead, it ruled that the plaintiff's claim was barred by the ministerial exception precluding "application of employment discrimination laws to claims involving an 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' (citations omitted)." *Id.* at *2.

The first issue to determine was whether the plaintiff here qualified as a "minister." The Court noted that the U.S. Supreme Court "has instructed that there is no 'rigid formula for deciding when an employee qualifies as a minister' (citation omitted)." Moreover, the Supreme Court has "considered the teacher's 'formal title,' 'the substance reflected in that title, her own use of that title, and the important religious functions she performed for the Church' (citation omitted)." *Id.*

The plaintiff's offer letter (of employment) here stated that:

> Plaintiff was responsible for 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." In her fifteen weekly hours of teaching, she was responsible for "Chevruta (1:1 tutoring for our learners)," "Pre-bimah tutoring," and "Parsha of the week." And she was responsible for furthering the Temple's "mission," including by "support[ing] the development of a strong Jewish identity" and "bringing Torah to life and inspiring Jewish dreams."

Id.

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The Court concluded that plaintiff's "core responsibilities" were not secular, but were as a teacher of religion. "She was responsible for teaching religious texts through one-on-one study and weekly Torah portions, as well as planning and attending religious programming. Those duties leave little doubt that she was charged with 'educating young people in their faith.'" *Id.*

The Court acknowledged that the ministerial exception involves a fact-intensive analysis generally not capable of resolution on a motion to dismiss. However, because the plaintiff was only employed at the position for a few weeks and discovery was unlikely to provide additional facts about her job responsibilities, "the offer letter alone conclusively establishes that the ministerial exception applies." *Id.*

Judge Rivera concurred in the result. However, she believed that with respect to the ministerial exception, further discovery was necessary to assess plaintiff's actual responsibilities during her employment. Instead, Judge Rivera concluded that "[a]ssuming, without deciding, that plaintiff's blogging about her views on Israel and Zionism is a recreational activity under Labor Law § 201-d, . . . her blog post created a material conflict of interest with defendant's business interest and is thus unprotected by the statute (see Labor Law § 201-d [3] [a])." *Id.*

Labor Law § 201-d(3)(a) specifically excludes from protection employee activity that "creates a material conflict of interest related to the employer's trade secrets, proprietary information or other proprietary or *business interest*" (italics added). Judge Rivera maintained that plaintiff's blog post fell within this exception:

> Plaintiff espoused a viewpoint (i.e. anti-Zionism) at odds with her employer's "philosophy" (i.e. Zionism) and its mission. Thus, as the Temple asserts, plaintiff's publicly posted assertions and opinions directly undermine the Temple's business interest as a synagogue, as some congregants may view Zionism as a feature of their religious or ethnic identities as Jews. Additionally, Sander's presence as a Jewish educator of children could invite a backlash among at least some of her students' parents due to her anti-Zionist views. If the Temple were to lose membership en masse, its proprietary or business interests—even as a nonprofit—would inevitably suffer. The fact that plaintiff gained no financial benefit from her blogging does not diminish or eliminate the conflict of interest that exists here (citation omitted).

Id. at *5.

Court of Appeals Holds Petitioner's Inability to Cross-Examine Troopers at License Revocation Hearing Did Not Violate His Due Process Rights

Petitioner Had Opportunity but Failed to Enforce Nonjudicial Subpoenas

In *Matter of Monaghan v. Schroeder*, 2025 N.Y. Slip Op. 06959 (Dec. 16, 2025), state troopers stopped the petitioner (Monaghan) in February 2021 for traffic infractions upon observing the petitioner driving erratically. After the petitioner exhibited indicia of alcohol consumption, which he admitted, he failed a field sobriety test (a "horizonal gaze nystagmus" test) and refused to take a chemical breath test. Petitioner was arrested for Driving While Intoxicated ("DWI"), and his driver's license was suspended for 15 days pending a chemical test hearing.

The initial hearing scheduled for April 2021 was adjourned because the troopers did not appear. On the adjourned June 2021 hearing date, and despite nonjudicial subpoenas having been served on the troopers, they again did not appear. Nevertheless, the Administrative Law Judge (ALJ) denied petitioner's motion to dismiss. Over the petitioner's due process objection, the ALJ accepted the troopers' Report of Refusal to Submit to Chemical Test and read into evidence portions of a trooper's deposition. The petitioner testified, denying that the warnings had been read to him. The ALJ found that all elements for revoking petitioner's license under Vehicle and Traffic Law § 1194(2)(c) had been established.

On administrative appeal, petitioner asserted that, because the troopers had been subpoenaed, he had a due process right to cross-examine them. Nevertheless, the DMV Appeals Board affirmed the license revocation, prompting the petitioner to bring this Article 78 proceeding. Upon transfer from the trial court, the Appellate Division confirmed the DMV's determination and dismissed the petition.

The Court of Appeals affirmed. Initially, it rejected petitioner's nonconstitutional arguments. The Court did not believe that the petitioner had established that the DMV's own precedent required the ALJ to dismiss the petitioner's refusal charge where a police officer does not comply with a properly issued subpoena. Similarly, the Court rejected the claim that there was no substantial evidence supporting the finding that the petitioner was properly warned of the consequences of his refusal to submit to the chemical test. "Although the Report of Refusal and supporting deposition provide contradictory accounts of who gave the warnings, a reasonable mind could conclude that the Troopers' sworn statements established that one or both of the officers administered the warnings, which is sufficient to meet the substantial evidence standard even in the face of Mr. Monaghan's denial." *Id.* at *3.

With respect to petitioner's constitutional argument, he asserted that, based on the Court's decision in *Gray v Adduci,* 73 N.Y.2d 741 (1988), his "due process right to confront and cross-examine the officers was violated where the officers failed to comply with properly issued subpoenas and the ALJ revoked Mr. Monaghan's license based on the officers' written report and supporting deposition."

However, the Court stressed that the petitioner failed to seek enforcement under CPLR 2308 of the nonjudicial subpoenas and he does not claim that the ALJ prevented him from doing so. The Court dispensed with the petitioner's assertion that enforcement of nonjudicial subpoenas under CPLR 2308 (b) is not available to motorists in license revocation proceedings under DMV regulations. Specifically, the petitioner pointed for support to 15 N.Y.C.R.R. § 127.11(a),

an applicable DMV regulation, which provides "that the provisions of the CPLR pertaining to 'motion practice' are not applicable." Because enforcement of a nonjudicial subpoena requires the filing of a motion in the trial court, he could not avail himself of CPLR 2308.

The Court countered that the DMV did not establish its own subpoena enforcement mechanism and CPLR 2308(b) was an available remedy:

> 15 NYCRR 127.11 states only that provisions of the CPLR "are not binding upon the conduct of administrative hearings." Because CPLR 2308 (b) authorizes litigants to enforce their nonjudicial subpoenas by filing before Supreme Court, none of the subpoena enforcement process pertains to "the conduct of administrative hearings." Indeed, "forms of pleading, motion practice, discovery procedures" all govern formal rules of pre-trial practice in plenary actions that are inapplicable to DMV administrative hearings. Subpoena issuance, by contrast, is directly carved out as applicable to DMV administrative hearings under 15 NYCRR 127.11 (b). It would be illogical to allow the issuance of subpoenas without a corresponding enforcement mechanism.

Monaghan at *3.

The Court stated that in order to assess whether the petitioner was afforded due process in the administrative proceeding, it was required to 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 (citation omitted)." *Id.* The Court acknowledged that the petitioner had a procedural due process right to cross-examine the troopers. However, when applying the balancing test, the Court concluded that the petitioner was not deprived of his right to cross-examine the troopers, focusing on the petitioner's failure to enforce the nonjudicial subpoenas or seek an adjournment to do so:

> 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.

Id. at *4.

Broad Release in Second Action Covers All Claims, Including Those Asserted in First Action

Court Finds Release Language to Be Clear and Plaintiff Failed to Set Forth Any Exclusions

Smith v. City of New York, 2025 N.Y. Slip Op. 07081 (Dec. 18, 2025) dealt with the scope of a release. The plaintiff commenced two separate false-arrest actions against the City in connection with different arrests within 14 days of each other. The plaintiff settled action #2 and executed a broad general release which did not specifically name or exclude action #1.

The plaintiff released the City from "any and all state and federal tort claims, causes of action, suits, occurrences, and damages, whatsoever, known or unknown, including but not limited to state and federal civil rights claims, actions, and damages, which [plaintiff] had, now has, or hereafter can, shall, or may have . . . upon or by reason of any matter, cause, or thing whatsoever that occurred through the date of this RELEASE, except as indicated below, if applicable." Immediately following this language, the release advised the plaintiff in bolded and all-capitalized text to "list below the exclusion of other actions or claims from this release," and that the release would cover "all outstanding actions or claims . . . unless excluded specifically by name." Plaintiff did *not* exclude any claims and he signed the document before his attorney as notary.

The trial court denied the City's summary judgment motion in action #1 (this action) based on the release. The Appellate Division reversed in a split decision. The Court of Appeals unanimously affirmed, holding that the release language in action # 2 was clear. Because the plaintiff did not note any exclusions, the release covered the claims in this action:

> The City's intent to secure a release from plaintiff of "any and all" claims is evidenced by the plain text of the document it transmitted for plaintiff's signature. As the Appellate Division correctly held, there was nothing "surreptitious" about the way the release was drafted or transmitted. Although plaintiff, who was represented by counsel, could have excluded this action from the release by the simple act of listing it in the space provided for that purpose, he signed the release without doing so, an objective manifestation of assent that is binding upon him notwithstanding any unilateral mistake or subsequent regret on his part (citations omitted).

Id. at *2.

The lesson to be learned: make sure the release clearly sets forth what is and is not covered.

Appellate Division Rules That Deadline in Order Ran from Entry Date Rather Than from When Order Was Served with Notice of Entry

Court Looks to Language of Order Requiring 120-Day Period to Run From "the Date of Notice of This Order's Entry"

In *U.S. Bank Trust, N.A. v. Quevedo*, 2025 N.Y. Slip Op. 06749 (2d Dep't Dec. 3, 2025), the trial court granted defendants' motion to dismiss the amended complaint based on plaintiff's failure to serve the defendants within the 120-day period set forth in an August 1, 2022 order, which was entered on August 10, 2022. The entered order was not served (by the plaintiff) with notice of entry until December 21, 2022. Nevertheless, the Appellate Division found that the 120-day period ran from August 10, 2022, not from December 21, 2022, based on the fact that the order provided that the 120-day period was to run from "the date of notice of

this Order's entry." The court concluded that the plaintiff was "on notice," when it received the NYSCEF notification of the order's entry on August 10, 2022:

> Although 22 NYCRR 202.5-b(h)(2) provides that the transmission via email of a notification of receipt of entry does "not constitute service of notice of entry by any party" (emphasis added), the order dated August 1, 2022, did not indicate that the 120-day period was to run from the date of service of notice of entry by a party. Rather, that order provided that the 120-day period was to run from "the date of notice of this Order's entry," which unequivocally referred to the date upon which the plaintiff was on notice of entry of the order.

Id. at *2.

Thus, the Second Department held that the trial court properly determined that plaintiff's service of the supplemental summons and amended complaint in April, 2023 was beyond the 120-day period and thus untimely.

There are various instances, apart from an express provision in an order, where a deadline runs from service of a written notice of entry of an order. Two prominent examples are the service of a notice of appeal or a motion for permission for leave to appeal (CPLR 5513(a), (b)) and a motion for leave to reargue (CPLR 2221(d)). With the widespread use of electronic filing, it appears that the requirement that a formal notice of entry be served should generally be unnecessary since, in an action subject to e-filing, all appearing parties are notified when an order is entered. The County Clerk's filing stamp is "proof of the fact of entry and the date and time thereof." 22 N.Y.C.R.R. § 202.5-b(h)(1). Perhaps some amendments are in order!

CPLR 3024 Motion to Strike Scandalous or Prejudicial Matter

Not Your Everyday Response to a Summons and Complaint

Generally, when we talk about a response to a summons and complaint, we refer to a pre-answer motion to dismiss under CPLR 3211(a) or an answer. However, there are other motions that can be made pursuant to CPLR 3024. They are relatively rare because of the general liberal rules of modern pleading. CPLR 3024(a) permits a motion for a more definite statement, where a pleading "is so vague and ambiguous" that a party cannot reasonably respond. CPLR 3024(b) authorizes a motion to strike from a pleading "scandalous or prejudicial matter" that is not necessary to the pleading. Such a motion is to be served within twenty days after service of the challenged pleading. Where the motion is denied, a responsive pleading must be served within ten days after service of notice of entry of the order; if granted, an amended pleading in accord with the order is to be served within that ten-day time period. CPLR 3024(c).

In *Gawel v. Roman Catholic Diocese of Brooklyn*, 2025 N.Y. Slip Op. 06691 (2d Dep't Dec. 3, 2025), an action commenced pursuant to the Child Victims Act (see CPLR 214-g), the issue was whether certain allegations in the complaint were "scandalous or prejudicial" under CPLR 3024(b). The court stressed that even matters that are scandalous or prejudicial "will not be stricken if it is relevant to a cause of action in a complaint or petition or its material elements." In this action, the Court found that many of the allegations were relevant and necessary to support the pleading. However, it did agree that a few allegations should have been stricken as scandalous and prejudicial, because they were "not necessary for the sufficiency of the plaintiff's pleading, and it would cause undue prejudice to the defendants." *Id.* at *2. In addition, it agreed that an allegation referencing "clergy in general" was inappropriate and should be stricken as irrelevant, scandalous and prejudicial.

Filing Timely Motion for Leave to Amend to Add New Defendant, Including Proposed Pleading, Tolls Limitation Period

Where Expiration of Limitation Period Imminent, Also Bringing a Separate Action Against New Defendant May Be Prudent

In *Prado v. Town/Village of Harrison*, 2025 N.Y. Slip Op. 06881 (2d Dep't Dec. 10, 2025), the plaintiff had filed a motion for leave to amend to add a new defendant with 11 days remaining on the applicable limitation period. While the motion was pending, the statute of limitations ran. The trial court erroneously denied the motion on that basis. The Appellate Division reversed. Citing to the Court of Appeals decision in *Perez v. Paramount Communs.*, 92 N.Y.2d 749 (1999), the court stated that because the plaintiff had included the proposed pleading with the timely filed motion to amend, denial of the motion on that basis was inappropriate:

> [W]hen a motion for leave to amend a complaint to add a defendant "is filed with the court within the applicable limitations period, but the ruling by the court does not occur until after expiration, dismissal is inappropriate and would offend the CPLR's liberal policies of promoting judicial economy and preventing a multiplicity of suits." Contrary to the Supreme Court's determination, the statute of limitations for the plaintiff's personal injury claim against Gioffre had not expired, as the plaintiff moved for leave to amend the complaint within the three-year limitations period and included a copy of the proposed pleadings (citations omitted).

Prado at *2.

The Second Department ruled that since the motion to amend was timely, it should have been granted.

A motion for leave to amend to add a new party should always include the proposed pleading. Where the statute of limitations is a factor, it may be prudent to consider also bringing a separate action against the new party. Filing that summons and complaint will buy an additional 120 days. In the event the motion to amend in the first action is denied, the claim against the new party will not have been lost. A subsequent motion to consolidate the two actions may be available. If the motion to amend is granted, the second action can be discontinued.

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