New York State Law Digest

EDITOR: DAVID L. FERSTENDIG

No. 783 February 2026

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

NYSBA

CASE LAW DEVELOPMENTS

Apparent First New York State Appellate Award of Sanctions for Improper Use of Artificial Intelligence

Defendant Repeatedly Cited To Nonexistent Cases Even After Being Placed on Notice of the Issue

There has been much discussion of the benefits and dangers associated with the use of artificial intelligence and specifically how it impacts attorneys in their practice. *Deutsche Bank Natl. Trust Co. v. LeTennier,* 2026 N.Y. Slip Op. 00040 (3d Dep't Jan. 8, 2026) is a cautionary tale, in what appears to be the first New York State appellate court awarding sanctions for the improper use of AI.

Relevant here, defendant repeatedly included nonexistent cases and false legal propositions in his papers. For example, defendant's original brief cited to six cases which did not exist. On plaintiff's motion for sanctions, the defendant claimed that the cases resulted from citation or formatting errors that would be corrected in his reply brief. Nevertheless, the court noted that the defendant continued to misuse AI. Thus, in opposing the sanctions motion, the defendant cited to

> fake cases and interpretations for existing cases that are at best strenuously attenuated, and at worst entirely inapposite. Defendant's subsequent reply brief acknowledged that his "citation of fictitious cases is a serious error" and that they are "problematic," but failed to offer any corrections or further explanation as previously stated. He then proceeded to include more fake cases and false legal propositions in two subsequent letters to this Court that requested judicial notice of a bankruptcy stay. In examining the propriety of defendant's previously filed papers, more nonexistent cases were discovered in a motion that granted affirmative relief to defendant. Defense counsel reluctantly conceded during oral argument that he used AI in the preparation of his papers and, although he told the Court that he checked his papers, the filings themselves demonstrate otherwise. In total, defendant's five filings during this appeal include no less than 23 fabricated cases, as well as many other blatant misrepresentations of fact or law from actual cases.

Id. at *3.

The Third Department noted that while other state and federal courts have addressed the misuse of AI in legal papers, this court had not yet done so. The court acknowledged that, while the use of generative artificial intelligence in the legal profession was not inherently improper, there are dangers, including AI "hallucinations" (described more fully below). Courts throughout the country have awarded sanctions where filed papers have contained fake cases or analysis. The court recognized that much like the transition from digest books to online legal databases,

> generative artificial intelligence (hereinafter GenAI) represents a new paradigm for the legal profession, one which is not inherently improper, but rather has the potential to offer benefits to attorneys and the public — particularly in promoting access to justice, saving costs for clients and assisting courts with efficient and accurate administration of justice. At the same time, attorneys and litigants must be aware of the dangers that GenAI presents to the legal profession. At the forefront of that peril are AI "hallucinations," which occur when an AI database generates incorrect or misleading sources of information due to a "variety of factors, including insufficient training data, incorrect assumptions made by the model, or biases in the data used to train the model." Hallucinated cases may look like a real case because they include familiar-looking reporter information, but their citations lead to cases with dif-

IN THIS ISSUE

> ferent names, in different courts and on different topics — or even to no case at all. Even where GenAI provides accurate case citations, it nonetheless may misrepresent the holdings of the cited cases — often in favor of the user supplying the query (citations omitted).

Id. at *3–4.

The Third Department pointed to a court's discretion to award sanctions pursuant to 22 N.Y.C.R.R. § 130. In addition, Rule 3 of the Rules of Professional Conduct provides that "[a] lawyer shall not knowingly . . . make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Moreover, frivolous and meritless appeals may justify a sanction award.

The court concluded that the defendant's conduct here, coupled with what the court termed an "incredible" excuse offered by the defendant, justified an award of sanctions. Particularly troubling was the continued submission by the defendant of half of the fake cases he offered *after* he was placed on notice of the issue. With respect to 22 N.Y.C.R.R. § 130, "[i]t is axiomatic that submission of fabricated legal authorities is completely without merit in law and therefore constitutes frivolous conduct." Nor can such fabricated authorities "constitute 'existing law' so as to provide a nonfrivolous ground for extending, modifying or reversing existing law." *Id*. at *5.

As to the appropriate sanction, the Third Department referenced court decisions from around the country addressing the submission of AI hallucinated cases and false propositions. The sanctions ranged from warnings to tens of thousands of dollars based on the conduct of counsel and the party, taking into account "the number of fake cases or propositions, whether there were fake quotes, if the submitter continued to use or create more fabricated authorities across other filings in the same proceeding after being on notice of the misconduct, there was an admission of the error, there was remorse and the extent of the impact that the fabricated legal authorities had on the proceedings." *Id.* at *6. The court stressed both the retributive nature of sanctions to punish past behavior and its "goal-oriented" purpose of "deterring future frivolous conduct not only by the particular parties, but also by the [b]ar at large (citation omitted)." *Id.*

The court concluded that an appropriate sanction of $5,000 was merited against defense counsel, stating again that while the use of GenAI was not prohibited in preparing submissions to a court, it "in no way abrogates an attorney's or litigant's obligation to fact check and cite check every document filed with a court." *Id.* at *7.

Unfortunately (for the defendant), the court was not done yet. It also held that the appeal itself was frivolous and a " 'continuation[ ] of the underlying protracted and frivolous litigation pursued by defendant undeterred by the repeated' warnings and imposition of sanctions by Supreme Court." *Id*. Moreover, the defendant's arguments on appeal were previously considered and rejected by this court. Thus, the court assessed an additional $2,500 sanction against defense counsel and $2,500 against the defendant.

Appellate Division Modifies Trial Court Sanction for Spoliation

Finds Adverse Inference as Opposed to Preclusion Was Appropriate

There are three elements necessary to support an award of sanctions for the spoliation of evidence. First, it must be established that the party who controls the evidence had an obligation to preserve it at the time of the spoliation. Second, the evidence was destroyed with a "culpable state of mind." Third, the spoliated evidence was relevant to the party's claim or defense. With respect to the final prong, the relevancy of the evidence is presumed if the destruction is done intentionally or willfully. Conversely, if the spoliation was merely negligent, the party seeking sanctions has the burden to establish relevancy. *See Pegasus Aviation I, Inc. v. Varig Logistica S.A.,* 26 N.Y.3d 543 (2015).

In *Battle v. Fulton Park Site 4 Houses, Inc.,* 2026 N.Y. Slip Op. 00114 (2d Dep't Jan. 14, 2026), a personal injury action, the issue revolved around the appropriate sanction in connection with defendants' spoliation of evidence. The plaintiff alleged that he was injured while exiting a building owned and operated by the defendants. He claimed that when he pushed on a glass window in a door he was opening, the glass broke cutting his arm. A security guard (Williams) for a company employed by the defendants prepared an incident report based on video surveillance allegedly depicting the incident, concluding that the plaintiff had punched and broken the glass.

After the plaintiff learned that the video had been automatically erased, he moved for sanctions against the defendants for spoliation of evidence. The trial court granted the motion to the extent of precluding the defendants from offering any evidence at trial or on a summary judgment motion with respect to any observations made from the destroyed video.

The Second Department noted that the defendants had an obligation to preserve the video at the time it was destroyed:

> Williams learned that the glass in the door was broken the same day that the incident occurred, and she investigated and documented it. Furthermore, the defendants' site manager testified at a deposition that the plaintiff's mother called after the incident to report that the plaintiff's arm had gone through the glass in the door, causing "severe injury," and that he was in the hospital. After receiving this report, the site manager testified, she spoke with Williams and learned that Williams had viewed video surveillance footage depicting the incident and had created an incident report. "Given the nature of the plaintiff's injuries and the immediate documentation and investigation into the accident by the defendants' employee[ ], the defendants were on notice of possible litigation and thus under an obligation to preserve any evidence that might be needed for

future litigation" (citations omitted).

Id. at *2.

In addition, the court concluded that the plaintiff had established that the defendants had control over the video footage and negligently failed to preserve it, and that the footage was relevant to the plaintiff's claims. Thus, sanctions were warranted.

However, while the Appellate Division stated that a trial court has broad discretion in determining the appropriate sanction, it concluded that here the lower court

> improvidently exercised its discretion in precluding the defendants from presenting any evidence regarding Williams's observations of the video surveillance footage, as this sanction disproportionately eliminated their defense to this action. Instead, under the circumstances, including the negligent, rather than intentional, destruction of the video surveillance footage and the degree of prejudice to the plaintiff, the court should have directed that an adverse inference charge be given against the defendants at trial with respect to the video surveillance footage of the incident (citations omitted).

Id.

A separate opinion concurring in part and dissenting in part asserted that the majority was wrong in limiting the sanction to an adverse inference and that the trial court order of preclusion was proper. It referenced a prior decision of the court with similar facts where the court applied a preclusion sanction:

> In this case, my colleagues in the majority, contrary to the determination in *Rokach v Taback* (148 AD3d 1195), would permit the defendants to rely on video surveillance footage of the incident, which they destroyed, by presenting testimony as to an opinion of the security guard that that video surveillance footage showed the plaintiff intentionally breaking the door's glass window. Cross-examination of the security guard would have minimal value, since she testified at her deposition that she had no recollection of her observations. The security guard's opinion may have been based upon pure speculation, but, since the video surveillance footage of the incident has been destroyed, we will never know.

Id. at *3.

Daimler May Have Rejected the "Doing Business" Standard with Respect to General Jurisdiction, But Whether a Corporation is "Doing Business" Remains Relevant Elsewhere

Business Corporation Law § 1312(a) Precludes Unauthorized Foreign Corporation "Doing Business" in the State From Maintaining an Action Here

The United States Supreme Court in *Daimler AG v. Bauman*, 571 U.S. 117 (2014), in essence, replaced the existing "doing business" standard applied in determining whether a court has general jurisdiction over a foreign corporation with the "at home" standard. Under *Daimler*, a finding of general jurisdiction is warranted only if the corporation is incorporated or has its principal place of business in the forum state, or in an "exceptional case," still in search of a taker.

However, there may be other instances where a (different) "doing business" analysis lives on. Business Corporation Law § 1312(a) provides, in part, that "[a] foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state. . .". A party that relies on this bar "bears the burden of proving that the corporation's business activities in New York were not just casual or occasional, but so systematic and regular as to manifest continuity of activity in the jurisdiction (citations omitted)." *Forethought Life Ins. Co. v. 1442, LLC*, 2025 N.Y. Slip Op. 07285 (2d Dep't Dec. 24, 2025). The language used ("not just casual or occasional, but so systematic and regular") is reminiscent of the old doing business standard rejected by *Daimler.* Where there is no proof that the plaintiff is doing business in New York, there is a presumption that the plaintiff-foreign corporation is doing business in its state of incorporation.

In *Forethought Life*, the court denied the defendants' motion to dismiss under CPLR 3211(a)(3), finding that the defendants failed to establish that "the plaintiff 'conducted continuous activities in New York essential to its corporate business.' Therefore, the presumption that the plaintiff does business not in New York but in its State of incorporation has not been overcome (citations omitted))." *Id.*

Court of Claims Act § 8-b Does Not Apply To Wrongful Prosecution and Conviction Claims in Federal Action

Thus, State Did Not Waive Sovereign Immunity

Court of Claims Act § 8-b, the Unjust Conviction and Imprisonment Act, waives New York State's sovereign immunity in permitting damages actions brought by claimants wrongfully convicted of a crime "against the state." In *Nolan v. State of New York*, 2026 N.Y. Slip Op. 00200 (1st Dep't Jan. 15, 2026), the claimant was convicted by a New York *federal* district court jury of conspiracy to commit robbery and attempted robbery, and of brandishing a weapon during a crime of violence, all under federal law, and was sentenced to 10 years in a federal prison. The Court of Claims dismissed the claim on subject matter jurisdiction grounds because the crimes the claimant was convicted of were not "against the state."

The First Department affirmed:

> Because actions against the State are in derogation of the common law and allowed only upon the State's waiver of sovereign immunity, statutory requirements conditioning suit must be strictly construed. There is no language in the statute to indicate that New York intended to assume liability for any wrongful prosecution

and conviction claims associated with a federal prosecution. While the phrase, "the state," is not defined in the statute, statutory construction requires that the statute's provisions be construed as a whole to derive its meaning. Upon review of the statute, including other references throughout to "the state," we conclude that the phrase "the state" in the Unjust Conviction and Imprisonment Act refers only to New York State. Even if it did not, we note that only Congress may waive the federal government's sovereign immunity**.** Further, claimant has not demonstrated how the NYPD's involvement in the investigation of the crimes transforms them to ones having been committed "against the state" (citations omitted).

Id.

Adult Survivors Act Not Intended To Displace CPLR Service Rules

Thus, CPLR 306-b Extension Is Permitted

B.B. v. Cosby, 2026 N.Y. Slip Op. 00187 (1st Dep't Jan. 15, 2026) is an action brought under the Adult Survivors Act (ASA) (CPLR 214-j), alleging that the plaintiff was sexually abused by Bill Cosby between 1985 and 1987. The plaintiff did not properly serve The Carsey-Werner Company, LLC (CW), which produced the Cosby show, within 120 days of commencement of the action. However, the trial court granted the plaintiff's motion for an extension of time to serve under CPLR 306-b. The First Department held that the trial court providently exercised its discretion in concluding that the extension was warranted in the interest of justice.

Significantly, the Appellate Division rejected an argument that there was a categorical exception to CPLR 306-b's authorized extension for ASA claims.

> The ASA creates a one-year window for filing revived claims (which ended after this action was filed but before plaintiff moved to extend its time to serve CW with process), but it says nothing about the time for service with respect to such claims (see CPLR 214-j). The legislative history cited by CW likewise says nothing about the time for service (see Senate Introducer's Mem in Support of 2021 NY Senate Bill S66A). The ASA is therefore best understood as not intended to displace the existing rules for service in civil actions.

Id.

Commencing Hybrid Action and Proceeding Requires Adherence to Law Applicable to Both

Thus, Failure To Serve Summons Results in Dismissal of Declaratory Judgment Action

While there is certainly overlap between the law regarding actions and proceedings, there are significant differences impacting practice. The most elementary difference is the documents necessary for proper commencement. An action is generally commenced by the filing of a summons with notice or summons and complaint; a proceeding is commenced by the filing of a petition (which is then served together with a notice of petition or an order to show cause). Service must be effected within 120 days of commencement or within 15 days of the expiration of the statute of limitations, where the limitation period is four months or less (except an election law proceeding). CPLR 304, 306-b, 403[d].

In *Matter of Nicholas v. Martuscello*, 2026 N.Y. Slip Op. 00181 (3d Dep't Jan. 15, 2026), the petitioner commenced a combined declaratory judgment action and CPLR article 78 proceeding by filing a petition/complaint together with a proposed order to show cause. While the petitioner served the order to show cause and petition/complaint, as per the directions in the signed order to show cause, petitioner did not (apparently file or) serve a summons. The trial court dismissed the declaratory judgment portion of the combined action and proceeding, finding that because the petitioner failed to serve the summons, the court lacked personal jurisdiction over the respondent with respect to the declaratory judgment action. The Third Department affirmed, finding that proper service pursuant to the order to show cause was not dispositive:

> As stated above, service of both a summons and a notice of petition or an order to show cause is necessary to commence a combined action and proceeding, with the summons establishing personal jurisdiction with respect to the action and the notice of petition or order to show cause establishing personal jurisdiction with respect to the proceeding. Contrary to petitioner's contention, the fact that the method of service proscribed by the order to show cause was complied with is not dispositive because service of the order to show cause only functions as an alternative to service of the notice of petition, thereby only establishing personal jurisdiction in the context of the CPLR article 78 proceeding. Consequently, service of the order to show cause does not operate as an alternative to service of the summons and, due to petitioner's failure to serve a summons, the court properly dismissed the declaratory judgment action for want of personal jurisdiction.

Id. at *3–4.

Interestingly, while the Third Department focused on the lack of service of the summons, the facts of the case suggest that a summons was never *filed*. And when the court rejected the applicability of CPLR 2001, it stated that "to the extent petitioner asserts that this defect could and should have been overlooked, 'the complete *failure to file* the initial papers necessary to institute an action is not the type of error that falls within the court's discretion to correct under CPLR 2001' (citations omitted)." *Id.* at *4 (emphasis added).

ISSN 0028-7636 (print) ISSN 2379-1225 (online)