

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, September 5, 2018

**No. 93 Matter of LeadingAge New York, Inc. v Shah
Matter of Coalition of New York State Public Health Plans v New York State
Department of Health**

In January 2012, the Governor proposed legislation that would limit executive salaries and administrative expenses for private entities that receive funding from the state to provide services to needy New Yorkers. A day later he issued Executive Order No. 38, which directed the Department of Health (DOH) and other agencies to adopt regulations to curb "abuses in executive compensation and administrative costs and ensure that taxpayer dollars are used first and foremost to help New Yorkers in need." The order said the regulations must ultimately require that 85 percent of state payments be used "to provide direct care or services rather than to support administrative costs," and to "the extent practicable," prevent the use of state funding for executive salaries exceeding \$199,000 per year. DOH responded by adopting 10 NYCRR part 1002, which imposed what is called a "hard cap" limiting administrative costs to 15 percent and annual executive salaries to \$199,000 for certain health care providers that receive state funding, primarily Medicaid money. The regulations also included a "soft cap" that placed the same limits on certain health care providers that receive funding from all sources, including nontaxpayer funds, except under certain conditions. The regulations require providers to file annual disclosures of their allocation of state funds, and permits them to seek waivers of the restrictions.

In these cases -- one brought by a group of nursing homes, home-care agencies and their trade associations, including LeadingAge New York, and the other by the Coalition of New York State Public Health Plans and other representatives of managed health care plans -- the plaintiffs contend the regulations violate the separation of powers doctrine and are arbitrary.

Supreme Court declared the "hard cap" regulations were valid under Boreali v Axelrod (71 NY2d 1), but ruled DOH exceeded its authority in adopting the "soft cap" to regulate the use of private funds by providers.

The Appellate Division, Third Department affirmed on a 4-1 vote. Finding the hard cap portion of the regulations valid under Boreali, it said "in view of DOH's broad authority to regulate the use of public health funds and the underlying purpose of its enabling statutes to ensure that such funds will be used primarily on direct care and services to those in need, it cannot be said that DOH 'had 'not been given any legislative guidelines at all for determining how the competing concerns of public health and economic cost are to be weighed'...." The Second Department reached a similar conclusion in Agencies for Children's Therapy Servs., Inc. v New York State Dept. of Health (136 AD3d 122) in 2015, which also upheld the soft cap regulation. The Third Department disagreed with that court on the soft cap, saying DOH exceeded its authority: "by attempting to regulate executive compensation from all sources, DOH was acting on its own ideas of sound public policy."

In a partial dissent, one justice argued the hard cap violates the separation of powers. "DOH's authority to control its own expenditures cannot be reasonably interpreted as authority to control how providers spend earned revenues for past services...", he said. "Without legislative guidance, DOH reached its own conclusion that the measure was justified by what it describes as spiraling health care costs and past misuse of monies paid to certain providers."

For appellants-respondents Health Plans et al: Henry M. Greenberg, Albany (518) 689-1400

For appellants-respondents LeadingAge et al: David T. Luntz, Albany (518) 436-0751

For State respondents-appellants: Asst. Solicitor General Matthew W. Grieco (212) 416-8014

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To be argued Wednesday, September 5, 2018
No. 94 Matter of Hon. Leticia D. Astacio

Rochester City Court Judge Leticia Astacio is challenging a determination of the State Commission on Judicial Conduct that she should be removed from office for conduct generally stemming from her arrest for drunk driving in February 2016. The Commission found that she repeatedly referred to her judicial position as she was being arrested and processed in an effort "to avoid the consequences of her arrest." Judge Astacio was convicted of misdemeanor DWI and sentenced to a conditional discharge, which required that she abstain from alcohol, install an ignition interlock device on her car, and submit to testing for alcohol or drugs. The Commission said she violated the terms of the sentence twice, first when she admittedly tried to start her car while "drunk" and was thwarted by the interlock device. The second violation occurred when she failed to comply with a court order to appear in court or immediately provide a urine sample for testing. She said she had been unable to comply because she was in the midst of a lengthy visit to Thailand, which she had undertaken without informing her administrative judge or the probation office. She was re-sentenced to 60 days in jail. The Commission also found that Judge Astacio engaged in misconduct on the bench by, among other things, failing to disqualify herself from arraigning a defendant she had previously represented as an attorney and asking her clerk not to transfer the case to a judge she viewed as harsh, and by suggesting to a deputy that an unruly defendant "needs a whoopin'."

The Commission said it has only once before sought to remove a judge for drunk driving offenses, but in this case it said, "The totality of [Judge Astacio's] misbehavior as shown in the record before us -- her operation of a vehicle while under the influence of alcohol, resulting in her conviction for Driving While Intoxicated; her assertion of her judicial position in attempting to avoid the consequences of her arrest; her repeated, willful violations of the terms of her conditional discharge; and her improper conduct on the bench -- demonstrates her unfitness for judicial office and requires the sanction of removal."

Judge Astacio says she "has acknowledged that her conduct was inappropriate and that she should be disciplined," but she argues that she should be censured, not removed. She says the Commission proceeding was unfair because, at her hearing, the chairman brought up news reports of critical comments she had made about the Commission, which "introduced highly prejudicial information to the other Commission members that was not in evidence" and "created a toxic environment in which [she] could not effectively argue for mitigation and demonstrate remorse...." She says she "has not demonstrated a pattern of corruption and deceit, nor bias against racial or ethnic groups. She was a new Judge who exercised poor judgment in the Courtroom and in her personal life. She has demonstrated very poor judgment at a time when she has been barred from the Courthouse, ignored by the system, but followed and bullied and pestered by the press. While her choices have been poor, we respectfully argue they are not at a level where the harsh remedy of removal should be imposed."

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For respondent Commission: Edward Lindner, Albany (518) 453-4613

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To be argued Wednesday, September 5, 2018

No. 95 Matter of Lacey L., an infant (Stephanie L., appellant) (*papers sealed*)

The primary issue here is whether the federal Americans with Disabilities Act (ADA), which requires agencies to provide accommodations for persons with disabilities, applies to child neglect proceedings under Family Court Act article 10, which requires agencies to make "reasonable efforts ... to make it possible for the child to safely return home."

Stephanie L., a young mother with mental disabilities, gave birth to a daughter, Lacey, in June 2014. Days later, the New York City Administration for Children's Services (ACS) removed Lacey from her care and filed an article 10 neglect petition based on her failure to participate in mental health and drug treatment programs as ordered by Family Court in a prior proceeding involving an older child. Before the permanency hearing was held for Lacey, Stephanie moved for an order finding that ACS had not made "reasonable efforts" toward the permanency goal of 'return to parents' ... based on [ACS's] failure to accommodate [Stephanie] as required by the Americans with Disabilities Act (ADA)."

After the hearing, Bronx Family Court denied the motion, saying the ADA did not apply, and found ACS made reasonable efforts to reunite Lacey with her mother. It said, "In Matter of La'Asia Lanae S., 23 AD3d 271 (1st Dept 2005), the First Department explicitly held that the ADA 'has no bearing' on an Article 10 proceeding in Family Court.... While the Appellate Division did not provide any detail or rationale behind this holding, the holding is clear.... However, the law makes clear -- and all parties in this case agreed -- that the agencies' efforts towards a permanency plan must be tailored to the particular circumstances and individuals in a given case.... Accordingly, I am required to consider the [parents'] special needs when determining if the efforts were reasonable in this case." It said, "Here, the agency surely should have done further and more regular follow-up with both the service providers and the parents. The very nature of the parents' apparent disabilities likely contributed to [parents'] failure to follow through with recommended services and requirements.... Nevertheless..., I find that the agency's efforts were not below the minimum required under the 'reasonableness' standard."

The Appellate Division, First Department affirmed, saying, "The Family Court here acknowledged that it was required to consider the mother's special needs when determining if the agency's efforts were reasonable in this case.... In precluding litigation of ADA claims during the permanency hearing, but considerate of its purpose to guide the reasonable efforts analysis, the Family Court properly complied with the requirements as set forth by the court in the La'Asia case."

Stephanie L. argues that "ACS violated the ADA by failing to reasonably accommodate [her] disabilities." She says the First Department's decision "is clearly inconsistent with state law." Article 10 requires Family Court to "determine if ACS has taken reasonable efforts towards reunification," which it cannot do "in cases involving parents with disabilities without determining whether ACS complied with the ADA. The Family Court is fully empowered under state law to make that determination, and exercise of that power is necessary to effectuate the Legislature's preference for family reunification in article 10 proceedings." In any case, she says, the federal Supremacy Clause "would still require the Family Court to address Stephanie's ADA arguments."

For appellant Stephanie L.: Alan E. Schoenfeld, Manhattan (212) 230-8800

For respondent ACS: Assistant Corporation Counsel Scott Shorr (212) 356-0838

For the child Lacey L.: Andrew J. Baer, Manhattan (212) 233-0318