

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Ocasio v. Shields

2026 NY Slip Op 02307 · No. CV-24-0690 · Decided April 16, 2026

SUMMARY

The Appellate Division, Third Department affirmed dismissal of a CPLR article 78 proceeding challenging the petitioner’s honorable discharge from the New York Guard and asserting claims under the Freedom of Information Law. The court held that the discharge challenge was nonjusticiable under the intra-military immunity doctrine, that the FOIL claims were moot or unexhausted, and that denial of sanctions was proper.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mackey, J.; Garry, P.J.; Aarons, J.; Ceresia, J.; Fisher, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	April 16, 2026
DOCKET	CV-24-0690
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of Supreme Court, Albany County, granting respondent's pre-answer cross-motion to dismiss a CPLR article 78 petition and denying petitioner's motion for sanctions.
STANDARD OF REVIEW	The court reviewed the dismissal of the CPLR article 78 proceeding and determined that Supreme Court properly dismissed the claims; it reviewed the denial of sanctions for abuse of discretion.
PRECEDENTIAL VALUE	published
PARTIES	Juan Carlos Ocasio v. Raymond Shields, as Adjutant General of the Division of Military and Naval Affairs

TOPICS

- military law
- judicial review of agency action
- exhaustion of remedies
- appellate procedure
- sanctions

PRACTICE AREAS

military law

administrative law

Freedom of Information Law

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether petitioner's challenge to his discharge from the New York Guard was nonjusticiable under the intra-military immunity doctrine.
2. Whether petitioner's FOIL claims were moot because the agency had responded to his requests and, alternatively, unexhausted because he had not pursued an administrative appeal.
3. Whether Supreme Court abused its discretion by denying petitioner's motion for sanctions based on alleged misrepresentations.

HOLDINGS

1. A challenge to a discretionary military personnel decision involving military order and discipline is nonjusticiable under the intra-military immunity doctrine when adjudication would require a fact-specific inquiry into military personnel matters.
2. The nonjusticiability of discretionary military decisions is not absolute; courts may review facial constitutional challenges to military regulations and claims that the military substantially failed to follow its own regulations in a manner prejudicing a service member.
3. The FOIL claims were properly dismissed because the agency had responded to the requests, rendering the claims moot, and petitioner's challenge to the adequacy of the disclosures was unexhausted because he had not first pursued an administrative appeal.
4. Supreme Court did not abuse its discretion by denying petitioner's motion for sanctions because his allegations of misrepresentations were unsupported by the record.

KEY QUOTATIONS

*"The doctrine of intra-military immunity — which applies to both the federal armed forces and state organized militia — "bars a lawsuit if 'the injuries [for which a plaintiff seeks to recover] arise out of or are in the course of activity incident to [the plaintiff's military] service'" ([*1]-[*2])*

*"To be sure, the "non-justiciability of discretionary military decisions is not absolute'" ([*2])*

*"Particularly where, as here, a petitioner is seeking judicial review of a discrete military personnel decision that would unquestionably require a fact-specific inquiry into an area affecting military order and discipline, civilian courts must tread cautiously'" ([*2])*

FACTUAL BACKGROUND

Juan Carlos Ocasio served as a noncommissioned officer in the New York Guard and was counseled regarding disciplinary incidents, including violations of the chain of command and failure to comply with a direct order. After he attempted to initiate court-martial proceedings against officers involved in his disciplinary proceedings, he was honorably discharged. He later submitted FOIL requests to the Division of Military and Naval Affairs and commenced an article 78 proceeding challenging both his discharge and the handling of his requests.

PROCEDURAL HISTORY

Petitioner challenged his honorable discharge from the New York Guard and alleged that the Division of Military and Naval Affairs failed to respond adequately to his Freedom of Information Law requests. Supreme Court dismissed the discharge challenge as nonjusticiable under the intra-military immunity doctrine, dismissed the FOIL claims as moot or unexhausted, and denied sanctions. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Overton v New York State Div. of Military & Naval Affairs, 373 F3d 83, 88-89 (2d Cir. 2004)
- Feres v United States, 340 US 135, 146 (1950)
- Gilligan v Morgan, 413 US 1, 10 (1973)
- Matter of Figueroa v Maguire, 37 AD3d 829, 831-832 (2d Dept 2007)
- Chappell v Wallace, 462 US 296, 300 (1983)
- Jones v New York State Div. of Military & Naval Affairs, 166 F3d 45, 52 (2d Cir. 1999)
- Doolen v Wormuth, 5 F4th 125, 133-134 (2d Cir. 2021)
- Zaccaro v Parker, 249 AD2d 1003, 1003 (4th Dept 1998)
- Martinez v McCarthy, 838 Fed Appx 611, 613 (2d Cir. 2020)
- Matter of Maidenbaum & Sternberg, LLP v New York State Dept. of Taxation & Fin., 243 AD3d 1054, 1055 (3d Dept 2025)
- Matter of Prisoners' Legal Servs. of N.Y. v New York State Dept. of Corr. & Community Supervision, 209 AD3d 1208, 1210-1211 (3d Dept 2022), affd, 42 NY3d 936 (2024)
- Matter of Jewish Press, Inc. v New York State Educ. Dept., 212 AD3d 916, 918 (3d Dept 2023)
- Matter of Wilkerson v Annucci, 137 AD3d 1444, 1446 (3d Dept 2016)
- Matter of Roth & Roth, LLP v Long Is. R.R., 237 AD3d 506, 508 (1st Dept 2025)
- Matter of Cobado v Benziger, 163 AD3d 1103, 1107 (3d Dept 2018)

OPINION

Matter of Ocasio v. Shields 2026 NY Slip Op 02307

PER CURIAM.

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plaintiff's military] service' " (*Overton v New York State Div. of Military & Naval Affairs*, 373 F3d 83, 88-89 [2d Cir 2004], quoting *Feres v United States*, 340 US 135, 146 [1950]). As such, the doctrine restricts civilian judicial review of internal personnel matters of the military inasmuch as such concern the "composition, training, equipping, and control of a military force[, which] are essentially professional military judgments, subject always to civilian control of the Legislative and Executive *Branches" (*Gilligan v Morgan*, 413 US 1, 10 [1973] [emphasis omitted]). It follows then that, "[a]s a general rule, '[c]ivilian courts must, at the very least, hesitate long before entertaining a suit which asks the court to tamper with the established relationship between enlisted military personnel and their superior officers' " (*Matter of Figueroa v Maguire*, 37 AD3d 829, 831 [2d Dept 2007], quoting *Chappell v Wallace*, 462 US 296, 300 [1983]). "Particularly where, as here, a petitioner is seeking judicial review of a discrete military personnel decision that would unquestionably require a fact-specific inquiry into an area affecting military order and discipline, civilian courts must tread cautiously" (*Matter of Figueroa v Maguire*, 37 AD3d at 831 [citation omitted]).

To be sure, the "non-justiciability of discretionary military decisions is not absolute" and courts may nevertheless review facial challenges to the constitutionality of military regulations as well as claims that the military failed to follow its own regulations in a manner that substantially prejudiced a service member (*Jones v New York State Div. of Military & Naval Affairs*, 166 F3d 45, 52 [2d Cir 1999]; *see* *Doolen v Wormuth*, 5 F4th 125, 133-134 [2d Cir 2021]). Petitioner, however, makes no such claims here and his challenge to DMNA's decision to honorably discharge him from the NY Guard instead concerns solely, under the facts presented, a military personnel decision stemming from questions of military order and discipline. Accordingly, petitioner's challenge in this regard is nonjusticiable under the intra-military immunity doctrine (*see* *Matter of Figueroa v Maguire*, 37 AD3d at 832; *Zaccaro v Parker*, 249 AD2d 1003, 1003 [4th Dept 1998]). Petitioner's unsupported assertion that his discharge was retaliatory does not necessitate a contrary conclusion (*see* generally *Martinez v McCarthy*, 838 Fed Appx 611, 613 [2d Cir 2020]). Similarly, contrary to petitioner's contentions, the status of SGAUS as a nonmilitary organization is of no moment inasmuch as petitioner's misconduct underlying his honorable discharge stems from his actions related to his service in the NY Guard.

Supreme Court likewise properly dismissed petitioner's FOIL claims as moot, inasmuch as the record reflects that he received responses to his requests (*see* *Matter of Maidenbaum & Sternberg, LLP v New York State Dept. of Taxation & Fin.*, 243 AD3d 1054, 1055 [3d Dept 2025]; *Matter of Prisoners' Legal Servs. of N.Y. v New York State Dept. of Corr. & Community Supervision*, 209 AD3d 1208, 1210-1211 [3d Dept 2022], *affd* 42 NY3d 936 [2024]). As to petitioner's claim that respondent's disclosures were nevertheless inadequate, he has failed to exhaust his administrative remedies by first pursuing an administrative appeal (*see* *Matter of Jewish Press, Inc. v New York State Educ. Dept.*, 212 AD3d 916, 918 [3d Dept 2023];

Matter of Wilkerson v Annucci, 137 AD3d 1444, 1446 [3d Dept 2016]). Finally, the court did not abuse its discretion ^[*3]in denying petitioner's motion for sanctions against respondent based upon alleged misrepresentations, among other things, as his claims are unsupported by the record (*see* *Matter of Roth & Roth, LLP v Long Is. R.R.*, 237 AD3d 506, 508 [1st Dept 2025]; *Matter of Cobado v Benziger*, 163 AD3d 1103, 1107 [3d Dept 2018]). Petitioner's remaining arguments, to the extent properly before us, have been considered and found to be lacking in merit.

Garry, P.J., Aarons, Ceresia and Fisher, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

Footnotes

- Footnote 1: Akin to the National Guard, the NY Guard is authorized by article VIII of the Military Law and maintained at the Governor's discretion (*see* Military Law § 165 [1]). The NY Guard is made up of unpaid volunteers; the volunteer force "augments and supports the New York National Guard," but they "are not federal military reservists like members of the Army and Air National Guard" (Division of Military and Naval Affairs, <https://dmna.ny.gov/nyg/> [last accessed March 13, 2026]).
- Footnote 2: SGAUS is a non-profit organization that advocates "for the advancement and support of regulated state military forces" and provides, among other things, emergency management training to state defense forces (*see* SGAUS, <https://sgaus.org/>).
- Footnote 3: DMNA is a division of the Executive Department and includes the state's organized militia, which in turn includes the NY Guard (*see* Executive Law § 31 [2]; 190 [2]; Military Law § 2 [1]; *Matter of State of New York v Public Empl. Relations Bd.*, 103 AD2d 876, 876 [3d Dept 1984]).
- Footnote 4: Supreme Court (Hummel, J.) transferred the proceeding from Bronx County, where it had been commenced, to Albany County.

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