

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

Maurer v. Mickel

2026 NY Slip Op 03712 (3d Dep't 2026) · No. CV-24-1968 · Decided June 11, 2026

SUMMARY

The New York Appellate Division, Third Department affirmed an order concerning attorney fees, disbursements, and charging liens arising from a personal injury settlement. The court held that the plaintiffs could not assert legal malpractice through a cross-motion, found no demonstrated cause for discharging either law firm, declined to require an evidentiary hearing, and upheld the denial of recusal requests.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Ryba, J.; Garry, P.J.; Clark, J.; Fisher, J.; Mackey, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	June 11, 2026
DOCKET	CV-24-1968
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of Supreme Court, Saratoga County, concerning counsel fees, disbursements, attorney liens, discharge of counsel, and plaintiffs' amended cross-motion alleging legal malpractice.
STANDARD OF REVIEW	The court reviewed the denial of recusal for abuse of discretion and applied the legal requirements governing legal malpractice claims, discharge for cause, and the necessity of an evidentiary hearing. It stated that recusal absent a statutory basis is committed to the trial court's sound discretion.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Michelle L. Maurer et al. v. Harding Mazzotti LLP, Dalmata Maloy & Burke, LLP

TOPICS

attorney fees

motion to amend

appellate procedure

civil procedure

remedies

PRACTICE AREAS

civil procedure

legal malpractice

attorney fees

appellate procedure

QUESTIONS PRESENTED

1. Whether plaintiffs could assert a legal malpractice cause of action against Dalmata through an amended cross-motion in the underlying personal injury action.
2. Whether plaintiffs established that Harding or Dalmata had been discharged for cause and therefore were not entitled to compensation from the settlement funds.
3. Whether plaintiffs were entitled to a formal evidentiary hearing concerning their allegations of discharge for cause.
4. Whether Supreme Court abused its discretion by denying plaintiffs' requests for judicial recusal.
5. Whether plaintiffs' remaining challenges, including the challenge to post-note-of-issue discovery, warranted appellate relief.

HOLDINGS

1. A legal malpractice cause of action must be asserted in a separate plenary action; plaintiffs' attempt to assert malpractice through a cross-motion in the underlying personal injury action was a legal nullity.
2. Generalized dissatisfaction with counsel's performance, disagreements over litigation strategy, or loss of confidence do not, without more, constitute discharge for cause; discharge for cause requires misconduct, a significant breach of legal duty, or failure to properly represent the client's interests.
3. A formal evidentiary hearing is not required when the client's allegations fail to raise even a colorable claim that counsel was discharged for cause.
4. Absent a statutory basis for disqualification, recusal is within the trial court's sound discretion, and unsubstantiated suspicions of bias do not require recusal.

KEY QUOTATIONS

"plaintiffs' attempt to assert a malpractice cause of action via cross-motion, rather than by separate plenary action, is a legal nullity." (at *2)

"generalized dissatisfaction with counsel's performance, disagreements over litigation strategy or loss of confidence do not, without more, constitute cause for discharge" (at *3)

"Absent a statutory basis for disqualification, which was not asserted herein, recusal is a matter committed to the trial court's sound discretion" (at *3)

FACTUAL BACKGROUND

Harding represented plaintiffs in a personal injury action arising from a motor vehicle accident, obtained partial summary judgment on liability, and was later relieved as counsel after an irreparable breakdown in the attorney-

client relationship; Supreme Court awarded Harding a charging lien. Plaintiffs then retained Dalmata under a contingency fee agreement, and the matter settled shortly before trial. After receiving the settlement statement and net-recovery checks, plaintiffs attempted to terminate Dalmata and Harding for cause and sought release of funds held in escrow, alleging malpractice and disputing fees, disbursements, and liens.

PROCEDURAL HISTORY

In the underlying personal injury action, Supreme Court granted plaintiffs partial summary judgment on liability, later relieved Harding Mazzotti LLP as counsel and awarded it a charging lien, and the matter subsequently settled after plaintiffs retained Dalmata Maloy & Burke, LLP. Supreme Court granted Dalmata's motion directing payment of counsel fees, disbursements, and certain liens from the settlement funds, and denied plaintiffs' amended cross-motion asserting malpractice and discharge for cause. Plaintiffs appealed, also challenging recusal and post-note-of-issue discovery.

DISPOSITION

affirmed

CASES CITED

- Stone Cast, Inc. v Couch, Dale Marshall P.C., 242 AD3d 1415, 1417 [3d Dept 2025]
- Scott v Schwartz, 236 AD3d 1273, 1275 [3d Dept 2025]
- Mid-Hudson Val. Fed. Credit Union v Quartararo & Lois, PLLC, 155 AD3d 1218, 1220 [3d Dept 2017], *affd* 31 NY3d 1090 [2018]
- Rodriguez v Jacoby & Meyers, LLP, 126 AD3d 1183, 1185-1186 [3d Dept 2015], *lv denied* 25 NY3d 912 [2015]
- Doviak v Lowe's Home Ctrs. Inc., 134 AD3d 1324, 1326 [3d Dept 2015], *lv denied* 27 NY3d 904 [2016]
- Wiggins v Kopko, 105 AD3d 1132, 1134 [3d Dept 2013]
- Sprole v Sprole, 151 AD3d 1405, 1406 [3d Dept 2017]
- Kasmin v Josephs, 228 AD3d 431, 432 [1st Dept 2024]
- Roe v Roe, 117 AD3d 1217, 1218 [3d Dept 2014]
- McAuliffe v McAuliffe, 209 AD3d 1119, 1120-1121 [3d Dept 2022]
- Ricky SS. v Christine SS., 241 AD3d 1009, 1015 [3d Dept 2025]
- Kopko v Kopko, 229 AD3d 974, 976 [3d Dept 2024], *lv dismissed* 42 NY3d 1086 [2025]
- Matter of Patrick UU. v Frances VV., 200 AD3d 1156, 1161 [3d Dept 2021]

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