CRIMINAL

FOURTH DEPARTMENT

State of NY v Michael M., 4/30/21 – **MHL ART. 10 / REVERSED**
The respondent appealed from an order of Niagara County Supreme Court, determining that he was a dangerous sex offender and committing him to a secure treatment facility. The Fourth Department reversed and granted a new trial. The lower court erred in denying the respondent's request to proceed pro se. A MHL Article 10 respondent could waive the statutory right to counsel, once the court conducted a searching inquiry to ensure that the waiver was unequivocal, voluntary, and intelligent. This respondent made a timely request and understood the risks of going pro se, as revealed during the requisite inquiry. Yet the trial court denied his request, opining that, if represented, he might well prevail. Where a respondent knew the dangers of self-representation, mere ignorance of the law could not vitiate an effective waiver of counsel. Kathryn Friedman represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_02636.htm

Snow v Rochester Police Officer, 4/30/21 –
BAD SERVICE / MAD CUSTOMER / BROKEN ARM
The defendants appealed from a Monroe County Supreme Court order, denying their motion for summary judgment in an action for assault and battery, as well as false arrest and excessive force under 42 USC § 1983. The Fourth Department modified. The case arose when a restaurant allegedly gave the plaintiff the wrong order. After her prolonged confrontation with restaurant staff, they called police, who told her to leave as staff asked. The plaintiff refused, the defendants tried to handcuff her, and her arm was broken. The motion court erred in sustaining the false arrest claim. The defendants made a prima facie of probable cause to arrest the plaintiff—when she refused to leave, she trespassed. In opposition, the plaintiff did not raise a triable issue of fact. However, she was entitled to a trial on excessive force. The defendants' own submissions raised triable issues as to the degree of her resistance, the threat she posed, and the possibly unreasonable force used in response. For similar reasons, the defendants were not entitled to judgment as a matter of law as to excessive force based qualified immunity, or as to assault and battery.
http://nycourts.gov/reporter/3dseries/2021/2021_02638.htm

People v Chrisley, April 30, 2021 – **SORA / LEVEL TWO**
The defendant appealed from a Genesee County Court order, determining that he was a level-two risk under SORA. The Fourth Department affirmed, though finding error. A letter from the defendant's counselor, presented at the SORA hearing, reported that he had been actively engaged in treatment and had made positive changes. Further, on three risk assessment instruments, the defendant scored as a low risk for recidivism, and the counselor concurred that he did indeed represent a low risk. After the hearing, based on a purported third incident of sexual conduct, the court assessed points for continuing course of sexual misconduct. The salient evidence—the grand jury testimony of the victim's mother—showed only the possibility that something nefarious happened but did not constitute clear and convincing proof. Unlike in other cases involving a victim who sat on

a defendant's lap, there was no proof here that the defendant touched the victim illicitly. However, the above mitigating factors were not sufficient to warrant the requested downward departure to risk level one, where the defendant's score placed him in the middle of the range for level two, and his history did not support imposing the lowest risk level.
http://nycourts.gov/reporter/3dseries/2021/2021_02699.htm

People v Davis, 4/30/21 –**PROTECTIVE ORDER / MODIFIED**
The defendant appealed from a County Court judgment, convicting him, upon his plea of guilty, of 2nd degree arson and aggravated family offense. The Fourth Department modified, among other things, by specifying that the order of protection was to be a no-offensive-contact order, because the defendant shared children with the person protected. The Monroe County Public Defender (Helen Syme, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_02644.htm

FAMILY

FOURTH DEPARTMENT

M/O Andalora v Dix, 4/30/21 – **CHILD SUPPORT / REINSTATED**
The mother appealed from a child support order of Chautauqua County Family Court, dismissing her modification petition. The Fourth Department reversed, reinstating the petition and remitting. The parties' judgment of divorce provided that each party had a right to seek to modify support, in Family Court, by demonstrating a substantial change in circumstances. It was error to dismiss the petition based on a lack of subject matter jurisdiction and to not decide whether a substantial change occurred.
http://nycourts.gov/reporter/3dseries/2021/2021_02698.htm

M/O Bilinda S. v Carl P., 4/30/21 – **POST-ADOPTION / TERM VIOLATED**
In a Domestic Relations Law § 112-b proceeding, the biological mother appealed from a Monroe County Family Court order. The Fourth Department affirmed. The mother violated provisions of her contact agreement with the adoptive parents, which was incorporated into a judicial surrender of parental rights. She was to have certain visitation, but if she violated any agreement terms, such visits would be in the adoptive parents' sole discretion. By not visiting the child for more than six months, the mother violated a term. The lower court properly held that it was in the best interests of the child to enforce the agreement.
http://nycourts.gov/reporter/3dseries/2021/2021_02646.htm