

Article 78 Proceedings - How to Appeal an Agency Decision

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What is an Article 78 Proceeding?

Article 78 proceedings are lawsuits mainly used to challenge an action (or inaction) by agencies of New York State and local governments. Article 78 proceedings are also sometimes filed against judges, tribunals, boards, and even private companies whose existence is based on statutory authority.

Notably, appeals of decisions of the New York Department of Labor's Unemployment Insurance Appeal Board, are an exception. Such appeals must be made to the New York State Supreme Court's Third Department Appellate Division.

Although Article 78 proceedings are available to appeal most administrative actions in New York, the laws governing the particular agency or body should be consulted to determine if there is a specific appeal procedure. For example, Real Property law establishes a process to be used by a homeowner who wants to challenge their property tax assessment.

Court determinations in civil and criminal matters generally fall outside the scope of Article 78 review, with some exceptions.

What can I do if I get a decision from a New York agency that I disagree with?

If you disagree with an agency decision, you may want to consider appealing the decision to the New York courts. You can do so by filing an "Article 78 Proceeding." It is named after the section of New York law that sets out the rules for this kind of

case: Article 78 of the New York Civil Practice Law and Rules. People ask us about this kind of case after they have received an unfavorable hearing decision in a case involving the Department of Social Services (DSS) or a housing authority.

Article 78 is generally unavailable if the decision or determination that you seek to appeal is not final. Generally, a determination is final when there remains no further appeal options within an agency. Sometimes a decision can become final if the agency ignores your request—this is called a “constructive denial.” It is important to know that agencies usually respond “yes” or “no.”

Do I need a lawyer?

You are not required to have a lawyer, but Article 78 proceedings are usually filed by lawyers. It is important to file the papers you need properly (a Notice of Petition and a Petition). We strongly recommend that you find a lawyer to help you. If you do not know of one, you can contact the New York State Lawyer Referral and Information Service. Their toll free number is 1-800-342-3661. They may be able to give you the names of lawyers in the area who handle this type of matter and would be willing to meet with you at the rate of \$35 for an initial half-hour consultation.

Some counties have local bar referral services such as The Cattaraugus County Bar Association's Lawyer Referral Service, which can be reached at (716) 584-1254. Monroe Monroe County's is available at mcba.org. Also, the New York Court system website, available at nycourts.gov, has an “Ask a Law Librarian” service. It is a remote legal reference service open to the general public. It is staffed by New York State Court System law library personnel from around the state and is intended to answer legal reference questions posed by the public.

In what court do I file my Article 78 proceeding?

You usually have to file your Article 78 proceeding in the New York State Supreme Court. Each county has its own Supreme Court. The Supreme Court is usually located at the County Courthouse. There is a “Court Locator” link at nycourts.gov with contact information.

Is there a time deadline for filing an Article 78 proceeding?

Yes. Article 78 proceedings must generally be filed within four months (120 days) of the date you receive the decision you want to appeal. Check with a lawyer as soon as you can to find out if your deadline is even shorter.

What arguments can I raise in my Article 78 proceeding?

One argument you can raise is that the agency did not follow its own rules when it made the decision. Two of the other things the court can consider are 1) whether the decision was "arbitrary and capricious" or 2) not supported by "substantial evidence". These words have special legal meanings. "Arbitrary and capricious" means the decision is not reasonably related to the facts of the case. "Substantial evidence" is evidence that a reasonable person would accept as enough to support the agency's decision. If you lost a hearing, you probably feel that you should win on both of these issues. New York courts very often decide in favor of the agency if the agency has written down some reason for its decision, even if many people would think the decision was wrong.

Can I do anything else besides filing an Article 78 proceeding?

Sometimes an unfavorable fair hearing decision can be reversed in your favor without actually going to court to file an appeal. This usually works best when an actual mistake was made in the decision. For example, if you gave the judge papers at the hearing, and the decision says you did not bring any papers to the hearing.

If your case involves rights protected by the U.S. Constitution or the legality of a federal law, you may be able to file a case in federal court or in New York State Supreme Court. In that case, you may have up to three years from the date of the unfavorable hearing decision to file your case. It is usually safest to file the Article 78 challenge to the unfavorable hearing decision within four months of the date of the decision to make sure that you do not miss this deadline.

How long does an appeal take?

Depending on the issues involved, an appeal can take several months or longer.

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Last Review Date: February 2025

Last updated on February 03, 2026.

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