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We provide free legal aid to people with civil legal problems in western New York.

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Article 78 Proceedings – How to Appeal an Agency Decision

What is an Article 78 Proceeding?

An Article 78 proceeding is used to appeal the decision of a New York State or local agency to the New York courts.

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 can appeal the decision to the New York courts. You can do so by bringing 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. Most 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.

Do I need a lawyer?

No, but Article 78 Proceedings are usually filed by a lawyer, so it may be hard to file the papers you need (a Notice of Petition and a Petition) by yourself. 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.

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.

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

Yes. Article 78 proceedings must generally be filed within four months 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 didn't 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?

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 the federal court or in the 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 challenge to the unfavorable hearing decision within four months of the date of the decision anyway, or sooner, to make sure that you do not miss a time deadline.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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