

Chapter 1 : What is an Article 78 Proceeding, and How Do I Bring One?

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What is Article 78? Article 78 is the article of the Civil Practice Law and Rules CPLR , which establishes the procedure for challenging the determinations of administrative agencies, public bodies or officers. These include every court, tribunal, board, corporation, officer, or other person, or aggregation of persons CPLR [a]. Properly stated, Article 78 provides the procedure in New York State for obtaining the relief previously obtained by writs of certiorari to review, mandamus or prohibition CPLR Enacted in , Article 78 is intended to supplant the three writs with a uniform procedure for obtaining the same relief. A writ is a written judicial order to perform a specified act. In New York State, the relief previously obtained by writs of certiorari to review, mandamus or prohibition, is now obtained by bringing a special proceeding under Article Certiorari is the writ by which the court reviews an action of an administrative agency, public body or officer for the purpose of establishing whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence CPLR [4]. The purpose of an Article 78 proceeding in the nature of certiorari is to seek judicial review. Mandamus is the writ by which the court makes a finding as to whether an administrative agency, public body or officer failed to perform a duty enjoined upon it by law CPLR [1]. The purpose of an Article 78 proceeding in the nature of mandamus is to compel the performance of a duty. Prohibition is the writ by which the court makes a finding as to whether an administrative agency, public body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction CPLR [2]. The purpose of an Article 78 proceeding in the nature of prohibition is to prohibit a specified action. Is Article 78 relief limited to certiorari, mandamus or prohibition? Article 78 proceedings are generally intended to be limited in scope to seeking the relief previously obtained by writs of certiorari to review, mandamus or prohibition. A provision exists in Article 78, however, which creates a hybrid form of relief that encompasses certiorari and mandamus, incorporating elements of both. In practice, many Article 78 proceedings seek the relief provided by this provision. This hybrid form of relief is provided in CPLR 3 , which authorizes the court to make a finding as to whether a determination of an administrative agency, public body or officer was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed. Where are Article 78 proceedings brought? A proceeding under Article 78 generally must be brought in New York State Supreme Court in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located CPLR [b] and [b]. There are certain exceptions to this general rule. An Article 78 proceeding against a justice of the New York State Supreme Court or a judge of a county court must be commenced in the Appellate Division in the judicial department where the action, in the course of which the matter sought to be enforced or restrained originated, is triable, unless a term of the Appellate Division in that department is not in session, in which case the proceeding may be commenced in the Appellate Division in an adjoining judicial department CPLR [b] [1]. How long do I have to bring an Article 78 proceeding? What types of judgments are awarded under Article 78? In an Article 78 proceeding, the court can render a judgment granting the petitioner the relief to which he is entitled, or the court may dismiss the proceeding either on the merits or with leave to renew. If the proceeding was brought to review a determination, the judgment may annul or confirm the determination in whole or in part, or modify it, and may direct or prohibit specified action by the respondent CPLR Are monetary damages awarded in Article 78 proceedings? Monetary damages, such as restitution, are obtainable in Article 78 proceedings. Any restitution or damages granted to the petitioner, however, must be incidental to the primary relief sought by the

petitioner, and must be such as he might otherwise recover on the same set of facts in a separate action or proceeding suable in New York State Supreme Court against the same administrative agency, public body or officer in its or his official capacity CPLR Can enforcement of the determination under review be stayed? On the motion of any party or on its own initiative, the court can stay further proceedings, or the enforcement of any determination under review, upon terms including notice, security and payment of costs. The enforcement of an order or judgment granted by the Appellate Division, however, may be stayed only by order of the Appellate Division or the New York State Court of Appeals. Unless otherwise ordered, security given on a stay is effective in favor of a person subsequently joined as a party to the Article 78 proceeding CPLR The petitioner, a nightclub, brought an Article 78 proceeding against the respondent, the New York State Liquor Authority, challenging a determination of the respondent, which held that the petitioner violated certain provisions of law by serving alcoholic beverages to minors, and imposed civil penalties upon the petitioner. After an incident in which police responded to a complaint that the petitioner was serving alcohol to underage persons and issued summonses to two persons charging them with possession and consumption of alcohol by a minor, and based solely on the summonses issued by police to the alleged underage drinkers, the respondent brought charges against the petitioner for various violations of law and, as a result of an administrative hearing held in the matter, imposed civil penalties on the petitioner. The respondent, however, could not prove that the alleged underage drinkers were actually underage. Nor was there any proof that the beverages those persons possessed contained alcohol, or that the beverages were served to those persons by the petitioner. As a health maintenance organization, the petitioner is exempt under the law from real property taxes and previously had always been granted an exemption by the respondent. The petitioner had constructed a garage on his property pursuant to a building permit he was granted, which had expired. He then sought its renewal together with a variance for a rear yard setback of only a fraction of a foot, which was not substantial and had no adverse impact on the physical or environmental conditions of the neighborhood. The respondent denied the application and refused to issue the petitioner a certificate of occupancy for the garage. The Court held in favor of the petitioner, finding that the petitioner was entitled to a certificate of occupancy, remanded the matter to the respondent and ordered the respondent to take certain action. The petitioner held a valid pistol license to own and possess handguns within his home. The Court held in favor of the petitioner, finding that the petitioner has a fundamental right to keep and bear arms, remanded the matter to the respondent and ordered the respondent to take certain action. How do I know if an Article 78 proceeding is appropriate for me? To be properly situated to bring an Article 78 proceeding, generally, you must be the subject of an adverse final determination of an administrative agency, public body or officer. You must have exhausted all other remedies, such as administrative appeals, and the Article 78 proceeding must be timely commenced. Only an attorney with expertise in Article 78 proceedings can advise you with certainty as to whether you have standing to bring a special proceeding under Article Since the statute of limitations for commencing an Article 78 proceeding is short, it is imperative that you consult with an attorney specializing in this area of practice as soon as possible. Failure to act within the time limits imposed by law may result in the forfeiture of your rights in the matter. Do I need a lawyer to bring an Article 78 proceeding? Because of the complexities of Article 78, it is highly advisable to retain a NY Attorney who specializes in such proceedings. While there are some types of legal matters in which it is not terribly ill-advised to represent oneself " such as in a small claims action, where there is not much at stake and where the court has created a framework and a forum for litigants to represent themselves " in most cases there is simply no substitute for professional counsel. Attempting to represent oneself in an Article 78 proceeding could lead to the loss of the case and an irreversible forfeiture of rights. For these reasons, you should always consult with, and be represented by, an attorney if you intend to bring an Article 78 proceeding.

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In the Supreme Court, the program shall be limited to commercial claims and tax certiorari, conservatorship, and mental hygiene proceedings in Monroe, Westchester, New York and Suffolk Counties. The papers, including exhibits, shall comply with the requirements of CPLR a and section Whenever a paper is filed that requires the payment of a filing fee, a separate credit card or debit card authorization sheet shall be included and shall contain the credit or debit card number or other information of the party or attorney permitting such card to be debited by the clerk for payment of the filing fee. The card authorization sheet shall be kept separately by the clerk and shall not be a part of the public record. The clerk shall not be required to accept papers more than 50 pages in length, including exhibits but excluding the cover page and the card authorization sheet. The clerk shall date-stamp the papers with the date that they were received. Where the papers initiate an action, the clerk also shall mark the papers with the index number. No later than the following business day, the clerk shall transmit a copy of the first page of each paper, containing the date of filing and, where appropriate, the index number, to the filing party or attorney, either by facsimile or first class mail. If any page of the papers filed with the clerk was missing or illegible, a telephonic, facsimile, or postal notification transmitted by the clerk to the party or attorney shall so state, and the party or attorney shall forward the new or corrected page to the clerk for inclusion in the papers. The appropriate clerk shall deem the UCS fax server to be subject to a technical failure on a given day if the server is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after The clerk shall provide notice of all such technical failures by means of the UCS fax server which persons may telephone in order to learn the current status of the Service which appears to be down. When filing by fax is hindered by a technical failure of the UCS fax server, with the exception of deadlines that by law cannot be extended, the time for filing of any paper that is delayed due to technical failure shall be extended for one day for each day in which such technical failure occurs, unless otherwise ordered by the court. For purposes of this section: Except as otherwise provided in section A party may commence any action in the Supreme Court in any county provided that e-filing has been authorized in that county and in the class of actions to which that action belongs pursuant to paragraph 1 of subdivision a of this section by electronically filing the initiating documents with the County Clerk through the NYSCEF site. Upon receipt of such transmission, the site shall generate and record the completed petition in proper form in portable document format. After commencement of an action wherein e-filing is authorized, documents may be electronically filed and served, but only by, and electronic service shall be made only upon, a party or parties who have consented thereto. A party who has not consented to participation shall file documents with the court and the County Clerk, and serve and be served with documents, in hard copy. When an e-filing party serves a document in hard copy on a non-participating party, the document served shall bear full signatures of all signatories and proof of such service shall be filed electronically. Notwithstanding the following, no party shall be compelled, directly or indirectly, to participate in e-filing pursuant to this section. A consent to e-filing in an action shall state that the party providing it agrees to the use of e-filing in the action and to be bound by the filing and service provisions in this section. A party who has commenced an action electronically shall serve upon the other parties together with the initiating documents a notice of e-filing in a form approved by the Chief Administrator. Such notice shall provide sufficient information in plain language concerning e-filing. Except for an unrepresented litigant, a party served with such a notice shall promptly record his or her consent electronically in the manner provided at the NYSCEF site or file with the court and serve on all parties of record a declination of consent. An unrepresented litigant is exempt from having to file and serve documents electronically in accordance with this section and need not respond to the notice described herein; except that he or she may file a consent to participate in e-filing provided the clerk shall first have explained his or her options for e-filing in plain language, including the option for expedited processing, and inquired whether he or she wishes to participate.

Where an unrepresented litigant opts to file a consent hereunder, it shall be documented in the case file in a manner prescribed by the Chief Administrator. Provided, however, that where an unrepresented litigant chooses to participate in e-filing in accordance with these rules, he or she may at any time opt out of such participation by presenting the clerk of the court with a form so declaring. The filing of a consent to e-filing hereunder shall not constitute an appearance in the action under CPLR. When an action becomes subject to e-filing, the court may direct that documents previously filed in the action in hard copy be filed electronically by the parties. The court may at any time order discontinuation of e-filing in such action or modification of e-filing procedures therein in order to prevent prejudice and promote substantial justice. Where procedurally permitted, upon court direction, an application by a party to the court, or a stipulation among the parties, a pending action may be converted to electronic form. Such direction, application, or stipulation must be served on all parties to the action and filed with proof of service. The County Clerk may require the parties to furnish previously filed hard copy documents in electronic form. Documents may be filed or served electronically only by a person who has registered as an authorized e-filing user or as otherwise provided in this subdivision. An attorney admitted to practice in the State of New York, or a person seeking to serve as an authorized e-filing agent on behalf of attorneys of record in an e-filed action or actions hereinafter "filing agent" may register as an authorized e-filing user of the NYSCEF site. An attorney admitted pro hac vice in an action, an unrepresented litigant, or a person who has been authorized in writing by an owner or owners of real property to submit a petition as provided in section of the Real Property Tax Law and who has been licensed to engage in such business as required by the jurisdiction in which the business is operated hereinafter "small claims assessment review filing agent" may also register as an authorized e-filing user, but solely for purposes of such action or, in the case of a small claims assessment review filing agent, solely for those proceedings under section of the Real Property Tax Law in which he or she has been authorized to submit a petition. Registration shall be on a form prescribed by the Chief Administrator. If so provided by the Chief Administrator, registration shall not be complete until the registering person has been approved as an e-filing user. An authorized e-filing user shall notify the Resource Center immediately of any change in the information provided on his or her registration form. An authorized e-filing user shall maintain his or her User ID and password as confidential, except as provided in paragraph 4 of this subdivision. Upon learning of the compromise of the confidentiality of either the User ID or the password, an authorized e-filing user shall immediately notify the Resource Center. At its initiative or upon request, the UCS may at any time issue a new User ID or password to any authorized e-filing user. An authorized e-filing user may authorize another person to file a document electronically on his or her behalf in a particular action using the User ID and password of the user, but, in such event, the authorized e-filing user shall retain full responsibility for any document filed. In any action subject to e-filing, all documents required to be filed with the court by an e-filing party shall be filed and served electronically, except as provided in this section. A filing agent other than one employed by a governmental entity shall e-file a statement of authorization from counsel of record in an action, in a form approved by the Chief Administrator, prior to or together with the first e-filing in that action by the agent on behalf of that counsel. Documents that are required to be filed and served electronically in accordance with this section or paragraph 1 of subdivision c of section. In the event a filer shall file and serve documents in hard copy pursuant to this sub paragraph, each such document shall include the notice required by the immediately following sub paragraph, and the filer shall file those documents with the NYSCEF site within three business days thereafter. Where an action is subject to e-filing and a party other than an unrepresented litigant who is not participating in e-filing or attorney seeks to file a document therein in hard copy, such document shall include, on a separate page firmly affixed thereto, a notice of hard copy submission, in a form approved by the Chief Administrator, that states the reason why the document is being filed in hard copy form. Whenever documents are filed electronically that require the payment of a filing fee, the person who files the documents shall provide therewith, in payment of the fee: Notwithstanding the foregoing, where permitted by the County Clerk, an authorized e-filing user who electronically files documents that require the payment of a filing fee may cause such fee to be paid thereafter at the office of the County Clerk. A document other than an order or judgment is filed when its electronic transmission or, in the

case of a petition that is e-filed by submission of a text file as provided in subdivision b 1 of this section, the electronic transmission of the text file is recorded at that site, provided, however, that where payment of a fee is required upon the filing of a document, the document is not filed until transmission of the document and the information or form or information as required in i , ii or iii of paragraph 2 of this subdivision has been recorded at the NYSCEF site; or, if no transmission of that information or form or information is recorded, where permitted by the County Clerk, until payment is presented to the County Clerk. No later than the close of business on the business day following the electronic filing of a document, a notification, in a form prescribed by the Chief Administrator, shall be transmitted electronically by the NYSCEF site to the person filing such document and the e-mail service addresses of all other participating parties in such action. When documents initiating an action are filed electronically, the County Clerk shall assign an index number or filing number to the action and that number shall be transmitted to the person filing such documents as part of the notification. If, where permitted, payment is submitted after the initiating documents have been transmitted electronically, the County Clerk shall assign the number upon presentation of that payment. Unless otherwise directed by the court, any document placed in restricted status in response to such a request shall be returned to public view upon expiration of this five day period. The Chief Administrator of the Courts shall promulgate forms to implement this process. When a document has been filed electronically pursuant to this section, the official record shall be the electronic recording of the document stored by the County Clerk. The County Clerk or his or her designee may scan and e-file documents that were filed in hard copy in an action subject to e-filing or maintain those documents in hard copy form. Where a document that was filed in hard copy is thereafter e-filed, the filing date recorded in NYSCEF shall be the date of hard copy filing. The court may require the parties to provide working copies of documents filed electronically. In such event, each working copy shall include, firmly affixed thereto, a copy of a confirmation notice in a form prescribed by the Chief Administrator. Except where the Chief Administrator authorizes use of electronic signatures, decisions, orders and judgments signed by a judge shall be signed in hard copy. All signed decisions, orders and judgments shall be converted into electronic form and transmitted to the NYSCEF site by the appropriate clerk. Notwithstanding any other provision of this section, and subject to such guidelines as may be established by the Chief Administrator, the County Clerk or his or her designee may require or permit a party to file in hard copy, in accordance with procedures set by the County Clerk or designee, an exhibit or other document which it is impractical or inconvenient to file electronically. An electronically filed document shall be considered to have been signed by, and shall be binding upon, the person identified as a signatory, if: A document shall be considered to have been signed by an attorney or party in compliance with section A judge, party or attorney may add his or her signature to a stipulation or other filed document by signing and filing, or causing to be filed, a Certification of Signature for such document in a form prescribed by the Chief Administrator. Initiating documents may be served in hard copy pursuant to Article 3 of the CPLR, or, in tax certiorari cases, pursuant to the Real Property Tax Law, and shall bear full signatures as required thereby, or by electronic means if the party served agrees to accept such service. In the case of a proceeding to review a small claims assessment where the petition has been e-filed by the submission of a text file as provided in subdivision b 1 of this section, a hard copy of the petition, fully completed and signed as set forth in that subdivision, shall be mailed, and shall be served upon the assessing unit or tax commission, as provided in Section of the Real Property Tax Law, unless otherwise stipulated. A party served by electronic means shall, within 24 hours of service, provide the serving party or attorney with an electronic confirmation that the service has been effected. The e-mail service address recorded at the time of registration is the e-mail address at which service of interlocutory documents on that party may be made through notification transmitted by the NYSCEF site. It is the responsibility of each filing user to monitor that address and promptly notify the Resource Center in the event of a change in his or her e-mail service address. An e-filing party causes service of an interlocutory document to be made upon another party participating in e-filing by filing the document electronically. Upon receipt of an interlocutory document, the NYSCEF site shall automatically transmit electronic notification to all e-mail service addresses in such action. Such notification shall provide the title of the document received, the date received, and the names of those appearing on the list of e-mail service addresses to whom that

notification is being sent. Each party receiving the notification shall be responsible for accessing the NYSCEF site to obtain a copy of the document received. Except as provided otherwise in subdivision h 2 of this section, the electronic transmission of the notification shall constitute service of the document on the e-mail service addresses identified therein; however, such service will not be effective if the filing party learns that the notification did not reach the address of the person to be served. A party may, however, utilize other service methods permitted by the CPLR provided that, if one of such other methods is used, proof of that service shall be filed electronically. A party to be added in an action subject to e-filing shall be served with initiating documents in hard copy together with the notice of e-filing. In an action subject to e-filing, the County Clerk or his or her designee shall file orders and judgments of the court electronically and enter them. The County Clerk may affix a filing stamp to orders or judgments by stamping the original hard copy document before filing it electronically or by affixing a stamp to the document after it has been electronically filed. The filing stamp shall be proof of the fact of entry and the date and time thereof. The date of entry shall be the date shown on the stamp, except that if the County Clerk receives an order or judgment and places a filing stamp and date thereon reflecting that the date of receipt is the date of filing but does not e-file the document until a later day, the Clerk shall record at the NYSCEF site as the date of entry the date shown on the filing stamp. Upon entry of an order or judgment, the NYSCEF site shall transmit to the e-mail service addresses a notification of receipt of such entry, which shall not constitute service of notice of entry by any party. A party shall serve notice of entry of an order or judgment on another party by serving a copy of the order or judgment and written notice of its entry. A party may serve such documents electronically by filing them with the NYSCEF site and thus causing transmission by the site of notification of receipt of the documents, which shall constitute service thereof by the filer. In the alternative, a party may serve a copy of the order or judgment and written notice of its entry in hard copy by any method set forth in CPLR b 1 to 6. If service is made in hard copy by any such method and a copy of the order or judgment and notice of its entry and proof of such hard copy service are thereafter filed with the NYSCEF site, transmission by NYSCEF of notification of receipt of those documents shall not constitute additional service of the notice of entry on the parties to whom the notification is sent. The NYSCEF site shall be considered to be subject to a technical failure on a given day if the site is unable to accept filings or provide access to filed documents continuously or intermittently over the course of any period of time greater than one hour after Notice of all such technical failures shall be provided on the site. When e-filing is hindered by a technical failure, a party may file with the appropriate clerk and serve in hard copy. With the exception of deadlines that by law cannot be extended, the time for filing of any document that is delayed due to technical failure of the site shall be extended for one day for each day on which such failure occurs, unless otherwise ordered by the court. In the event an attorney or party shall file and serve documents in hard copy pursuant to this paragraph, each such document shall include the notice required by paragraph 1 of subdivision d of this section, and the filer shall file those documents with the NYSCEF site within three business days after restoration of normal operations at that site. In any action subject to e-filing, parties and non-parties producing materials in response to discovery demands may enter into a stipulation, which shall be e-filed, authorizing the electronic filing of discovery responses and discovery materials to the degree and upon terms and conditions set forth in the stipulation. In the absence of such a stipulation, no party shall file electronically any such materials except in the form of excerpts, quotations, or selected exhibits from such materials as part of motion papers, pleadings or other filings with the court.

Chapter 3 : PART Uniform Civil Rules For The Supreme Court And The County Court | blog.quintoapp.com

Rule Proof of service. (a) Generally. Proof of service shall specify the papers served, the person who was served and the date, ti.

Chapter 4 : Civil Practice Law and Rules :: New York Code :: US Codes and Statutes :: US Law :: Justia

The New York Civil Practice Law and Rules (CPLR) is chapter 8 of the Consolidated Laws of New York and governs

legal procedure in the Unified Court System such as jurisdiction, venue, and pleadings, as well certain areas of substantive law such as the statute of limitations and joint and several liability.

Chapter 5 : Civil Practice Law and Rules - Wikipedia

(a) In any residential foreclosure action involving a home loan, as such term is defined in section thirteen hundred four of the real property actions and proceedings law, in which the defendant is a resident of the property which is subject to foreclosure, the complaint shall be accompanied by a.

Chapter 6 : McKinney's New York Civil Practice Law | Legal Solutions

This practice aid and form book covers both civil practice and criminal procedure in New York with a full-text discussion of the governing case law and the controlling provisions of the Civil Practice Law and Rules, the Criminal Procedure Law, the Judiciary Law, the Surrogate's Court Procedure Act, and the Real Property Actions and Proceedings Law.

Chapter 7 : NYSBA | NYSBA | Committee on Civil Practice Laws and Rules

New York Civil Practice Before Trial Step-by-step procedures, answers to knotty questions, tips from the bench, 3, citations, and over forms. Quickly find detailed and authoritative answers to difficult questions concerning pleadings, motions, discovery, and more.