

CPLR ARTICLE 78:
PROCEEDINGS AGAINST BODY/OFFICER.

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This article replaces WRITS of: CERTIORARI (review); MANDAMUS (must do something); & PROHIBITION (must not).

This article does NOT apply to any non-final determination, or where such final determination be reviewable of appeal or by re-argument (unless such period to appeal/re-hear was expired, or the application denied).

This article also does NOT apply generally to Civil or Criminal cases; EXCEPT: for punishment on summary contempt proceedings for actions allegedly occurring in the Court's presence.

A BODY or OFFICER includes every: Court/Board/Corporation/Officer [including successors-in-office] which made a determination so actionable herein.

Any action herein brought on behalf of another person shall JOIN such individual as a necessary party.

The only questions to be raised in such proceeding shall be whether: the body/officer failed to perform a required duty; acted without or beyond jurisdiction; or that the determination is a violation of law, procedure OR arbitrary & capricious/abuse of discretion; if a determination was made against "substantial evidence". A proceeding to review a determination pursuant to Education Law is subject to CPLR Article 4, Special Proceedings.

Article 78 proceedings are SPECIAL PROCEEDINGS, and venue lies in any county of judicial district where determination made or failure to perform duty occurred OR where Respondent's principal office is located. ** NOTE EXCEPTIONS PURSUANT TO CPLR ARTICLE 5: VENUE. **

The Petition shall be VERIFIED; and accompanied by a Notice, together with any affidavits. Service shall be at least 20 days before hearing; answer of adverse party in 5, reply in 1.

If on a STATE body, serve also the Attorney General by the Assistant in the office within the venue county; or if none, the nearest such office.

If the Respondent is an officer whose term expired, serve also the government subdivision where Respondent previously held office.

A Body or Officer shall file a certified transcript of the proceeding at issue together with the answer and affidavits (unless transcript already filed).

Respondent can object to matters of law in an answer, or by motion. If Respondent motions to dismiss, and such motion be denied, Respondent shall then answer within 5 days of service of the order on motion, together with notice of entry. Petitioner may then re-notice for hearing at least 2 days before date so specified.

If there are questions made regarding whether "substantial evidence" to support determination; the Court shall first deal with all other issues, and TRY forthwith. If such other issues do not terminate the proceeding, then the "substantial evidence" question shall be sent to the Appellate Division. Trial of such issue in Appellate Division may be by Referee, or Supreme Court Justice, who shall then return the matter to the Appellate Division to make and enter an order.

If the Respondent is a Judge on a pending matter where Petitioner is a party [as long as the Judge is not also a party to that action], Article 78 proceeding also joins all other parties to that action as Respondents. Such Judge need not "appear" unless the Court so orders on a party's application. Such non appearance does not constitute an admission OR denial. A Judge so electing not to appear shall notify all parties. If a Judge does appear, shall ANSWER; and is entitled to representation by Attorney General.

STAY of the determination at issue can be granted; EXCEPT: a determination of the Appellate Division can only be stayed by the Appellate Division, OR the Court of Appeals.

Dispositions: Annul/Confirm/Modify determination; or direct/prohibit an action.

Any restitution or damages requested must be "incidental" to the primary relief, and no more than would otherwise be recoverable in a separate action.