

Webcast: Article 78 Challenges to Government Action in New York: Strategic Considerations and Pitfalls (January 2024)

Webcasts | January 16, 2024

In recent years, regulatory action has been on the upswing in New York, with state and city administrative agencies and officials adopting increasingly aggressive roles in governing virtually every industry across the State. As a result, now more than ever it is essential for those working in regulated industries—whether on the legal or business side—to understand their legal options in challenging New York state and city agency rules, regulations, determinations, and other executive actions and policies. The primary vehicle for mounting such a challenge is the Article 78 action, a type of summary proceeding brought in New York State Supreme Court. In this one-hour webcast, four of our most experienced attorneys in the field of challenging government action in New York—partners Mylan Denerstein, Gabriel Herrmann, and Akiva Shapiro, and of counsel Paul Kremer—provide practical and strategic guidance for the successful prosecution of Article 78 actions. Drawing on real-world examples from their practice, they will discuss the primary strategic issues that should be considered in deciding whether to bring an Article 78 challenge (versus, for example, a suit in federal court); provide a roadmap for litigating Article 78 proceedings and keys to success; and discuss the procedural hurdles government actors often raise in defending against these actions, and ways of overcoming those hurdles. The program is beneficial to anyone working in a regulated industry or otherwise affected by actions taken by New York city and state agencies and officials, as well as for practitioners.

Related People

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PANELISTS:

Mylan L. Denerstein is a litigation partner in the New York office of Gibson, Dunn & Crutcher. Mylan is a co-chair of the Public Policy Practice Group and a member of the Crisis Management, White Collar Defense and Investigations, Financial Institutions, Labor and Employment, Securities Litigation, and Appellate Practice Groups. Mylan leads complex litigation and internal investigations, representing companies confronting a wide range of legal issues, in their most critical times. Mylan is known not only for her effective legal advocacy, but also for her problem solving skills. In addition, Mylan is global chair of the firm's Diversity Committee and co-partner in charge of the New York office. Mylan was previously a member of the firm's Executive Committee. In 2022, Mylan was appointed to serve as the independent NYPD Monitor to oversee the court ordered reform process. Previously, Mylan has served in a wide variety of leadership roles in government, including as Counsel to the New York State Governor, as an Executive Deputy Attorney General in the New York Attorney General's Office, and as Deputy Commissioner for Legal Affairs for the New York City Fire Department. In addition, Mylan served as a federal prosecutor in the U.S. Attorney's Office for the Southern District of New York, prosecuting complex securities and fraud cases, and then as Deputy Chief of the Criminal Division. **Gabriel Herrmann** is a partner in the New York office of Gibson, Dunn & Crutcher, and a member

of Gibson Dunn's Litigation Practice Group. His practice focuses on complex business and financial-services litigation, including disputes concerning commercial breach of contract claims, fraud and business torts, insolvency-related litigation, disputed interests in real property, shareholder derivative and securities litigation, antitrust and competition law, insurance, class actions, and M&A-related litigation. A substantial portion of his experience concerns matters involving cross-border jurisdictional issues, coordination of parallel overseas proceedings, and international choice-of-law and venue considerations. In addition to his commercial practice, Mr. Herrmann has significant experience representing clients in matters relating to the operations of New York State and City governmental entities, including both administrative and judicial review of agency determinations and constitutional challenges to government action and legislation. He practices actively in the federal district and bankruptcy courts, as well as the civil and Commercial Division courts of New York State, and has extensive appellate experience in both the New York State and federal court systems. **Akiva Shapiro** is a litigation partner in Gibson, Dunn & Crutcher's New York office, Chair of the Firm's New York Administrative Law and Regulatory Practice Group, Co-Chair of its Religious Liberty Working Group, and a member of the Firm's Appellate and Constitutional Law, Media, Entertainment and Technology, and Securities Litigation Practice Groups, among others. Mr. Shapiro's practice focuses on a broad range of high-stakes constitutional, administrative, commercial, and appellate litigation matters. He is regularly engaged in front of New York's trial courts, federal and state courts of appeal, and the U.S. Supreme Court. **Paul J. Kremer** is Of Counsel in the New York office of Gibson, Dunn & Crutcher. He is a member of Gibson Dunn's Litigation, Intellectual Property, and Crisis Management Practice Groups, where he focuses on contract, lease, and license disputes; patent infringement cases; and state and local regulatory challenges. Paul represents a diverse array of clients engaged in high-stakes commercial litigation, from New York City park trustees and private real estate developers to Fortune 100 technology companies and prestige television networks. His intellectual property clients run the gamut, from garage startups to world-renowned pharmaceutical and consumer electronics makers. He also has extensive experience helping clients of all types navigate the New York State and New York City regulatory spheres.

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