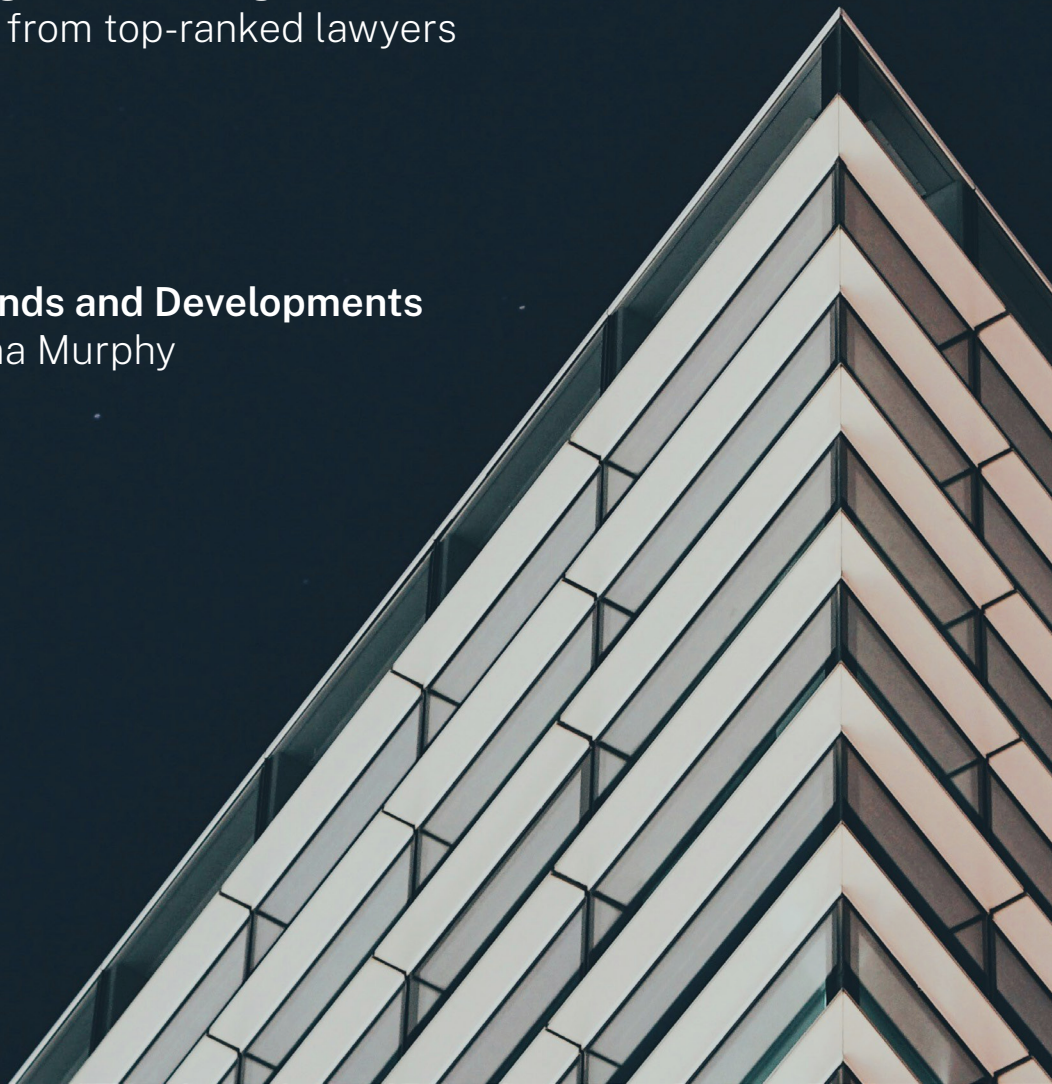

CHAMBERS GLOBAL PRACTICE GUIDES

Public & Administrative Law and Judicial Review 2026

Definitive global law guides offering
comparative analysis from top-ranked lawyers

USA – New York: Trends and Developments
Craig Bucki and Emma Murphy
Phillips Lytle LLP



USA – NEW YORK



Trends and Developments

Contributed by:

Craig Bucki and Emma Murphy
Phillips Lytle LLP

Phillips Lytle LLP is a preeminent, nationally recognised law firm serving Fortune 500 and middle-market companies. Phillips Lytle has offices across New York State, as well as in Chicago, IL, Washington, D.C. and Ontario, Canada. Phillips Lytle's administrative law practice is comprised of a multidisciplinary team with expertise in many facets of governmental function, including land use, environmental and tax law. Phillips Lytle also has expertise in all aspects of law relating to

the powers, procedures and operations of the administrative state, including state and local governments, public authorities, public benefit corporations, and all their governing bodies, boards, subsidiary agencies and departments. The practice includes both the defence of determinations made by public entities and challenges on behalf of individuals and private-sector businesses to legislative enactments, administrative regulations and other agency decisions.

Authors



Craig Bucki is a partner at Phillips Lytle and team leader of the firm's administrative law practice. He focuses his practice on litigation involving state and municipal governments, public authorities and other quasi-governmental entities. In this area, Craig has experience prosecuting disciplinary hearings against public employees, representing political candidates in election law disputes and counseling governmental clients on legislative redistricting and reapportionment matters. He also has expertise in challenging and defending the constitutionality of state statutes and municipal ordinances, litigating matters arising from land use decisions, and seeking review of regulations and adjudicatory decisions issued by state and municipal agencies through special proceedings pursuant to Article 78 of the New York Civil Practice Law and Rules.



Emma Murphy is an attorney at Phillips Lytle and a member of its administrative law practice team. Emma works in a variety of litigation areas, including commercial litigation, government operations, labor and employment and education law. She also represents clients in connection with election law disputes, special proceedings under Article 78 of the New York Civil Practice Law and Rules to review the decisions of state agencies and challenges to the constitutionality of state statutes and municipal ordinances.

Phillips Lytle LLP

One Canalside
125 Main Street Buffalo
New York 14203
USA

Tel: 716-847-8400
Fax: 716-852-6100
Email: info@phillipslytle.com
Web: www.phillipslytle.com



Phillips Lytle LLP

The Statute of Limitations for Challenges to Administrative Determinations in New York, and Proposals for Change

In New York State, one who seeks judicial review of an administrative determination must generally bring a special proceeding pursuant to New York Civil Practice Law and Rules (CPLR) Article 78. The statute of limitations for such Article 78 proceedings is four months or sometimes less, with accrual measured from the point at which “the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact[.]” CPLR 217 (1). A breadth of New York case law analyses when a determination becomes “final and binding,” so the relevant limitations period begins to run.

In March 2025, however, Bill A.7213/S.6060 was proposed in the New York State Legislature to amend CPLR 217 (1) in two material respects. First, the bill would add a requirement that the challenged determination be served either in person or by first class mail before the operative limitations period could begin to run. Second, the bill would extend that limitations period to commence five days after the sending of the determination to the aggrieved party in the mail, if served in that manner. If enacted, the bill would mark a significant change in New York administrative law.

Finality under CPLR 217

Pursuant to CPLR 217 (1), “[u]nless a shorter time is provided in the law authorizing the proceeding, a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the petitioner or the person whom he represents in law or in fact[.]” As the New York Court of Appeals has explained, this “abbreviated statutory time frame” for challenges to determinations by New York administrative agencies is based on the public policy consideration that “the operation of government agencies should not be unnecessarily clouded by potential litigation[.]” *Matter of Best Payphones, Inc. v. Dep’t of Info. Tech. & Telecomms. of City of N.Y.*, 5 N.Y. 3d 30, 34 (2005).

Two requirements must be met for an administrative determination to become “final and binding” under CPLR 217 (1). “First, the agency must have reached

a definitive position on the issue that inflicts actual, concrete injury and second, the injury inflicted may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party.” *Best Payphones*, 5 N.Y.3d at 34. In other words, there must be “completeness (finality) of the determination and exhaustion of administrative remedies.” *Walton v. N.Y. State Dep’t of Corr. Servs.*, 8 N.Y.3d 186, 195 (2007). In practice, this rule “is easier stated than applied[.]” *Smith v. State*, 201 A.D.3d 1225, 1228 (3d Dep’t 2022) (quoting *Matter of Essex County v. Zagata*, 91 N.Y.2d 447, 453 (1998)).

Concerning the first requirement for finality, “[a] determination becomes final and binding when it definitively impacts and aggrieves the party seeking judicial review[.]” *Developmental Disabilities Inst., Inc. v. N.Y. State Off. for People with Dev. Disabilities*, 200 A.D.3d 1273, 1274 (3d Dep’t 2021) (quoting *Matter of Duffy v. Town of Guilderland*, 186 A.D.3d 1856, 1857 (3d Dep’t 2020) (internal quotation marks and citations omitted)). Courts are to take a “pragmatic evaluation” of this circumstance. *Essex County*, 91 N.Y.2d at 453 (quoting *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 519 (1986)).

Ascertaining when an agency has reached a final determination can be challenging. As such, “where the agency has created the impression that the determination, albeit issued, was intended to be nonconclusive,” *there is no final determination for purposes of CPLR 217 (1), and the statute of limitations does not begin to run.* *Matter of Edmead v. McGuire*, 67 N.Y.2d 714, 716 (1986). Indeed, “[i]f an agency has created ambiguity or uncertainty as to whether a final and binding decision has been issued, ‘the courts should resolve any ambiguity created by the public body against it in order to reach a determination on the merits and not deny a party his day in court[.]’” *Carter v. State of N.Y., Exec. Dept., Div. of Parole*, 95 N.Y.2d 267, 270 (2000) (quoting, in part, *Mundy v. Nassau County Civ. Serv. Comm’n*, 44 N.Y.2d 352, 358 (1978)).

For example, in *Matter of Coney Island Preparatory Public Charter School v. New York State Education Department*, petitioners brought an Article 78 challenge in August 2022 to the New York State Educa-

tion Department's calculation of charter school basic tuition. 224 A.D.3d 1203, 1204–05 (3d Dep't 2024). Affirming the dismissal of the proceeding as untimely, the Appellate Division, Third Department, concluded that the petitioners became aggrieved, and the challenged determination became final, when the Education Department posted the tuition rates on its website in May 2021 (*id.*, at 1206). As *Coney Island Preparatory Public Charter School* illustrates, petitioners who fail to recognise when an agency's determination has become final and binding may ultimately find themselves without a judicial remedy.

The effect of a request for reconsideration

Another potential wrinkle for a party attempting to determine whether an agency has issued a final and binding determination is the effect of a request that an agency reconsider its position. "The rule that the four-month limitations period begins to run on the date that the determination to be reviewed becomes final and binding would be completely emasculated if the petitioner could extend the commencement of this period by merely requesting that reconsideration be given to a prior decision[.]" *Matter of De Milio v. Borghard*, 55 N.Y.2d 216, 222 (1982).

As such, a "petitioner cannot revive [a] lapsed limitations period by eliciting correspondence from [a] respondent relative to [a] prior final determination." *Matter of Sunco Holding Corp. v. Town of Vestal*, 204 A.D.3d 1143, 1145 (3d Dep't 2022). But, on the other hand, when "an agency holds a new hearing at which new testimony is taken, new evidence is proffered and new matters are considered, or reconsideration of the matter appears to be on a fresh look at the merits, the statutory period within which to commence a review proceeding is renewed." *Matter of Eldaghar v. N.Y. City Hous. Auth.*, 34 A.D.3d 326, 327 (1st Dep't 2006).

For example, in *Matter of Cathie v. Greenstein*, an assistant to a town administrator had notified the petitioner in February 2018 via both telephone and email that his request to change his health insurance provider had been denied. 194 A.D.3d 925, 926–27 (2d Dep't 2021). The petitioner requested reconsideration, and in June 2018, the town's counsel sent him a letter again informing him that he was not allowed to change his health care provider (*id.*, at 927). Affirming

the dismissal of the petition as untimely, the Appellate Division, Second Department, reasoned the June 2018 letter had simply reiterated the town's final determination that had denied the petitioner's requested health insurance change, and therefore was not itself a final determination that could extend the statute of limitations (*id.*, at 926–27). Stated differently, a litigant cannot necessarily depend on a response to a request for reconsideration to extend the operative statute of limitations to challenge an underlying determination that is already "final and binding."

Notice of a determination

On a related point, one affected by an administrative determination is generally entitled to receive notice of the same before it can be considered "final and binding" under CPLR 217 (1). "A determination generally becomes binding when the aggrieved party is 'notified.'" *Matter of Vill. of Westbury v. Dep't of Transp. of State of N.Y.*, 75 N.Y.2d 62, 72 (1989) (quoting, in part, *Matter of Biondo v. N.Y. State Bd. of Parole*, 60 N.Y.2d 832, 834 (1983)). Currently, however, the form of notice provided by agencies can vary depending on the type of determination at issue.

"[W]here the public at large is not impacted by a determination, actual notice, commonly in the form of receipt of a letter or other writing containing the final and binding determination, is required to commence the statute of limitations[.]" *Matter of Knavel v. West Seneca Cent. Sch. Dist.*, 149 A.D.3d 1614, 1616–17 (4th Dep't 2017). On this point, in *Developmental Disabilities Institute*, the Court measured the accrual of the statute of limitations from 1 July 2019, when the petitioners had received a letter (dated 28 June 2019) notifying them of the challenged determination to terminate certain individuals' eligibility for funding. 200 A.D.3d at 1274.

Although agencies often provide written notice of a determination, "oral notification is sufficient to commence the running of the statute of limitations where ... petitioner is adversely impacted and aggrieved[.]" *Matter of Scott v. City of Albany*, 1 A.D.3d 738, 739 (3d Dep't 2003). For example, a public employee's oral termination was deemed "final and binding" under CPLR 217 (1) when "its impact upon petitioner was evident," even when the employee subsequently

pursued a voluntary grievance procedure. *Matter of Bargstedt v. Cornell Univ.*, 304 A.D.2d 1035, 1036–37 (3d Dep’t 2003).

By contrast, “[i]n the context of quasi-legislative determinations ..., actual notice of the challenged determination is not required in order to start the statute of limitations clock; rather, the statute of limitations begins to run once the administrative agency’s ”definitive position on the issue [becomes] readily ascertainable to the complaining party.” *Matter of School Adm’rs Ass’n of N.Y. State v. N.Y. State Dep’t of Civ. Serv.*, 124 A.D.3d 1174, 1176–77 (3d Dep’t 2015) (quoting, in part, *Matter of Riverkeeper, Inc. v. Crotty*, 28 A.D.3d 957, 962 (3d Dep’t 2006)). This ”readily ascertainable” requirement ”is styled as a constructive notice standard; actual, in-hand notice of the underlying determination is not required.” *School Adm’rs Ass’n*, 124 A.D.3d at 1177.

In *School Administrators Ass’n*, petitioners sought to challenge a policy memorandum which delineated the circumstances under which an employee of a participating agency could decline health insurance enrollment in the New York State Health Insurance Program in exchange for a cash payment or other benefit. 124 A.D.3d at 1175. The policy had been issued on 15 May 2012, and was effective immediately (*id.* at 1177). Because the Appellate Division, Third Department, held the determination became final and binding when the policy became effective, it affirmed dismissal of the March 2013 petition on statute of limitations grounds (*id.* at 1178). Under current law in New York, therefore, a challenger to an administrative determination must be aware of the particular type of notice the challenger is entitled to receive in order to know when the statute of limitations begins to run; and, to avoid any doubt, would be prudent to assume the challenge accrued whenever the determination was issued and took effect.

The proposed amendments to CPLR 217 (1)

On 5 March 2025, New York State Senator Kevin S. Parker introduced S.6060, entitled ”An act to amend the civil practice law and rules, in relation to the timing of proceedings against a body or an officer.” Short-

ly thereafter, on 21 March 2025, Assemblywoman Monique Chandler-Waterman introduced A.7213, with the same title. The bills were referred to the New York State Senate and New York State Assembly Judiciary Committees on 7 January 2026. As of 29 April 2026, no vote has taken place on the bill in either House of the State Legislature.

If enacted, Bill A.7213/S.6060 would change CPLR 217 (1) in two critical ways. First, it would require that the determination being challenged ”be served upon the petitioner or the person whom the petitioner represents in law or in fact, in person or by first class mail.” Per the accompanying Senate Sponsor Memorandum, this service requirement is intended to ”ensure [...] that individuals involved are promptly informed about the decision” in order to ”contribute [...] to transparency in legal matters and allow [...] affected parties to be aware of their rights and obligations.”

Second, the bill would amend CPLR 217 (1) to provide that, “[i]f the determination is mailed by first class mail to the petitioner or the person whom such petitioner represents in law or in fact, the statute of limitations commences five days after the determination was placed in the mail.” According to the Senate Sponsor Memorandum, such provision would ”prevent [...] any undue advantage or disadvantage that could arise due to delays in postal services.”

Should it take effect, both amendments to CPLR 217 (1) would alter the time when the limitations period begins to run for challenges to administrative determinations and the type of notice a challenger would be entitled to receive.

Conclusion

When challenging administrative determinations, ”litigants should risk suing prematurely rather than too late.” *Walton*, 8 N.Y.3d at 202 (Read, J., dissenting). Unless and until CPLR 217 (1) is amended, one who considers bringing an Article 78 proceeding to institute such a judicial challenge would be wise to presume the statute of limitations accrues on the earliest possible date when one could reasonably argue that the agency reached a final and binding determination.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Luke.Wilson@Chambers.com