



ADAM W. PERRY

Partner, Employment Litigation Practice Leader

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Adam concentrates his practice in employment-related litigation and has represented a broad array of employers, including nonprofit organizations, governments, and businesses in complex litigation, with a primary focus on employer/employee disputes of every kind. Adam has a vast number of published opinions from state and federal courts demonstrating successful handling of high-risk, high-dollar employment litigations.

Adam also routinely handles a variety of other legal matters, including those concerning governments, educational institutions, and their officials on a variety of litigation, regulatory, and transactional matters. His more than 25 years of experience serving businesses, nonprofit organizations, municipalities, public authorities, and educational institutions gives him a remarkable depth of experience counseling and representing a diverse and broad base of clients on their most significant matters. His practice includes serving a variety of the government relations needs of his clients.

Adam exclusively practices U.S. law and is admitted to practice in New York and Florida.

Honors

- Listed, *Best Lawyers in America* (Commercial Litigation) 2013 - 2024
- Listed, *Upstate New York Super Lawyers* (Employment Litigation: Defense) 2013 - 2023
- Adam W. Perry Day proclaimed in the City of Buffalo, August 6, 2015
- Minority Bar Association of WNY Legal Service Award, 2015
- Community Action Organization of Western New York Corporate Leadership Award, 2015
- Grassroots Inc. Cora P. Maloney Award, 2012

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Buffalo, NY 14202

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Practices & Industries

Business Litigation
Government Relations
Municipal
Canada-U.S. Cross-Border
Alternative Dispute Resolution
College & University
Employment Litigation
Hotel, Hospitality & Lodging
Public Authority
Tax-Exempt Organizations
Wine, Beer & Spirits

Admissions

New York
Supreme Court of the United States
U.S. District Courts for the Western,
Southern, Eastern, and Northern

ADAM W. PERRY

- Community Action Organization of Western New York Agent of Change Award, 2011
- Erie Community College President's Outstanding Alumnus Award, 2004
- *Buffalo Business First's* 40 Under Forty Award, 2000
- Erie Community College Foundation's Distinguished Alumni Award, 1996

Experience

In *Maraschiello v. City of Buffalo*, Hodgson Russ obtained summary judgment and successfully defended an appeal before the U.S. Court of Appeals for the Second Circuit. The plaintiff was next in line for promotion on the civil service eligible list for police inspector. After he lost his opportunity for promotion, he sued claiming reverse discrimination. In forcefully rejecting the plaintiff's contention that Buffalo acted for impermissible race-based reasons in discarding civil service exam results, the Second Circuit emphasized that Buffalo's "problem was the test itself, rather than with a particular set of results." The Second Circuit's decision has broad significance for municipalities and other employers nationally as it makes clear that employers retain substantial discretion to design and implement new employment procedures for purposes of complying with Title VII and other anti-discrimination law, despite claims by majority plaintiffs that such compliance efforts constitute reverse discrimination.

Hodgson Russ successfully defended the City of Buffalo's use of employment promotional exams against two federal putative class-action challenges by a group of African-American firefighters. After a bench trial, the district court ruled that the examinations were valid, non-discriminatory selection devices that were job related and consistent with business necessity, even though they statistically favored non-minority candidates. A Hodgson Russ attorney successfully briefed and argued the appeal in the U.S. Court of Appeals for the Second Circuit, which affirmed the district court's ruling.

Hodgson Russ successfully defended a public housing authority in a \$5 million lawsuit arising from the termination of a contractor on a hazardous material abatement and demolition project. Our work included pursuing counterclaims for damages arising from the conduct of the contractors on the same project and achieving a multi-million dollar settlement for the authority in mediation.

Hodgson Russ assisted client Community Action Organization of Erie County, Inc. (CAO) on a \$16.25 million development project that turned a long-vacant orphanage on Buffalo's East Side into St. Martin Village, a low-income housing

Districts of New York

U.S. Courts of Appeals for the Second, Sixth, and Eighth Circuits

Education

Erie Community College, A.A.S., with highest honors

University at Buffalo, B.A., magna cum laude

University of Michigan Law School, J.D.

ADAM W. PERRY

project comprising 60 housing units and related facilities and grounds. The project involved rehabilitating three architecturally significant buildings, demolishing eight other buildings, and constructing six new buildings. Hodgson Russ attorneys assisted CAO in securing \$1.32 million annually in low-income housing tax credits from the New York State Division of Housing and Community Renewal, with a total of \$13.2 million in tax credits anticipated. The firm also provided project-financing assistance, negotiating a construction loan not to exceed approximately \$9.5 million from KeyBank National Association; a permanent loan of \$1 million from Community Preservation Corporation; and secondary loans in varying amounts from the New York State Housing Trust Fund Corporation, the City of Buffalo, and CAO. The firm also assisted St. Martin Village in obtaining, through CAO, a grant from the New York State Urban Initiatives Program Fund and an approximately \$1 million federal home loan grant.

A Hodgson Russ team, which included Adam W. Perry and Michael B. Risman, secured for Hodgson Russ clients the City of Buffalo, Mayor Byron Brown, and Buffalo Police Commissioner Daniel Derenda the dismissal of a First Amendment retaliation lawsuit brought by former police detective Dennis Delano. After making public comments to a news reporter and releasing evidence related to the 1993 murder of 13-year-old Buffalo resident Crystallyn Girard, Delano was brought up on disciplinary charges and later suspended for 60 days at the recommendation of an independent hearing officer. According to the Buffalo Police Department, Delano's actions violated numerous departmental regulations and were in direct violation of orders from his superiors. Delano, however, asserted that the suspension was in retaliation for his exercising his right to free speech under the First Amendment. Chief U.S. District Judge William M. Skretny dismissed the civil lawsuit in August 2014 on the grounds that Delano's conduct amounted to insubordination, which outweighed the value of his speech. Judge Skretny's ruling was informed by the decision handed down by the U.S. Court of Appeals for the Second Circuit in *Sacha v. Sedita*, another First Amendment retaliation case successfully handled by a Hodgson Russ team at the district court and on appeal in defense of Sacha's claims against Erie County District Attorney Frank A. Sedita, III. In the decision, the Second Circuit ruled that an assistant district attorney's public statement expressing criticism of his office "was sufficiently disruptive to justify terminating his employment." Judge Skretny agreed with the *Sacha* precedent, stating that "no matter the merits of his motivation," Delano's action "had the potential to cause a disruption significant enough to impair 'discipline by superiors' and 'harmony among co-workers.'"

In *M.O.C.H.A. Society, Inc. v. City of Buffalo* (2013), the U.S. Court of Appeals for the Second Circuit affirmed the district court's ruling in favor of Hodgson Russ's client, the City of Buffalo, that evidence did not support the plaintiffs' challenge to the Buffalo Fire Department's drug testing policy.

The U.S. Court of Appeals for the Second Circuit affirmed the dismissal of First Amendment retaliation and New York State whistleblower claims made by Mark Sacha, a former assistant district attorney fired by Erie County District Attorney Frank A. Sedita, III. Sacha's lawsuit was previously dismissed by U.S. Chief District Court Judge William M. Skretny. Sacha appealed Judge Skretny's ruling, claiming he was fired in retaliation for alleging that District Attorney Sedita and his predecessor, District Attorney Frank J. Clark, were corrupt. The court found Sacha's speech while employed as an assistant district attorney was so potentially disruptive to the Erie County District Attorney's Office as to justify terminating his employment. The court also stated, "We have considered Sacha's remaining arguments and find they are without merit." Partner Adam W. Perry led the Hodgson Russ defense team.

ADAM W. PERRY

In *Casciani v. Town of Webster and Nesbit*, Hodgson Russ successfully defended a municipality in a federal lawsuit brought by a high-net-worth individual claiming his civil rights had been violated by an ordinance prohibiting him from landing his helicopter at his residence. Even though the plaintiff submitted over two dozen affidavits and three expert reports, the district court granted the municipality summary judgment and the Second Circuit affirmed.

In *Piccone v. Town of Webster*, Hodgson Russ obtained summary judgment dismissing the complaint on behalf of a municipal defendant against allegations of employment discrimination and harassment based on gender, age, national origin, and ethnicity in violation of the U.S. Constitution's Equal Protection Clause and New York State Human Rights Law. The case turned on extensive e-mail, the content of which the plaintiff alleged was offensive. Hodgson Russ attorney Joshua Feinstein was able to undermine the plaintiff's claim and obtain summary judgment by having her admit that she voluntarily engaged in the e-mail exchanges.

The Appellate Division for the 4th Department unanimously held that the petitioner had no standing to sue in his attempts to challenge a negative declaration issued under the SEQRA by a municipality's Planning Board regarding the demolition and reconstruction of an apartment complex with that city. He did not show the requisite environmental injury that differs from that of the public at large in order to challenge the Planning Board's SEQRA determination. His interest in historic preservation, his interest in photographing the apartment building and his position on the Preservation Board of the municipality were all insufficient to confer standing to sustain the lawsuit. Nor did the petitioner have standing on behalf of the apartment complex tenants. Charles Malcomb and Adam Perry handled this matter on behalf of the property developer.

In the News

Falls City Council Moves Forward with Plans for Centennial Park Project
Niagara Gazette, November 23, 2022

Judge Ends Historic Desegregation Order for Buffalo Firefighters
Buffalo News, February 9, 2019

Judge Praises Delano but Dismisses His Lawsuit
Buffalo News, August 30, 2014

Fifty-Five Hodgson Russ Attorneys Named to *Best Lawyers* 2014
August 28, 2013

Fifty-Four Hodgson Russ Attorneys Named to *Best Lawyers* 2013
August 30, 2012

Lawyer to the Leaders
Buffalo News, February 27, 2012

Adam W. Perry Appointed Chair of City of Buffalo Citizens Planning Council
September 22, 2009

ADAM W. PERRY

Costs Add Up, but Litigators Say Experts, Trial Aids Vital
Buffalo Law Journal, April 14, 2008

Hodgson Russ Partner Adam W. Perry Named a Commissioner of the NFTA
January 31, 2008

Press Releases

55 Hodgson Russ LLP Attorneys Named to 2023 *Upstate New York Super Lawyers* List
August 23, 2023

83 Hodgson Russ LLP Attorneys Ranked in 2024 Edition of *Best Lawyers in America*
August 17, 2023

Fifty-Nine Hodgson Russ Attorneys Ranked in 2022 Edition of *Upstate New York Super Lawyers*
Hodgson Russ Press Release, August 23, 2022

71 Hodgson Russ Attorneys Ranked in 2023 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2022

Fifty-Four Hodgson Russ Attorneys Ranked in 2021 Edition of *Upstate New York Super Lawyers*
Hodgson Russ Press Release, August 20, 2021

55 Hodgson Russ Attorneys Ranked in 2022 Edition of *Best Lawyers in America*
Hodgson Russ Press Release, August 19, 2021

Sixty-Two Hodgson Russ Attorneys Named to 2020 *Upstate New York Super Lawyers*
Hodgson Russ Press Release, September 8, 2020

55 Hodgson Russ Attorneys Ranked in 2021 *Best Lawyers in America*
Hodgson Russ Press Release, August 20, 2020

52 Hodgson Russ Attorneys Named to Various *Best Lawyers* Listings
Hodgson Russ Press Release, August 20, 2019

Sixty Hodgson Russ Attorneys Named to 2019 *Upstate New York Super Lawyers*
Press Release, August 12, 2019

Publications

New York State Liquor Authority Moves to Tackle Backlog of Items
Hodgson Russ Wine, Beer & Spirits Practice, November 29, 2023

ADAM W. PERRY

Updates to State Building Codes will Require Local Revisions: Given the Added Workload on Code Enforcement, Municipalities May Wish to Evaluate the Sufficiency of Local Permit Fees

Hodgson Russ Municipal Alert, November 28, 2022

Mandating Low Carbon Concrete to Achieve Embodied Carbon Reductions in the Building Sector

Hodgson Russ Municipal Alert, May 16, 2022

Budget Bill Amends Assessment Challenges to Renewable Energy Projects Under Real Property Tax Law § 575-b

Hodgson Russ Renewable Energy & Municipal Alert, May 3, 2022

New York State Legislature Amends Open Meetings Law to Allow for Videoconferencing

Hodgson Russ Municipal and Education Alert, April 19, 2022

New York State Legislative Developments For Tax-Exempt Organizations/Nonprofits

Hodgson Russ Tax-Exempt Organizations Alert, December 15, 2021

Recent Developments For Tax-Exempt Organizations/Nonprofits

Hodgson Russ Tax-Exempt Organizations Alert, November 10, 2021

Open Meetings Law Amendment Requires Making Materials Available At Least 24 Hours before Meetings

Hodgson Russ Municipal Alert, October 29, 2021

New Nonprofit Filing Requirements with NYS Department of State

Hodgson Russ Tax-Exempt Organizations Alert, May 14, 2021

Recent COVID-19 Developments for Tax-Exempt Organizations/Nonprofits

Hodgson Russ Tax-Exempt Organizations Alert, May 13, 2021

Community & Pro Bono

- Board member, New York State Cannabis Control Board
- Chair of Aviation Committee and member, board of commissioners, Niagara Frontier Transportation Authority. The only New York transit authority with bus and rail lines, two international airports, a large police force, and more than \$1 billion in assets
- Chair, Citizens Planning Council of the City of Buffalo Capital Budget
- U.S. legal counsel, Buffalo and Fort Erie Public Bridge Authority (the Peace Bridge Authority)
- U.S. legal counsel, Niagara Falls Bridge Commission (a bi-national transportation instrumentality with three vehicle crossings connecting the United States and Canada)
- Past Vice-chair, board of directors, New York Council for the Humanities (New York's official National Endowment for the Humanities affiliate) (2010-2018)
- Counsel to and former member of the board of directors, Buffalo Urban League

ADAM W. PERRY

- Former member, board of trustees, Erie Community College (a SUNY affiliate) (1998-2007)
- General Counsel, Community Action Organization of Western New York, Inc.
- Life member, National Association for the Advancement of Colored People (NAACP)
- Past President, Mayor Brown's Fund to Advance Buffalo (2008)
- Board of directors, Buffalo Police Foundation
- Past Chair, Erie County Advisory Committee on Reapportionment (2011)
- Former board member, Planned Parenthood of Western New York