
NEW YORK STATE
REGISTER

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 45 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which full text was included in the Notice or posted on a state web site, or which is a consensus rule or a rule defined in SAPA §102(2)(a)(ii); or for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making or a Notice of Emergency Adoption and Proposed Rule Making for which a summary of the text of the rule was included in the Notice and the full text of which was not published on a state web site; and for 30 days after publication of a Notice of Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 45 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

- the 60-day period expires on Sunday, March 4, 2007
- the 45-day period expires on Saturday, February 17, 2007
- the 30-day period expires on Friday, February 2, 2007

ADJUDICATORY REPORTS

Department of State
Administrative Adjudication Plan Biennial Report
for December 1, 2004 to December 1, 2006
[pursuant to Executive Order No. 3 (9 NYCRR
Section 5.3) and Executive Order No. 131
(9 NYCRR Section 4.131)]
December 1, 2006

The Office of Administrative Hearings (OAH) conducts quasi-judicial administrative hearings for 20 of the occupations regulated by the Department of State (DOS). All adjudications are governed by applicable licensing statutes; the State Administrative Procedure Act; Part 400 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); Executive Order No. 3 (9 NYCRR Section 5.3) and Executive Order No. 131 (9 NYCRR Section 4.131); and the Administrative Adjudication Plan submitted by the Department in compliance with these Executive Orders.

Provisions of 19 NYCRR Part 400 create the OAH as an independent unit in New York City and Albany that is physically separate from the offices of other Department of State divisions that appear as parties in adjudicatory matters before the OAH; govern communications with and discipline of administrative law judges (ALJs); and establish the procedure under which administrative law judges issue final decisions. Effective on July 24, 1996, ALJs were given authority by Part 400 to issue final decisions without prior review or approval by the Secretary of State or his/her designee. These final decisions are appealable to the Secretary of State by any party to a proceeding (applicant, licensee or a division of the Department of State). Judicial review of a decision of the Secretary of State to the New York State Supreme Court is available under provisions of Article 78 of the CPLR. ALJs report to the Secretary of State or his/her designee.

Attorneys assigned as prosecutors for the Department are located in Albany and report to the General Counsel. Review of the merits of a case and the decision whether to prosecute takes place in a consultative process that involves attorneys and program staff. Prosecuting attorneys and ALJs of the Department of State are forbidden by regulation to engage in ex parte communications about the merits of a matter being adjudicated.

The Department has simplified its procedure for the adjudication of less complex cases. In such cases, non-lawyer supervisory employees represent the Division of Licensing Services before the OAH. Licensees usually represent themselves in this process. This process quickly and fairly disposes of many cases that involve minor violations of the licensing laws.

During the reporting period, the OAH held 2075 hearings and issued 1926 decisions. The decisions in these hearings resulted in seven Article 78 proceedings. Four of these proceedings were decided

in the Department's favor. The other three proceedings are still pending and have not been decided.

Office of Temporary and Disability Assistance
Office of Legal Affairs
Office of Administrative Hearings

Pursuant to Executive Order No. 131 issued by Governor Mario Cuomo on December 4, 1989, each agency is required to publish a report that sets forth the steps taken by the agency to comply with the Order. The report for the period ending November 30, 1990, detailed the initial steps taken to comply with the Order, including changes in organizational structure, Office regulations and practices, and in hearing procedures. Those provisions remain in effect.

The Order (Section V) requires that the report include "statistics on Article 78 proceedings brought against the agency, including the outcome of such proceedings and the reasons for any reversal or modification of an agency determination." The following statistics on Article 78 proceedings are from the period commencing December 1, 2004 through November 30, 2006.

Cases opened:	117
Cases closed:	40
The closed cases resulted in the following outcomes:	
Stipulation of settlement:	19
Decisions favorable to the Office:	12
Withdrawn or abandoned by the petitioner:	5
Decisions adverse to the Office:	4
Reasons for adverse decisions:	
Mistake of law as applied to facts:	1
Record deficient:	3