

# ADJUDICATORY REPORTS

---

## Department of State

Administrative Adjudication Plan Biennial Report  
for December 1, 2006 to December 1, 2008

[pursuant to Executive Order No. 9 of Governor David A.  
Paterson (9 NYCRR Section 7.9),

Executive Order No. 5 of Governor Eliot Spitzer (9 NYCRR  
Section 6.5),

Executive Order No. 3 of Governor George E. Pataki (9  
NYCRR Section 5.3),

and Executive Order No. 131 of Governor Mario M. Cuomo  
(9 NYCRR Section 4.131)]

December 1, 2008

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; the Executive Orders of Governors Paterson, Spitzer, Pataki, and Cuomo noted above; 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 New York City 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 4258 hearings and issued 3661 decisions. The decisions in these hearings resulted in seven Article 78 proceedings. One of these proceedings was decided in the Department's favor. Of the other six proceedings, four are still pending and have not been decided, one has been dismissed, and one has been withdrawn.

