

Guide to Statutes and Rules Relating to Hearings and Appeals

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New York State
DEPARTMENT OF STATE
Division of Licensing Services
<https://dos.ny.gov>

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Introduction

The Department of State's Office of Administrative Hearings is responsible for conducting administrative hearings to determine where discipline of licensees regulated by the department is warranted. This Guide to Statutes and Rules Relating to Hearings provides information to those who are respondents in a hearing and their attorneys. Included in the Guide are excerpts from the State Administrative Procedure Act and the Rules of the Department of State (19 NYCRR), and a summary of those rules.

Additional information may be obtained by writing to:

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Summary of Hearing Rules of Procedure

The Department of State's Rules of Procedure for Adjudicatory Proceedings are set forth in Part 400 of 19 NYCRR. The following is a summary of such rules:

1. All hearings will be conducted in accordance with the State Administrative Procedure Act. Pertinent provisions are as follows:
 - a) All hearings will be commenced on reasonable notice (generally 10 days under our statutes). The notice will apprise the respondent of matters asserted and of any statutes or rules involved. Parties may present written and/or oral argument on any issue.
 - b) The department will make a record of all hearing proceedings including a transcript of the hearing and shall furnish a copy of the record or any part thereof, other than the transcript, to the respondent at cost. Transcripts may be ordered from the private hearing reporter. All parties have the usual rights of parties in civil proceedings, i.e., to examine and cross-examine witnesses, make objections, etc.
 - c) The administrative law judge will preside over the hearing in a fair and impartial manner. Generally, an administrative law judge has the authority of any judge in a civil matter and may order discovery and depositions. The judge rules on the admissibility of evidence and is not bound by strict rules of evidence.
 - d) The administrative law judge or other person assigned to render a decision does so by including findings of fact and conclusions of law or reasons for his/her decision. The judge will not consult with any party about his/her decision except upon notice to all parties.
2. The rules require a decision to be made in the format of findings of fact and conclusions of law. Parties may propose findings of fact and the decision will contain a ruling on such findings.
3. Subpoenas compelling attendance of witnesses or documents may be issued by the administrative law judge or any attorney duly admitted to practice in the State of New York.
4. Motions may be made to dismiss the complaint upon failure of proof.
5. Every person is entitled to representation and someone who is not a lawyer may represent a respondent without compensation. Every representative must file a notice in accordance with Section 166 of the Executive Law on forms to be provided by the department.
6. A maximum of two adjournments of a hearing may be granted and requests must be made by affidavit addressed to the administrative law judge and must be received no later than three working days prior to the date of the hearing at the judge's regular office.
7. All adjudicatory proceedings must be finally disposed of within 150 days of the date of the hearing unless the hearing is adjourned by mutual consent or by request of the respondent; or the time is extended by mutual consent or the Secretary of State or administrative law judge makes a written declaration of necessity to extend citing his/her reasons therefor.

STATE ADMINISTRATIVE PROCEDURE ACT DEFINITIONS

Section

102 Definitions

§ 102. Definitions.

3. "Adjudicatory proceeding" means any activity which is not a rule making proceeding or an employee disciplinary action before an agency, except an administrative tribunal created by statute to hear or determine allegations of traffic infractions which may also be heard in a court of appropriate jurisdiction, in which a determination of the legal rights, duties or privileges of named parties thereto is required by law to be made only on a record and after an opportunity for a hearing.
4. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law.
5. "Licensing" includes any agency activity respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, recall, cancellation or amendment of a license.
6. "Person" means any individual, partnership, corporation, association, or public or private organization of any character other than an agency engaged in the particular rule making, declaratory ruling, or adjudication.
7. "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

ARTICLE 3 ADJUDICATORY PROCEEDINGS

Section

301. Hearings
302. Record
303. Presiding officers
304. Powers of presiding officers
305. Disclosure
306. Evidence
307. Decisions, determinations and orders

§ 301. Hearings.

1. In an adjudicatory proceeding, all parties shall be afforded an opportunity for hearing within reasonable time.
2. All parties shall be given reasonable notice of such hearing, which notice shall include (a) a statement of the time, place, and nature of the hearing; (b) a statement of the legal authority and jurisdiction under which the hearing is to be held; (c) a reference to the particular sections of the statutes and rules involved, where possible; (d) a short and plain statement of matters asserted; and (e) a statement that interpreter services shall be made available to deaf persons, at no charge, pursuant to this section. Upon application of any party, a more definite and detailed statement shall be furnished whenever the agency finds that the statement is not sufficiently definite or not sufficiently detailed. The finding of the agency as to the

sufficiency of definiteness or detail of the statement or its failure or refusal to furnish a more definite or detailed statement shall not be subject to judicial review. Any statement furnished shall be deemed, in all respects, to be a part of the notice of hearing.

3. Agencies shall adopt rules governing the procedures on adjudicatory proceedings and appeals, in accordance with provisions of article two of this chapter, and shall prepare a summary of such procedures in plain language. Agencies shall make such summaries available to the public upon request, and a copy of such summary shall be provided to any party cited by the agency for violation of the laws, rules or orders enforced by the agency.

4. All parties shall be afforded an opportunity to present written argument on issues of law and an opportunity to present evidence and such argument on issues of fact, provided however that nothing contained herein shall be construed to prohibit an agency from allowing parties to present oral argument within a reasonable time. In fixing the time and place for hearings and oral argument, due regard shall be had for the convenience of the parties.

5. Unless precluded by statute, disposition may be made of any adjudicatory proceeding by stipulation, agreed settlement, consent order, default, or other informal method.

6. Whenever any deaf person is a party to an adjudicatory proceeding before an agency, or a witness therein, such agency in all instances shall appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to, and the testimony of, such deaf person. The agency conducting the adjudicatory proceeding shall determine a reasonable fee for all such interpreting services which shall be a charge upon the agency.

§ 302. Record.

1. The record in an adjudicatory proceeding shall include: (a) all notices, pleadings, motions, intermediate rulings; (b) evidence presented; (c) a statement of matters officially noticed except matters so obvious that a statement of them would serve no useful purpose; (d) questions and offers of proof, objections thereto, and rulings thereon; (e) proposed findings and exceptions, if any; (f) any findings of fact, conclusions of law or other recommendations made by a presiding officer; and (g) any decision, determination, opinion, order or report rendered.

2. The agency shall make a complete record of all adjudicatory proceedings conducted before it. For this purpose, unless otherwise required by statute, the agency may use whatever means it deems appropriate, including but not limited to the use of stenographic transcriptions or electronic recording devices. Upon request made by any party upon the agency within a reasonable time, but prior to the time for commencement of judicial review, of its giving notice of its decision, determination, opinion or order, the agency shall prepare the record together with any transcript of proceedings within a reasonable time and shall furnish a copy of the record and transcript or any part thereof to any party as he may request. Except when any statute provides otherwise, the agency is authorized to charge not more than its cost for the preparation and furnishing of such record or transcript or any part thereof, or the rate specified in the contract between the agency and a contractor if prepared by a private contractor.

3. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 303. Presiding officers.

Except as otherwise provided by statute, the agency, one or more members of the agency, or one or more hearing officers designated and empowered by the agency to conduct hearings shall be presiding officers. Hearings shall be conducted in an impartial manner. Upon the filing in

good faith by a party of a timely and sufficient affidavit of personal bias or disqualification of a presiding officer, the agency shall determine the matter as part of the record in the case, and its determination shall be a matter subject to judicial review at the conclusion of the adjudicatory proceeding. Whenever a presiding officer is disqualified or it becomes impractical for him to continue the hearing, another presiding officer may be assigned to continue with the case unless it is shown that substantial prejudice to the party will result therefrom.

§ 304. Powers of presiding officers.

Except as otherwise provided by statute, presiding officers are authorized to:

1. Administer oaths and affirmations.

2. Sign and issue subpoenas in the name of the agency, at the request of any party, requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence and said subpoenas shall be regulated by the civil practice law and rules. Nothing herein contained shall affect the authority of an attorney for a party to issue such subpoenas under the provisions of the civil practice law and rules.

3. Provide for the taking of testimony by deposition.

4. Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents.

5. Direct the parties to appear and confer to consider the simplification of the issues by consent of the parties.

6. Recommend to the agency that a stay be granted in accordance with section three hundred four, three hundred six or three hundred seven of the military law.

§ 305. Disclosure.

Each agency having power to conduct adjudicatory proceedings may adopt rules providing for discovery and depositions to the extent and in the manner appropriate to its proceedings.

§ 306. Evidence.

1. Irrelevant or unduly repetitious evidence or cross-examination may be excluded. Except as otherwise provided by statute, the burden of proof shall be on the party who initiated the proceeding. No decision, determination or order shall be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with substantial evidence. Unless otherwise provided by any statute, agencies need not observe the rules of evidence observed by courts, but shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, an agency may, for the purpose of expediting hearings, and when the interests of parties will not be substantially prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

2. All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

3. A party shall have the right of cross-examination.

4. Official notice may be taken of all facts of which judicial notice could be taken and of other facts within the specialized knowledge of the agency. When official notice is taken of a material fact not appearing in the evidence in the record and of which judicial notice could not be taken,

every party shall be given notice thereof and shall on timely request be afforded an opportunity prior to decision to dispute the fact or its materiality.

§ 307. Decisions, determinations and orders.

1. A final decision, determination or order adverse to a party in an adjudicatory proceeding shall be in writing or stated in the record and shall include findings of fact and conclusions of law or reasons for the decision, determination or order. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision, determination or order shall include a ruling upon each proposed finding. A copy of the decision, determination or order shall be delivered or mailed forthwith to each party and to his attorney of record.

2. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in an adjudicatory proceeding shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. Any such agency member (a) may communicate with other members of the agency, and (b) may have the aid and advice of agency staff other than staff which has been or is engaged in the investigative or prosecuting functions in connection with the case under consideration or factually related case.

This subdivision does not apply (a) in determining applications for initial licenses for public utilities or carriers; or (b) to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers.

3. (a) Each agency shall maintain an index by name and subject of all written final decisions, determinations and orders rendered by the agency in adjudicatory proceedings. For purposes of this subdivision, such index shall also include by name and subject all written final decisions, determinations and orders rendered by the agency pursuant to a statute providing any party an opportunity to be heard, other than a rule making. Such index and the text of any such written final decision, determination or order shall be available for public inspection and copying. Each decision, determination and order shall be indexed within sixty days after having been rendered.

(b) An agency may delete from any such index, decision, determination or order any information that, if disclosed, would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of the public officers law and may also delete at the request of any person all references to trade secrets that, if disclosed, would cause substantial injury to the competitive position of such person. Information which would reveal confidential material protected by federal or state statute, shall be deleted from any such index, decision, determination or order.

ARTICLE 4 LICENSES

Section

401. Licenses

§ 401. Licenses.

1. When licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning adjudicatory proceedings apply.

For purposes of this act, statutes providing an opportunity for hearing shall be deemed to include statutes providing an opportunity to be heard.

2. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court, provided that this subdivision shall not affect any valid agency action then in effect summarily suspending such license.

3. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

4. When the hearing seeks the revocation of a license or permit previously granted by the agency, either party shall, upon demand and at least seven days prior to the hearing, disclose the evidence that the party intends to introduce at the hearing, including documentary evidence and identification of witnesses, provided, however, the provisions of this subdivision shall not be deemed to require the disclosure of information or material otherwise protected by law from disclosure, including information and material protected because of privilege or confidentiality. If, after such disclosure, a party determines to rely upon other witnesses or information, the party shall, as soon as practicable, supplement its disclosure by providing the names of such witnesses or the additional documents.

ARTICLE 5 REPRESENTATION

Section

501. Representation

§ 501. Representation.

Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party or person shall be accorded the right to appear in person or by or with counsel. Nothing herein shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before any agency.

RULES AND REGULATIONS

TITLE 19 NYCRR

HEARING

PART 400

Section

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400.4 Commencement of disciplinary proceedings
400.5 Subpoenas
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§ 400.1 Intent and purpose.

The Secretary of State has authority under article 3 of the State Administrative Procedure Act to provide for adjudicatory proceedings and appeals pertaining to matters within the secretary's statutory jurisdiction. It is the intent and purpose of these regulations to afford all those appearing in any hearing subject to this Part due process of law and an opportunity to be heard, while at the same time ensuring protection of the public health, safety and general welfare.

§ 400.2 Office of Administrative Hearings.

(a) There is hereby established within the Department of State an Office of Administrative Hearings which shall conduct all adjudicatory proceedings which devolve upon the Secretary of State by requirement of statute. All adjudicatory proceedings shall be conducted by the Office of Administrative Hearings through the service of administrative law judges who will have all the power and authority of presiding officers or hearing officers as defined by the State Administrative Procedure Act (SAPA), and other pertinent statutes, and these regulations.

(b) All administrative law judges shall be licensed to practice law and shall not serve in any other capacity within the Department of State.

(c) For administrative and personnel purposes the administrative law judges shall report directly to the Secretary of State or the Secretary of State's designee.

(d) The fact that an administrative law judge's rulings, decisions or other actions favor or disfavor the Department of State or any other party shall not be considered in establishing the administrative law judge's salary, promotion, benefits, working conditions, case assignments or opportunities for employment or promotion, and shall not be the cause of any disciplinary proceedings, removal, reassignment, reclassification, or relocation. There shall not be established any quotas or similar expectations for any administrative law judge that relate in any way to whether the administrative law judge's rulings, decisions or other actions favor or disfavor the Department of State. The work of the administrative law judge shall be evaluated only on the following general areas of performance: competence, objectivity, fairness, productivity, diligence and temperament.

(e) In any pending adjudicatory proceeding, the administrative law judge may not be ordered or otherwise directed to make any finding of fact, to reach any conclusion of law, or to make or recommend any specific disposition of a charge, allegation, question or issue.

(f) Unless otherwise authorized by law, an administrative law judge shall not communicate in connection with any issue that relates in any way to the merits of an adjudicatory proceeding pending before the administrative law judge with any person except upon notice and opportunity for all parties to participate, except that an administrative law judge may consult on questions of law and ministerial matters with other administrative law judges and support staff of the office, provided that such other administrative law judges or support staff have not been engaged in investigative or prosecutorial functions in connection with the adjudicatory proceeding under consideration or a factually related adjudicatory proceeding or would not be disqualified pursuant to subdivision (g) of this section.

(g) An administrative law judge shall not participate in any proceeding to which he or she is a party; in which he or she has been attorney, counsel or representative; in which he or she is interested; or if he or she is related

by consanguinity or affinity to any party to the controversy. An administrative law judge shall recuse him or herself from any case in which he or she believes that there is, or there may be perceived to be, a conflict of interest.

(h) Matters shall be referred by other divisions of the Department of State to the Office of Administrative Hearings for hearing.

(i) The administrative law judge assigned shall set the location and time at which a hearing, and any adjournments or continuations thereof, will be held. The Office of Administrative Hearings shall prepare the notice of hearing and transmit it to the person assigned to litigate the matter for proper service. Notices of adjournment or continuation shall be transmitted directly to the parties by the Office of Administrative Hearings.

(j) After the hearing the administrative law judge shall issue a decision based on findings of fact and conclusions of law. Such decision shall be final and binding when issued unless an appeal is taken pursuant to subdivision (k) of this section.

(k) Any of the parties may appeal the decision or the grant or denial of an interim order of suspension to the Secretary of State within 30 calendar days of receipt. Such an appeal shall be made by filing with the Secretary of State, and serving on the other party or parties, a written memorandum stating the appellant's arguments and setting forth specifically the questions of procedure, fact, law or policy to which exceptions are taken, identifying that part of the administrative law judge's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for exceptions. A party upon whom an adverse party has served an appeal may file and serve a memorandum in opposition and cross-appeal within 30 calendar days after such service. A response to a cross-appeal may be filed and served within 15 calendar days after service of the cross-appeal. The failure of any party to respond shall not be deemed a waiver or admission. The record on appeal shall consist of the evidentiary exhibits from and transcript of the hearing, and the memorandums of appeal, opposition, and cross-appeal. The Secretary of State or his or her designee may, in his or her discretion, stay the effective date of the decision, and shall, based solely on the record on appeal unless he or she directs in his or her sole discretion that there be oral argument, either confirm the decision in writing, make a written, superseding decision including a statement as to why he or she has not confirmed the administrative law judge's decision, or remand the matter to the administrative judge for additional proceedings.

(l) Following the administrative law judge's decision, and pending the filing of an appeal therefrom, any party may immediately apply to the secretary or the secretary's designee for a stay pending determination of the appeal. The application for a stay shall be in writing and based upon evidence contained in the record and shall be served on opposing parties who shall have the opportunity to rebut the application in writing within two business days of receipt. The secretary or the secretary's designee shall forthwith rule on the application, and may grant the stay and reserve decision on the appeal; or may deny the stay and either reach a decision on the merits of the appeal or reserve such decision.

§ 400.3 Conduct of adjudicatory proceedings.

All adjudicatory proceedings will be conducted under the rules enunciated by articles 3, 4 and 5 of the State Administrative Procedure Act, the definitions of the State Administrative Procedure Act pertaining thereto, any other licensing statute under the jurisdiction of the Secretary of State, the Civil Practice Law and Rules as the same may be reasonably be applied and the Constitution of the State of New York as these statutes and Constitution are now stated or may be amended in the future. In all instances, due process of law will be observed. An administrative law judge shall have all the authority which the Secretary of State may grant pursuant to the State Administrative Procedure Act or any other pertinent stat-

ute, including, but without limitation, the authority to direct disclosure under section 305 of the State Administrative Procedure Act.

§ 400.4 Commencement of disciplinary proceedings.

(a) Every adjudicatory proceeding which may result in a determination to revoke or suspend a license or to fine or reprimand a licensee will be commenced by the service of a notice of hearing together with a statement of charges (also known as a complaint), which shall consist of plain and concise statement which shall sufficiently give the administrative law judge and the respondent notice of the alleged misconduct of incompetence. Notice of hearing and statement of charges (or complaint) shall be communicated in any manner permitted by the applicable regulatory statute or the Civil Practice Law and Rules. Respondent may, at his option, serve an answer denying such charges and interposing affirmative defenses, if any. Absent an answer, all charges are deemed denied and all rights are reserved.

(b) The Department of State shall, before making a final determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the Civil Practice Law and Rules. If the applicant is a real estate salesman or has applied to become a salesman, the department shall also notify the broker with whom such salesman is associated, or with whom such salesman or applicant is about to become associated, of such proposed denial. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within 35 days after receipt of such notification, then the notification of denial shall become the final determination of the department. Upon receipt of such demand, an adjudicatory proceeding will be commenced in the manner set forth in subdivision (a) of this section, except that the reasons for denial will be set forth in the stead of charges.

§ 400.5 Subpoenas.

Subpoenas may be issued by the administrative law judge or any attorney for a party who has been duly admitted to the practice of law in the State of New York. Subpoenas shall be served in any manner permitted by the Civil Practice Law and Rules unless otherwise provided by applicable statutes administered by this department.

§ 400.6 Motions.

(a) A motion to dismiss the complaint or statement of charges for failure of proof may be made at the conclusion of the direct case presented by the complaining division of the Department of State. The administrative law judge may make a determination:

- (1) granting the motion;
- (2) denying the motion and continuing the hearing; or
- (3) reserving decision on the motion and continuing the hearing.

(b) A denial of a motion made under this section is not a final disposition and a right to appeal to the Secretary of State or to commence a proceeding under article 78 of the Civil Practice Law and Rules shall not accrue until a final decision on the merits is rendered.

§ 400.7 Affidavits.

When a verified statement is required or deemed desirable by any party, it shall be sufficient for the deponent to subscribe a statement at the end thereof that the “foregoing statement is affirmed under penalties of per-

jury.” A statement verified before a notary public will be equally acceptable.

§ 400.8 Evidence and proof.

The strict rules of evidence do not apply with respect to administrative adjudicatory proceedings.

§ 400.9 Service of rules.

Every notice of hearing served shall be served with a copy of these rules, a copy of articles 3, 4 and 5 of the State Administrative Procedure Act and relevant definitions under section 102 of the State Administrative Procedure Act. A summary of these rules will be prepared and made available to the public on request and served with a notice of hearing on any respondent.

§ 400.10 Representation.

Any person compelled to appear in person or who voluntarily appears before the agency shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before the agency, every party or person shall be accorded the right to appear in person or by or with counsel. Nothing in this section shall be construed either to grant or to deny to any person who is not a lawyer the right to appear for or represent others before the agency. In accordance with section 166 of the Executive Law, any such representative will file a notice of appearance with the administrative law judge on forms provided by the Department of State and state whether a fee is being paid therefor.

§ 400.11 Adjournments.

(a) Adjournments of adjudicatory hearings will be granted only for good cause, and no party shall be granted more than two adjournments.

(b) Requests for adjournment must be made by written affidavit addressed to the presiding officer, and must be received at the office of the Department of State in which the presiding officer maintains his regular office no later than three business days prior to the scheduled date of hearing. The affidavit must contain sufficient details to explain the reason for the request so as to enable the presiding officer to rule thereon.

§ 400.12 Proposed findings of fact.

Any party may submit proposed findings of fact within time limitations set by the administrative law judge. Such findings of fact shall be captioned, entitled as such, shall be consecutively numbered and shall be typed legibly on plain, white bond, standard weight paper, 8½ × 11 inches in size. Such proposed findings of fact shall recite basic facts and not evidentiary facts and shall not be conclusions of law. A basic fact would be “John Jones visited Syracuse,” and not “John Jones testified that he visited Syracuse,” which is an evidentiary fact. A conclusion of law would be “John Jones has demonstrated untrustworthiness within the meaning of section 441-c of the Real Property Law.” In general, it is expected that the complaint will allege the basic facts which would otherwise be contained in a statement of proposed findings of fact. In accordance with section 301(1) of the State Administrative Procedure Act, the person assigned to render a decision will rule on each finding of fact. Such decision maker will do so by marking the instrument setting forth the proposed findings of fact a part of the decision and noting in the margin thereof the ruling, i.e., “Found,” “Not Found,” “Irrelevant,” “Evidentiary,” “Conclusion of Law,” which rulings may be abbreviated meaningfully. The body of the decision will contain such findings of fact as the decision maker deems relevant, but need not be expressed in the same language as presented in the proposed findings.

§ 400.13 Time periods.

(a) Except by consent of the parties or otherwise determined under subdivision (c) of this section, every adjudicatory proceeding under the jurisdiction of the Secretary of State shall be brought to completion within 150 days of the date of the hearing specified in the service of the notice of hearing. An adjournment or continuance granted at the request of respondent or by mutual consent of the parties will extend the period of 150 days in which the Secretary of State must act by the length of time the adjournment or continuance is granted.

(b) With respect to applications for a license or a commission, the Secretary of State shall grant or deny such application within 150 days of the date of the submission of a completed application. If the application is denied, the Secretary of State shall state the reasons for denial in writing by letter to the applicant and offer the applicant an opportunity for a hearing by demanding the same in writing within 30 days of the date of the letter of denial. If a hearing is demanded, a decision shall be issued within 150 days of the receipt of the demand.

(c) The Secretary of State or an administrative law judge may, prior to the expiration period, extend the time periods established by subdivision (a) of this section by making a determination in writing that the adjudicatory proceeding cannot be completed within 150 days and stating sufficient reasons therefor. Such an extension shall be for no longer than an additional 120 days. Such determination shall be promptly mailed to all parties.

(d) A failure of the Secretary of State to observe the time limitations established by this section, or the failure of an administrative law judge to make the determination required by subdivision (c) of this section shall be reviewable under article 78 of the Civil Practice Law and Rules in a proceeding in the nature of mandamus.