

CHAPTER 112

OCCUPATIONAL SAFETY AND HEALTH REVIEW
COMMISSION RULES OF PROCEDURE

Authority

N.J.S.A. 34:1-20, 34:1A-3(e), 34:6A-32 and 34:6A-42(c).

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Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, expires on August 27, 1998.

Chapter Historical Note

Chapter 112, Occupational Safety and Health Review Commission Rules of Procedure, was adopted as R.1988 d.438, effective September 6, 1988. See: 20 N.J.R. 1165(a), 20 N.J.R. 2301(a). Pursuant to Executive Order No. 66(1978), Chapter 112 was readopted as R.1993 d.474. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

12:112-1.1	Purpose
12:112-1.2	Scope
12:112-1.3	Validity
12:112-1.4	Definitions
12:112-1.5	Quorum
12:112-1.6	Voting
12:112-1.7	Computation of time
12:112-1.8	Extension of time
12:112-1.9	Address of record
12:112-1.10	Service and notice
12:112-1.11	Filing
12:112-1.12	Consolidation
12:112-1.13	Severance

SUBCHAPTER 2. PARTICIPATION

12:112-2.1	Non-party participation
12:112-2.2	Party and non-party representatives
12:112-2.3	Appearances of parties and non-parties
12:112-2.4	Withdrawals of parties and non-parties

SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1	Title of cases
12:112-3.2	Signing of motions
12:112-3.3	Notices of contest
12:112-3.4	Employer contest
12:112-3.5	Complaints
12:112-3.6	Content of the answer
12:112-3.7	Statement of position
12:112-3.8	Motions without conference consideration
12:112-3.9	Motions and request
12:112-3.10	Failure to obey rules

SUBCHAPTER 4. PRE-HEARING CONFERENCE

12:112-4.1	Discussion among the parties
12:112-4.2	Pre-hearing conference

SUBCHAPTER 5. HEARINGS

12:112-5.1	Notice of hearing
12:112-5.2	Issues in dispute
12:112-5.3	Postponement of hearing
12:112-5.4	Failure to appear
12:112-5.5	Transcript of testimony
12:112-5.6	Duties and powers of Review Commission
12:112-5.7	Disqualification of member of Review Commission
12:112-5.8	Examination of witnesses
12:112-5.9	Objections
12:112-5.10	Filing of briefs

SUBCHAPTER 6. POST HEARING PROCEDURES

12:112-6.1	Decision of the Review Commission
12:112-6.2	Stay of final order

SUBCHAPTER 7. MISCELLANEOUS ISSUES

12:112-7.1	Settlement policy
12:112-7.2	Filing of settlement
12:112-7.3	Withdrawal
12:112-7.4	Expedited proceeding
12:112-7.5	Standards of conduct
12:112-7.6	Ex parte communication

SUBCHAPTER 1. GENERAL PROVISIONS

12:112-1.1 Purpose

The purpose of this chapter is to set forth the hearing procedures of the New Jersey Public Employees Occupational Safety and Health Review Commission.

12:112-1.2 Scope

This chapter shall govern all proceedings before the Review Commission.

12:112-1.3 Validity

Should any section, paragraph, sentence or word of this chapter be declared for any reason to be invalid, such decision shall not affect the remaining portions of this chapter.

12:112-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the New Jersey Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq.

“Agency” means:

1. An executive department, or an employing unit or authority of the executive branch of the State, or any department, division bureau, board, council, employer or authority of the State; except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, employer or authority of any county or municipality, or any school district or special purpose district created pursuant to law.

“Commissioner” means the Commissioner of the New Jersey Department of Labor or his or her designee.

“Day” means a calendar day.

“Employee” means any public employee, any person holding a position by appointment or employment in the service of an “employer” as that term is used in the Act and shall include any individual whose work has ceased as a consequence of, or in connection with, any administrative or judicial action instituted under this Act; provided, however, that elected officials, members of boards and commissions and managerial executives as defined in the New Jersey Employer–Employee Relations Act, N.J.S.A. 34:13A-1 et seq., shall be excluded from the coverage of the Act.

“Employer” means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of:

1. The State, or any department, division, bureau, board, council, agency or authority of the State except any bi-state agency; or

2. Any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

“Non-party” means a person or entity who participates in the Review Commission proceeding as a witness or in amicus curiae capacity.

“Order to comply” means a written directive issued by the Commissioner to an employer as set forth in N.J.S.A. 34:6A-41.

“Party” means either the complainant who is the Commissioner or the respondent who is the employer in the Review Commission proceeding.

“Proceeding” means any proceeding before the Review Commission.

“Review Commission” means the Occupational Safety and Health Review Commission created by N.J.S.A. 34:6A-42.

“Secretary” means the Executive Secretary of the Review Commission.

“Working day” means any Monday through Friday but shall not include Saturday, Sunday, any Federal holiday or any State holiday. In computing 15 working days, the day of receipt of any notice shall not be included.

“Workplace” means a place where public employees are assigned to work or customarily suffered or permitted to work.

12:112-1.5 Quorum

(a) No official business of the Review Commission shall be conducted without a quorum.

(b) A quorum shall consist of at least two of the three members of the Review Commission.

12:112-1.6 Voting

(a) Members of the Review Commission shall be present in order to vote except as provided in (b) below.

(b) A member who has been absent with good cause may vote by letter ballot provided he or she certifies that he or she has read the transcript, in the case of a hearing, or is otherwise familiar with the issue over which the vote was cast.

(c) Official action of the Review Commission shall be taken only when at least two members vote in a similar fashion. In the event that at least two members do not vote in a similar fashion, the order of the Commissioner shall stand.

12:112-1.7 Computation of time

(a) In computing any period of time prescribed or allowed in this chapter, the day from which the designated period begins to run shall not be included.

(b) The last day of the period so computed shall be included unless it is a Saturday, Sunday, Federal holiday, or State holiday in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal holiday, or State holiday.

(c) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, Federal holidays and State holidays shall be excluded in the computation.

12:112-1.8 Extension of time

Requests for extensions of time for the filing of any document shall be in writing, addressed to the Secretary of the Review Commission and received in advance of the date on which the document is due to be filed. Extensions of time shall be honored for good cause.

12:112-1.9 Address of record

(a) The initial document filed by any party or non-party shall contain his or her name, address, and telephone number. Any change in such information shall be communicated promptly in writing to the Review Commission, and to all other parties and non-parties.

(b) A party or non-party who fails to furnish such information shall be deemed to have waived his or her right to notice and service under this chapter.

12:112-1.10 Service and notice

(a) At the time of filing documents, a copy shall be served by the filing party on every other party or non-party.

(b) Service upon a party or non-party who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the document.

(e) The employer shall, immediately upon receipt of notice of the docketing of the notice of contest, post, where the written order to comply is required to be posted, a copy of the notice of contest. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

This employer has been cited by the Commissioner of Labor for violation of the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq. The written order to comply has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(f) A copy of the notice of the hearing to be held before the Review Commission shall be posted by the employer at or near the place where the written order to comply is required to be posted.

(g) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

12:112-1.11 Filing

(a) Prior to the assignment of a case to the Review Commission, all papers shall be filed with the Secretary of the Review Commission at CN 110, Trenton, New Jersey 08625-0110. Subsequent to the assignment of the case to the Review Commission, and before the issuance of its decision, all papers shall be filed with the Review Commission at the address given in the notice informing of such assignment. Subsequent to the issuance of the decision of the Review Commission, all papers shall be filed with the Secretary.

(b) Unless otherwise ordered, all filing shall be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

12:112-1.12 Consolidation

Cases may be consolidated on the motion of any party or on the Review Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

12:112-1.13 Severance

Upon its own motion, or upon motion of any party, the Review Commission may, for good cause, order any proceeding severed with respect to some or all issues or parties.

SUBCHAPTER 2. PARTICIPATION

12:112-2.1 Non-party participation

(a) A petition for a non-party to participate as a witness or in an amicus curiae capacity shall be filed at least 10 days before the commencement of the hearing before the Review Commission, except as provided in (c) below.

(b) The petition shall set forth the interest of the non-party in the proceeding and show that the participation of the non-party will assist in the determination of the issues in question, and that the participation of the non-party will not unnecessarily delay the proceeding.

(c) The Review Commission may grant a petition for participation of a non-party to such an extent and upon such terms as the Review Commission determines.

12:112-2.2 Party and non-party representatives

(a) Any party or non-party may appear in person or through a representative.

(b) A representative of a party or non-party shall be deemed to control all matters respecting the interest of such party or non-party in the proceeding.

(c) Nothing contained herein shall be construed to require any representative to be an attorney at law.

12:112-2.3 Appearances of parties and non-parties

(a) A representative of a party or non-party shall enter an appearance by signing the first document filed on behalf of the party or non-party in accordance with (b) below, or thereafter by filing an entry of appearance in accordance with (c) below.

(b) If the first document filed on behalf of a party or non-party is signed by a representative, the representative shall be recognized as representing that party or non-party. No separate entry of appearance is necessary.

(c) Where a representative has not previously appeared on behalf of a party or non-party, he or she shall file an entry of appearance with the Secretary. The entry of appearance shall be signed by the representative.

12:112-2.4 Withdrawals of parties and non-parties

(a) Any counsel or representative of record desiring to withdraw his or her appearance shall file a motion with the Review Commission requesting leave therefor, and showing that prior notice of the motion has been given by him or her to his or her client or counsel or representative, as the case may be.

(b) The motion of counsel to withdraw may, in the discretion of the Review Commission, be denied where it is necessary to avoid undue delay or prejudice to the rights of a party.

SUBCHAPTER 3. NOTICES AND MOTIONS

12:112-3.1 Title of cases

(a) Cases initiated by a notice of contest shall be titled:
Commissioner of Labor, Complainant versus
(Name of Contestant), Respondent.

(b) The titles listed in (a) above shall appear at the left upper portion of the initial page of any document filed.

(c) The initial page of any document shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Review Commission.

12:112-3.2 Signing of motions

(a) Motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him or her that he or she is authorized to represent the party on whose behalf the action is filed.

(b) The signature of a representative or party also constitutes a certificate by him or her that he or she has read the motion, or other paper, that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is arranged by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

12:112-3.3 Notices of contest

Within 15 working days after receipt of notification that the employer intends to contest the written order to comply issued under the Act, the Commissioner shall notify the Review Commission of the receipt in writing and shall promptly furnish to the Secretary of the Review Commission the original of any documents or records filed by the employer and copies of all other documents or records relevant to the contest.

12:112-3.4 Employer contest

(a) The Commissioner shall file with the Review Commission a complaint conforming to N.J.A.C. 12:112-3.5 no later than 30 days after the filing of the Commissioner's notice to the Review Commission pursuant to N.J.A.C. 12:112-3.3.

(b) Upon a showing by the employer that it cannot frame a responsive answer to the allegations of the complaint, the employer may move for a more definite statement of the Commissioner's allegations before filing an answer. The motion shall be filed with the Review Commission within 20 days after service of the complaint and shall point out the defects complained of and the details desired. The prompt filing of an amended complaint meeting the objections of the moving party may obviate the necessity for the Review Commission to rule on the motion.

(c) In response to a motion for a more definite statement, the Commissioner may be ordered to file an amended complaint. The order will require the Commissioner to supply such additional information or further particularization of the complaint's allegations as the Review Commission deems necessary.

(d) Except as provided in (d)1 below, the employer shall file with the Review Commission an answer conforming to N.J.A.C. 12:112-3.6 within 30 days after service of the complaint.

1. If a motion to dismiss or a motion for a more definite statement has been filed, the answer shall be filed within 15 days after the motion is denied. If a motion to amend the complaint or a motion for a more definite statement has been granted, or if an amended complaint has been filed voluntarily under N.J.A.C. 12:112-3.5(f) before an answer is served, the answer shall be filed within 30 days after service of the amended complaint.

12:112-3.5 Complaints

(a) The purpose of this section is to insure the early ascertainment of the issues to be litigated. Attachment of the order to comply to the complaint and incorporation of its terms by reference does not comply with this section. The complaint shall contain the following allegations in separately designated paragraphs:

1. The employer is engaged in an activity within the scope of the Act;
2. The employer's name, address of record and type of service performed on the date of the alleged violation; and
3. The time and place of each alleged violation.

(b) Each alleged violation shall be set out in a separate numbered paragraph, which shall contain the paragraphs described below. All allegations that relate to the same alleged violation shall be placed in one paragraph. A paragraph alleging a violation shall in separate subparagraphs clearly and concisely state the following:

1. What provision of the Act, standard, rule or order was violated and the item and order number in which the alleged violation is set forth;
2. The factual basis for each allegation necessary to establish that the standard or rule applies, and what scope or application provision governs its applicability;
3. The factual basis for each allegation necessary to establish that the cited circumstances, conditions, practices or operations violated the cited provision of the Act, standard, rule or order;
4. Where pertinent, the factual basis for the allegation that employees had access to or were exposed to the cited circumstances, conditions, practices or operations;
5. That the employer knew or could have known with the exercise of reasonable diligence of the cited circumstances, conditions, practices or operations;
6. Any allegation that the alleged violation is serious, or that the employer willfully committed the alleged violation;
7. Any allegation that the employer repeatedly committed the alleged violation, each prior written order to comply and item number that serves as the basis for the classification, and the date that each became a final order of the commission; and
8. That the proposed penalty is appropriate, specifying the amount.

(c) With respect to each alleged violation of the general duty clause of the Act, the complaint shall also identify the alleged hazard and specify the feasible means by which the employer could have eliminated or materially reduced the alleged hazard.

(d) With respect to each alleged violation of any standard or rule under which the obligation of the employer is contingent upon the existence of a hazard, the complaint shall also identify the particular hazard created by the circumstances, conditions, practices or operations that are the basis for the alleged violation. With respect to each alleged violation of any standard or rule that does not

specify a means of abatement and does not provide a specific performance criterion, the complaint shall also identify the feasible means by which the employer could have abated the allegedly violative condition.

(e) The complaint shall state the penalty proposed, and allege that the penalty is "appropriate" under the Act. The complaint shall also identify the written order to comply and item number in which the violation was previously cited and the date on which this prior order became a final order of the Review Commission.

(f) A contested written order to comply may be amended once as a matter of course in the complaint before an answer is served if:

1. The amended allegation arises out of the same conduct, occurrence or hazard described in the order;
2. The amendment does not result in incurable harm to the employer in the preparation or presentation of its case; and
3. The complaint clearly identifies the change that is being made in the allegation.

12:112-3.6 Content of the answer

(a) General denials of the Commissioner's allegations shall not be accepted. The answer shall contain in short and plain terms a response to each allegation of the complaint. It shall specifically admit or deny each allegation or, if the employer is without knowledge of the facts, the answer shall so state. A statement of lack of knowledge has the effect of a denial. A failure to respond to an allegation shall be treated as an admission that the allegation is true. Amendment of the answer to correct a failure to respond may be permitted when the presentation of the merits of the case will be subserved thereby and the party who obtained the admission fails to satisfy the Review Commission that the amendment will prejudice him or her in presenting his or her case or defense on the merits.

(b) The employer shall state in its answer in separate numbered paragraphs any matter that may constitute avoidance or an affirmative defense to the extent they are known or with reasonable diligence could have been known, including but not limited to the following:

1. Creation of a greater hazard by complying with a cited standard;
2. Exemption of the Act;
3. Failure to issue a written order to comply with reasonable promptness;
4. Infeasibility of compliance;
5. Invalidity of the cited standard;
6. Preemption of the Act, by a specific standard;

7. Preemption of a standard by a more specifically applicable standard; or

8. Unpreventable employee conduct.

(c) By pleading avoidance or an affirmative defense, the employer does not waive its right to argue that the Commissioner has the burden of persuasion concerning the matter.

12:112-3.7 Statement of position

(a) Any time prior to the commencement of the hearing before the Review Commission, any party or non-party entitled to appear may file a statement of position with respect to any or all issues to be heard.

(b) The Review Commission may order the filing of a statement of position.

12:112-3.8 Motions without conference consideration

A motion shall not be viewed favorably if the subject of the motion has not been first discussed among the parties prior to the conference.

12:112-3.9 Motions and request

(a) A request for an order by the Review Commission shall be made by motion. Motions shall be in writing or, unless the Review Commission directs otherwise, may be made orally during a hearing on the record and shall be included in the transcript. In exigent circumstances in cases pending before the Review Commission, a motion may be made telephonically if it is reduced to writing and filed within three days of the telephone call. A motion shall state with particularity the grounds on which it is based and shall set forth the relief or order sought. A motion shall not be included in another document, such as a brief or a petition for discretionary review, but shall be made in a separate document. Unless a motion is made by all participants, the moving participant shall state in the motion any opposition or lack of opposition of which he or she is aware.

(b) A motion filed in lieu of an answer pursuant to N.J.A.C. 12:112-3.4 shall be filed no later than 20 days after the service of the complaint. Any other motion shall be made as soon as the grounds therefor are known.

(c) Any party upon whom a motion is served shall have 10 days from service of the motion to file a response. A procedural motion may be ruled upon prior to the expiration of the time for response. A party adversely affected by the ruling may within five days of service of the ruling seek reconsideration.

(d) The filing of a motion, including a motion for a postponement, does not automatically postpone a hearing.

12:112-3.10 Failure to obey rules

(a) When any party or non-party has failed to proceed as provided by these rules or as required by the Review Commission, he or she may be declared to be in default either:

1. On the initiative of the Review Commission, after having been afforded an opportunity to show cause why he or she should not be declared to be in default; or
2. On the motion of a party.

(b) After a finding of default, the Review Commission, in its discretion, may enter a decision against the defaulting party or non-party or strike any document not filed in accordance with these rules.

(c) For reasons deemed sufficient by the Review Commission and upon motion expeditiously made, the Review Commission may set aside a sanction imposed under (b) above.

SUBCHAPTER 4. PRE-HEARING CONFERENCE

12:112-4.1 Discussion among the parties

(a) At least two weeks before the hearing, the parties shall meet, or confer by telephone, and discuss the following:

1. Settlement of the case;
2. The narrowing of issues;
3. An agreed statement of issues and facts;
4. Defenses;
5. Witnesses and exhibits; and
6. Any other pertinent matter.

12:112-4.2 Pre-hearing conference

(a) The Review Commission shall schedule and preside over a pre-hearing conference.

(b) At the beginning of the pre-hearing conference, the Review Commission shall enter into the record all agreements reached by the parties as well as defenses raised during discussions.

(c) The parties and the Review Commission then shall attempt to resolve or narrow the remaining issues.

(d) At the conclusion of the pre-hearing conference, the Review Commission shall enter into the record any further agreements reached by the parties.

SUBCHAPTER 5. HEARINGS**12:112-5.1 Notice of hearing**

The Review Commission may schedule a hearing to occur one or more days after the conference if, in its discretion, it determines that such a schedule would result in a more practical or efficient case disposition.

12:112-5.2 Issues in dispute

The Review Commission shall hold a hearing on any issue that remains in dispute at the conclusion of the conference.

12:112-5.3 Postponement of hearing

(a) Postponement of a hearing at the request of a party may be granted by the Review Commission for good cause.

(b) Except in the case of an extreme emergency or in unusual circumstances, no such request shall be considered unless received in writing at least three days in advance of the time set for the hearing.

12:112-5.4 Failure to appear

(a) Subject to the provisions of (b) below, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the right to be served with a copy of the decision of the Review Commission.

(b) The Review Commission, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing shall be rescheduled.

12:112-5.5 Transcript of testimony

A hearing shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Review Commission.

12:112-5.6 Duties and powers of Review Commission

(a) It shall be the duty of the Review Commission to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay.

(b) The Review Commission shall have authority to:

1. Administer oaths and affirmations;
2. Issue authorized subpoenas;
3. Rule upon petitions to revoke subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the needs of justice would be served;

6. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

7. Hold conferences for the settlement or simplification of the issue;

8. Dispose of procedural requests or similar matters, including motions referred to the Review Commission and motions to amend; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of their decision;

9. Make decisions;

10. Call and examine witnesses and to introduce into the record documentary or other evidence;

11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

12. Adjourn the hearing as the needs of justice and good administration require; and

13. Take any other action necessary under the foregoing and authorized by this chapter.

12:112-5.7 Disqualification of member of Review Commission

(a) A member of the Review Commission shall withdraw from a proceeding whenever he or she deems him or herself disqualified.

(b) Any party may request a member of the Review Commission, at a time following his or her designation and before the filing of his or her decision, to withdraw on grounds of personal bias, or conflict of interest, or disqualification, by filing with the Review Commission promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Review Commission, the affidavit referred to in (b) above is filed with due diligence and is sufficient on its face, the other members of the Review Commission shall rule upon the adequacy of the member in question to serve.

(d) If the remaining members of the Review Commission determine that a member is disqualified, they shall remove the member from the proceeding. The other members of the Review Commission shall so rule upon the record stating the grounds for their ruling and shall proceed with the hearing, or if the hearing has closed, the remaining members of the Review Commission shall proceed with the issuance of their decision.

12:112-5.8 Examination of witnesses

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

12:112-5.9 Objections

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Review Commission, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the record. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the participant offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

12:112-5.10 Filing of briefs

(a) A party is entitled to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. Any party or non-party shall be entitled, upon request made before the close of hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Review Commission. In lieu of briefs, the Review Commission may permit or direct the parties or non-parties to file memoranda or statements of authority.

(b) Briefs shall be filed simultaneously on a date established by the Review Commission. A motion for extension of time for filing any brief shall be made at least three days prior to the due date and shall recite that the moving party or non-party has advised the other parties and non-parties of the motion. Reply briefs shall not be allowed except by order of the Review Commission.

(c) Untimely briefs shall not be accepted unless accompanied by a motion setting forth good cause for the delay.

SUBCHAPTER 6. POST HEARING PROCEDURES**12:112-6.1 Decision of the Review Commission**

(a) The Review Commission shall hear and make a decision upon any proceeding instituted before it.

(b) The proceeding shall be deemed completed when all post hearing submissions that have been authorized are submitted within the time limit established by the Review Commission.

(c) If post hearing submissions are not received within the time limit established by the Review Commission, the proceeding shall be deemed closed on the date established by the Review Commission as the closing date for submissions.

(d) The Review Commission shall render a decision in writing within 45 calendar days of the closing date of the proceeding and the decision shall be distributed to all parties and non-parties to the hearing.

(e) A party shall have 14 calendar days after the decision in (d) above to file an exception.

(f) The decision shall become the final order of the Review Commission within 30 calendar days of the issuance of the decision.

(g) Copies of the final order shall be mailed to all parties and non-parties of the hearing.

12:112-6.2 Stay of final order

(a) Any party aggrieved by a final order of the Review Commission may, while the matter is within the jurisdiction of the Review Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Review Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

SUBCHAPTER 7. MISCELLANEOUS ISSUES**12:112-7.1 Settlement policy**

(a) Settlement is permitted and encouraged by the Review Commission at any stage of the proceedings.

(b) The Review Commission does not require that the parties in the hearing include any particular language in a settlement agreement, but does require that the agreement specify the terms of settlement for each contested item and specify any contested item or issue that remains to be decided. Unless the settlement agreement states otherwise, the withdrawal of a notice of contest or an order to comply shall be with prejudice.

12:112-7.2 Filing of settlement

(a) A settlement submitted for approval shall be filed with the Secretary. When a settlement agreement is filed with the Secretary, proof of service shall be filed with the settlement agreement, showing service upon all parties in the manner prescribed by N.J.A.C. 12:112-1.10. The parties in the hearing shall file a final consent order for adoption by the Review Commission.

(b) A settlement document shall be typewritten.

12:112-7.3 Withdrawal

(a) A party may withdraw its notice of contest or written order to comply at any stage of a proceeding.

(b) The notice of withdrawal shall be served in accordance with N.J.A.C. 12:112-1.10(c) upon all parties. It shall also be posted in the manner prescribed in N.J.A.C. 12:112-1.10(g).

(c) Proof of service shall accompany the notice of withdrawal.

12:112-7.4 Expedited proceeding

(a) Upon application of any party in the hearing or upon its own motion, the Review Commission may order an expedited proceeding. When an expedited proceeding is ordered by the Review Commission, the Secretary shall notify all parties and nonparties.

(b) When an expedited proceeding is ordered by the Review Commission, it shall take precedence on the docket of the Review Commission over all other classes of cases, and shall be set for hearing or for the submission of briefs at the earliest practicable date.

(c) The Review Commission shall make rulings with respect to time for filing of pleadings and with respect to all other matters, without reference to times set forth in these rules, and shall do all other things appropriate to complete the proceeding in the minimum time consistent with fairness.

12:112-7.5 Standards of conduct

(a) All representatives appearing before the Review Commission shall comply with the letter and spirit of ethical conduct.

(b) If an attorney or other representative practicing before the Review Commission engages in unethical or unprofessional conduct or fails to comply with any rule or order of the Review Commission, the Review Commission may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action, including suspension or disbarment from practice before the Review Commission.

12:112-7.6 Ex parte communication

(a) There shall be no ex parte communication with respect to the merits of any case not concluded, between any member, employee, or agent of the Review Commission who is employed in the decisional process and any of the parties, non-parties, representatives or other interested persons in the hearing.

(b) In the event an ex parte communication occurs, the Review Commission may make such orders or take such actions as fairness requires. Any disciplinary action by the Review Commission, including suspension or disbarment, shall be governed by N.J.A.C. 12:112-7.5(b).

(c) All ex parte communications in violation of this section shall be placed on the public record of the proceeding.