

- 1:1-17.5 Multiple agency jurisdiction claims; standards for determining predominant interest
- 1:1-17.6 Determination of motions involving consolidation of cases from multiple agencies; contents of order; exempt agency conduct
- 1:1-17.7 Review of orders involving consolidation of cases from multiple agencies
- 1:1-17.8 Initial decision in cases involving a predominant interest; order of review; extension of time limits

SUBCHAPTER 18. INITIAL DECISION; EXCEPTIONS; FINAL DECISION; REMAND; EXTENSIONS OF TIME LIMITS

- 1:1-18.1 Initial decision in contested cases
- 1:1-18.2 Oral initial decision
- 1:1-18.3 Written initial decision
- 1:1-18.4 Exceptions; replies
- 1:1-18.5 Motions to reconsider and reopen
- 1:1-18.6 Final decision; stay of implementation
- 1:1-18.7 Remand; procedure
- 1:1-18.8 Extensions of time limits

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

- 1:1-19.1 Settlements
- 1:1-19.2 Withdrawals

SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

- 1:1-20.1 Scheduling of mediation
- 1:1-20.2 Conduct of mediation
- 1:1-20.3 Conclusion of mediation

SUBCHAPTER 21. UNCONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

- 1:1-21.1 Transmission to the Office of Administrative Law
- 1:1-21.2 Discovery
- 1:1-21.3 Representation
- 1:1-21.4 Conduct of uncontested cases
- 1:1-21.5 Report
- 1:1-21.6 Extensions

APPENDIX. CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES

SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F-5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:1-11.1(c) (Subpoena forms);
2. N.J.A.C. 1:1-12.6 (Emergency relief);
3. N.J.A.C. 1:1-14.10 (Interlocutory review);
4. N.J.A.C. 1:1-16.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:1-21 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

In (b), deleted the last sentence.

Cross References

Women-owned and minority-owned businesses, false information supplied, contested case hearing as under this subchapter, see N.J.A.C. 12A:11-1.9.

Case Notes

Disciplinary hearings by the Board are authorized by the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., and are governed by the New Jersey Uniform Administrative Rules. *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

In an action challenging the decision of a state architecture board that a manufacturer of prefabricated houses violated N.J.S.A. 45:3-10, in the context of determining whether the Younger abstention doctrine demanded dismissal of the challenge, the court found that proceedings before the board were insufficiently adjudicatory in nature to vindicate federal claims because the procedural rules set forth in N.J.A.C. 1:1-1.1 et seq., allowed the inquisitorial, prosecutorial, and judicial power to be concentrated in the board. *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F. Supp. 633, 1982 U.S. Dist. LEXIS 10633 (D.N.J. 1982).

In an appeal from a decision of the New Jersey Transit Corporation (NJTC) denying an applicant eligibility for Access Link paratransit services, the appellate court declined to consider fully the applicant's argument that the NJT administrative hearing should have been a

contested case under New Jersey's Administrative Procedure Act (APA), N.J.S.A. 52:14B-2(b), because the issue was not raised below, as evidenced by the fact that the applicant did not seek to have the case referred to the Office of Administrative Law for a hearing under the APA pursuant to the procedures set forth in N.J.A.C. 1:1-1.1 through 1:1-21.6. *Sell v. N.J. Transit Corp.*, 298 N.J. Super. 640, 689 A.2d 1386, 1997 N.J. Super. LEXIS 123 (App.Div. 1997).

Administrative agency cannot expand reach of statute. *Rutgers University Legislative Affairs Council, Inc. v. Thompson*, 12 N.J. Tax 642 (1992).

An administrative law judge is not automatically bound by an agency party's argument. This would frustrate the legislative intent of N.J.S.A. 52:14F-1 et seq. which tasked the OAL with providing due process hearings independently and impartially. *Div. of Motor Vehicles v. Canova*, 1 N.J.A.R. 7 (1980).

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

1:1-1.3 Construction and relaxation

(a) This chapter shall be construed to achieve just results, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a rule, a judge may proceed in accordance with the New Jersey Court Rules, provided the rules are compatible with these purposes. Court rules regarding third party practices and class action designations may not be applied unless such procedures are specifically statutorily authorized in administrative hearings.

(b) Except as stated in (c) below, procedural rules may be relaxed or disregarded if the judge determines that adherence would result in unfairness or injustice. The judge shall make such determinations and state the reasons for doing so on the record.

(c) The burden of proof shall not be relaxed. Statutory procedural requirements shall not be relaxed or disregarded except when permitted by the controlling Federal or State statutes.

Amended by R.1992 d.213, effective May 18, 1992.

See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised (a).

Case Notes

It was proper for the ALJ to recommend converting a motion to dismiss into a motion for summary disposition, in the interests of administrative economy and as allowed by N.J. Ct. R. 4:6-2. *K.L. & K.L. ex rel. M.L. v. Bd. of Educ. of Kinnelon*, OAL Dkt. No. EDU 1191-08 & EDU 1192-08 (Consolidated), Final Decision (July 22, 2008).

Requests for adjournment granted as petitioner had retained counsel and needed time to conduct discovery and prepare appropriately for trial. Request was granted in order to secure a just determination and to avoid unfairness to the pro se complainant. *White v. Public Service*, 8 N.J.A.R. 335 (1984), approved Docket No. A-1496-84 (App.Div.1986).

Standard for reopening case has not been set forth by statute or rule. In the absence of standards, N.J.A.C. 1:1-1.3(a) states judge may proceed in any manner compatible with the purposes of administrative adjudication. In *Re: White Bus Co.*, 6 N.J.A.R. 535 (1983).

Conduct of contested case hearing under former rulemaking regulations. *Bally Manufacturing Corp. v. New Jersey Casino Control Commission*, 85 N.J. 325, 426 A.2d 1000 (1981) appeal dismissed 102 S.Ct. 77, 454 U.S. 804, 70 L.Ed.2d 74.

Definitions of adjudication and contested case under former rulemaking regulation; conduct of hearings. In *re Matter of Public Hearings*, 142 N.J. Super. 136, 361 A.2d 30 (App.Div.1976), certification denied 72 N.J. 457, 371 A.2d 62 (1976).

Administrative law judge was without jurisdiction to compel joinder of third party in school district's placement dispute with parents. *B.R. v. Woodbridge Board*, 95 N.J.A.R.2d (EDS) 159.

Section incorporates generally into the uniform administrative rules only those portions of the court rules which govern the conduct of lawyers, judges, and agency personnel (cited former rule, N.J.A.C. 1:1-3.8). *Div. of Motor Vehicles v. Festa*, 6 N.J.A.R. 173 (1982).

1:1-1.4 Computation of time

In computing any period of time fixed by rule or judicial order, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or legal holiday. In computing a period of time of less than seven days, Saturday, Sunday and legal holidays shall be excluded.

1:1-1.5 Conduct of administrative law judges

The Code of Judicial Conduct for Administrative Law Judges, as incorporated herein by reference as the chapter Appendix, shall govern the conduct of administrative law judges.

New Rule, R.1992 d.430, effective November 2, 1992.

See: 24 N.J.R. 2755(a), 24 N.J.R. 4028(a).

Amended by R.2002 d.198, effective July 1, 2002.

See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

SUBCHAPTER 2. DEFINITIONS

1:1-2.1 Definitions

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

"Adjournment" means postponement of the hearing until another time.

"Administrative law judge" means a person appointed pursuant to N.J.S.A. 52:14F-4 or N.J.S.A. 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Administrative rule" means each agency statement of general applicability and continuing effect that implements or interprets law or policy, or describes the organization, procedure or practice requirements of any agency. The term includes the amendment or repeal of any rule, but does not

Case Notes

Complainant's case did not warrant re-transmitting to the Office of Administrative Law where complainant failed to respond to a letter advising him that he could provide an explanation for his failure to appear within 13 days of the Clerk's notice of dismissal. Batchelor v. N.J. Transit, OAL Dkt. No. CRT 3062-2007N, 2009 N.J. AGEN LEXIS 618, Final Decision (February 27, 2009).

Case remanded from state superior court requires remand to Office of Administrative Law for determination of whether constitutional claims were within scope of remand order. R.D. v. Bernards Township Board of Education, 96 N.J.A.R.2d (EDU) 481.

**SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE
TRANSMISSION TO THE OFFICE OF
ADMINISTRATIVE LAW****1:1-4.1 Determination of contested case**

(a) After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case. If any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within 30 days from receipt of the petition and inform all parties of its determination.

Amended by R.1987 d.506, effective December 21, 1987.

See: 19 N.J.R. 1591(b), 19 N.J.R. 2388(b).

Substituted may for shall in (a).

Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).

Amended failure to appear rules; recodified provisions of original subsection (c) as new rule, N.J.A.C. 1:1-14.14.

Recodified original subsection to subsections (a) and (b), deleting original subsection (b). In (a), changed "10" to "one" day for time limit of receipt of an explanation for nonappearance. Added additional text to (a) and new (b)2. Added new subsection (c).

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

In (a), substituted "shall, unless proceeding pursuant to (d) below" for "may, pursuant to N.J.A.C. 1:1-3.3(b) and (c)", and inserted "pursuant to N.J.A.C. 1:1-3.3(b) and (c)"; recodified (b)1 as (c); in the introductory paragraph of (c), deleted "the judge shall reschedule the matter and may, at his or her discretion, order any of the following" from the end; added (c)1 and (c)2; deleted former (b)2; recodified former (c) as (d), and in (d), deleted "because of the failure to appear" preceding "the party shall ask".

Case Notes

Senior correction officer who arrived over two hours late at the scheduled disciplinary hearing should not have been sanctioned where there was a misunderstanding regarding the start time and where he arrived at the hearing site as soon as possible upon being notified of his error. The record did not indicate that the officer had a pattern of previously failing to appear on time or that his tardiness prevented the commencement and conclusion of his hearing. In re Smith, OAL Dkt. No. CSV 10108-07, 2009 N.J. CSC LEXIS 1439, Civil Service Comm'n Decision (October 7, 2009).

Administrative Law Judge was within her right to dismiss complainant's case where complainant repeatedly failed to reply to respondent's discovery, failed to participate in a settlement conference, and failed to attend scheduling conferences. While complainant's attorney suffered from health issues, there was nothing in the record that would have excused counsel's failure to respect judge-ordered deadlines or his unwillingness to make the necessary arrangements to ensure this case was properly handled; additionally, counsel's difficulty in communicating his client did not justify a more than one year delay in providing discovery. Campbell v. Quest Diagnostics, OAL Dkt. No. CRT 05381-2008N, 2009 N.J. AGEN LEXIS 741, Final Decision (October 2, 2009), aff'd per curiam, No. A-1287-09T3, 2010 N.J. Super. Unpub. LEXIS 2608 (App.Div. October 28, 2010).

Although the parent failed to appear at an OAL hearing to determine whether her child was entitled to remain in the school district following allegations that the family no longer met the residency requirements, an order dismissing the parent's appeal and granting the district tuition costs for educating the child was reversed and the matter was remanded, especially in light of the parent's assertion — however incredible — that she did not receive notice of the scheduled hearing, as well as the suggestion that the student may have been the child of a homeless family and, consequently, entitled to attend school in the Board's district. L.E.H. ex rel. Z.H. v. Bd. of Educ. of West Orange, OAL Dkt. No. EDU 3787-09, 2009 N.J. AGEN LEXIS 919, Remand Decision (July 2, 2009).

ALJ did not abuse its discretion when it awarded a correction sergeant \$800 in attorney's fees after the appointing authority failed to produce its witnesses at a scheduled hearing because, although the non-appearance was unintentional and due to an administrative error, there was technically "no good cause" for the failure to appear (adopting 2008 N.J. AGEN LEXIS 1258). In re Ross, OAL Dkt. No. CSV 8839-07, 2009 N.J. AGEN LEXIS 1001, Civil Service Comm'n Decision (April 15, 2009).

Complainant's case did not warrant re-transmitting to the Office of Administrative Law where complainant failed to respond to a letter advising him that he could provide an explanation for his failure to

appear within 13 days of the Clerk's notice of dismissal. Batchelor v. N.J. Transit, OAL Dkt. No. CRT 3062-2007N, 2009 N.J. AGEN LEXIS 618, Final Decision (February 27, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 656) adopted, which sanctioned a former police officer for failure to appear at two hearings in the amount of \$1,513.46 for costs and attorney's fees; the appellant's failures to appear plus his abandoning another hearing constituted a failure to prosecute warranting dismissal. The ALJ had previously denied the appellant's request to place the matter on the inactive list pending disposition of his related federal civil rights case. In re Thompson, OAL Dkt. No. CSV 05511-06, 2007 N.J. AGEN LEXIS 1138, Final Decision (October 24, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 702) adopted, in which an employee's appeal was dismissed as a sanction for the employee's failure to appear for a scheduled hearing without good cause; it was reasonable to conclude that continuation of the matter would have resulted in additional expense and delay. In re Pearson, OAL Dkt. No. CSV 3949-03, 2006 N.J. AGEN LEXIS 772, Final Decision (August 23, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 551) adopted, which concluded that dismissal of a senior correction officer's sexual harassment claim was necessary because the officer failed to appear at the scheduled hearing and the evidence demonstrated that, after the officer's complaint was made regarding the procedure and thoroughness of the harassment investigation, remedial actions had been taken to assure proper investigation of complaints, rendering the officer's complaint moot. In re Easley, OAL Dkt. No. CSV 4869-04, 2005 N.J. AGEN LEXIS 1198, Final Decision (November 22, 2005).

Mother's due process claim that a school district should provide her child with an extended school year program was denied where evidence demonstrated that the mother failed to cooperate in the evaluations of her son and in the development of an IEP and also failed to appear for the administrative hearing on the case. L.T. ex rel. E.T. v. Middletown Twp. Bd. of Educ., OAL Dkt. No. EDS 6818-05, 2005 N.J. AGEN LEXIS 1139, Final Decision (September 29, 2005).

Initial Decision (2005 N.J. AGEN LEXIS 394) adopted, which explained that the decision to permit an ex parte presentation of evidence is within the judge's discretion. Sheddan v. N.J. Racing Comm'n, OAL Dkt. No. RAC 2400-04, 2005 N.J. AGEN LEXIS 1476, Final Decision (September 19, 2005).

Decision to permit an ex parte presentation of evidence in matter of State employee's removal was not arbitrary. White v. Department of Transportation, 95 N.J.A.R.2d (ETH) 1.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. New Jersey Real Estate Commission v. Grennor, 92 N.J.A.R.2d (REC) 29.

1:1-14.5 Ex parte communications

(a) Except as specifically permitted by law or this chapter, a judge may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge shall advise all parties of the communications as soon as possible thereafter.

(b) The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.

(c) Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or as necessary to keep the agency head as a client informed of the status of the case, provided that no information may be disclosed ex parte if it would compromise the agency head's ability to adjudicate the case impartially. In no event may the legal representative participate in making or preparing the final decision in the case.

Amended by R.1988 d.78, effective February 16, 1988.
See: 19 N.J.R. 1761(b), 20 N.J.R. 385(a).

Adopted the codifying of the Supreme Court's ruling in *In Re Opinion No. 583 of the Advisory Committee on Professional Ethics*, 107 N.J. 230 (1987).

Case Notes

In case construing N.J.A.C. 1:1-3.8(c), court held that while an administrative case is being heard at the OAL, the prosecuting DAG may consult ex parte with the head of the administrative agency to the extent necessary to keep the agency head, the client, reasonably informed. In *The Matter of Opinion No. 583 of Advisory Committee on Professional Ethics*, 107 N.J. 230, 526 A.2d 692 (1987).

1:1-14.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more or less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or decelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court reporter to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

Case Notes

While the appellant in a licensing dispute carried the burden of proof throughout the hearing, the ALJ properly ordered that the issuing authority provide the initial burden of production to explain the basis for its denial on the record. Notwithstanding appellant's burden of proof that respondent's action was arbitrary, capricious, or unreasonable, respondent was properly asked to assume the burden of going forward with clear and competent evidence to support its decision to deny the place-to-place transfer of the license (adopting 2009 N.J. AGEN LEXIS 761). *Rooster Bar v. Governing Body of Cliffside Park*, OAL Dkt. No. ABC 11895-08, 2009 N.J. AGEN LEXIS 1203, Final Decision (October 28, 2009).