

CHAPTER 21

TRADE SECRET CLAIMS

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.1997 d.158, effective March 10, 1997. See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Executive Order No. 66(1978) Expiration Date

Chapter 21, Trade Secret Claims, expires on March 10, 2002.

Chapter Historical Note

Chapter 21, Trade Secret Claims, was adopted as R.1985 d.367, effective July 15, 1985. See: 17 N.J.R. 1009(a), 17 N.J.R. 1754(b). Chapter 21 was repealed and a new Chapter 21, Trade Secret Claims, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 21 was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

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SUBCHAPTER 1. APPLICABILITY

1:21-1.1 Applicability

The rules in this chapter shall apply to any hearing concerning the validity of a trade secret claim. Any aspect of the hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

Amended by R.1992 d.213, effective May 18, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised text.

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

SUBCHAPTER 8. TRANSMISSION OF CASES TO THE OFFICE OF ADMINISTRATIVE LAW

1:21-8.1 Transmission of cases; the trade secret documentation or information

When a case is transmitted to the Office of Administrative Law involving a trade secret claim, any information or documentation which reveals the trade secret shall not be transmitted with the case file.

Amended by R.1992 d.213, effective May 18, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised text.

1:21-8.2 Custody of the trade secret information or documentation; no copying

(a) Any information or documentation which reveals the trade secret shall remain throughout the hearing in the physical custody of the representatives of the transmitting agency.

(b) When needed, upon the judge's direction, the trade secret information or documentation shall be brought to the hearing by the responsible department representatives.

(c) The trade secret information or documentation shall not be placed in the Office of Administrative Law case file and may not be copied by any Office of Administrative Law personnel.

(d) The trade secret information shall not be communicated over telecommunication networks, including but not limited to: telephones, computers connected by modems, or electronic mail systems.

(e) The judge may, when necessary for the performance of his or her functions, disclose the trade secret information to his or her secretary.

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).

SUBCHAPTER 9. (RESERVED)

SUBCHAPTER 10. DISCOVERY

1:21-10.1 Discovery in trade secret cases

(a) When necessary to prevent the trade secret from being disclosed without authorization, the judge may order:

1. That the requested discovery not be had;
2. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
3. That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
4. That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
5. That discovery be conducted with no one present except persons designated by the judge;
6. That a deposition after being sealed be opened only by order of the judge;
7. That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the judge; or
8. Any other device which reasonably balances the discovery goal of minimizing surprise at hearings with the need to protect the trade secret from an unauthorized disclosure.

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:21-12.1 Written motions

Written motions shall be made directly to the judge.

Amended by R.1992 d.213, effective May 18, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).
Revised text.

SUBCHAPTER 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF TRADE SECRET CASE

1:21-14.1 Sound recordings; safeguarding the case file and sound recordings; preparation of transcripts

(a) Court reporters will not be provided for trade secret hearings. A verbatim record will be maintained by sound recording.

(b) When not in use, all audio tapes and case files together with all evidence and other related case materials, including any transcripts, shall be locked in an Office of Administrative Law filing cabinet in a locked room, whether or not particular tapes, case files, evidence or related materials include secret testimony or argument. Access to the file cabinet shall be limited to judges and their secretaries. Access to the locked room shall be restricted to a person or persons designated by the Director in writing. A record of access to the file cabinet shall be maintained by the designated persons.

(c) No duplicates or copies of any portion of an audio tape containing secret information shall be permitted.

(d) Upon the request of a person who is authorized by the judge to receive a transcript, the judge's secretary shall prepare a transcript of that portion of the hearing dealing with the secret information. A transcribing firm may be authorized to prepare a transcript of that portion of the hearing not dealing with the secret information.

1:21-14.2 Sealing the record

(a) On the last day of the evidentiary hearing, the parties shall be given the opportunity to address the record sealing requirements of the case. The record shall be sealed by order attached to the initial decision in every trade secret case.

(b) In rendering a sealing order, the judge shall consider the extent of restriction necessary to safeguard the trade secret and shall determine in each such order:

1. That the Office of Administrative Law shall not maintain a duplicate case file after the initial decision has been provided to the parties and agency head; and
2. That all documents transmitted to the Office of Administrative Law together with all evidence received at the hearing and all audio tapes or transcripts, if any, shall be returned to the transmitting agency with the initial decision; and
3. That all requests for transcripts prior to the initial decision shall be directed to the judge and that all requests for transcripts after the initial decision shall be directed to the transmitting agency; and
4. Whether any portions of the audio tapes of the proceeding may not be transcribed or whether other means of safeguarding the trade secret can be utilized when preparing a transcript; and
5. The names of persons who are authorized to request a transcript; and
6. Whether the entire initial decision, transcript, audio tapes, evidence and other related case materials or any part thereof must be marked "CONFIDENTIAL" and distributed by hand or certified mail in a plain envelope addressed only to a person authorized to receive the secret information; and
7. Whether the initial decision or any part thereof may be made available to the public in any agency's library.

1:21-14.3 Exceptions to the public hearing policy

When necessary to prevent the trade secret from being disclosed without authorization, the judge may make an exception to the public hearing requirements of N.J.A.C. 1:1-14.1 and he or she may close the hearing, or any part thereof, and exclude witnesses, or, if necessary, parties from portions of the hearing.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

SUBCHAPTER 18. INITIAL DECISIONS; RETURNING THE CASE TO THE TRANSMITTING AGENCY

1:21-18.1 Delivery of initial decisions, transcripts, audio tapes, evidence and other related case materials

(a) Unless the judge otherwise directs in the record sealing order (see N.J.A.C. 1:21-14.2), the parties to the case and the transmitting agency or their designated representatives will be telephoned and asked to pick up the initial decision at the judge's chambers at the Office of Administrative Law. The indicated date of receipt by the agency head, as required by N.J.S.A. 52:14B-10(c), shall be the second day after the Office of Administrative Law telephones the transmitting agency.

(b) Unless the judge otherwise directs in the record sealing order, the transmitting agency will be telephoned and asked to pick up at the Office of Administrative Law the transcript, if any, audio tapes, evidence and other related case materials on the same date it is requested to pick up the initial decision.

(c) After returning the case to the transmitting agency, the Office of Administrative Law may maintain in the Clerk's file only the transmittal form, the notices of filing and hearing and the order sealing the record.

SUBCHAPTERS 19 THROUGH 21. (RESERVED)