

**CHAPTER 40
PROCEDURAL RULES**

Authority

N.J.S.A. 8A:2-2.

Source and Effective Date

R.1975 d.184, effective June 25, 1975.
See: 7 N.J.R. 192(b), 7 N.J.R. 293(b).

Executive Order No. 66 (1978) Expiration Date

Chapter 40, Procedural Rules, expires on November 21, 1999.

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SUBCHAPTER 1. GENERAL RULES AND DEFINITIONS

3:40-1.1 Scope of rules

These rules shall govern the practice and procedure before the New Jersey Cemetery Board within the Department of Banking of the State of New Jersey.

3:40-1.2 Construction and amendment

These rules shall be liberally construed to permit the board to effectively carry out its statutory functions and to secure just and expeditious determination to issues properly presented to the board. In special cases and for cause shown, the Board may relax and permit deviations from these rules. The rules may be amended in accordance with the provisions of the Administrative Procedure Act.

3:40-1.3 Definitions

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

“Act” means the New Jersey Cemetery Act, P.L. 1971, c.333 (N.J.S.A. 8A:1-1 et seq.) as amended and supplemented.

"Board" means the New Jersey Cemetery Board, or when specially designated by the board, any member of the board, or the executive director of the board.

"Presiding officer" means and shall include any duly designated member of the board, executive director or hearing examiner duly designated as such who may conduct any hearing and who can issue reports and recommendations to the board.

"Person" means and includes, but shall not be limited to, cemetery, cemetery company, individual, partnership, limited partnership, corporation, business association, trustee, county and municipality.

3:40-1.4 Offices

Office of the New Jersey Cemetery Board is located at 36 West State Street, Trenton, New Jersey 08625.

3:40-1.5 Hours

The office is open on weekdays from 8:30 A.M. to 4:30 P.M. unless otherwise authorized by the board. The office is closed on legal holidays, Saturdays and Sundays.

3:40-1.6 Communications

All formal papers and correspondence should be addressed to the office of the New Jersey Cemetery Board, 36 West State Street, Trenton, New Jersey 08625, and not to individual members of the board unless otherwise specifically authorized or directed by the New Jersey Cemetery Board. All such papers and correspondence shall be deemed to be officially received when delivered or received at the office at the aforementioned address.

3:40-1.7 Official records

Copies of rules and regulations and orders and decisions of the board will be furnished by the board upon payment of appropriate fees. The executive director of the New Jersey Cemetery Board shall have custody of the cemetery board's official records including the minutes of all meetings held.

3:40-1.8 Proceedings of the board

(a) Proceedings before the board shall be conducted with fitting dignity and decorum.

(b) The taking of photographs or the making of sketches of the hearing room or any person in it or the broadcasting of proceedings by radio or television shall not be permitted.

(c) There shall be free access to all public hearings by members of the press, who shall be provided suitable facilities for the performance of their duties in reporting the proceeding.

(d) The use of sound recording devices for the purpose of making the official transcripts of the proceeding before the board by the reporter so designated for that purpose shall be permitted.

3:40-1.9 Organizational meetings

(a) The Board shall elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Chairman, who shall:

i. Schedule meetings of the Board;

ii. Set the agendas for Board meetings in consultation with the Executive Director, except that this shall not be deemed to bar any member of the Board or the Counsel to the Board from having a matter placed on the agenda of the next meeting;

iii. Preside at meetings of the Board;

iv. Appoint committees of the Board; and

v. Provide general oversight of, and policy guidance for, the operations of the Board office between meetings; and

2. A Vice-Chairman, who shall perform the functions of the Chairman during the absence or recusal of the Chairman.

(b) The Board may, at its discretion, elect the following officers from among its members annually at the first Board meeting of each calendar year, which officers shall exercise the following duties:

1. A Secretary, who shall perform the functions of the Chairman during the absence or recusal of both the Chairman and the Vice-Chairman; and

2. Any other officer which the Board may deem appropriate, who shall exercise whatever duties the Board may specify.

(c) In addition to the duties set forth in (b) and (c) above, each officer shall exercise such other duties as are customarily exercised by one holding such office, and such other duties as may be specified by the Board in its minutes.

(d) In the event that neither the Chairman, Vice-Chairman, or Secretary are present to preside at a meeting, the members of the Board who are present, provided that they constitute a quorum, shall elect from among their number a Chairman pro tempore who shall preside at that meeting.

(e) In the event that a person who has been serving as an officer of the Board is no longer a member of the Board, or if a person who has been serving as an officer of the Board resigns as an officer but remains a member of the Board, an election to fill the office vacated by the person shall be held at the next meeting of the Board.

(f) The exercise of the rights and duties of Board offices shall be personal to the member who is elected. Therefore, if an ex officio member of the Board namely the Attorney General, the Commissioner of Banking and the Commissioner of Health pursuant to N.J.S.A. 8A:2-1, is elected to a Board office, the designee of that ex officio member may not exercise the rights and duties of the office, and if a designee of an ex officio member of the Board is elected to a Board office the ex officio member may not exercise the rights and duties of the office.

New Rule, R.1995, d.118, effective March 6, 1995.
See: 26 N.J.R. 4475(a), 27 N.J.R. 877(b).

SUBCHAPTER 2. APPEARANCE AND PRACTICE BEFORE THE BOARD OR OFFICE

3:40-2.1 Rights of parties

(a) At any hearing the parties named in N.J.A.C. 3:40-3.1 who are affected by the proceeding shall be entitled to enter an appearance personally as provided in section 2 of this subchapter, to introduce evidence, examine and cross-examine witnesses, make arguments and generally participate in the conduct of the proceedings.

(b) In all instances where a person other than a respondent has received individual notice of a proceeding, and he intends to enter an appearance, he shall file with the board and serve on the petitioner, at least 15 days before a hearing, a written notice of his intention to appear and he shall include in the written notice a brief statement of the reason for the appearance.

3:40-2.2 Appearances

(a) No person, except an individual appearing in his own behalf, shall be permitted to participate in any proceeding before the board unless such person is represented by an attorney of this State in good standing.

(b) Any attorney or counsellor from any other jurisdiction, of good standing there, may, at the discretion of the board be admitted, pro hac vice, to participate in a proceeding in the same manner as an attorney of this State, provided, however, that all pleadings, briefs and other papers filed with the board in such matters shall be signed by an attorney authorized to practice in this State who shall be held responsible for them and who shall be present at all times during the proceeding unless excused by the presiding officer.

(c) Any person appearing before or transacting business with the board in a representative capacity may be required by the board or the presiding officer to file evidence of his authority to act in such capacity.

SUBCHAPTER 3. PARTIES

3:40-3.1 Classification of parties

(a) Parties to proceedings before the board shall be designated according to relationship of the parties thereto as follows:

1. Petitioners: Parties applying to invoke the jurisdiction of the board;
2. Respondents: Parties against whom any petition is filed or investigation is started;
3. Intervenors: Parties to the proceeding other than the above who are permitted by the board to intervene.

SUBCHAPTER 4. PLEADINGS NOT INVOLVING VIOLATIONS

3:40-4.1 Pleadings enumerated and defined

(a) Pleadings before the board shall be petitions, answers, replies and motions which for purposes of these rules are defined as follows:

1. Petition: The pleading filed to initiate a proceeding invoking the jurisdiction of the board;
2. Answer: The pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition;
3. Reply: The pleading filed by the petitioner or other in response to an answer;
4. Motion: The pleading filed, incidental to an action before the board, for the purpose of obtaining a rule or order directing that some action be taken in favor of the movement.

3:40-4.2 Formal requirements for pleadings

(a) Pleadings and other papers filed under these rules shall be prepared on letter-size paper.

(b) All pleadings must be signed in ink by the attorneys of record, if any. When a party is authorized to act in his own behalf under these sections, signature shall be by the party.

3:40-4.3 Number of copies

Unless otherwise required by the board, there shall be filed with the board through the office for its own use an original and three conformed copies of each pleading or other paper and amendment thereof.

3:40-4.4 Valid service

(a) Unless otherwise directed by the board, service of pleadings, notices, decisions, orders and other papers shall be deemed valid if made by delivering one copy to each party or his attorney of record in person or depositing it in the United States mail, first class, postage prepaid, directed to the party or his attorney of record at his post office address. Unless otherwise provided, when any party has appeared by attorney, service upon such attorney shall be deemed valid service upon the party of all future pleadings until notice of dismissal of such attorney is received in writing by the chairman of the board through the office and served on all parties of record to the proceeding.

(b) Whenever a party has a right or is required to do some act or take some action within a prescribed period after the serving of a notice or other paper upon him, then if the notice is served by mail, three days shall be added from the date of mailing to the prescribed period.

3:40-4.5 Withdrawal of a petition or dismissal of a proceeding

(a) A petition may be withdrawn without order of the board by filing a notice of withdrawal at any stage of the proceeding prior to the filing of the report and recommendations of the hearing examiner or prior to the entry of the board's decision or other final disposition of the proceeding. A proceeding may also be terminated by filing a stipulation signed by all parties who have appeared in the proceedings prior to the entry of the board's decision. However, if the board finds that public interest so requires, the board by its order may continue each proceeding.

(b) The board may without request from or consent of the party instituting the proceeding dismiss the same for good cause shown upon recommendation of the director or its own motion or motion of any party.

(c) Unless otherwise specified or ordered, a withdrawal or dismissal pursuant to this rule shall be without prejudice.

3:40-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the board's own motion or the motion of the Attorney General of the State of New Jersey.

3:40-4.7 Changes in facts or circumstances

Whenever, subsequent to the date of the pleading, there is any significant change in respect to the information required by these sections to be included or shown in the pleading or with respect to any other relevant matter, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

SUBCHAPTER 5. PETITION**3:40-5.1 Form and content**

(a) The form and content of petitions shall be as set forth below:

1. All petitions shall comply with the provisions of subchapter 4 of this chapter to the extent applicable;
2. Shall clearly and concisely state the facts and relief sought;
3. Shall cite by appropriate reference the statutory provision or other authority under which the board's action is sought; and,
4. In addition, shall contain such information or statements as required by provisions of the statute and the applicable provisions of these sections or such other sections adopted by the board, or as may be required by the board in a particular proceeding.

3:40-5.2 Ex parte or emergency relief

If a petition seeks ex parte action or the granting of emergency relief pending full hearing, it shall set forth the necessity or emergency for such requested action and must be supported by affidavits sufficient to make a prima facie case.

SUBCHAPTER 6. (RESERVED)**Subchapter Historical Note**

Subchapter 6, formerly Format of Applications Required to be Filed, was recodified with changes as N.J.A.C. 3:41-13, Applications, by R.1994 d.579, effective November 21, 1994. See: 26 N.J.R. 3785(a), 26 N.J.R. 4597(a).

SUBCHAPTER 7. VIOLATION OF THE CEMETERIES ACT**3:40-7.1 Charge**

(a) A charge that any person has violated any provision of this Act, other than a charge filed by the board, may be filed by any person within three months of the date the person filing the complaint became aware of the alleged violation.

(b) All charges shall be sworn to and in writing.

(c) Three copies of the charge shall be filed with the cemetery board and a copy shall be served simultaneously on each named party. Proof of service shall then be filed with the board. If one desires to withdraw a charge, the procedures outlined earlier are to be followed.

3:40-7.2 Contents of a charge

(a) A charge shall contain the following and forms for filing such charges may be supplied by the executive director of the board on request:

1. The name, address and telephone number of the person making the charge, hereinafter called the petitioner;
2. The name, address and telephone number of the person against whom the charge is made (hereinafter respondent);
3. A clear and concise statement of the facts constituting the alleged violations of the act, or any rules and regulations of the board, including, but not limited to, the time and place of occurrence of the particular acts and a statement of the portion or portions of the act and/or rules and regulations alleged to be violated.

3:40-7.3 Answers

The respondent shall have a right to file an original and two copies of the answer to the charge with the board within ten days after the service of the charge. Upon application, the board may extend the time, for good cause shown, within which the answer shall be filed. One copy of the answer shall be served on each party with proof of service furnished to the board.

3:40-7.4 Contents of the answer

(a) The answer shall contain:

1. A specific admission, denial or explanation of each allegation in the charge, or if the respondent is without knowledge, he shall so state to that effect, such statement operating as a denial; admissions or denials may be to all or part of an allegation but shall fairly meet the substance of an allegation;
2. A specific detailed statement of any affirmative defense;
3. A clear and concise statement of the facts and matters of law relied upon constituting the grounds of the defense. Any allegation of the charge not denied in the answer shall be deemed admitted and may be so found by the board.

3:40-7.5 Responses of the board to a charge

After a charge has been filed, if it appears to the board based upon the allegations in the investigation in the materials submitted by the petitioner and the respondent, or any other investigation it deems appropriate, that a formal proceeding should be instituted, it will cause to be issued

and served upon the parties a notice of hearing. At that time, the board may request the Commissioner of Banking to appoint a hearing officer to hold a hearing and issue a report containing findings of fact, conclusions of law and recommendations, including where appropriate, remedial action to be taken and notices to be posted.

3:40-7.6 Format of a notice of hearing

(a) The notice of hearing shall include:

1. A copy of the charge;
2. A statement of the time of the hearing which shall be not less than ten days after service of the notice of hearing, except in extraordinary circumstances;
3. A statement of the place and nature of the hearing;
4. A statement of the legal authority in jurisdiction under which the hearing is to be held;
5. A reference to the particular sections of the act and rules and regulations involved;
6. The respective positions of the parties, in order to frame, simplify and clarify the issue involved; however, any such material shall not be deemed a part of the record and any party wishing to rely upon them as exhibits shall make an appropriate submission at the hearing.

3:40-7.7 Service of the notice of hearing

A notice of hearing shall be served on all parties in interest by certified mail.

SUBCHAPTER 8. HEARINGS

3:40-8.1 Presiding officer

The hearing for the purpose of taking evidence pursuant to these rules and regulations shall be conducted by a hearing officer designated by the Commissioner of Banking, unless the commissioner designates the board to sit at the hearing. Such hearings shall be public unless otherwise ordered, for good cause, by the board or the hearing officer.

3:40-8.2 Recording of the hearing

An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided by the board. Copies of the official transcript may be purchased by arrangement with the official reporter or if transcribed for the board may be examined in the board's office in Trenton during normal working hours.

3:40-8.3 Hearing officer's powers

(a) It shall be the duty of the hearing officer to inquire fully into the facts as they relate to the matter before him. With respect to cases assigned to him, between the time he is designated and the transfer of the case of the board, the hearing officer shall have the authority, subject to these rules and regulations and the act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon offers of proof and receive relevant evidence;
4. Take or cause depositions to be taken whenever the ends of justice would be served thereby;
5. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
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 question;
7. Hold conferences for the settlement or simplification of the issues by consent of the parties;
8. Dispose of procedural requests, motions or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the executive director and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearing officer's report and recommendations;
9. Call, examine and cross-examine witnesses, and to introduce into the record documentary or other evidence;
10. 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;
11. Take any other action necessary under the foregoing and authorized by the rules and regulations of the board.

3:40-8.4 Unavailability of hearing officer

In the event the hearing officer designated to conduct the hearing becomes unavailable, the board or the Commissioner of Banking, upon the agreement of all of the parties involved, may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both.

3:40-8.5 Procedure

Any party shall have the right to appear at such hearing on his own behalf or by counsel, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer; and provided, further, that five copies of documentary evidence shall be submitted. The hearing officer at his discretion may permit a reduced number of copies of documentary evidence for good cause shown.

3:40-8.6 Admissibility of evidence

The parties shall not be bound by rules of evidence whether statutory, common law or adopted by the rules of court. All relevant evidence is admissible, except as otherwise provided. The board or hearing officer may, on its or his discretion, exclude any evidence or offer of proof if it or he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The board or hearing officer shall give effect to the rules of privilege recognized by law. Every party shall have a right to present his cause by oral or documentary evidence and to submit rebuttal evidence. Every party and the hearing officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

3:40-8.7 Proofs required

A charging party in asserting a violation of the Act and these rules and regulations shall have the burden of proving the allegations of the charge by a preponderance of the evidence.

3:40-8.8 Statement of facts

In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue. An agreed statement of facts may be accepted by the board or hearing officer for a decision without a hearing. The acceptance of an agreed statement of facts by the board or hearing officer may be deemed a waiver of a right to hearing.

3:40-8.9 Objections

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. The board shall, in its discretion, have the authority for good cause shown, to review any objection to the rulings of a hearing officer or the conduct of a hearing. The aforementioned review by the board shall not stay the conduct of the hearing unless otherwise ordered by the board. An objection not duly urged before a hearing officer shall be deemed waived unless the failure to urge such objection shall be excused by the board because of extraordinary circumstances.

3:40-8.10 Privileges of parties

(a) Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

(b) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the hearing officer who may fix a reasonable time for such filing, but not in excess of 21 days from the close of the hearing. Requests for further extensions of time for good cause shown shall be made to the board.

(c) No request will be considered unless received at least three days prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the board.

(d) Notice of the request for any extension shall be served simultaneously on all other parties, and proof of service shall be furnished.

(e) Five copies of any brief or proposed findings and conclusions shall be filed with the hearing officer, and copies shall be served simultaneously on other parties, and a statement of such service shall be furnished.

3:41-8.11 Adjournments

At the discretion of the hearing officer, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the hearing officer, or by other appropriate notice.

3:40-8.12 Report of hearing officer

(a) After completion of the hearing, or upon the consent of the parties prior to the conclusion of the hearing, the hearing officer shall transfer the case to the board, including the hearing officer's report and recommended finding of fact and conclusions of law, and the record.

(b) The hearing officer's report and recommendations, where appropriate, should include the remedial action to be taken and notices to be posted.

(c) The record shall include the petition or charge, notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties.

(d) The board shall cause the report and recommendations of the hearing officer to be served promptly on all parties to the proceeding.

(e) Five copies of any exceptions to the hearing officer's report and recommendations may be filed by any party with the board within seven days after service of the report and recommendations, provided, however, that the executive director may for good cause shown extend the time for filing such exceptions. Copies of such exceptions and any supporting briefs shall be served simultaneously on all parties, and a statement of such service shall be furnished to the board.

3:40-8.13 Objection to report

(a) Exceptions to a hearing officer's report shall:

1. Set forth specifically the questions of procedure, facts, law or policy to which exceptions are taken;
2. Identify that part of the hearing officer's report to which objection is made;
3. Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief. Any exception to a ruling, conclusion or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(b) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

1. A concise statement of the case containing all that is material to the consideration of the questions presented;
2. A specification of the questions involved and to be argued;
3. The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(c) Answering briefs to the exceptions, and cross-exceptions and supporting briefs, may be filed upon application at the discretion of the board.

3:40-8.14 Decision of the board

(a) After considering the hearing officer's report and recommendations, the record and any exceptions filed, the board shall issue its decision.

(b) Parties shall be notified either personally or by mail of any decision or order.

(c) Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

(d) In cases alleging a violation of the act and these rules and regulations and upon finding such violation, the board shall order the respondent to cease and desist from conduct violative of the act and these rules and regulations and may require the respondent to take such affirmative corrective action as he deems appropriate to effectuate the policies of the act and these rules and regulations.

(e) The board shall also assess whatever statutory fines it deems appropriate.

3:40-8.15 Compliance

Where remedial action is ordered, compliance with decisions and orders of the board shall be achieved by the respondent reporting to the board, within a specified period, that the required remedial action has been taken.

SUBCHAPTER 9. HEARING CONDUCTED BY BOARD

3:40-9.1 Hearing conducted by board

When the hearing is conducted by the board, all of the rules and regulations governing the conduct of the hearing shall apply with the exception of N.J.A.C. 3:40-8.12 and 3:40-8.13.

SUBCHAPTER 10. ADMINISTRATIVE PROCEDURE ACT

3:40-10.1 Administrative Procedure Act

Except as otherwise provided in the New Jersey Cemetery Act and in these regulations, the procedures followed by the board shall be in conformity with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.).

SUBCHAPTER 11. FORMS

3:40-11.1 Penalty letter

(a) The following is the form of the penalty letter attachment thereto:

Dear

Our investigation indicates that you violated the provisions of N.J.S.A. in that you You may be liable to a penalty of up to \$. for such violation under N.J.S.A.

If you wish a hearing in this matter, you may request the same within 15 days of the date of this letter. At the time of hearing you may appear with counsel of your choice and with witnesses and documentary evidence. If no request for a hearing is received within the period stated above, the Board will make its determination on the evidence in its possession, and will take such action as it deems appropriate. If a penalty is indicated, the matter will be referred to the Attorney General for the institution of a suit in the County District Court to collect the penalty.

You are hereby afforded the opportunity of disposing of this matter without a hearing and without recourse to litigation by executing the attached form and returning it to the Board within 15 days, together with your remittance made payable to the New Jersey Cemetery Board in the amount of \$.....

Very truly yours,
New Jersey Cemetery Board
By:
Executive Director

ATTACHMENT

We hereby admit to the violation of N.J.S.A. and remit herewith (check or money order) in the amount of \$.....