

these standards, the judge may revoke a non-lawyer representative's right to appear in a case or may order sanctions as provided in (c) above.

Amended by R.1989 d.158, effective March 20, 1989.

See: 20 N.J.R. 2845(a), 21 N.J.R. 749(a).

Exceptions allowing non-lawyer representatives to sign consent orders or stipulations, added at (f).

Correction in (c): changed 1:11-4.4 to 1:1-14.4.

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).

In (c): revised N.J.A.C. citation.

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

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

Added (g).

Amended by R.1997 d.158, effective April 7, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

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

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

In (c), inserted "and 14.15" twice.

Case Notes

Testimony by lay advocate for parents was only arguably relevant under federal discovery rules. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 858 F.Supp. 51.

Attorney-client privilege extended to lay advocate. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 858 F.Supp. 51.

1:1-5.6 Appearance without representation: State agencies

(a) In those cases where a State agency does not send a representative who has been approved under N.J.A.C. 1:1-5.4 to a hearing, but merely rests its case on papers presented to the judge:

1. The agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. 1:1-5.4 and lists the papers upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers.

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

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

Section was "Appearance without representation: State agencies or county or municipal welfare agencies; corporations". In the introductory paragraph of (a), deleted "or a county or municipal welfare agency" following "State agency" and "and/or on witnesses" preceding "presented to the judge."; in (a)1, deleted "and/or witnesses" preceding "upon which"; rewrote (a)2; and deleted (b).

SUBCHAPTER 6. PLEADINGS

1:1-6.1 Pleading requirements

(a) Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case. Except as otherwise provided by this subchapter, parties in contested cases should refer to the rules of the appropriate agency for guidance.

(b) Pleadings shall be filed as required by the rules of the agency with subject matter jurisdiction over the case.

(c) Pleadings shall be served in the manner permitted by N.J.A.C. 1:1-7.1(a) on all parties and on any other person required by the rules of the agency with subject matter jurisdiction over the case.

Case Notes

Thirty day period in which the Commissioner of Education was required to determine whether to retain case filed by local school board challenging amount of state aid school district received, or transfer case to Office of Administrative Law (OAL), was never triggered, where Department of Education never filed an answer to school board's petition and Commissioner never determined that school board's petition presented a contested case. *Sloan v. Klagholtz*, 776 A.2d 894 (2001).

Notice of appeal or cross-appeal is deemed complaint and tolls running of statute of limitations when aggrieved party in state administrative proceeding elects not to file complaint in state court alleging federal civil rights claims but raises such claims in notice of appeal or cross-appeal from the decision of the agency. *Maisonet v. New Jersey Dept. of Human Services, Div. of Family Development*, 140 N.J. 214, 657 A.2d 1209 (1995).

The "letter report" also serves as the "first pleading" in the administrative hearing process. The significance of the letter report at this stage of the administrative process is to put the applicant on notice of the affirmative qualification criteria which he or she is obligated to prove by clear and convincing evidence. *Davis v. Div. of Gaming Enforcement*, 8 N.J.A.R. 301 (1985).

1:1-6.2 Amendment of pleadings

(a) Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.

(b) A judge in granting pleading amendments may permit a brief continuance to allow an opposing party additional preparation time.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 770) adopted, which permitted the appointing authority to amend its pleadings to conform to the proofs established at the disciplinary hearing. Although the original pleading charged the employee with being absent from work without permission and without giving proper notice, the essence of the charge against her was not whether she gave notice of her absences, but whether she was absent without permission; the wording of the original pleading addressed her placement on medical verification, her call outs as sick on the dates in question, and her failure to submit the proper medical documentation to support her sick leave usage, rendering the fact that she called in the absences inconsequential. In re *Bailey*, OAL Dkt. No. CSV 8805-07, 2008 N.J. AGEN LEXIS 1065, Final Decision (September 24, 2008).

Where parents challenged a school board's decision to deny their daughter transportation services, and the daughter had completed middle school during the course of the appeal, no reasonable purpose would have been served by requiring the parents to file an entirely new petition to substitute their younger daughter; irrespective that delays in the movement of the appeal were attributable to the parents' own dilatoriness, in light of the stage of record development and given that all of the underlying facts of the matter, other than the name of the specific child involved, were identical, amendment was permitted. *T.F.S. ex rel.*

C.M.S. v. Bd. of Educ., South Brunswick Twnshp., OAL Dkt. No. EDU 6674-02, 2005 N.J. AGEN LEXIS 1285, Commissioner's Decision (November 2, 2005).

First pleading may be amended anytime, even after presentation of proofs (citing former N.J.A.C. 1:1-6.3). *Roberts v. Keansburg Bd. of Educ.*, 5 N.J.A.R. 208 (1983).

1:1-6.3 Public officers; death or separation from office

When any public officer who is a party to a contested case, whether or not mentioned by name in the pleadings, dies, resigns or for any reason ceases to hold office, his or her successor in office shall be deemed to have been substituted in his or her place. However, on motion, the judge may otherwise order or may specifically order the retention as a party of the predecessor in office.

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS; FORMAT

1:1-7.1 Service; when required; manner

(a) Service shall be made in person; by certified mail, return receipt requested; by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served.

(b) Any paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order.

(c) Service by mail shall be complete upon mailing.

(d) The standards of personal service contained in R. 4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable.

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), deleted "or" preceding "by certified mail" and preceding "by ordinary mail".

1:1-7.2 Proof of publication and service

(a) Whenever these rules or the applicable rules of any agency provide for publication, mailing or posting of public notices in contested cases, proofs thereof shall be filed within 20 days after the publication, mailing or posting.

(b) Except for service by publication or as otherwise required by this chapter or by State or Federal statute, proof of service shall not be necessary unless a question of notice arises.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, any other representative or party, or by an affidavit of the person making service, or by a certificate of service appended to the

paper to be filed and signed by the attorney or other representative for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

1:1-7.3 Filing; copies

(a) A paper shall be filed with the Clerk if the matter has not been assigned to a judge, or, if a judge has been assigned, with the judge assigned to the case.

(b) The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refileing or cure the defects and accept the papers for filing.

(c) All papers filed with the Office of Administrative Law shall be in duplicate. If the filer submits an additional copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk or judge will return the paper to the filer marked with the date of filing.

(d) Evidence of filing shall be a notation showing the date of filing. When a paper is filed with a judge, the notation shall also identify the judge. A copy of such papers shall be forwarded by the filing party to the Clerk immediately.

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

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

Rewrote (a); in (c), inserted "or judge"; and added (d).

1:1-7.4 Format of papers

(a) Every paper filed shall contain:

1. The Office of Administrative Law docket number of the proceeding or, if the case has not been transmitted, the agency docket number;

2. The name, address and telephone number of the person who prepared the paper; and

3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8 1/2" x 11" stock of customary weight and quality insofar as is practicable.

1:1-7.5 Filing by facsimile transmission

(a) A paper may be filed by facsimile transmission unless prohibited by the judge.

(b) Facsimile transmissions must comply with all requirements of this subchapter except N.J.A.C. 1:1-7.3(c) and 1:1-7.4(b).

(c) The party filing a document by facsimile transmission must include a certification indicating the method of service upon each party and stating that the original document is available for filing if requested by court or a party.