

TITLE 1

OFFICE OF ADMINISTRATIVE LAW

CHAPTER 1

UNIFORM ADMINISTRATIVE PROCEDURE RULES

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).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 1, Uniform Administrative Procedure Rules, expires on September 6, 2002. See: 34 N.J.R. 983(a).

Chapter Historical Note

Chapter 1, Uniform Administrative Procedure Rules of Practice, was adopted as R.1980 d.275, effective July 1, 1980, repealing the administrative hearing rules of the Division of Administrative Procedure at N.J.A.C. 15:15-10. See: 11 N.J.R. 479(a), 12 N.J.R. 234(a), 12 N.J.R. 362(a). Chapter 1 was amended by R.1981 d.55, effective February 17, 1981. See: 13 N.J.R. 3(b), 13 N.J.R. 114(a); R.1981 d.116, effective May 7, 1981. See: 13 N.J.R. 2(a), 13 N.J.R. 254(b); R.1981 d.443, effective November 16, 1981. See: 13 N.J.R. 254(c), 13 N.J.R. 842(a); R.1982 d.87, effective April 5, 1982. See: 14 N.J.R. 2(a), 14 N.J.R. 335(a); R.1982 d.150, effective May 17, 1982. See: 14 N.J.R. 4(a), 14 N.J.R. 471(a); R.1982 d.295, effective September 7, 1982. See: 14 N.J.R. 606(b), 14 N.J.R. 975(b); R.1982 d.467, effective January 3, 1983. See: 14 N.J.R. 486(a), 15 N.J.R. 23(a); R.1983 d.268, effective July 5, 1983. See: 15 N.J.R. 582(a), 15 N.J.R. 1093(a); R.1983 d.515, effective November 21, 1983. See: 15 N.J.R. 1399(a), 15 N.J.R. 1939(a); R.1983 d.550, effective December 5, 1983. See: 15 N.J.R. 1400(b), 15 N.J.R. 2032(a); R.1984 d.368, effective September 4, 1984. See: 16 N.J.R. 1413(a), 16 N.J.R. 2354(a); R.1984 d.445, effective October 1, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2518(a); R.1984 d.476, effective October 15, 1984 (operative November 14, 1984). See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a); R.1984 d.490, effective November 5, 1984. See: 16 N.J.R. 2320(a), 16 N.J.R. 3004(a); R.1984 d.587, effective December 7, 1984. See: 16 N.J.R. 2710(a), 16 N.J.R. 3426(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules of Practice, was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Chapter 1 was amended by R.1985 d.368, effective July 15, 1985. See: 17 N.J.R. 1008(a), 17 N.J.R. 1754(a); R.1985 d.508, effective October 7, 1985. See: 17 N.J.R. 1820(a), 17 N.J.R. 2457(b); R.1986 d.79, effective April 7, 1986. See: 18 N.J.R. 130(a), 18 N.J.R. 634(a); R.1986 d.340, effective August 18, 1986. See: 18 N.J.R. 2(a), 18 N.J.R. 1699(a); R.1986 d.468, effective December 1, 1986. See: 18 N.J.R. 1020(a), 18 N.J.R. 1865(a), 18 N.J.R. 2381(a).

Chapter 1, Uniform Administrative Procedure Rules of Practice, was repealed and a new Chapter 1, Uniform Administrative Procedure Rules, 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 1, Uniform Administrative Procedure Rules, was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1997 d.158, effective March 10, 1997. See: Source and Effective Date. See, also, section annotations.

Cross References

Apparel industry registration, confiscation of apparel and equipment, requests for formal hearings, see N.J.A.C. 12:210-1.9.

Motorized wheelchair dispute resolution, notification and scheduling of contested case hearings, see N.J.A.C. 13:45A-26E6.

Small, minority and female businesses, State contracts, contested case hearings as under this section, see N.J.A.C. 12A:10-2.2.

Law Review and Journal Commentaries

Administrative adjudications in New Jersey: Why not let the ALJ decide? Richard M. Hluchan, 180 N.J.Law. 28 (Mag.) (Oct./Nov. 1996).

Appeals and enforcement of agency decisions: Confessions of a general counsel. Robert E. Anderson, 180 N.J.Law. 25 (Mag.) (Oct./Nov. 1996).

Approaching hearsay at administrative hearings: Hearsay evidence and the Residuum Rule. Joseph R. Morano, 180 N.J.Law. 22 (Mag.) (Oct./Nov. 1996).

Introduction to administrative law, or what is this thing called administrative law? Barbara A. Harned, 180 N.J.Law. 9 (Mag.) (Oct./Nov. 1996).

Right to a hearing: Statutory rights, constitutional rights and "fundamental fairness". Robert H. Stoloff, 180 N.J.Law. 14 (Mag.) (Oct./Nov. 1996).

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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. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(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. 52:14F5(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.

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).

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

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.

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).

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 Appendix A, 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).

APPENDIX A

CODE OF JUDICIAL CONDUCT FOR ADMINISTRATIVE LAW JUDGES

PREAMBLE

The Code of Judicial Conduct for Administrative Law Judges is intended to establish basic ethical conduct standards for administrative law judges. The Code is intended to govern the conduct of these administrative law judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct. This Code is based upon the Model Code of Judicial Conduct as adopted by the ABA on August 7, 1990 and the New Jersey Code of Judicial Conduct.

The text of the Canons is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The Commentary is not intended as a statement of additional rules. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is a statement of what is or is not appropriate conduct, but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is designed to provide guidance to administrative law judges and to provide a structure for regulating conduct.

CANON 1

AN ADMINISTRATIVE LAW JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE ADMINISTRATIVE JUDICIARY

An independent and honorable administrative judiciary is indispensable to justice in our society. An administrative law judge should participate in establishing, maintaining, and enforcing, high standards of conduct, and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Commentary: Deference to the judgments and rulings of administrative proceedings depends upon public confidence in the integrity and independence of administrative law judges. The integrity and independence of administrative law judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the administrative judiciary is maintained by the adherence of each administrative law judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the administrative judiciary and thereby does injury to the system of government under law.

CANON 2

AN ADMINISTRATIVE LAW JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. An administrative law judge shall respect and comply with the law and at all times shall act in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

Commentary: Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by judges. An administrative law judge must avoid all impropriety and appearance of impropriety. An administrative law judge must expect to be the subject of constant public scrutiny. An administrative law judge must therefore expect, and accept restrictions on the administrative law judge's conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by administrative law judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this

Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the administrative law judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired.

See also Commentary under Canon 2C.

B. An administrative law judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. An administrative law judge shall not lend the prestige of the office to advance the private interests of the administrative law judge or others; nor shall an administrative law judge convey or permit others to convey the impression that they are in a special position to influence the judge. An administrative law judge shall not testify voluntarily as a character witness.

Commentary: Maintaining the prestige of the administrative judiciary is essential to a system of government in which the administrative judiciary must to the maximum extent possible, function independently of the executive and legislative branches. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for an administrative law judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting an administrative law judge's personal business.

An administrative law judge must avoid lending the prestige of the office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.

Although an administrative law judge should be sensitive to possible abuse of the prestige of the office, an administrative law judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

An administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. An administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination as defined by Federal law and the New Jersey Law Against Discrimination.

*Commentary: It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. Membership of an administrative law judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as, that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of categories prohibited by Federal law or the New Jersey Law Against Discrimination persons who would otherwise be admitted to membership. See *New York State Club Ass'n Inc. v. City of New York*, 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).*

Although Canon 2C relates only to membership in organizations that invidiously discriminate, in addition, it would be a violation of Canon 2 and Canon 2A for an administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination, or for the judge to regularly use such a club. Moreover, public manifestation by an administrative law judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Canon 2A.

When a person who is an administrative law judge at the time this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2 and Canon 2A, the administrative law judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but the judge is required to suspend participation in any activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the administrative law judge is required to resign immediately from the organization.

CANON 3

AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of an administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities:

(1) An administrative law judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) An administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall be unswayed by partisan interests, public clamor, or fear of criticism.

(3) An administrative law judge shall maintain order and decorum in proceedings before the judge.

(4) An administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the judge deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members, and others subject to the judge's direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the judge. Judges can be efficient and businesslike while being patient and deliberate.

(5) An administrative law judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff and others subject to the judge's direction and control to do so.

Commentary: A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudice.

(6) An administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representative, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications as to substantive matters concerning a pending or impending proceeding. On notice, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, by amicus curiae or as otherwise authorized by law, if the judge affords the parties reasonable opportunity to respond. A judge may with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding except as authorized by law, but does not preclude a judge from consulting with other judges or subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(7) An administrative law judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary: In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Prompt disposition of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants, and their representatives cooperate with the judge to that end.

(8) An administrative law judge shall abstain from public comment about a pending or impending proceeding in any court or tribunal and shall require similar abstention on the part of personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by rules of professional conduct. This subsection is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

(9) An administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

B. Administrative responsibilities:

(1) An administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(2) An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) An administrative law judge shall initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body. Internal agency procedure which routes the complaint should be utilized; however, the judge remains responsible for initiation of the action.

C. Disqualification:

(1) An administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary: By decisional law, the rule of necessity may supersede the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action. The judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) in private practice the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or child residing in the judge's household, or any other member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household, has a more than de minimis financial interest in the subject matter in controversy or is a party to the proceeding, or any other more than de minimis interest that could be substantially affected by the outcome of the proceeding; generally, receiving service from a particular public utility is a de minimis interest;

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with, a lawyer or other representative in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have a more than de minimis interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding.

(2) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this Code the following words or phrases shall have the meaning indicated:

(a) The degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, niece or her husband, or nephew or his wife were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) ownership of one share of stock is more than a de minimis interest.

(d) "proceeding" includes prehearing or other stages of litigation.

CANON 4

AN ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Extra-judicial activities in general:

An administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Avocational activities:

An administrative law judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including the revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

C. Governmental, civic, and charitable activities:

(1) An administrative law judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interest.

Commentary: The judge has a professional obligation to avoid improper influence.

(2) An administrative law judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Commentary: Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the judge from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative judiciary.

(3) An administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court or tribunal.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to reexamine regularly the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with that organization.

(b) An administrative law judge as an officer, director, trustee or non-legal advisor, or as a member, or otherwise:

(i) may assist such an organization in planning fund-raising, but shall not personally participate in the solicitation of funds or other fund-raising activities; however, this shall not prohibit de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary: An administrative law judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may conduct de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated, (2) a judge may solicit other judges for membership in the organizations described above and other persons if neither those persons nor persons with whom they are affiliated are likely ever to appear before the Office of Administrative Law, and (3) a judge who

is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for membership solicitation does not violate Canon 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial activities:

(1) An administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in transactions or continuing business relationships with lawyers or other persons likely to come before the Office of Administrative Law.

Commentary: A judge may avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges in the Office of Administrative Law. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or involve those family members in frequent transactions or continuing business relationships with persons likely to come before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

(2) An administrative law judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate.

(3) An administrative law judge shall not serve as an officer, director, manager, advisor, or employee of any business entity.

(4) An administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) Neither an administrative law judge, nor a member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except for:

Commentary: Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary: A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria to other applicants; or

(h) any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Commentary: Canon 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(6) An administrative law judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and Canon 3. The Director of the Office of Administrative Law is required to disclose such information pursuant to the New Jersey Conflicts of Interest Law, *N.J.S.A. 52:13D-12*.

E. Fiduciary activities:

(1) An administrative law judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) An administrative law judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the Office of Administrative Law.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Commentary: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Canon 4D(4).

F. Practice of law:

A full-time administrative law judge shall not practice law, with or without compensation.

Commentary: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

This provision will not be interpreted to prohibit a judge from giving legal advice to and assisting in the drafting or reviewing of documents for a member of the judge's family, so long as the judge receives no compensation. A member of the judge's family denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge

maintains a close familial relationship. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

G. Compensation and reimbursement:

An administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code to the extent permitted by law.

CANON 5

AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

A. An administrative law judge shall not:

(1) act as a leader or hold an office in a political organization;

(2) publicly endorse or publicly oppose any candidate for public office;

(3) make speeches on behalf of a political organization;

(4) attend political functions or functions that are likely to be considered as being political in nature;

(5) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or

(6) otherwise engage in any political activity except as authorized under this Code.

Commentary: An administrative law judge retains the right to participate in the political process as a voter. Canon 5A(2) does not prohibit an administrative law judge from privately expressing his or her views on candidates for public office.

B. A candidate for reappointment to an administrative law judge position or an administrative law judge seeking another governmental office shall not engage in any political activity to secure the appointment except that such persons may:

(1) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Canon 5B(1); and

(3) provide to those specified in this Canon information as to his or her qualifications for the office.

C. An administrative law judge shall resign from office when the judge becomes a candidate either in a party primary or in a general election for an elective public office.

New Rule, R.1992 d.430, effective November 2, 1992.
See: 24 N.J.R. 2755(a), 24 N.J.R. 4028(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 include: (1) statements concerning the internal management or discipline of any agency; (2) intra-agency and inter-agency statements; and (3) agency decisions and findings in contested cases. N.J.S.A. 52:14B-2(e).

“Affidavit” means a written statement that is signed and sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation.

“Agency” includes each of the principal departments in the executive branch of the State government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments now existing or hereafter established and authorized by statute to make, adopt or promulgate rules or adjudicate contested cases, except the office of the Governor. N.J.S.A. 52:14B-2(a).

“Agency head” means the person or body authorized by law to render final decisions in contested cases, except that in the Department of Education, the State Board of Education is the head of an agency but the Commissioner of Education is authorized by statute to render final decisions.

“Appellant” means the party who is requesting a reversal or modification of a prior result.

“Burden of producing evidence” means the obligation of a party to introduce evidence when necessary to avoid the risk of a contrary decision or preemptory finding on a material issue of fact.

“Burden of proof” means the obligation of a party to meet the requirements of a rule of law that a fact be proved by a preponderance of the evidence or by clear and convincing evidence.

“Clerk” means the Clerk of the Office of Administrative Law or any such scheduling or docketing officer designated by the head of an agency to oversee the administration of contested cases.

“Complainant” means the party who requests action or relief by filing a complaint.

“Conclusion of hearing” means that time when the record for a case closes and after which no subsequently submitted information may be considered by the judge.

“Conference hearing” means a proceeding conducted before an administrative law judge, in which discovery, pre-hearing motions and post-hearing submissions are limited.

“Contested case” means an adversary proceeding, including any licensing proceeding, in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by an agency by decisions, determinations, or orders, addressed to them or disposing of their interests, after opportunity for an agency hearing. N.J.S.A. 52:14B-2. The required hearing must be designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition relating to past, current or proposed activities or interests. Contested cases are not informational nor intended to provide a forum for the expression of public sentiment on proposed agency action or broad policy issues affecting entire industries or large, undefined classes of people.

“Discovery” means the process by which a party is permitted on demand or upon motion granted by a judge to view, inspect or receive a copy of documents, and gain other information necessary to prepare a case for hearing.

“Docket number” means the number given to a case by the Office of Administrative Law, which contains the abbreviation of the agency that sent the case to the Office of Administrative Law, a sequence number and the year. Sample:

HPW	8831	82
agency	sequence no.	year

“Evidence” is the means from which inferences may be drawn as a basis of proof in the conduct of contested cases, and includes testimony in the form of opinion and hearsay.

“Filing” means receipt of an original or clear copy of a paper by the proper office or officer.

“Final decision” means a decision by an agency head that adopts, rejects or modifies an initial decision by an administrative law judge, an initial decision by an administrative law

judge that becomes a final decision by operation of N.J.S.A. 52:14B-10 or a decision by an agency head after a hearing conducted in accordance with these rules.

“Finding of fact” means the determination from proof or official notice of the existence of a fact.

“Hearing” means a proceeding conducted by a judge for the purpose of determining disputed issues of fact, law or disposition.

“Initial decision” means the administrative law judge’s recommended findings of fact, conclusions of law and disposition, based upon the evidence and arguments presented during the course of the hearing and made a part of the record which is sent to the agency head for a final decision.

“Intervention” means the process by which a non-party may, by motion, obtain all rights and obligations of a party in a case.

“Judge” means an administrative law judge of the State of New Jersey or any other person authorized by law to preside over a hearing in a contested case unless the context clearly indicates otherwise. The term includes the agency head when presiding over a contested case under N.J.S.A. 52:14F-8(b).

“Jurisdiction” means the legal power to hear or decide a case.

“Material fact” means a fact legally consequential to a determination of an issue in the case.

“Mediation” means a proceeding conducted after transmission in which an administrative law judge other than the judge assigned to preside over the hearing attempts to settle or compromise a dispute between opposing parties.

“Motion” means an application to a judge for a ruling or order.

“Participation” means the process by which a non-party may, by motion, be permitted to take limited part in a proceeding.

“Party” means any person or entity directly involved in a case, including a petitioner, appellant, complainant, respondent, intervenor, or State agency proceeding in any such capacity.

“Petitioner” means the party who is requesting relief or action at the hearing.

“Pleadings” means written statements of the parties’ respective claims and defenses. A pleading may be a petition, complaint, answer, order to show cause or any other form permitted by an agency’s rules.

"Plenary hearing" means a complete and full proceeding conducted before a judge, providing the parties with discovery, the opportunity to present evidence, to give sworn testimony, to cross-examine witnesses and to make arguments.

"Prehearing conference" means a meeting that may be held in advance of the hearing between the judge, representatives of the parties and, sometimes, the parties to discuss and set out the issues to be decided in the case, how the case will be presented and any other special matters required by the judge to be discussed and resolved in advance of the hearing.

"Presumption" means a rebuttable assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the contested case.

"Principal of a close corporation" means either a substantial shareholder of a corporation that is not publicly owned or an officer or executive employee who is actively involved in managing the business of such a corporation.

"Proceeding on the papers" means a summary proceeding conducted without any personal appearance or confrontation of the parties before the judge. The hearing is conducted through the submission of pleadings, affidavits, records or documents to the Office of Administrative Law for a decision by an administrative law judge.

"Proof" means all of the evidence before the judge relevant to a fact in issue which tends to prove the existence or nonexistence of such fact.

"Pro se" means a person who acts on his or her own behalf without an attorney or other qualified non-lawyer representative.

"Record" means all decisions and rulings of the judge and all of the testimony, documents and arguments presented before, during and after the hearing and accepted by the judge for consideration in the rendering of a decision.

"Relevant evidence" means evidence having any tendency in reason to prove any material fact.

"Respondent" means the party who answers or responds to a request for relief or action.

"Service" means the delivery (by mail or in person) of a paper to a party or any other person or entity to whom the papers are required to be delivered.

"Settlement" means an agreement between parties which resolves disputed matters and may end all or part of the case. Various methods may be utilized to help parties reach agreement, including: (1) pre-transmission settlement efforts by an agency; (2) pre-transmission settlement efforts by an administrative law judge at the request of an agency; (3) mediation by an administrative law judge; and (4) post-transmission settlement conferences by an administrative law judge.

"Subpoena" means an official paper that requires a person to appear at a hearing to testify and/or bring documents.

"Telephone hearing" means a proceeding conducted by telephone conference call.

"Uncontested case" means any hearing offered by an agency for reasons not requiring a contested case proceeding under the statutory definition of contested case.

"Withdrawal" means a decision by a party voluntarily relinquishing a hearing request or a raised defense.

Case Notes

Agency had exclusive authority to decide contested cases. Application of County of Bergen, N.J., for Approval to Dissolve Bergen County Utilities Authority, 268 N.J.Super. 403, 633 A.2d 1017 (A.D.1993).

Utility dissolution proceeding was not "contested case". Application of County of Bergen, N.J., for Approval to Dissolve Bergen County Utilities Authority, 268 N.J.Super. 403, 633 A.2d 1017 (A.D.1993).

Local agency had authority to render final decision on application to dissolve county utilities authority. Application of County of Bergen, N.J., for Approval to Dissolve Bergen County Utilities Authority, 268 N.J.Super. 403, 633 A.2d 1017 (A.D.1993).

Limitations period for challenge to denial of tenure did not commence upon letter from college president agreeing with claim for tenure. Dugan v. Stockton State College, 245 N.J.Super. 567, 586 A.2d 322 (A.D.1991).

Shell fisherman did not have right to adjudicatory hearing on proposed coastal development by reason of his occupation. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq., 52:14B-2(b), 52:14B-9. Spalt v. New Jersey Dept. of Environmental Protection, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989), certification denied 122 N.J. 140, 584 A.2d 213.

Lessees of shellfish bottoms were not entitled to adjudicatory hearing on proposed coastal development. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq., 50:1-5 et seq., 52:14B-2(b), 52:14B-9. Spalt v. New Jersey Dept. of Environmental Protection, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989), certification denied 122 N.J. 140, 584 A.2d 213.

Residents near proposed coastal development did not have sufficient particularized property right to be entitled to adjudicatory hearing. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq., 52:14B-2(b), 52:14B-9. Spalt v. New Jersey Dept. of Environmental Protection, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989), certification denied 122 N.J. 140, 584 A.2d 213.

Administrative Procedure Act does not establish right to hearing in those who otherwise do not have such right. N.J.S.A. 52:14B-9. Spalt v. New Jersey Dept. of Environmental Protection, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989), certification denied 122 N.J. 140, 584 A.2d 213.

Nonaggrieved third parties did not have right to challenge coastal development under Coastal Area Facility Review Act or Waterfront Development Act. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq. Spalt v. New Jersey Dept. of Environmental Protection, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989), certification denied 122 N.J. 140, 584 A.2d 213.

Procedural mode choice (rulemaking v. adjudication) turns on which is best suited to achieve goals and fulfill responsibilities of an agency in a given case (citing former N.J.A.C. 1:1-1.6 as N.J.A.C. 1:11-1.6). State Dep't of Environmental Protection v. Stavola, 103 N.J. 425, 511 A.2d 622 (1986).

Public utility ratemaking procedures, although quasi-legislative in origin, are conducted like quasi-judicial proceedings (citing former N.J.A.C. 1:1-6(a)3). Mortgage Bankers Association v. New Jersey Real Estate Commission, 102 N.J. 176, 506 A.2d 733 (1986).

Public utility ratemaking procedures, although quasi-legislative in origin, are conducted like quasi-judicial proceedings (cites former N.J.A.C. 1:1-6(a)3). Adjudicatory proceedings often involve disputed factual issues and require adversary proceeding for proper resolution (citing former N.J.A.C. 1:1-1.5(a)3). *Shapiro v. Albanese*, 194 N.J.Super. 418, 477 A.2d 352 (App.Div.1984).

Former N.J.A.C. 1:1-1.6 and 1.7 did not usurp the agency head's authority to decide what constitutes a contested case. In *Re: Uniform Administrative Procedure Rules*, 90 N.J. 85, 447 A.2d 151 (1982).

Rate schedule approval hearing, as a non-adjudicative proceeding, does not require a plenary hearing. *New Jersey Builders Assn. v. Sheeran*, 168 N.J.Super. 237, 402 A.2d 956 (App.Div.1979), certification denied 81 N.J. 293, 405 A.2d 837 (1979).

Order of remand signed by assistant director; valid. *O.F. v. Hudson County Welfare Agency*, 92 N.J.A.R.2d (DEA) 57.

Denial of hearing in uncontested case affirmed. *Camden County v. Board of Trustees of the Public Employees' Retirement System*, 97 N.J.A.R.2d (TYP) 105.

SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

1:1-3.1 Commencement of contested cases in the State agencies

A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency.

Case Notes

New Jersey limitations for disputing individualized education plan did not bar reimbursement claim. *Bernardsville Bd. of Educ. v. J.H., C.A.3* (N.J.)1994, 42 F.3d 149, rehearing and rehearing in banc denied.

1:1-3.2 Jurisdiction of the Office of Administrative Law

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. 1:1-17.

(b) When the Office of Administrative Law acquires jurisdiction over a matter that arises from a State agency's rejection of a party's application, and at the hearing the party offers proofs that were not previously considered by the agency, the judge may either allow the party to amend the application to add new contentions, claims or defenses or, if considerations of expediency and efficiency so require, the judge shall order the matter returned to the State agency. If the matter is returned to the agency and thereaf-

ter transmitted for hearing, the agency's response to any new contentions, claims or defenses shall be attached to the transmittal form required by N.J.A.C. 1:1-8.2.

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;
2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;
3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;
4. Sanctions under N.J.A.C. 1:1-14.4 or 14.14 consisting of the assessment of costs, expenses, or fines;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3;
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b); and
7. Appearance of attorneys pro hac vice pursuant to N.J.A.C. 1:1-5.2.

Amended by R.1991 d.34, effective January 22, 1991.

See: 22 N.J.R. 3278(a), 23 N.J.R. 194(a).

Added (c)6.

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)4: revised N.J.A.C. citation.

Amended by R.1996 d.133, effective March 18, 1996.

See: 27 N.J.R. 609(a), 28 N.J.R. 1503(a).

In (c)4 added fines.

Amended by R.2001 d.180, effective June 4, 2001.

See: 33 N.J.R. 1040(a), 33 N.J.R. 1926(a).

In (c)4, inserted "or 14.14" following "1:1-14.4"; added (c)7.

Case Notes

State Department of Education, rather than administrative law judge, had jurisdiction to conduct due process review of responsibility for education of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Agency, rather than Superior Court, was proper place for challenge to special education being provided to blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Administrative agencies enjoy a great deal of flexibility in selecting the proceedings most suitable to achieving their regulatory aims. A high degree of discretion in exercising that choice reposes in the administrative agency (citing former N.J.A.C. 1:1-2.2). *Crema v. N.J. Dep't of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

Taxes paid to state, jurisdiction of the Office of Administrative Law. *Linden Disposal, Inc., v. Edison Township*, 94 N.J.A.R.2d (EPE) 1.

1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting

agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may retransmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above.

(d) The agency head may extend the time limit for receiving explanations regarding the failure to appear when good cause is shown.

Amended by R.1989 d.605, effective December 18, 1989.

See: 21 N.J.R. 3207(a), 21 N.J.R. 3914(a).

Deleted language stating that an initial decision shall be entered returning the case.

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).

Added new subsections (b) and (c), recodifying original rule text as subsection (a).

Amended by R.1991 d.513, effective October 21, 1991.

See: 23 N.J.R. 1728(a), 23 N.J.R. 3133(a).

Explanation for failure to appear to be submitted within 13 days.

Case Notes

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.

(b) When a question arises whether a particular matter is a contested case, legal advice shall be obtained from the Attorney General's office.

1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

SUBCHAPTER 5. REPRESENTATION

1:1-5.1 Representation

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule R. 1:21-1(e) or be represented by a law graduate or student pursuant to R. 1:21-3(b). Except as provided by N.J.A.C. 1:1-5.4 and 1:1-5.6, a corporation must be represented by an attorney.

Case Notes

Attorney was properly disqualified from representing a public employee against a public employer. *Point Pleasant Borough v. Block*, 94 N.J.A.R.2d (OAL) 7.

Disabled child challenging school placement could not be represented by non-attorney. *T.W. v. Division of Developmental Disabilities*, 94 N.J.A.R.2d (OAL) 1.

Appellant, removed from employment and later reinstated with back pay, denied counsel fee; appellant entitled to award of 30 vacation days. *Harrington v. Dep't of Human Services*, 11 N.J.A.R. 537 (1989).

Board of Education ordered to pay reasonable counsel fees and costs incurred in the filing of petition which was filed by petitioner in order to carry out mandatory statutory duties. *Ross v. Jersey City Bd. of Educ.*, 5 N.J.A.R. 393 (1981).

1:1-5.2 Out-of-state attorneys; admission procedures

(a) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain in this State a bona fide office for the practice of law, may, at the discretion of the judge, be admitted pro hac vice for the one occasion to participate in the proceeding in the same manner as an attorney authorized to practice in this State pursuant to New Jersey Court Rule R. 1:21-1 by complying with the following procedure:

1. Admission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee. The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the attorney to appear in subsequent matters during the payment year, provided the attorney otherwise qualifies for admission.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

1:1-5.3 Conduct of lawyers

In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

Case Notes

Contested case hearing before administrative law judge was hearing before "state agency" for purposes conflicts of interest law. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law that conducted administrative hearing on behalf of Department of Community Affairs had authority derivative of Department's authority. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law could properly reach different decision from that reached by Joint Committee on Legislative Ethics. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law has authority to regulate qualifications of persons appearing before its courts; administrative law judge authorized to rule on attorney disqualification in a contested case; Code of Judicial Conduct and Rules of Professional Conduct incorporated by reference (decision on former rule). In the Matter of Tenure Hearing of Onorevale, 103 N.J. 548, 511 A.2d 1171 (1986).

The OAL may initially determine issues relating to possible attorney disqualification on ethics grounds appearing before administrative law judges in contested cases (citing former N.J.A.C. 1:1-3.8). In the Matter of Tenure Hearing of Onorevale, 103 N.J. 548, 511 A.2d 1171 (1986).

Legislator-attorney was disqualified from representing party in administrative proceeding. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (OAL) 1.

Respondent moved to bar counsel for petitioner because of alleged conflict of interest due to rule that prohibits members of the Legislature and their partners and employees from representing any person other than the State in connection with any cause or matter pending before a State agency. Cited N.J.A.C. 1:1-5.1 and 1:1-14.6(p), which authorize an administrative law judge to rule on the propriety of appearance of counsel. Held counsel was barred (citing former N.J.A.C. 1:1-3.7 and 3.9). *Stone Harbor v. Dir. of Coastal Resources*, 4 N.J.A.R. 101 (1980).

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) In conformity with New Jersey Court Rule, R.1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals;
6. Union representatives in Civil Service and Public Employment Relations Commission cases;
7. Individuals representing parents or children in special education proceedings; and
8. County or local government employees in Civil Service cases.

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of Family Development, Division of Medical Assistance and Health Services, Division of Youth and Family Services and Department of Labor Vocational Rehabilitation cases.

i. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

ii. At the hearing, the judge shall determine that the non-lawyer applicant seeking to represent a recipient or applicant for services fulfills the appearance requirements of Federal law.

iii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall

state that he or she is an agency staff person with knowledge of the matter in controversy, has been assigned to represent the agency in the case and that the county or municipal counsel is not providing representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name, title, business address and telephone number of his or her supervisor.

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Economic Assistance, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements for representation set forth in (b)3i below.

2. Oral application at the hearing may be made in public employment relations proceedings. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

3. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; where a county or local government employee seeks to represent the appointing authority; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Economic Assistance, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement, indicating that the employee has been assigned to represent the agency in the case and that the Attorney General will not provide legal representation.

ii. For non-lawyers from legal services programs, the Notice shall include a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services Program of which he or she is a part; and the name, business address, telephone number and signed authorization of a Legal Services attorney who supervises the applicant.

iii. The non-lawyer union representative shall include in his or her Notice a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit; and the name, title, business address and telephone number of his or her supervisor.

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she has knowledge or training with respect to handicapped pupils and their educational needs so as to facilitate the presentation of the claims or defenses of the parent or child. The applicant shall describe his or her relevant education, work experience or other qualifications related to the child's condition.

v. For non-lawyer employees seeking to represent a county or local government appointing authority in a Civil Service case, the notice shall include a statement that the non-lawyer is an employee of the county or local government appointing authority; his or her position with the appointing authority; his or her supervisor's position; business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The notice shall also contain a statement indicating that the employee has been assigned to represent the appointing authority in the case and that the legal representative for the county or locality does not provide representation in the matter.

vi. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall demonstrate in his or her Notice how he or she qualifies as a principal of a close corporation.

vii. Any non-lawyer applicant filing a Notice of Appearance/Application shall submit a certification with the Notice stating that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

viii. The Notice of Appearance/Application must be signed by the non-lawyer applicant. Notices shall be filed with the Clerk and served on all parties no later than 10 days prior to the scheduled hearing date.

ix. The Clerk may require the applicant to supply additional information or explanation of the items specified above as applicable, or may require the applicant to supply evidence of the statements contained in the Notice. If the Clerk does not otherwise notify the applicant within five days of receipt of the Notice, the non-lawyer's request to appear at the hearing shall be deemed approved. When the Clerk believes that a Notice presents a significant legal issue relating to representation rights, the Clerk will notify the parties that the presiding judge will determine the matter at or before the hearing.

Amended by R.1991 d.296, effective June 17, 1991.

See: 23 N.J.R. 1053(a), 23 N.J.R. 1919(a).

Eliminated provision that a DAG had to "sign off" on agency non-lawyer representation; delegated authority to agencies.

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.

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

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

In (a)6, inserted reference to Public Employment Relations Commission; inserted (a)8; in (b)1iv, amended subsection reference; inserted new (b)2; recodified former (b)2 as (b)3; in (b)3, inserted "where a county or local government employee seeks to represent the appointing authority"; inserted (b)3v; and recodified former (b)3v through (b)3viii as (b)3vi through (b)3ix.

Amended by R.1997 d.474, effective November 3, 1997.

See: 29 N.J.R. 3758(a), 29 N.J.R. 4677(a).

In (b)1, substituted "Family Development" for "Economic Assistance", and added "and Department of Labor Vocational Rehabilitation cases".

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.

Attorney licensed in foreign jurisdiction could not represent party as a non-lawyer. *Thompson and Pavlick v. Department of Community Affairs*, 92 N.J.A.R.2d (OAL) 9.

Nursing home not authorized representative for patients. *Bridgeton Nursing Center v. Division of Medical Assistance and Health Services*, 92 N.J.A.R.2d (DMA) 1.

Allowed representation by non-lawyer representative in matters in which such appearances were permitted prior to the establishment of the OAL. *Dep't of Community Affairs v. The Buckingham*, 6 N.J.A.R. 81 (1982).

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

(a) The presiding judge, unless precluded by Federal law, may determine at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. The judge shall implement a determination to preclude non-lawyer representation by informing the parties of the decision and the reasons therefor. With respect to a county, local or State agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual either to obtain a new non-lawyer, to represent himself or herself or to obtain legal representation.

(b) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance/Application or in any oral application by a non-lawyer.

(c) Non-lawyer representatives shall be subject to the Uniform Administrative Procedure Rules, including the sanctions provided in N.J.A.C. 1:1-14.14. If the judge determines that an incorrect statement in an oral application or Notice of Appearance/Application was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. 1:1-14.14, which may include:

1. In the case of a State, county or local agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action;
2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,
3. A recommendation by the presiding judge to the agency head that a particular non-lawyer representative be permanently excluded from administrative hearings before that agency.

(d) A non-lawyer may not be precluded from providing representational services solely because the non-lawyer is also appearing as a witness in the matter.

(e) In general, a non-lawyer representative shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross-examinations of witnesses.

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation which may be rendered by a non-lawyer. Conditions or limits may include:

- i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;
- ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;
- iii. Requiring the party to speak for him or herself; or
- iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party, except that non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations who have been authorized to agree to the terms of a particular settlement by the represented entity may sign consent orders or stipulations.

(g) Non-lawyer representatives are expected to be guided in their behavior by appropriate standards of conduct, such as contained in the following Rules of Professional Conduct

for attorneys: RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 3.2 (Expediting Litigation); RPC 3.3 (Candor Towards the Tribunal); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 3.5 (Impartiality and Decorum of the Tribunal); and RPC 4.1 (Truthfulness in Statements to Others). Non-lawyer representatives who are state officers or employees must also comply with the requirements of the New Jersey Conflicts of Interest Law, in particular N.J.S.A. 52:13D-16. For failure to comply with 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).

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 or county or municipal welfare agencies; corporations

(a) In those cases where a State agency or a county or municipal welfare 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 and/or on witnesses 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 and/or witnesses upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. 1:1-5.4, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to examine or cross-examine witnesses.

(b) In cases where a corporation is a party and will not be represented at the hearing by either a lawyer or a non-lawyer representative approved under N.J.A.C. 1:1-5.4, the judge may permit the corporation to proceed at the hearing on papers and/or on witnesses.

1. The corporation's lawyer or approved non-lawyer representative must obtain the judge's approval for the appearance without representation prior to the hearing. The judge shall consider whether the party's position can be adequately presented without representation and whether there will be any adverse impact on the hearing process.

2. A witness who appears on behalf of the corporation may testify and, in the interest of developing a full hearing record, may be permitted to ask questions through the judge, make statements in response to other testimony or to offer documents in his or her own name. However, the judge need not permit this witness to examine or cross-examine other witnesses.

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).

9. Anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand;

10. The names, addresses and telephone numbers of all parties and their attorneys or other representatives, with each person clearly designated as either party or representative. For any party that is a corporation, the transmitting agency shall provide the name, address and telephone number of the corporation's attorney or non-lawyer representative qualified under N.J.A.C. 1:1-5.4(b)2v.

11. A request for a barrier-free hearing location if it is known that a handicapped person will be present; and

12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case.

13. The transmitting agency may provide the name and address of one additional person other than a party or representative to receive a copy of all Clerk's notices in the case. If no person is designated, the OAL shall send an informational copy of notices to the agency's transmitting officer.

(b) The agency shall attach all pleadings to the transmittal form.

(c) The agency may affix to the completed transmittal form only documents which have been exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

(d) If there was a previous hearing in a matter which upon appeal is subject to de novo review, the agency shall not transmit the record of the previous hearing to the Office of Administrative Law.

(e) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

(f) The completed transmittal form and two copies of any attachments shall be filed with the Clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102.

Amended by R.1987 d.519, effective December 21, 1987.

See: 19 N.J.R. 1761(a), 19 N.J.R. 2388(a).

New (d) added; old (d)-(e) renumbered (e)-(f).

Amended by R.1989 d.395, effective July 17, 1989.

See: 21 N.J.R. 1181(a), 21 N.J.R. 2019(a).

In (f): added "in duplicate" regarding transmittal documents.

Amended by R.1990 d.484, effective September 17, 1990.

See: 22 N.J.R. 2066(a), 22 N.J.R. 3003(a).

At (a), added requirement for specific information about parties and their representatives on the form used to transmit cases and added 13 regarding making copy available to one additional designated party.

1:1-8.3 Receipt by Office of Administrative Law of transmitted contested case; filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, it may be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case, other than one requiring a conference hearing, whenever necessary to foster an efficient and expeditious proceeding.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 for:

1. Division of Motor Vehicles cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13;
2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and
3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A conference hearing may be scheduled for:

1. Civil Service cases dealing with layoffs, disciplinary actions and termination after probationary work period;
2. Division of Economic Assistance cases where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency or a local decision or inaction by a municipal welfare department (see N.J.A.C. 1:10 for special hearing rules);

3. Food stamp intentional program violations cases (see N.J.A.C. 1:10 for special hearing rules);

4. Matters arising out of the Special Education Program of the Department of Education (see N.J.A.C. 1:6A for special hearing rules);

5. Any case when all parties agree and the judge so directs; and

6. Any other class of cases which the Director of the Office of Administrative Law and the transmitting agency agree would be suitable to be heard as conference hearings.

(g) A telephone hearing may be scheduled for any case when all parties agree and the judge so directs.

Amended by R.1987 d.463, effective November 16, 1987.

See: 19 N.J.R. 1591(a), 19 N.J.R. 2131(a).

Deleted text (d)1.-3. because those specifications had been found to be superfluous.

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).

1:1-9.2 Cases commenced by order to show cause

When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk, who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-7.

Case Notes

Even if order to show cause mechanism for bringing compliance issues before Board of Public Movers and Warehousemen, in license revocation proceeding, was required to be established in an Administrative Procedure Act (APA) rule promulgation, administrative code provision governing cases commenced by order to show cause would have satisfied that requirement. Matter of A-1 Moving and Storage, Inc., 706 A.2d 752, 309 N.J.Super. 33 (A.D. 1998).

1:1-9.3 Priority scheduling

Priority in scheduling shall be given where requirements of law impose expedited time frames for disposition of a case. In all other cases, the transmitting agency or any party may make special scheduling requests to the Clerk.

1:1-9.4 Accelerated proceedings

(a) Any party may apply for accelerated disposition of a case. The application shall be in writing, on notice to all parties, and shall include the reasons for the request and a statement that all parties consent to acceleration.

(b) Applications for acceleration shall be filed as soon as circumstances meriting such action are discovered. Whenever possible, applications for acceleration by a transmitting agency shall be filed upon transmittal of the case and

applications for acceleration by any other party shall be filed with the pleadings in the case.

(c) Applications for acceleration shall be made to the Director until such time as a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing or hearing. The Director may decide the request for acceleration or may assign the motion to a judge for determination. If a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing, or hearing, applications for acceleration shall be made to the judge.

(d) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (e)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (e)8 below.

(e) If the transmitting agency agrees to the 15-day decision deadline, all parties consent and the Director or the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.
2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.
3. Except for extraordinary circumstances establishing good cause, no adjournments shall be granted.
4. Prehearing motions shall not be permitted unless requested by the presiding judge.
5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.
6. Initial decisions shall be issued within 15 days after the hearing is concluded.
7. Exceptions to the initial decision must be filed with the agency no later than six days after the initial decision was mailed to the parties. No replies or cross-exceptions are permitted.
8. Final decisions shall be entered within 15 days after receipt of the initial decision.

Amended by R.1990 d.483, effective September 17, 1990.

See: 22 N.J.R. 2067(a), 22 N.J.R. 3003(b).

At (c)7, changed filing time from three days to six days after the initial decision was mailed to the parties.

Amended by R.1994 d.173, effective April 4, 1994.

See: 26 N.J.R. 284(a), 26 N.J.R. 1493(a).

1:1-9.5 Clerk's notices

(a) Upon acceptance of a contested case for filing, the Clerk shall notify the transmitting agency and all parties of the case's filing date and the Office of Administrative Law docket number. This notice shall include a description of the nature of the proceeding, a reference to the controlling hearing procedures, including discovery, and a reference to the right of persons to represent themselves or to be represented by any attorney or a qualified non-lawyer in certain situations. The Clerk may also include in this notice any information he or she deems instructive or helpful to the parties and may combine this notice with any other notice, including the notice of hearing.

(b) The Clerk shall provide all parties with timely notice of any mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding, except that in emergency relief proceedings pursuant to N.J.A.C. 1:1-12.6 the Clerk may require the moving party to provide appropriate notice. Each notice shall apprise the parties of the presiding judge and the date, time and place of the proceeding. The Clerk may also include in any proceeding notice any information he or she deems instructive or helpful to the parties.

(c) Notice shall be by regular mail, except that when emergent needs so require and the law permits, notice of proceedings may be by telegram, mailgram or telephone. Telephone notice shall be confirmed promptly in writing.

(d) All Clerk's notices shall be written in plain language. See generally, N.J.S.A. 56:12-1 et seq.

(e) Each notice shall prominently display a telephone number where parties can obtain further assistance.

(f) All parties shall receive subsequent notices of all proceedings in any contested case. Subsequent notices shall apprise the parties of the date, time, place and nature of a proceeding and may be either written or effected by a statement made on the record.

1:1-9.6 Adjournments

(a) In Human Services (except Medical Assistance provider and rate); Motor Vehicle; Consumer Affairs Lemon Law; and Alcoholic Beverage Control, Department of Personnel civil service and Community Affairs settlement conferences, applications for adjournments shall be made to the Clerk until such time as a party has appeared before the judge in person, by telephone or in writing for a motion, prehearing or hearing. Thereafter, applications for adjournments shall be made to the judge.

(b) In all cases other than those specified in (a) above, applications for adjournments shall be made to the Clerk until such time as a judge has been assigned. Thereafter, applications for adjournments shall be made to the judge.

(c) Applications may be made in writing or by telephone; telephone applications for adjournments which are granted must be confirmed in writing by the party requesting the adjournment. All adjournments that are granted will be granted for the shortest period possible and to a definite date.

(d) Adjournments will be granted only in exceptional situations which could not have been reasonably foreseen or prevented.

(e) Adjournments will not be granted to complete discovery if parties have not timely complied with N.J.A.C. 1:1-10.4.

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).

Revised N.J.A.C. citation in rule text.

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) and (b).

Case Notes

Administrative law judge has power to impose reasonable monetary sanctions on attorneys as representatives of parties. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Before administrative law judge could impose sanctions for violating discovery order, court was required to conduct evidentiary hearing and make findings of fact. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Sanctions; failure to comply with administrative discovery orders. In the Matter of Timofai Sanitation Co., 92 N.J.A.R.2d (OAL) 6.

Development application denied to petitioners for failure to meet minimum standards for seasonal high water table and wetlands buffer; waiver of strict compliance denied for failure to offer information to establish an extraordinary hardship, citing N.J.A.C. 1:1-11.2 (recodified as N.J.A.C. 1:11-8.3)-(Final Decision by the Pinelands Commission). Lavecchia v. Pinelands Commission, 10 N.J.A.R. 63 (1987).

Administrative law judge held to have discretion with regards to sanctions following a motion to compel discovery (cited former N.J.A.C. 1:1-11.6). 7 N.J.A.R. 206 (1984), reversed Docket No. A-3886-84 (App.Div.1986).

1:1-10.6 Discovery in conference hearings; no discovery in mediation

(a) If an agency or a county/local governmental entity is a party to a conference hearing and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's entire file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. See, N.J.S.A. 47:1A-2. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

(b) In any matter scheduled as a conference hearing, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(c) Any discovery other than that permitted in (a) and (b) above in conference hearings shall be by motion to the judge and for good cause shown.

(d) In no conference case shall the hearing date be adjourned to permit discovery.

(e) No discovery to prepare for mediation shall be permitted.

SUBCHAPTER 11. SUBPOENAS

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk, any judge, or by pro se parties, attorneys-at-law or non-lawyer representatives, in the name of the Clerk, to compel the attendance of a person to testify or to produce books, papers, documents or other objects at a hearing, provided however, that a subpoena to compel the attendance of the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director may be issued only by a judge. A subpoena for the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director shall be issued only if the requesting party makes a showing that the subpoenaed individual has firsthand knowledge of, or direct involvement in, the events giving rise to the contested case, or that the testimony is essential to prevent injustice.

(b) The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(c) Subpoenas to compel the attendance of a person to testify at a deposition may be issued by a judge pursuant to N.J.A.C. 1:1-10.2(c).

(d) A subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case.

(e) Subpoena forms shall be available free of charge from the Office of Administrative Law.

(f) Upon request by a party, subpoena issued by the Clerk or by a judge may be forwarded to that party by facsimile transmission. Facsimile transmitted subpoenas shall be served in the same manner and shall have the same force and effect as any other subpoena pursuant to this subchapter. A party requesting a facsimile transmittal shall

be charged for such transmittal pursuant to N.J.A.C. 1:1-7.5(e).

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

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

Added (d).

Amended by R.1994 d.293, effective June 6, 1994.

See: 26 N.J.R. 1276(a), 26 N.J.R. 2255(a).

1:1-11.2 Service; fees

(a) A subpoena shall be served by the requesting party by delivering a copy either in person or by certified mail return receipt requested to the person named in the subpoena, together with the appropriate fee, at a reasonable time in advance of the hearing.

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of \$2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of \$2.00 for every 30 miles of travel in going to the place of hearing from his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

1:1-11.3 Motions to quash

The judge on motion may quash or modify any subpoena for good cause shown. If compliance with a subpoena for the production of documentary evidence would be unreasonable or oppressive, the judge may condition denial of the motion upon the advancement by the requesting party of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.

1:1-11.4 Failure to obey subpoena

A party who refuses to obey a subpoena may be subject to sanctions under N.J.A.C. 1:1-14.4 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable.

1:1-11.5 Enforcement

A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.

SUBCHAPTER 12. MOTIONS

1:1-12.1 When and how made; generally; limitation in conference hearings

(a) Where a party seeks an order of a judge, the party shall apply by motion.

1. A party shall make each motion in writing, unless it is made orally during a hearing or unless the judge otherwise permits it to be made orally.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made, the relief or order being sought and the date when the matter shall be submitted to the judge for disposition. A party shall submit a proposed form of order with each motion, unless the judge waives this requirement.

(b) A party shall file each motion with the judge. If a case has not yet been assigned to a judge, motions may be filed with the Clerk.

(c) In a motion for substantially the same relief as that previously denied, a party shall specifically identify the previous proceeding and its disposition.

(d) In conference hearings, other than motions for emergency relief, discovery, summary decision or conversion of the conference hearing into another form of proceeding, a party may not file a motion in advance of the scheduled hearing date.

Amended by R.1991 d.44, effective February 4, 1991.

See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

In (b): deleted text explaining Clerk's procedures regarding motions. Added text: "If a case . . . with the Clerk."

1:1-12.2 Motions in writing; generally, no oral argument; time limits

(a) With the exception of emergency relief applications made pursuant to N.J.A.C. 1:1-12.6 and when a motion is expedited pursuant to (g) below, no action shall be taken on motions in writing until at least 20 days have expired from the date of service upon the opposing party.

(b) The moving papers shall establish a submission date at least 20 days from the date of service upon the opposing party, when the matter will be submitted to a judge for disposition. Proof of service shall be filed with the moving papers.

(c) The opposing parties shall file and serve responsive papers no later than 10 days after receiving the moving papers. Proof of service shall be filed with the responsive papers.

(d) The moving party may file and serve further papers responding to any matter raised by the opposing party and shall do so no later than five days after receiving the responsive papers.

(e) All motions in writing shall be submitted for disposition on the papers unless oral argument is directed by the judge.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

Case Notes

Adult classified special education student with disciplinary problems was precluded from attending Senior Prom. P.P. v. Westwood Board, 95 N.J.A.R.2d (EDS) 165.

1:1-12.7 Disposition of motions

Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:1-13.1 Prehearing conferences

(a) A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-9.1(d).

(b) The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-13.2 and that discovery should have already been commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the

parties and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

(c) In exceptional circumstances, the judge may, upon no less than 10 days' notice, require the parties to file with the judge and serve upon all other parties no later than three days before the scheduled prehearing conference, prehearing memoranda stating their respective positions on any or all of the matters specified in N.J.A.C. 1:1-13.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

1:1-13.2 Prehearing order; amendment

(a) Within 10 days after the conclusion of the prehearing conference, the judge shall prepare a written order specifically setting out the matters listed in 1 through 14 below and shall cause the same to be served upon all parties.

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;
2. The parties and their status, for example, petitioner, complainant, appellant, respondent, intervenor, etc., and their attorneys or other representatives of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;
3. Any special legal requirements as to notice of hearing;
4. The schedule of hearing dates and the time and place of hearing;
5. Stipulations as to facts and issues;
6. Any partial settlement agreements and their terms and conditions;
7. Any amendments to the pleadings contemplated or granted;
8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;
9. Order of proofs;
10. A list of exhibits marked for identification;
11. A list of exhibits marked in evidence by consent;
12. Estimated number of fact and expert witnesses;

13. Any motions contemplated, pending and granted;
14. Other special matters determined at the conference.

(b) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors.

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

SUBCHAPTER 14. CONDUCT OF CASES

1:1-14.1 Public hearings; records as public; sealing a record; media coverage

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Prehearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case may, at the judge's discretion, be conducted in public or in closed session and may or may not be recorded. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege and the effective right to counsel, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

Amended by R.1988 d.115, effective March 21, 1988.

See: 20 N.J.R. 127(a), 20 N.J.R. 642(a).

Added text to (d) "and the effective right to counsel".

Case Notes

Newspaper was entitled to a redacted copy of the ALJ's order in case involving teacher who allegedly committed sexual abuse against her students. *Division of Youth and Family Services v. M.S.*, 73 A.2d 1191 (2001).

State Board of Examiners, Department of Education was required to balance the interests of protecting victims from potential harm and embarrassment against the press' access to public records and proceedings, when determining whether to release redacted copy of sealed order to newspaper. *Division of Youth and Family Services v. M.S.*, 73 A.2d 1191 (2001).

Casino Control Commission is required to balance interests on application to seal a record. *Petition of Nigris*, 242 N.J.Super. 623, 577 A.2d 1292 (A.D.1990).

Public disclosure required of electric utility's settlement agreement. In *Matter of Westinghouse Electric Corporation Motion for Protective Order*. 92 N.J.A.R.2d (BRC) 73.

There is a presumption that all adjudicative proceedings were open to the public and that any deviation from this norm must be tested by a standard of strict and inescapable necessity. A case involving allegations of sexual misconduct could not, on its own, be sufficient to create the compelling circumstances necessary to seal the record (citing former N.J.A.C. 1:1-3.1). *Sananman v. Bd. of Medical Examiners*, 5 N.J.A.R. 310 (1981).

1:1-14.2 Expedition

(a) Hearings and other proceedings shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

(b) The parties shall promptly advise the Clerk and the judge of any event which will probably delay the conduct of the case.

Case Notes

Hearings required to proceed with all reasonable expedition (citing former N.J.A.C. 1:1-3.2). *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

1:1-14.3 Interpreters; payment

(a) Except as provided in (d) below, any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.

(b) Taking into consideration the complexity of the issues and communications involved, the judge may require that an interpreter be taken from an official registry of interpreters

or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the judge.

(h) Applications to an agency head for emergent relief in matters previously transmitted to the Office of Administrative Law shall not delay the scheduling or conduct of hearings, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

(i) Upon determining an application for emergency relief, the judge forthwith shall issue to the parties, the agency head and the Clerk a written order on the application. The Clerk shall file with the agency head any papers in support of or opposition to the application which were not previously filed with the agency and a sound recording of the oral argument on the application, if any oral argument has occurred.

(j) The agency head's review of the judge's order shall be completed without undue delay but no later than 45 days from entry of the judge's order, except when, for good cause shown and upon notice to the parties, the time period is extended by the joint action of the Director of the Office of Administrative Law and the agency head. Where the agency head does not act on review of the judge's order within 45 days, the judge's order shall be deemed adopted.

(k) Review by an agency head of a judge's order for emergency relief shall not delay the scheduling or conduct of hearings in the Office of Administrative Law, unless the presiding judge determines that a postponement is necessary due to special requirements of the case, because of probable prejudice or for other good cause.

Case Notes

Adult classified special education student with disciplinary problems was precluded from attending Senior Prom. P.P. v. Westwood Board, 95 N.J.A.R.2d (EDS) 165.

1:1-12.7 Disposition of motions

Disposition of motions which completely conclude a case shall be by initial decision. Disposition of all other motions shall be by order.

SUBCHAPTER 13. PREHEARING CONFERENCES AND PROCEDURES

1:1-13.1 Prehearing conferences

(a) A prehearing conference shall be scheduled in accordance with the criteria established in N.J.A.C. 1:1-9.1(d).

(b) The prehearing notice shall advise the parties, their attorneys or other representatives that a prehearing conference will cover those matters listed in N.J.A.C. 1:1-13.2 and that discovery should have already been commenced. At the time of the prehearing conference, the participants shall be prepared to discuss one or more alternate dates when the

parties and witnesses will be available for the evidentiary hearing. The judge may advise the parties that other special matters will be discussed at the prehearing conference.

(c) In exceptional circumstances, the judge may, upon no less than 10 days' notice, require the parties to file with the judge and serve upon all other parties no later than three days before the scheduled prehearing conference, prehearing memoranda stating their respective positions on any or all of the matters specified in N.J.A.C. 1:1-13.2 set forth in the same sequence and with corresponding numbers or on other special matters specifically designated.

(d) A prehearing conference shall be held by telephone conference call unless the judge otherwise directs.

1:1-13.2 Prehearing order; amendment

(a) Within 10 days after the conclusion of the prehearing conference, the judge shall prepare a written order specifically setting out the matters listed in 1 through 14 below and shall cause the same to be served upon all parties.

1. The nature of the proceeding and the issue or issues to be resolved including special evidence problems;
2. The parties and their status, for example, petitioner, complainant, appellant, respondent, intervenor, etc., and their attorneys or other representatives of record. In the event that a particular member or associate of a firm is to try a case, or if outside trial counsel is to try the case, the name must be specifically set forth at the prehearing. No change in such designated trial counsel shall be made without leave of the judge if such change will interfere with the date for hearing. If the name of a specific trial counsel is not set forth, the judge and opposing parties shall have the right to expect any partner or associate to proceed with the trial on the date of hearing;
3. Any special legal requirements as to notice of hearing;
4. The schedule of hearing dates and the time and place of hearing;
5. Stipulations as to facts and issues;
6. Any partial settlement agreements and their terms and conditions;
7. Any amendments to the pleadings contemplated or granted;
8. Discovery matters remaining to be completed and the date when discovery shall be completed for each mode of discovery to be utilized;
9. Order of proofs;
10. A list of exhibits marked for identification;
11. A list of exhibits marked in evidence by consent;
12. Estimated number of fact and expert witnesses;

13. Any motions contemplated, pending and granted;
14. Other special matters determined at the conference.

(b) Any party may, upon written motion filed no later than five days after receiving the prehearing order, request that the order be amended to correct errors.

(c) The prehearing order may be amended by the judge to accommodate circumstances occurring after its entry date. Unless precluded by law, a prehearing order may also be amended by the judge to conform the order with the proofs.

SUBCHAPTER 14. CONDUCT OF CASES

1:1-14.1 Public hearings; records as public; sealing a record; media coverage

(a) All evidentiary hearings, proceedings on motions and other applications shall be conducted as public hearings unless otherwise provided by statute, rule or regulation, or on order of a judge for good cause shown. Prehearing conferences and informal discussions immediately preceding the hearing or during the hearing to facilitate the orderly and expeditious conduct of the case may, at the judge's discretion, be conducted in public or in closed session and may or may not be recorded. Mediations and settlement conferences shall be held in closed session but may be recorded. All other proceedings in the presence of a judge shall be recorded verbatim either by a stenographic reporter or by sound recording devices. All discussions off the record, no matter how brief, except settlement discussions and mediations, shall be summarized generally for the record. The record of all hearings shall be open to public inspection, but the judge may, for good cause shown, order the sealing of the record or any part thereof.

(b) In considering whether to close a hearing and/or seal a record, the judge shall consider the requirements of due process of law, other constitutional and statutory standards and matters of public policy. The judge shall consider the need to protect against unwarranted disclosure of sensitive financial information or trade secrets, to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests.

(c) When sealing a record, the judge must specify the consequences of such an order to all material in the case file including any evidence, the stenographic notes or audiotapes and the initial decision. The treatment of testimony or exhibits shall be on such terms as are appropriate to balance public and private rights or interests and to preserve the record for purposes of review. The judge shall also indicate what safeguards shall be imposed upon the preparation and disclosure of any transcript of the proceedings.

(d) All public hearings may be filmed, photographed and recorded, subject to reasonable restrictions established by the judge to avoid disruption of the hearing process. The number of cameras and lights in the hearing room at any one time may be limited. Technical crews and equipment may be prohibited from moving except during recesses and after the proceedings are concluded for the day. To protect the attorney/client privilege and the effective right to counsel, there shall be no recording of conferences between attorneys and their clients or between counsel and the judge at the bench.

Amended by R.1988 d.115, effective March 21, 1988.

See: 20 N.J.R. 127(a), 20 N.J.R. 642(a).

Added text to (d) "and the effective right to counsel".

Case Notes

Casino Control Commission is required to balance interests on application to seal a record. *Petition of Nigris*, 242 N.J.Super. 623, 577 A.2d 1292 (A.D.1990).

Public disclosure required of electric utility's settlement agreement. In *Matter of Westinghouse Electric Corporation Motion for Protective Order*. 92 N.J.A.R.2d (BRC) 73.

There is a presumption that all adjudicative proceedings were open to the public and that any deviation from this norm must be tested by a standard of strict and inescapable necessity. A case involving allegations of sexual misconduct could not, on its own, be sufficient to create the compelling circumstances necessary to seal the record (citing former N.J.A.C. 1:1-3.1). *Sananman v. Bd. of Medical Examiners*, 5 N.J.A.R. 310 (1981).

1:1-14.2 Expedition

(a) Hearings and other proceedings shall proceed with all reasonable expedition and, to the greatest extent possible, shall be held at one place and shall continue, except for brief intervals of the sort normally involved in judicial proceedings, without suspension until concluded.

(b) The parties shall promptly advise the Clerk and the judge of any event which will probably delay the conduct of the case.

Case Notes

Hearings required to proceed with all reasonable expedition (citing former N.J.A.C. 1:1-3.2). *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

1:1-14.3 Interpreters; payment

(a) Except as provided in (d) below, any party at his or her own cost may obtain an interpreter if the judge determines that interpretation is necessary.

(b) Taking into consideration the complexity of the issues and communications involved, the judge may require that an interpreter be taken from an official registry of interpreters or otherwise be assured that the proposed interpreter can adequately aid and enable the witness in conveying information to the judge.

(c) If all parties consent, the judge may accept as an interpreter a friend or relative of a party or witness, any employee of a State or local agency, or other person who can provide acceptable interpreter assistance.

(d) In cases requiring the appointment of a qualified interpreter for a hearing impaired person pursuant to N.J.S.A. 34:1-69.7 et seq., the administrative law judge shall appoint an interpreter from the official registry of interpreters. The fee for the interpreter shall be paid by the transmitting agency.

Amended by R.1989 d.159, effective March 20, 1989.
See: 20 N.J.R. 2845(c), 21 N.J.R. 749(b).

(d) added requiring appointment of interpreter for hearing impaired, transmitting agency to pay fee.

1:1-14.4 Failure to appear; sanctions for failure to appear

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may, pursuant to N.J.A.C. 1:1-3.3(b) and (c), direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for the conclusion that there has been an intentional delay.

(c) If the appearing party requires an initial decision on the merits because of the failure to appear, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

Amended by R.1987 d.462, effective November 16, 1987.

See: 19 N.J.R. 1592(a), 19 N.J.R. 2131(b).

Added text in (a) "The judge may . . . the requested relief."

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).

Case Notes

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

Respondent moved to bar counsel for petitioner because of alleged conflict of interest due to N.J.S.A. 52:13D-16(b) that prohibits members of the Legislature and their partner and employees from representing any person other than the State in connection with any cause or matter pending before a State agency. Cited N.J.A.C. 1:1-5.1 and 14.6(p), which authorize an administrative law judge to rule on the propriety of appearance of counsel. Held counsel was barred (citing former N.J.A.C. 1:1-3.7 and 3.9). *Stone Harbor v. Div. of Coastal Resources*, 4 N.J.A.R. 101 (1980).

1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

(a) The judge shall commence conference and plenary hearings by stating the case title and the docket number, asking the representatives or parties present to state their names for the record and describing briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record at this time.

(b) In conference and plenary hearings, the party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

(c) After opening statements in conference and plenary hearings, the party with the burden of proof shall begin the presentation of evidence unless the judge has determined otherwise. The other parties may present their evidence in a sequence determined by the judge.

(d) Cross-examination of witnesses in conference and plenary hearings shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing.

(e) When all parties and witnesses have been heard in conference and plenary hearings, opportunity shall be offered to present oral final argument, in a sequence determined by the judge.

(f) Unless permitted or requested by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions permitted after the final argument in plenary hearings. Whenever possible, proposed findings or other submissions should be offered at the hearing in lieu of or in conjunction with the final argument.

1. When proposed findings or other submissions are permitted or requested by the judge, the parties shall conform to a schedule that may not exceed 30 days after the last day of testimony or the final argument.

2. When the judge permits proposed findings or other submissions to be prepared with the aid of a transcript, the transcript must be ordered immediately. The 30-day submission time frame shall commence upon receipt of the transcript.

3. Any proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.

4. Any reference in briefs or other such submissions to initial decisions shall include sufficient information to enable the judge to locate the initial decision. This shall include either the Office of Administrative Law docket number or a reference to New Jersey Administrative Reports or another published and indexed compilation.

(g) In conference hearings, no proposed findings of fact, including conclusions of law, briefs, forms of order or other dispositions may be offered or required after the final argument, except for the purpose of expressing the terms of a settlement.

(h) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired.

(i) A telephone hearing may be designated by the Clerk or judge as a conference or plenary hearing. A telephone hearing, whether conference or plenary, is begun by the judge placing a conference call on a designated date and time to the parties in the case.

Amended by R.1991 d.44, effective February 4, 1991.
See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

In (h): deleted text “, or when the last such item has been received by the judge, whichever is earlier,” describing filing of submissions.

Case Notes

Striking answer and suppressing defenses was proper sanction for employer's failure to respond to discovery in employment discrimination complaint. *Ospina v. Jay Screen Printing, Inc. and Jay Sign Co.*, 97 N.J.A.R.2d (CRT) 1.

1:1-14.8 Conduct of proceedings on the papers

(a) Upon transmittal of a case that may be conducted as a proceeding on the papers, the Clerk shall schedule a hearing and send a notice of hearing to the parties. The notice shall permit the party requesting the hearing to select a telephone hearing or a proceeding on the papers in lieu of the scheduled in-person hearing.

(b) Along with the notice of hearing, the Clerk shall transmit a certification, to be completed if the party requesting the hearing chooses to have a proceeding on the papers.

(c) A completed certification must be returned to the Clerk no later than 10 days before the scheduled hearing date. Statements, records and other documents which supplement the certification may also be submitted. Upon request and for good cause shown, the Clerk may grant additional time for submission of supplemental documents.

(d) At the conclusion of the time allotted in (c) above, the Clerk will assign the record for review and determination by a judge. The record consists of the certification and supplemental documents, as well as documents transmitted with the file by the transmitting agency. In a proceeding on the papers, the hearing is concluded when the clerk assigns the record to a judge.

(e) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certification is received, the matter shall be handled pursuant to N.J.A.C. 1:1-14.14.

Amended by R.1988 d.517, effective November 7, 1988.

See: 20 N.J.R. 1979(c), 20 N.J.R. 2749(a).

Deleted text from (e) and substituted new. The new text changes the timing of exchange to receipt of the notice of filing of the case, rather than the notice of hearing.

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.

1:1-14.9 Orders; preparation of orders

(a) Any resolution which does not completely conclude the case shall be by order. Orders may be rendered in writing or orally on the record by the judge.

(b) Unless such review is precluded by law, all judges' orders are reviewable by an agency head in accordance with N.J.A.C. 1:1-14.10 or when rendering a final decision under N.J.A.C. 1:1-18.6.

(c) Orders may be prepared by a party at the direction of a judge. When prepared by a party, the order shall be filed with the judge and served on all parties who may within five

days after service object to the form of the order by writing to the judge with a copy to all parties. Upon objection to the form of the order, the judge, without oral argument or any further proceedings, may settle the form of the order, either by preparing a new order or by modifying the proposed order. After signing the order, the judge shall cause the order to be served upon the parties.

1:1-14.10 Interlocutory review

(a) Except for the special review procedures provided in N.J.A.C. 1:1-12.6 (emergency relief), and 1:1-12.5(e) (partial summary decision), an order or ruling may be reviewed interlocutorily by an agency head at the request of a party.

(b) Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the receipt of the written order or oral ruling, whichever is rendered first. An opposing party may, within three days of receipt of the request, submit an objection to the agency head. A copy must be served on the party who requested review. Any request for interlocutory review or objection to a request shall be in writing by memorandum, letter or motion and shall include a copy of any written order or ruling or a summary of any oral order or ruling sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the 10 day period will satisfy this notice requirement, provided that a written communication or order promptly follows.

(d) A party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head in writing arguments in favor of the order or ruling being reviewed. A copy shall be served on the party who requested review.

(e) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed. The time period for disposition may be extended for good cause for an additional 20 days if both the agency head and the Director of the Office of Administrative Law concur.

(f) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the Clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

(g) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

(h) The time limits established in this section, with the exception of (e) above, may be extended by the agency head where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence.

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Either the presiding judge or the agency head may order a stay of the proceedings, either on their own or upon application. Applications for stays should be made in the first instance to the presiding judge. If denied, the application may be resubmitted to the agency head. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j) Except as limited by (m) below and N.J.A.C. 1:1-18.4(a), any order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;
2. Was made but the agency head declined to review the order or ruling; or
3. Was made and not considered by the agency head within the established time frame.

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;
2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;
3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;

4. Sanctions under N.J.A.C. 1:1-14.4 or 14.14 consisting of the assessment of costs, expenses, or fines;

5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3;

6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b); and

7. Appearance of attorneys pro hac vice pursuant to N.J.A.C. 1:1-5.2.

(l) Any request for interlocutory review of those matters specified in (k) above should be addressed to the Director of the Office of Administrative Law with a copy to the agency head who transmitted the case to the Office of Administrative Law. Review shall proceed in accordance with (b) through (h) above.

(m) Orders or rulings issued under (k)1, 2, 3, 5, 6 and 7 above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.

Amended by R.1987 d.462, effective November 16, 1987.

See: 19 N.J.R. 1592(a), 19 N.J.R. 2131(b).

Added (m).

Amended by R.1990 d.219, effective May 7, 1990.

See: 22 N.J.R. 590(a), 22 N.J.R. 1353(a).

In (i): added language to clarify who may order a stay in an administrative hearing.

Amended by R.1991 d.34, effective January 22, 1991.

See: 22 N.J.R. 3278(a), 23 N.J.R. 194(a).

Added (k)6.

Amended by R.1996 d.133, effective March 18, 1996.

See: 27 N.J.R. 609(a), 28 N.J.R. 1503(a).

In (k)4 added fines.

Amended by R.2001 d.180, effective June 4, 2001.

See: 33 N.J.R. 1040(a), 33 N.J.R. 1926(a).

In (k)4, inserted "or 14.14" following "1:1-14.4"; added (k)7.

Case Notes

Granting of partial summary judgement is not effective until a final agency review has been rendered on an issue, either upon interlocutory review pursuant to a request by respondent or at end of the contested case (citing former N.J.A.C. 1:1-9.7 and 1:1-16.5). *Kurman v. Fairmount Realty Corp.*, 8 N.J.A.R. 110 (1985).

Order of the Administrative Law Judge may be reviewed by the Commissioner of the Department of Education and by the Commissioner of the Department of Human Services whether upon the interlocutory review or at the end of special education case (citing former N.J.A.C. 1:1-9.7). *A.N. v. Clark Bd. of Educ.*, 6 N.J.A.R. 360 (1983).

1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) A transcript of any proceeding which has been sound recorded may be obtained by filing a request with the Clerk. The requesting party shall notify all other parties of the request. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the preparer.

The Clerk shall promptly arrange for the preparation of the transcript with a copy for the case file. Upon completion of the transcript, the preparer shall forward the transcript to the requesting party and the copy to the Clerk. The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(b) An unofficial copy of a sound recorded proceeding may be obtained by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) A transcript of any stenographically recorded proceeding may be obtained by requesting the appropriate stenographic firm to prepare a transcript, except as specified in (d) below. The requesting party shall provide notice of the request to the Clerk and to all other parties. Unless the requesting party is the State or a political subdivision thereof, the stenographic firm may require a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or \$300.00 for each day or fraction thereof of the proceeding. The reporter shall promptly prepare the transcript and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The reporter shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(d) When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:

1. For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;
2. For cases heard by an agency head, the request shall be made to the Clerk of that agency.

(e) All transcript preparation requests pursuant to (d) above for appeal to a court shall include one copy of the transcript for the Clerk and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).

1. The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(f) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(g) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

(h) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester, when making the request, must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

(i) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) or (c) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(j) Where the Public Advocate's office is representing the public interest in a proceeding and another party to the proceeding is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Public Advocate upon request the official transcript.

Amended by R.1990 d.68, effective February 5, 1990.

See: 21 N.J.R. 1181(b), 21 N.J.R. 3587(a), 22 N.J.R. 334(a).

In (a)-(c): Deleted language specifying that "any party, or person, with a legitimate need, may obtain" or "may request a transcript . . .".

In (a): Added sentence that the requesting party shall notify all other parties of the request. Established new rate for security deposit. Specified responsibilities of the preparer regarding transcripts and billings.

In (c): Revised section to include new rate for security deposit and added sentence, "The reporter shall bill . . . for any overpayment".

Added new sections (d)-(h), recodifying old (d)-(e) as new (i)-(j).

In (j): Deleted sentence regarding payment for official transcripts by state agencies.

Case Notes

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding. *Negron v. Department of Corrections*, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

Rule allows respondent an opportunity to obtain a transcript of proceeding (citing former N.J.A.C. 1:1-3.3). *Div. of Motor Vehicles v. Exum*, 5 N.J.A.R. 298 (1983).

1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or

8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any

procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-14.10(k) and (l).

(b) The letter of request and transmittal form shall be filed with the Clerk of the Office of Administrative Law, together with any attachments, after all pleadings and notice requirements have been concluded.

1:1-21.2 Discovery

(a) Unless other discovery arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, discovery in uncontested cases shall consist of the following:

1. If an agency or a county/local governmental entity is a party to an uncontested case hearing, and the subject of the case is the county/local entity's or agency's action, proposed action or refusal to act, a party shall be permitted to review the entity's or agency's relevant file or files on the matter. Copies of any document in the file or files shall be provided to the party upon the party's request and for a reasonable copying charge. The agency or county/local entity may refuse to disclose any document subject to a bona fide claim of privilege.

2. If the subject of an uncontested case hearing is not a county/local entity's or agency's action, proposed action or refusal to act, each party shall provide each other party copies of any documents and a list with names, addresses and telephone numbers of any witnesses including experts which the party intends to introduce at the hearing. A summary of the testimony expected to be provided by each witness shall be included. These items shall be exchanged at least five days prior to the hearing, unless the judge determines that the information could not reasonably have been disclosed within that time.

(b) Any discovery other than that permitted in (a)1 and 2 above shall be by motion to the judge and for good cause shown.

(c) The hearing date shall not be adjourned to permit discovery.

1:1-21.3 Representation

In uncontested cases conducted by the Office of Administrative Law, representation shall not be regulated by N.J.A.C. 1:1-5.

1:1-21.4 Conduct of uncontested cases

(a) Unless other arrangements are requested by the transmitting agency and agreed to by the Director of the Office of Administrative Law, uncontested cases shall proceed in the following manner:

1. Uncontested cases shall begin with the judge reading the case title and the docket number, asking the representatives or parties present to state their names for the record and stating briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state

the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record.

2. In a sequence determined by the judge, each party to the proceeding shall be permitted to make a presentation setting forth the factual and/or legal basis for its position. When the parties are disputing the facts, the judge shall administer an oath to any party who wishes to make a presentation. The judge may also permit the parties to ask questions, either at the conclusion of each presentation or at the conclusion of all presentations, in the manner and to the extent that he or she determines most suitable.

3. Subject to a bona fide claim of privilege, documents or other tangible items or the written statements of an individual may be entered into the record if they are helpful to an understanding of the situation.

4. No rules of evidence apply to these proceedings.

5. Proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions may be submitted prior to the beginning of the hearing. Such documents may not be accepted thereafter, nor required of the parties at any time unless all parties agree to provide such submissions and the time for issuing the judge's report is not extended.

6. The proceeding shall be deemed concluded on the date the judge determines that no further presentations under (a)2 above shall be necessary.

1:1-21.5 Report

(a) In uncontested cases, the judge shall issue a report to the transmitting agency head which shall deal with each issue presented. The report shall explain the subject matter of the proceeding and the position of each party, shall recommend a course of action and shall set forth the factual or legal basis for the recommendation.

(b) The report may be rendered in writing or orally on the record at the hearing before the parties. If the report is rendered orally, it shall be transcribed and filed with the agency head and mailed to the parties.

(c) The report shall be issued within 45 days after the hearing is concluded unless expedition is required.

1:1-21.6 Extensions

Requests for an extension of any time limit associated with an uncontested case shall be taken to the transmitting agency head.

Amended by R.1987 d.464, effective November 16, 1987.
See: 19 N.J.R. 1593(b), 19 N.J.R. 2131(d).

Repealed old 21.6 exceptions and cross-exceptions and recodified this section from 21.7.