SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:1-8.1 Agency filing with the Office of Administrative Law; settlement efforts

(a) After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-8.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.

(b) During the 30-day period in (a) above, an agency may attempt settlement in accordance with N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the 30th day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.

(c) An agency may file a contested case with the Office of Administrative Law immediately if the agency determines that settlement efforts would be inappropriate or unproductive.

Case Notes

Agency may retain contested case and must notify all parties of decision to retain (citing former N.J.A.C. 1:1-5.1 and 5.4). Deck House, Inc. v. New Jersey State Bd. of Architects, 531 F.Supp. 633 (D.N.J.1982).

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

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).

An agency head may postpone the transfer of a contested case while the parties negotiate; however, no such delay is allowed where it would be inappropriate or unproductive (citing former N.J.A.C. 1:1-5.1 and 5.4). Abbott v. Burke, 100 N.J. 269, 495 A.2d 376 (1985).

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;

2. The name, address and telephone number of the agency's transmitting officer;

3. The name or title of the proceeding, including the designation petitioner/respondent or appellant/appellee when appropriate;

4. The agency docket or reference number;

5. A description of the nature of the case, including a statement of the legal authority and jurisdiction upon which the agency action is based or under which the hearing is to be held, a reference to particular statutes and rules involved as well as a brief summary of the matters of fact and law asserted. If this information is included in a pleading that is attached to the transmittal form pursuant to (b) below, the agency may refer to the pleading in order to satisfy this requirement;

6. An indication as to whether the agency has attempted settlement;

7. An estimate of the total time required for the hearing;

8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law will provide an audiotape recording for the hearing. When a stenographer is requested by the transmitting agency, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee shall be paid by that party;

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.

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.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (a)8, substituted "will provide" for "may provide at its expense either" and deleted "or a court stenographer" following "recording"; and in (f), deleted "at 185 Washington Street, Newark, New Jersey 07102".

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, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk or the judge's secretary 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 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 telephone hearing may be scheduled for any case when the judge so directs, subject to the requirements of N.J.A.C. 1:1-15.8(e).

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).
Amended by R.2002 d.198, effective July 1, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).
In (f), deleted 2 through 4 and recodified existing 5 and 6 as 2 and 3.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (a), deleted "conference hearing," preceding "telephone hearing"; in (b), inserted "or the judge's secretary"; in (d), deleted ", other than one requiring a conference hearing," preceding "whenever"; deleted former (f); recodified former (g) as (f); and rewrote (f).

no later than 10 days thereafter. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

(c) Motions for summary decision shall be decided within 45 days from the due date of the last permitted responsive filing. Any motion for summary decision not decided by an agency head which fully disposes of the case shall be treated as an initial decision under N.J.A.C. 1:1-18. Any partial summary decision shall be treated as required by (e) and (f) below.

(d) If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

(e) A partial summary decision order shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6. However, at the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. 1:1-18.3(c)12. If the agency head concludes that immediate review of the order will not avoid unnecessary litigation or expense, the agency head may return the matter to the judge and indicate that the order will be reviewed at the end of the contested case. Within 10 days after a partial summary decision order is filed with the agency head, the Clerk shall certify a copy of pertinent portions of the record to the agency head.

(f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to the case orders that a postponement is necessary because of special requirements, possible prejudice, unproductive effort or other good cause.

Amended by R.1990 d.368, effective August, 6, 1990.
See: 22 N.J.R. 3(a), 22 N.J.R. 2262(a).
In (e): added text to provide for an agency head to remand partial summary decisions to judge when deemed appropriate that decision will be reviewed at the end of contested case.
Amended by R.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).
Rewrote (a); in (b), added the fourth and fifth sentences; and in (c), substituted "due date of the last permitted responsive filing" for "date of submission".

Case Notes

Commissioner of Education was not required to conduct evidentiary hearing before removing local school board and ordering creation of state-operated school district, where there were no disputed issues of fact material to proposed administrative action. Contini v. Board of Educ. of Newark, 286 N.J.Super. 106, 668 A.2d 434 (A.D.1995).

Limitations period for challenge to denial of tenure did not begin to run when president of college advised employee by letter that he agreed employee should have tenure. Dugan v. Stockton State College, 245 N.J.Super. 567, 586 A.2d 322 (A.D.1991).

Evidential hearing in contested case is not needed if there are no disputed issues of fact. Frank v. Ivy Club, 120 N.J. 73, 576 A.2d 241 (1990), certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Fact-finding conference conducted by state Division on Civil Rights could serve as basis for resolution of claim that eating clubs practiced gender discrimination. Frank v. Ivy Club, 120 N.J. 73, 576 A.2d 241 (1990), certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Validity of partial summary decision rule upheld; reversed summary decisions in sex discrimination case re: men's eating clubs on jurisdiction and liability, final hearing necessary to resolve disputed fact (cited former N.J.A.C. 1:1-13.1—13.4). Frank v. Ivy Club, 228 N.J.Super. 40, 548 A.2d 1142 (App.Div.1988).

Administrative official could not resolve disputed facts without trial-type hearing. Frank v. Ivy Club, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Plenary hearing is necessary for consideration of petition for issuance of a certificate of public convenience and necessity in this case to consider mitigating circumstances and permit fuller development of all relevant factors. Matter of Robros Recycling Corp., 226 N.J.Super. 343, 544 A.2d 411 (App.Div.1988), certification denied 113 N.J. 638, 552 A.2d 164 (1988).

Summary disposition by administrative law judge is permissible if undisputed facts indicate that particular disposition is required. Matter of Robros Recycling Corp., 226 N.J.Super. 343, 544 A.2d 411 (A.D.1988), certification denied 113 N.J. 638, 552 A.2d 164.

Former N.J.A.C. 1:1-13.1 through 13.4 cited regarding summary decision; rules held valid. In Re: Uniform Administrative Procedure Rules, 90 N.J. 85, 447 A.2d 151 (1982).

Initial Decision (2007 N.J. AGEN LEXIS 806) adopted, which concluded that a teacher's case was moot, where the teacher alleged that her tenure and seniority rights were violated by the board's notice that her employment would be reduced from full-time to 60% but she had been reinstated with no loss of compensation or benefits and thus suffered no loss of position or damage; the board's motion to dismiss on mootness grounds was controlled by N.J.A.C. 1:1-12.5. Price v. Bd. of Educ. of Washington, OAL Dkt. No. EDU 6121-07, 2008 N.J. AGEN LEXIS 259, Commissioner's Decision (January 23, 2008).

When confronted in a disciplinary action with a motion that seeks summary decision both on the issue of liability for the alleged violations and on the quantum of sanctions to be imposed, an opposing party is required to establish the existence of a genuine issue of material disputed fact and, if the opposing party fails to do so, summary decision may be entered without the need for a further hearing on the issue of penalties. Goldman v. Nicolo, OAL Dkt. No. BKI 10722-04, 2006 N.J. AGEN LEXIS 943, Final Decision (October 12, 2006).

While N.J.A.C. 1:1-12.5(b) states that a motion for summary decision may be filed "with or without supporting affidavits," licensees had to file an affidavit or certification denying some or all of the facts set forth by the Commissioner in order to create an issue of material fact. Bakke v. Binn-Graham, OAL Dkt. No. BKI 483-05, 2006 N.J. AGEN LEXIS 60, Initial Decision (February 17, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 440) adopted, which concluded that where Racing Commission suspended horse trainer for

30 days as a result of positive drug test of horse (for Ketorolac) and disqualified horse from sharing purse, summary decision in favor of Commission was appropriate where, following a stay of his suspension, horse trainer failed to respond to certifications by the Commission; summary decision is the administrative counterpart to summary judgment in the judicial arena. Carter v. N.J. Racing Comm'n, OAL Dkt. No. RAC 629-05, 2005 N.J. AGEN LEXIS 1477, Final Decision (November 16, 2005).

Motion for summary decision granted on grounds that doctrines of res judicata and collateral estoppel barred re-litigation of issues (citing former N.J.A.C. 1:1-13.1). Lukas v. Dep't of Human Services, 5 N.J.A.R. 81 (1982), appeal decided 103 N.J. 206, 510 A.2d 1123 (1986).

1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(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

Parents of an autistic child, with severe language disorder and classified as preschool disabled, failed to satisfy all of the criteria for the granting of emergent relief relative to the change in speech therapy; however, as the board of education admitted that it had not provided the occupational therapy required by the child's IEP, the motion for emergent relief was granted as to those services. J.W. and E.W. ex rel. B.W. v. Tinton Falls Bd. of Educ., OAL DKT. NO. EDS 2200-08, 2008 N.J. AGEN LEXIS 165, Emergent Relief Decision (March 24, 2008).

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.

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 and telephone hearings

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

(b) A completed certification must be returned to the Clerk and served on the other party 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.

(c) Upon timely receipt of a completed certification, 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 record is closed when the Clerk assigns the record to a judge.

(d) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certificate is timely received, the matter shall be handled as a failure to appear pursuant to N.J.A.C. 1:1-14.4.

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.
Amended by R.2002 d.198, effective July 1, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).
Rewrote the section.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Section was "Conduct of proceedings on the papers". Rewrote (a); in (b), inserted "and served on the other party" and substituted "10 days before the scheduled hearing date" for "30 days from receipt of the notice of hearing and certification"; in (c), substituted "record is closed" for "hearing is concluded"; deleted former (d); recodified former (e) as (d); and rewrote (d).

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) 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.

(h) 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.

(i) Except as limited by (*l*) 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.

(j) 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 and 14.15 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.

(k) Any request for interlocutory review of those matters specified in (j) 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 (g) above.

(*l*) Orders or rulings issued under (j)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.

(m) A judge's determination to proceed on the record or to order a new hearing pursuant to N.J.A.C. 1:1-14.13(b) and (c) 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.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Deleted former (g); recodified former (h) through (m) as (g) through (*l*); in (i), substituted "(*l*)" for "(m)"; in (j)4, inserted "and 14.15"; in (k), substituted "(j)" for "(k)" and "(g)" for "(h)"; and in (*l*), substituted "(j)1" for "(k)1".
Amended by R.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).
Added (m).

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).

Appeal from license suspension for refusal to submit to breath test (N.J.S.A. 39:4-50.4). Administrative law judge is able to consider unpublished appellate opinion. No provision in the Administrative Procedure Rules of Practice prohibits this. Absent a ruling requiring otherwise, an agency is not free to ignore relevant unpublished appellate opinion of which it is aware unless the respondent can show surprise. Division of Motor Vehicles v. Festa, 6 N.J.A.R. 173 (1982).

1:1-15.2 Official notice

(a) Official notice may be taken of judicially noticeable facts as explained in N.J.R.E. 201 of the New Jersey Rules of Evidence.

(b) Official notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge.

(c) Parties must be notified of any material of which the judge intends to take official notice, including preliminary reports, staff memoranda or other noticeable data. The judge shall disclose the basis for taking official notice and give the parties a reasonable opportunity to contest the material so noticed.

Amended by R.1996 d.343, effective August 5, 1996.
See: 28 N.J.R. 2433(a), 28 N.J.R. 3779(a).
In (a) updated Rules of Evidence citation.

Case Notes

Official notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the agency or the judge. If the agency bases no belief on some unexpressed agency expertise, it should have noted the same for the record (citing former N.J.A.C. 1:1-15.3(b)). A.C. Powell Health Care Center v. Dep't of Environmental Protection, 1 N.J.A.R. 454 (1980).

Official notice may be taken of judicially noticeable facts as explained in Rule 9 of the New Jersey Rules of Evidence (citing former N.J.A.C. 1:1-15.3). Div. of Motor Vehicles v. Exum, 5 N.J.A.R. 298 (1983).

Parties must be notified before or during the hearing of the material noticed and the parties will be afforded an opportunity to contest that material of which the judge is asked to take official notice (citing former N.J.A.C. 1:1-15.3). In Re: Perno Bus Co., 1 N.J.A.R. 402 (1980).

1:1-15.3 Presumptions

No evidence offered to rebut a presumption may be excluded except pursuant to the judge's discretion under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege.

1:1-15.4 Privileges

The rules of privilege recognized by law or contained in the following New Jersey Rules of Evidence shall apply in contested cases to the extent permitted by the context and similarity of circumstances: N.J.R.E. 502 (Definition of Incrimination); N.J.R.E. 503 (Self-incrimination); N.J.R.E. 504 (Lawyer-Client Privilege); N.J.S.A. 45:14B-28 (Psychologist's Privilege); N.J.S.A. 2A:84-22.1 et seq. (Patient and Physician Privilege); N.J.S.A. 2A:84A-22.8 and N.J.S.A. 2A:84A-22.9 (Information and Data of Utilization Review Committees of Hospitals and Extended Care Facilities); N.J.S.A. 2A:84A-22.13 et seq. (Victim Counselor Privilege); N.J.R.E. 508 (Newsperson's Privilege); N.J.R.E. 509 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); N.J.R.E. 511 (Cleric-Penitent Privilege); N.J.R.E. 512 and 610 (Religious Belief); N.J.R.E. 513 (Political Vote); N.J.R.E. 514 (Trade Secret); N.J.R.E. 515 (Official Information); N.J.R.E. 516 (Identity of Informer); N.J.R.E. 530 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); N.J.R.E. 531 (Admissibility of Disclosure Wrongfully Compelled); N.J.R.E. 532 (Reference to Exercise of Privileges); and N.J.R.E. 533 (Effect of Error in Overruling Claim of Privilege).

Administrative Correction.
See: 23 N.J.R. 847(a).
Amended by R.1996 d.343, effective August 5, 1996.
See: 28 N.J.R. 2433(a), 28 N.J.R. 3779(a).
Updated Rules of Evidence citations.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Substituted "Cleric-Penitent Privilege" for "Priest Penitent Privilege".
Amended by R.2009 d.112, effective April 6, 2009.
See: 41 N.J.R. 5(a), 41 N.J.R. 1391(a).
Deleted "N.J.R.E 501 (Privilege of Accused)" following "similarity of circumstances:".

Case Notes

Deliberative process privilege did not apply to Department of Insurance documents. New Jersey Manufacturer's Insurance Company v. Department of Insurance, 94 N.J.A.R.2d (INS) 27.

1:1-15.5 Hearsay evidence; residuum rule

(a) Subject to the judge's discretion to exclude evidence under N.J.A.C. 1:1-15.1(c) or a valid claim of privilege, hearsay evidence shall be admissible in the trial of contested cases. Hearsay evidence which is admitted shall be accorded whatever weight the judge deems appropriate taking into account the nature, character and scope of the evidence, the circumstances of its creation and production, and, generally, its reliability.

(b) Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances of reliability and to avoid the fact or appearance of arbitrariness.

Case Notes

Community-supervised-for-life offender, who, for some time, has been released into the community, must be afforded due process of law before the New Jersey State Parole Board can impose a curfew confining the offender to his home. The level of process will depend on a number of variables and the unique circumstances of each case but, at a minimum, a supervised offender must be provided reasonable notice and a meaningful opportunity to be heard. Jamgochian v. New Jersey State Parole Bd., 196 N.J. 222, 952 A.2d 1060, 2008 N.J. LEXIS 899 (2008).

While the writings of an administrative analyst with the New Jersey Division of Pensions and Benefits were hearsay, as they appeared highly reliable, they were admissible in an administrative hearing under the residuum rule, N.J.A.C. 1:1-15.5(b), to corroborate a retiree's unrebutted testimony about the advice the retiree received from the Division; therefore, an administrative law judge erred in concluding that there was no corroboration for the retiree's testimony. Hemsey v. Board of

Trustees, Police & Firemen's Retirement System, 393 N.J. Super. 524, 925 A.2d 1, 2007 N.J. Super. LEXIS 176 (App.Div. 2007).

"Residuum rule" requires that findings be supported by residuum of competent evidence. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Facts did not need to be proved by residuum of competent evidence, so long as combined probative force of relevant hearsay and relevant competent evidence sustained ultimate finding. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Written, sworn statements of evidence to support charges against tenured, public high school teacher could be hearsay. Matter of Tenure Hearing of Cowan, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each finding of fact (citing former N.J.A.C. 1:1-15.8(b)). In the Matter of Tanelli, 194 N.J.Super. 492, 477 A.2d 394 (App.Div.1984), certification denied 99 N.J. 181, 491 A.2d 686 (1984).

Audiotaped statement of non-testifying female dancer admitted at hearing, but would not be used to impute actual knowledge of prostitution to ABC licensee's management because the licensee did not have the opportunity to cross-examine her. N.J. Div. of Alcoholic Beverage Control v. S.B. Lazarus, Inc., OAL Dkt. No. ABC 2309-07, 2008 N.J. AGEN LEXIS 342, Initial Decision (June 2, 2008).

In an automobile insurance cancellation case, the insurer's contention that water incursion could not cause a digital odometer rollback, presented only by hearsay evidence, could not be found as fact without legally competent evidence to support it, and the insurer's subsequent submission of affidavits attesting to the same bare conclusion did not cure the residuum rule deficiency. Nguyen v. NJ Re-Insurance Co., OAL Dkt. No. BKI 2981-06, 2008 N.J. AGEN LEXIS 309, Initial Decision (April 23, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 202) adopted, which considered the out-of-court statements of a cognitively impaired victim as to the source of the injury to his jaw, though there was a question as to whether the victim understood truth from a lie; testimony of witnesses and exhibits corroborated the hearsay statements. In re Murphy, OAL Dkt. No. CSV 12287-07, 2008 N.J. AGEN LEXIS 604, Final Decision (April 23, 2008).

In a special education case, there was no legally competent evidence in the record to support the hearsay assertions made in a parent's written statement that the consortium school bus drivers speed on the roadways, that her autistic son may be subject to an assault and could not yell out in his own defense because he does not speak, and that the driver assigned to the child's bus spoke only one English word; for that reason and because of the lack of opportunity for cross-examination, the statements were inadmissible. W.S. and P.S. ex rel. W.S. v. Ramsey Bd. of Educ., OAL DKT. NO. EDS 1544-08, 2008 N.J. AGEN LEXIS 89, Final Decision (February 20, 2008).

ALJ dismissed one charge of abuse against a certified nurse aide because it was based entirely on hearsay. N.J. Dep't of Health & Senior Services v. O.B., OAL Dkt. No. HLT 2051-07, 2007 N.J. AGEN LEXIS 263, Initial Decision (May 15, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 725) adopted, which concluded that it could not be found that a certified nurse aide threw a wet pad at a resident of a long-term care facility where there was no competent legal evidence to corroborate the resident's hearsay statement that the act had occurred. N.J. Dep't of Health & Senior Services v. Turner, OAL Dkt. No. HLT 2091-06, 2006 N.J. AGEN LEXIS 872, Final Decision (September 20, 2006).

Administrative cases are unique in that N.J.A.C. 1:1-15.5(b), entitled the "residuum rule," allows hearsay to be admitted, but it also requires the ultimate findings be supported by residuum of competent evidence; the residuum rule is consistent with the principle that, like judicial proceedings, administrative adjudication must include procedural safeguards, including notice and an opportunity to be heard and opportunity for cross-examination, defense, and rebuttal — essential for reliable fact finding. 2 Lars, LLC v. City of Vineland, OAL DKT. NO. ABC 8875-05, 2006 N.J. AGEN LEXIS 730, Initial Decision (September 12, 2006).

Competent evidence refers to evidence that would ordinarily be admissible in a court under the rules of evidence; while hearsay is admissible in an administrative proceeding, the ultimate finding must be based upon competent evidence and may not be based solely upon hearsay. 2 Lars, LLC v. City of Vineland, OAL DKT. NO. ABC 8875-05, 2006 N.J. AGEN LEXIS 730, Initial Decision (September 12, 2006).

Hearsay cannot be "boot strapped" from a municipal hearing into an administrative hearing by shifting the burden of proof to the licensee; if the municipal hearing was built entirely upon hearsay and the hearsay was accepted by the ALJ at an administrative hearing, it would turn it into a rubber stamp and the administrative process would be rendered meaningless. 2 Lars, LLC v. City of Vineland, OAL DKT. NO. ABC 8875-05, 2006 N.J. AGEN LEXIS 730, Initial Decision (September 12, 2006).

Where the city's case relied solely on hearsay, as the city's witness to a fight in the licensee's establishment was not presented as a witness at the administrative hearings and her admissions or statements made to the officers were thus out-of-court statements offered for the truth, the licensee was not afforded procedural safeguards, including opportunity for cross-examination, defense and rebuttal; the city therefore failed to establish by competent evidence that the licensee violated N.J.A.C. 13:2-23.1(a). 2 Lars, LLC v. City of Vineland, OAL DKT. NO. ABC 8875-05, 2006 N.J. AGEN LEXIS 730, Initial Decision (September 12, 2006).

Student accused of possessing marijuana with intent to distribute failed to present any evidence rebutting the police detective's report that he possessed six bags of marijuana, and the fact that the detective's account of the marijuana found with the student was hearsay did not automatically render the evidence incompetent under N.J.A.C. 1:1-15.5(a) and (b). The student himself offered into evidence three exhibits that described circumstances leading to the student's apprehension and possession of marijuana, and while the reports were all hearsay, they nonetheless corroborated each other and were from three separate individuals, one of whom was a witness to the car stop and police activity, and while the witness's statement did not directly refer to the student, it did corroborate facts in police reports. P.G. ex rel. M.G. v. Bd. of Educ. of Woodcliff Lake, OAL Dkt. No. EDU 7495-03, 2006 N.J. AGEN LEXIS 572, Commissioner's Decision (June 28, 2006).

In a proceeding against respondent for operating a solid waste facility without a permit, respondent's exception to an investigator's hearsay testimony failed, where the investigator had testified that the individual he observed dumping solid waste (who did not testify) said he had permission from respondent to do the dumping. Applying the residuum rule requires identifying the ultimate finding of fact that must be supported by a residuum of competent evidence, and here, the Solid Waste Management Act imposes strict liability. Thus, the ultimate finding of fact that the dumping occurred was well supported by the investigator's sworn testimony of observed actions corroborated by photographs taken by the investigator depicting the individual dumping solid waste into a container on the property occupied by respondent. N.J. Dep't of Envtl. Prot. v. Circle Carting, Inc., OAL Dkt. No. ESW 05939-03, 2006 N.J. AGEN LEXIS 227, Final Decision (February 21, 2006).

Hearsay opinion in police report, when successfully rebutted, was not a sufficient basis to require licensee to undergo driver re-examination. Division of Motor Vehicles v. Cioffi, 95 N.J.A.R.2d (MVH) 57.

Hearsay medical reports not sufficient to show police officer permanently and totally disabled for accidental disability retirement purposes. Mercier v. Board of Trustees, Police and Firemen's Retirement System, 92 N.J.A.R.2d (TYP) 94.

Residuum rule requires that notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support

each ultimate finding of fact (citing former N.J.A.C. 1:1-15.8). Div. of Medical Assistance v. Kares, 8 N.J.A.R. 517 (1983).

Letters from real estate agents held admissible hearsay (citing former N.J.A.C. 1:1-15.8(a)). Country Village v. Pinelands Commission, 8 N.J.A.R. 205 (1985).

Casino Control Commission determined that the residuum rule did not apply to hearings conducted pursuant to the Casino Control Act. The standard to be applied (N.J.S.A. 5:12-107(a)(6)) permits the Commission to base any factual findings upon relevant evidence including hearsay, regardless of the fact that such evidence may be admissible in a civil action, so long as the evidence is the sort upon which responsible persons are accustomed to rely upon in the conduct of serious affairs (citing former N.J.A.C. 1:1-15.8). Div. of Gaming Enforcement v. Merlino, 8 N.J.A.R. 126 (1985), affirmed 216 N.J.Super. 579, 524 A.2d 821 (App.Div.1987), affirmed 109 N.J. 134, 535 A.2d 968 (1988).

Hearsay evidence allowed subject residuum rule. In Re: White Bus Co., 6 N.J.A.R. 535 (1983).

Law Review and Journal Commentaries

Approaching Hearsay at Administrative Hearings: Hearsay Evidence and the Residuum Rule. Joseph R. Morano, 180 N.J. Lawyer 22 (1996).

1:1-15.6 Authentication and content of writings

Any writing offered into evidence which has been disclosed to each other party at least 10 days prior to the hearing shall be presumed authentic. At the hearing any party may raise questions of authenticity. Where a genuine question of authenticity is raised the judge may require some authentication of the questioned document. For these purposes the judge may accept a submission of proof, in the form of an

affidavit, certified document or other similar proof, no later than 10 days after the date of the hearing.

Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Substituted "10" for "five".

1:1-15.7 Exhibits

(a) The verbatim record of the proceedings shall include references to all exhibits and, as to each, the offering party, a brief description of the exhibit stated by the offering party or the judge, and the marking directed by the judge. The verbatim record shall also include a record of the exhibits retained by the judge at the end of the proceedings and of the disposition then made of the other exhibits.

(b) Parties shall provide each party to the case with a copy of any exhibit offered into evidence. Large exhibits that cannot be placed within the judge's file may be either photographed, attached to the file, or described in the record and committed to the safekeeping of a party. All other admitted exhibits shall be retained in the judge's file until certified to the agency head pursuant to N.J.A.C. 1:1-18.1.

(c) The standard marking for exhibits shall be:

1. P = petitioner;
2. R = respondent;
3. A = appellant;
4. J = joint;
5. C = judge;
6. I = intervenor; or
7. Such other additional markings required for clarity as the judge may direct.

Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (b), substituted "shall" for "should, whenever practicable,".

1:1-15.8 Witnesses; requirements for testifying; testifying by telephone

(a) Except as otherwise provided by this subchapter, by statute or by rule establishing a privilege:

1. Every person is qualified to be a witness; and
2. No person has a privilege to refuse to be a witness; and
3. No person is disqualified to testify to any matter; and
4. No person has a privilege to refuse to disclose any matter or to produce any object or writing; and
5. No person has a privilege that another shall not be a witness or shall not disclose any matter or shall not produce any object or writing but the judge presiding at the hearing in a contested case may not testify as a witness.

(b) A person is disqualified to be a witness if the judge finds the proposed witness is incapable of expression concerning the matter so as to be understood by the judge directly or through interpretation by one who can understand the witness, or the proposed witness is manifestly incapable of understanding the duty of a witness to tell the truth. An interpreter is subject to all the provisions of these rules relating to witnesses.

(c) As a prerequisite for the testimony of a witness there must be evidence that the witness has personal knowledge of the matter, or has special experience, training or education, if such is required. Such evidence may be provided by the testimony of the witness. In exceptional circumstances, the judge may receive the testimony of a witness conditionally, subject to evidence of knowledge, experience, training or education being later supplied in the course of the proceedings. Personal knowledge may be obtained through hearsay.

(d) A witness may not testify without taking an oath or affirming to tell the truth under the penalty provided by law. No witness may be barred from testifying because of religion or lack of it.

(e) Testimony of a witness may be presented by telephone if, before the hearing begins, the judge finds there is good cause for permitting the witness to testify by telephone. In determining whether good cause exists, the judge shall consider:

1. Whether all parties consent to the taking of testimony by telephone;
2. Whether credibility is an issue;
3. The significance of the witness' testimony;
4. The reason for the request to take testimony by telephone; and
5. Any other relevant factor.

(f) Testimony of a witness may be given in narrative fashion rather than by question and answer format if the judge permits.

Amended by R.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).
In the introductory paragraph of (e), deleted "all parties agree and" preceding "the judge" and inserted the final sentence; and added (e)1 through (e)5.

Case Notes

Construction code official authorized to determine particular fire code prevention requirements of building where building use deviates in any significant respect from building uses "specifically covered" by fire prevention subcode; hearing held by construction board of appeals was procedurally deficient. In the Matter of the "Analysis of Walsh Trucking Occupancy and Sprinkler System", 215 N.J.Super. 222, 521 A.2d 883 (App.Div.1987).

Except as otherwise provided by N.J.A.C. 1:1-15, by statute or by rule establishing a privilege, every person is qualified to be a witness (citing former N.J.A.C. 15.2(e)). De Vitis v. New Jersey Racing Commission, 202 N.J.Super. 484, 495 A.2d 457 (App.Div.1985), certification denied 102 N.J. 337, 508 A.2d 213 (1985).

Initial Decision (2008 N.J. AGEN LEXIS 202) adopted, which considered the out-of-court statements of a cognitively impaired victim as to the source of the injury to his jaw, though there was a question as to whether the victim understood truth from a lie; testimony of witnesses and exhibits corroborated the hearsay statements. In re Murphy, OAL Dkt. No. CSV 12287-07, 2008 N.J. AGEN LEXIS 604, Final Decision (April 23, 2008).

1:1-15.9 Expert and other opinion testimony

(a) If a witness is not testifying as an expert, testimony of that witness in the form of opinions or inferences is limited to such opinions or inferences as the judge finds:

1. May be rationally based on the perception of the witness; and

2. Are helpful to a clear understanding of the witness' testimony or to the fact in issue.

(b) If a witness is testifying as an expert, testimony of that witness in the form of opinions or inferences is admissible if such testimony will assist the judge to understand the evidence or determine a fact in issue and the judge finds the opinions or inferences are:

1. Based on facts and data perceived by or made known to the witness at or before the hearing; and

2. Within the scope of the special knowledge, skill, experience or training possessed by the witness.

(c) Testimony in the form of opinion or inferences which is otherwise admissible is not objectionable because it embraces the ultimate issue or issues to be decided by the judge.

(d) A witness may be required, before testifying in terms of opinions or inference, to be first examined concerning the data upon which the opinion or inference is based.

(e) Questions calling for the opinion of an expert witness need not be hypothetical in form unless, in the discretion of the judge, such form is required.

(f) If facts and data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, those facts and data upon which an expert witness bases opinion testimony need not be admissible in evidence.

Case Notes

Adopting and modifying on other grounds Initial Decision (2005 N.J. AGEN LEXIS 1070), which found the testimony of the manufacturer's witness to be lacking in foundation and not credible where the witness testified that the after-market installation of a snowplow on the consumer's truck could have been the cause of the vehicle's intermittent shutting down without warning; although the administrative rules give an ALJ latitude in admitting evidence, an expert's opinion must still be based on factual evidence. Marago v. Daimler Chrysler Motors Co., OAL Dkt. No. CMA 8775-05, 2005 N.J. AGEN LEXIS 1070, Final Decision (December 22, 2005).

1:1-15.10 Offers of settlement inadmissible

Offers of settlement, proposals of adjustment and proposed stipulations shall not constitute an admission and shall not be admissible.

1:1-15.11 Stipulations

The parties may by stipulation agree upon the facts or any portion thereof involved in any controversy. Such a stipulation shall be regarded as evidence and shall preclude the parties from thereafter challenging the facts agreed upon.

1:1-15.12 Prior transcribed testimony

(a) If there was a previous hearing in the same or a related matter which was electronically or stenographically recorded, a party may, unless the judge determines that it is necessary to evaluate credibility, offer the transcript of a witness in lieu of producing the witness at the hearing provided that the witness' testimony was taken under oath, all parties were present at the proceeding and were afforded a full opportunity to cross-examine the witness.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least 10 days notice prior to the commencement of the hearing of that intention and provide each with a copy of the transcript being offered.

(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) Provided the requirements in (a) above are satisfied, the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.

(e) Prior transcribed testimony that would be admissible as an exception to the hearsay rule under Evidence Rule 63(3) is not subject to the requirements of this section.

Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (a), inserted "or a related"; in (b), substituted "10" for "five" and inserted "prior to the commencement of the hearing".

SUBCHAPTER 16. INTERVENTION AND PARTICIPATION

1:1-16.1 Who may apply to intervene; status of intervenor

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially,

specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the proceeding.

Case Notes

Interested parties were entitled to relevant information on consideration of automobile insurance rates of Market Transition Facility. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Policyholders were "interested parties" with respect to access to information to be used by Department of Insurance on setting rates. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Initial Decision (2006 N.J. AGEN LEXIS 79) adopted, which concluded that where petitioner, who was denied a waterfront development permit, no longer owned the subject property and the successor owners had not responded to notification of the opportunity to seek leave to intervene, there was no longer a justiciable controversy; accordingly, the petitioner's appeal was moot and would be dismissed. Spalliero v. N.J. Dep't of Envtl. Prot., Land Use Regulation, OAL Dkt. No. ESA 8164-03, 2006 N.J. AGEN LEXIS 225, Final Decision (March 3, 2006).

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.

1:1-16.2 Time of motion

(a) A motion for leave to intervene may be filed at any time after a case is initiated.

(b) If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.

(c) If made after a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the judge or, if the case has not yet been assigned to a judge, with the Clerk of the Office of Administrative Law.

Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (c), inserted "the judge or, if the case has not yet been assigned to a judge, with".

1:1-16.3 Standards for intervention

(a) In ruling upon a motion to intervene, the judge shall take into consideration the nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case, the prospect of confusion or undue delay arising from the movant's inclusion, and other appropriate matters.

(b) In cases where one of the parties is a State agency authorized by law to represent the public interest in a case, no movant shall be denied intervention solely because the movant's interest may be represented in part by said State agency.

(c) Notwithstanding (a) above, persons statutorily permitted to intervene shall be granted intervention.

Case Notes

Interested parties were entitled to relevant information on consideration of automobile insurance rates of Market Transition Facility. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Policyholders were "interested parties" with respect to access to information to be used by Department of Insurance on setting rates. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Large volume customers of a gas company were allowed to intervene in matter where Rate Counsel moved to dismiss petition to defer certain carrying costs. In the Matter of the Petition of South Jersey Gas Company for Authorization to Defer Carrying Costs, 94 N.J.A.R.2d (BRC) 139.

Telephone company's motion to intervene in proposed modification of a lease agreement between cable television operator and alternative competitive access provider granted. In the Matter of the Petition of Suburban Cablevision to Lease Excess Capacity, 94 N.J.A.R.2d (BRC) 125.

1:1-16.4 Notice of opportunity to intervene or participate

Where it appears to the judge that a full determination of a case may substantially, specifically and directly affect a person or entity who is not a party to the case, the judge, on motion of any party or on his or her own initiative, may order that the Clerk or any party notify the person or entity of the proceeding and of the opportunity to apply for intervention or participation pursuant to these rules.

Case Notes

Interested parties were entitled to relevant information on consideration of automobile insurance rates of Market Transition Facility. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Policyholders were "interested parties" with respect to access to information to be used by Department of Insurance on setting rates. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

1:1-16.5 Alternative treatment of motions to intervene

Every motion for leave to intervene shall be treated, in the alternative, as a motion for permission to participate.

1:1-16.6 Participation; standards for participation

(a) Any person or entity with a significant interest in the outcome of a case may move for permission to participate.

(b) A motion to participate may be made at such time and in such manner as is appropriate for a motion for leave to intervene pursuant to N.J.A.C. 1:1-16.2. In deciding whether to permit participation, the judge shall consider whether the

participant's interest is likely to add constructively to the case without causing undue delay or confusion.

(c) The judge shall determine the nature and extent of participation in the individual case. Participation shall be limited to:

1. The right to argue orally; or

2. The right to file a statement or brief; or

3. The right to file exceptions to the initial decision with the agency head; or

4. All of the above.

Case Notes

The administrative law judge may determine the extent of participation once it is found a participant has a significant stake in the outcome. The Division of ABC granted participant status and allowed to file a brief (citing former N.J.A.C. 1:1-12.6(c)). Canal St. Pub v. City of Paterson, 6 N.J.A.R. 221 (1982).

SUBCHAPTER 17. CONSOLIDATION OF TWO OR MORE CASES; MULTIPLE AGENCY JURISDICTION CLAIMS; DETERMINATIONS OF PREDOMINANT INTEREST

1:1-17.1 Motion to consolidate; when decided

(a) As soon as circumstances meriting such action are discovered, an agency head, any party or the judge may move to consolidate a case which has been transmitted to the Office of Administrative Law with any other contested case involving common questions of fact or law between identical parties or between any party to the filed case and any other person, entity or agency.

(b) This rule shall apply to cases:

1. Already filed with the Office of Administrative Law;

2. Commenced in an agency but not yet filed with the Office of Administrative Law; and

3. Commenced in an agency and not required to be filed with the Office of Administrative Law under N.J.S.A. 52:14F-8.

not reasonable to assume that the exception period could run until the date established for the Final Decision on the matter; in addition, the bases for many of licensee's exceptions were improper. Bakke v. Prime Ins. Syndicate, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 985, Final Decision (May 24, 2006).

Respondent's Exceptions to the Initial Decision did not even come close to meeting statutory requirements where: (1) its motion to compel and for sanctions was heard by the ALJ on three separate occasions, but each time the respondent was warned that it should provide more complete discovery and was given additional time to comply, but each time it failed to do so; (2) the ALJ did not merely accept petitioner's representations about the inadequacy of respondent's discovery responses, but reviewed the interrogatory responses himself and thus did not reach his conclusion that the discovery provided was inadequate based on de minimis and conclusory data, as respondent suggested; (3) respondent failed to provide complete discovery although ordered by the ALJ to do so and its former counsel fully understood the consequences of a failure to do so; and (4) although respondent raised certain substantive claims, they became irrelevant due to respondent's own failure to comply with the ALJ's orders. Absolut Spirits Co., Inc. v. Monsieur Touton Selection, Ltd., OAL DKT. NO. ABC 4217-04, 2006 N.J. AGEN LEXIS 508, Final Decision (May 10, 2006).

Exceptions were not timely filed when they were addressed and directed to the Administrative Law Judge but not filed with the Commissioner of Education; instructions for the filing of exceptions were clearly set forth on the last page of the Initial Decision, and this was not a case of clerical error, where the exceptions were simply placed in an incorrect envelope. D.B.R. ex rel. N.R.L. v. Bd. of Educ. of Morris, OAL Dkt. No. EDU 12060-04, 2005 N.J. AGEN LEXIS 1147, Commissioner's Decision (August 18, 2005).

1:1-18.5 Motions to reconsider and reopen

(a) Motions to reconsider an initial decision are not permitted.

(b) Motions to reopen a hearing after an initial decision has been filed must be addressed to the agency head.

(c) Motions to reopen the record before an initial decision is filed must be addressed to the judge and may be granted only for extraordinary circumstances.

Case Notes

Commissioner's adoption of the administrative law judge's recommended decision had the effect of denying the request to reopen the record (citing former N.J.A.C. 1:1-16.4(e)). Dep't. of Labor v. Titan Construction Co., 102 N.J. 1, 504 A.2d 7 (1985).

Motion to reopen Lemon Law hearing at which respondent failed to appear was denied; respondent did not satisfy its burden of proving that it did not have actual notice of the hearing. Mitchell v. Hillside Auto Mall, OAL Dkt. No. CMA 05407-05, 2005 N.J. AGEN LEXIS 1125, Final Decision (October 14, 2005).

1:1-18.6 Final decision; stay of implementation

(a) Within 45 days after the receipt of the initial decision, or sooner if an earlier time frame is mandated by Federal or State law, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision. Such an order or final decision shall be served upon the parties and the Clerk forthwith.

(b) The agency head may reject or modify conclusions of law, interpretations of agency policy, or findings of fact not relating to issues of credibility of lay witness testimony, but shall clearly state the reasons for so doing. The order or final decision rejecting or modifying the initial decision shall state in clear and sufficient detail the nature of the rejection or modification, the reasons for it, the specific evidence at hearing and interpretation of law upon which it is based and precise changes in result or disposition caused by the rejection or modification.

(c) The agency head may not reject or modify any finding of fact as to issues of credibility of lay witness testimony unless it first determines from a review of a record that the findings are arbitrary, capricious or unreasonable, or are not supported by sufficient, competent, and credible evidence in the record.

(d) An order or final decision rejecting or modifying the findings of fact in an initial decision shall be based upon substantial evidence in the record and shall state with particularity the reasons for rejecting the findings and shall make new or modified findings supported by sufficient, competent and credible evidence in the record.

(e) If an agency head does not reject or modify the initial decision within 45 days and unless the period is extended as provided by N.J.A.C. 1:1-18.8, the initial decision shall become a final decision.

(f) When a stay of the final decision is requested, the agency shall respond to the request within 10 days.

Amended by R.2001 d.180, effective June 4, 2001 (operative July 1, 2001).
See: 33 N.J.R. 1040(a), 33 N.J.R. 1926(a).
Rewrote (b); added new (c) and (d), and recodified existing (c) and (d) as (e) and (f).

Case Notes

Refusal to grant nursing home an open-ended lease pass-through was protected by qualified immunity. Stratford Nursing and Convalescent Center, Inc. v. Kilstein, 802 F.Supp. 1158 (D.N.J. 1991), affirmed 972 F.2d 1332 (3rd Cir. 1992).

Exercise of quasi-judicial function in application of state appellate court decision to specific years encompassed therein; judicial immunity from civil rights liability. Stratford Nursing and Convalescent Center, Inc. v. Kilstein, 802 F.Supp. 1158 (D.N.J. 1991), affirmed 972 F.2d 1332 (3rd Cir. 1992).

Commissioner has 45 days to affirm, modify or reverse an administrative law judge's decision (citing former N.J.A.C. 1:1-16.5(a)). Wichert v. Walter, 606 F.Supp. 1516 (D.N.J.1985).

The over one-year delay between the issuance of Commissioner of the Department of Environmental Protection's (DEP) summary order and the final decision in action seeking compensation for an under recovery incurred by solid waste utility due to use of interim rates was not in bad faith, or was inexcusably negligent, or grossly indifferent so as to automatically required the administrative law judge's initial decision to be deemed approved, where the subject matter of the administrative proceeding was very complex, involving many days of complicated testimony, and there was a voluminous record, which was made even more problematical by the utility ending its relationship with county utilities authority after the hearings. Penpac, Inc. v. Passaic County Utilities Authority, 367 N.J.Super. 487, 843 A.2d 1153 (App. Div. 2004).

Three month delay in providing findings and legal conclusions for decision itself untimely; equitable factor against reconsideration of administrative law judge's (ALJ) decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Inherent power to reconsider decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Initial decision of administrative law judge (ALJ) shall be "deemed adopted". Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Board of Trustees of Public Employee Retirement System failed to make showing justifying setting aside decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Evidence that failed to particularize foundation failed to support decision that sergeant was totally and permanently disabled. Crain v. State Dept. of the Treasury, Div. of Pensions, 245 N.J.Super. 229, 584 A.2d 863 (A.D.1991).

Agency decision was not invalid for failure to include findings and conclusions within 45 day limit. DiMaria v. Board of Trustees of Public Employees' Retirement System, 225 N.J.Super. 341, 542 A.2d 498 (A.D.1988), certification denied 113 N.J. 638, 552 A.2d 164.

Civil Service Commission had no duty to review findings of administrative law judge prior to acceptance or rejection of judge's findings and recommendations (citing N.J.A.C. 4:1-5.4). In the Matter of Morrison, 216 N.J.Super. 143, 523 A.2d 238 (App.Div.1987).

Decision was affirmed despite the absence of findings in support of determination as required by N.J.A.C. 1:1-18.6 (citing former N.J.A.C. 1:1-16.5(b)). O'Toole v. Forestal, 211 N.J.Super. 394, 511 A.2d 1236 (App.Div.1986).

Within 45 days after the receipt of the initial decision, the agency head may enter an order or final decision adopting, rejecting or modifying the initial decision (former rule cited N.J.A.C. 1:16.4 and 16.5). De Vitis v. New Jersey Racing Commission, 202 N.J.Super. 484, 495 A.2d 457 (App.Div.1985), certification denied 102 N.J. 337, 508 A.2d 213 (1985).

Agency head may reject the Administrative Law Judge's determination to accord greater weight to one party's expert. ZRB, LLC v. N.J. Dep't of Envtl. Prot., Land Use Regulation, OAL Dkt. No. ESA 6180-04, 2007 N.J. AGEN LEXIS 921, Final Decision (July 2, 2007).

Commissioner overturned credibility determinations and legal findings of the ALJ and found that an applicant was disqualified from receiving certification as a nurse aide where the applicant provided a false answer on the criminal background investigation application. Pruette v. Dep't of Health & Senior Services, OAL Dkt. No. HLT 2118-06, 2006 N.J. AGEN LEXIS 783, Final Decision (August 17, 2006).

After an initial decision by administrative law judge, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision (citing former N.J.A.C. 1:1-16.5). Kurman v. Fairmount Realty Corp., 8 N.J.A.R. 110 (1985).

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).

1:1-18.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered. The remand order shall be attached to a N.J.A.C. 1:1-8.2 transmittal form and returned to the Clerk of the Office of Administrative Law along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision.

Case Notes

Administrative law judge without authority to refuse to comply with an order of remand of an agency head (citing former N.J.A.C. 1:1-16.5(c)). In Re Kallen, 92 N.J. 14, 455 A.2d 460 (1983).

Remand was appropriate and necessary, where the public interest would clearly not be served if the Racing Commission were compelled to determine trainer's suitability for license on incomplete record. Record indicated the evidence before ALJ was limited where: (1) no testimony was taken; (2) record did not indicate if burden of demonstrating suitability for license was placed on trainer as it should have been; and (3) it was not clear if trainer was given opportunity to prove his suitability for licensure. Height v. N.J. Racing Comm'n, OAL Dkt. No. RAC 06380-07, 2008 N.J. AGEN LEXIS 1113, Final Decision (March 20, 2008).

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

Order for remand by Director of agency rejected by administrative law judge since Department had ample opportunity to develop proofs at prior hearing; Director rejected ALJ's decision and reopened case (citing former N.J.A.C. 1:1-16.5). Cash Services, Inc., v. Dep't of Banking, 5 N.J.A.R. 103 (1981).

1:1-18.8 Extensions of time limits

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall forward the proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall within 10 days sign and issue the order and cause it to be served on all parties. If the

extended time limit necessitates an extension of the deadline for the final decision, the requirements of (e) below apply.

(e) If the agency head requests an extension of the time limit for filing a final decision, he or she shall sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within ten days of receipt of the proposed order sign the proposed order and return it to the transmitting agency head, who shall issue the order and cause it to be served on all parties.

(f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, and establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only for good cause shown.

Amended by R.1992 d.213, effective May 18, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).
Revised (c), (e) and (f).
Amended by R.2003 d.306, effective August 4, 2003.
See: 35 N.J.R. 1614(a), 35 N.J.R. 3551(a).
In (e), rewrote the last sentence.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (d), deleted "with a proposed form of extension order" following "writing" and "and the Director of the Office of Administrative Law" following the second occurrence of "parties"; and in (f), deleted "set forth the dates of any previous extensions," preceding "and establish", and substituted "for good cause shown" for "in the case of extraordinary circumstances".

Case Notes

Decision by ALJ recommending that college board of trustees follow its written procedures for denying reappointment to director of educational opportunity fund was "deemed adopted" by the board, where the board took no action to adopt, reject, or modify the ALJ's decision within 45 days, and did not seek an extension of time to do so within that period, there was no emergency justifying delay. Newman v. Ramapo College of N.J., 349 N.J.Super. 196, 793 A.2d 120.

Automatic approval of administrative law judge's recommendations was not applicable. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Provision for automatic adoption of administrative law judge's recommendations will not be literally enforced where agency head is not dragging his feet in issuing final decision. Rollins Environmental Services (NJ), Inc. v. Weiner, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

It was proper exercise of discretion to grant nunc pro tunc extension of time for Hackensack Meadowlands Development Commission (HMDC) to issue its final decision regarding intermunicipal tax-sharing obligations under Hackensack Meadowlands Reclamation and Development Act. Town of Secaucus v. Hackensack Meadowlands Development Com'n, 267 N.J.Super. 361, 631 A.2d 959 (A.D.1993), certification denied 139 N.J. 187, 652 A.2d 175.

Three month delay in providing findings and legal conclusions for decision itself untimely; equitable factor against reconsideration of administrative law judge's (ALJ) decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Inherent power to reconsider decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Initial decision of administrative law judge (ALJ) shall be "deemed adopted". Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Board of Trustees of Public Employee Retirement System failed to make showing justifying setting aside decision. Mastro v. Board of Trustees, Public Employees' Retirement System, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Challenge to extension of time under N.J.A.C. 1:1-18.8 for the Commissioner to issue a ruling on an appeal was actually a motion for leave to appeal an interlocutory order, rather than a "motion for emergent relief"; interlocutory review of an administrative ruling may be granted in the interest of justice or for good cause shown, and petitioner failed to demonstrate good cause. Toddlertown Child Care Center v. Bd. of Educ. of Irvington, OAL Dkt. Nos. EDU 3041-07 and EDU 5430-07 (CONSOLIDATED), SB No. 35-07, 2007 N.J. AGEN LEXIS 974 (December 19, 2007).

Exceptions are required to be filed within 13 days after the Initial Decision, including partial summary decisions, and although an end-date for filing exceptions was not specified in the order for extension, it was not reasonable to assume that the exception period could run until the date established for the Final Decision on the matter; in addition, the bases for many of licensee's exceptions were improper. Bakke v. Prime Ins. Syndicate, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 985, Final Decision (May 24, 2006).