

Administrative law judge was not required to recuse himself. *Ridings v. Maxim Sewerage Corp.*, 92 N.J.A.R.2d (OAL) 10.

Decision in criminal case involving substantive aspects of judicial disqualification provided no basis for collateral attack on issue of recusal of administrative law judge. N.J.S.A. 18A:6-27. In the Matter of the Tenure Hearing of John Fargo, 92 N.J.A.R.2d (EDU) 172.

1:1-14.13 Proceedings in the event of death, disability, departure from State employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from State employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, a conference will be scheduled to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and

2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

(d) An order or ruling issued pursuant to (b) and (c) 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.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).

Added (d).

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;
2. Suppress a defense or claim;
3. Exclude evidence;
4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party;
5. Take other appropriate case-related action.

New Rule, 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 by R.1996 d.133, effective March 18, 1996.

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

Added (b) through (d).

Recodified in part to N.J.A.C. 1:1-14.15 by R.2007 d.393, effective December 17, 2007.

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

Recodified (b) through (d) as N.J.A.C. 1:1-14.15.

Case Notes

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

Before administrative law judge (ALJ) could impose sanctions on attorneys, court was required to conduct evidentiary hearing. In re Timofai Sanitation Co., Inc., *Discovery Dispute*, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Initial Decision (2007 N.J. AGEN LEXIS 414) adopted, finding that when discovery requests encompassed all aspects of the petition, the proper remedy under N.J.A.C. 1:1-14.14 for failure to provide discovery was suppression of the petitioner's claim. L.A. and C.A. ex rel. P.M.A. v. Bd. of Educ. of Port Republic, OAL Dkt. No. EDU 12031-06, 2007 N.J. AGEN LEXIS 521, Commissioner's Decision (July 18, 2007).

Initial Decision (2005 N.J. AGEN LEXIS 397) adopted, which ordered insurance producer's defenses stricken where, for almost seven months, the producer failed to respond to requests for discovery, failed to comply with the ALJ's order to comply with the discovery requests, and demonstrated a flagrant disregard for the rules and the OAL's orders. *Bryan v. Bellissima*, OAL Dkt. No. BK1 10040-2004S, 2005 N.J. AGEN LEXIS 1154, Final Decision (August 30, 2005).

1:1-14.15 Conduct obstructing or tending to obstruct the conduct of a contested case

(a) If any party, attorney, or other representative of a party, engages in any misconduct which, in the opinion of the judge, obstructs or tends to obstruct the conduct of a contested case, the party, attorney, or other representative may be fined in an amount which shall not exceed \$1,000 for each instance.

(b) Where the conduct deemed to obstruct or tending to obstruct the conduct of a contested case occurs under circumstances which the judge personally observes and which he or she determines unmistakably demonstrates willfulness and requires immediate adjudication to permit the proceedings to continue in an orderly and proper manner:

1. The judge shall inform the party, attorney or other representative of the nature of the actions deemed obstructive and shall afford the party, attorney or other representative an immediate opportunity to explain the conduct; and

2. Where the judge determines, after providing the party, attorney or other representative, an opportunity to explain, that the conduct does constitute misconduct and that the conduct unmistakably demonstrates willfulness, the judge shall issue an order imposing sanctions.

- i. The order imposing sanctions shall recite the facts and contain a certification by the judge that he or

she personally observed the conduct in question and explain the conclusion that the party, attorney or other representative engaged in misconduct.

(c) Where the conduct deemed to obstruct or tending to obstruct a contested case did not occur in the presence of the judge or where the conduct does not require immediate adjudication to permit the proceedings to continue in an orderly and proper manner, the matter shall proceed by order to show cause specifying the acts or omissions alleged to be misconduct. The proceedings shall be captioned "In the Matter of _____, Charged with Misconduct."

(d) In any proceeding held pursuant to (c) above, the matter may be presented by a staff attorney of the Office of Administrative Law, or by the Attorney General. The designation shall be made by the Director of the Office of Administrative Law. The matter shall not be heard by the judge who instituted the proceeding if the appearance of objectivity requires a hearing by another judge.

Recodified in part from N.J.A.C. 1:1-14.14 and amended by R.2007 d.393, effective December 17, 2007.

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

Recodified former introductory paragraph of (b) as (a); in (a), substituted a period for "provided."; recodified former (b)1 as introductory paragraph of (b); in introductory paragraph of (b), substituted a colon for ", the"; inserted designation (b)1; in (b)1, inserted "The" at the beginning and "and" at the end; in (b)2, inserted "and that the conduct unmistakably demonstrates willfulness" and substituted a period for "which" at the end; inserted designation (b)2i; and rewrote (b)2i and (c).

Case Notes

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

Before administrative law judge (ALJ) could impose sanctions on attorneys, court was required to conduct evidentiary hearing. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

SUBCHAPTER 15. EVIDENCE RULES

1:1-15.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

(b) Evidence rulings shall be made to promote fundamental principles of fairness and justice and to aid in the ascertainment of truth.

(c) Parties in contested cases shall not be bound by statutory or common law rules of evidence or any formally adopted in the New Jersey Rules of Evidence except as specifically provided in these rules. All relevant evidence is admissible except as otherwise provided herein. A judge may, in his or her discretion, exclude any evidence if its probative value is substantially outweighed by the risk that its admission will either:

1. Necessitate undue consumption of time; or
2. Create substantial danger of undue prejudice or confusion.

(d) If the judge finds at the hearing that there is no bona fide dispute between the parties as to any unstipulated material fact, such fact may be proved by any relevant evidence, and exclusionary rules shall not apply, except for (c) above or a valid claim of privilege.

(e) When the rules in this subchapter state that the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, the judge shall hold a preliminary inquiry to determine the issue. The judge shall indicate which party has the burden of producing evidence and the burden of proof on such issue as implied by the rule under which the question arises. No evidence may be excluded in determining such issue except pursuant to the judge's discretion under (c) above or a valid claim of privilege. This provision shall not be construed to restrict or limit the right of a party to introduce evidence subsequently which is relevant to weight or credibility.

Case Notes

Rules of Evidence application in arbitration proceedings. Fox v. Morris County Policemen's Ass'n, 266 N.J.Super. 501, 630 A.2d 318 (A.D.1993), certification denied 137 N.J. 311, 645 A.2d 140.

M.D. license revocation's request that all 70 patients present be permitted to testify held unreasonable (citing former N.J.A.C. 1:1-15.2(a)). In the Matter of Cole, 194 N.J.Super. 237, 476 A.2d 836 (App.Div.1986).

In an administrative hearing, all relevant evidence is admissible (citing former N.J.A.C. 1:1-15.2(a)). Delguidice v. New Jersey Racing Commission, 100 N.J. 79, 494 A.2d 1007 (1985).

Evidence at public hearings under former rulemaking regulations. 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).

Exclusion of chiropractor's testimony in a Lemon Law proceeding was within the realm of the ALJ's discretion, where the chiropractor, who had not examined the claimants, was prepared to testify as to whether the driver's seat of their vehicle provided sufficient support; the ALJ had observed that the chiropractor would be testifying without reference to any particular standards. Krinick v. Ford Motor Co., OAL Dkt. No. CMA 7868-05, 2005 N.J. AGEN LEXIS 1068, Final Decision (September 9, 2005).

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.

SUBCHAPTER 19. SETTLEMENTS AND
WITHDRAWALS**1:1-19.1 Settlements**

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, the judge shall require the parties to disclose the full settlement terms:

1. In writing, by consent order or stipulation signed by all parties or their attorneys; or
2. Orally, by the parties or their representatives.

(b) Under (a) above, if the judge determines from the written order/stipulation or from the parties' testimony under oath that the settlement is voluntary, consistent with the law and fully dispositive of all issues in controversy, the judge shall issue an initial decision incorporating the full terms and approving the settlement.

(c) Where the parties to a case wish to settle the matter and the transmitting agency is a party to the case, if the agency head has approved the terms of the settlement, either personally or through an authorized representative, the parties shall:

1. File with the Clerk and the assigned judge, if known, a stipulation of dismissal, signed by the parties, their attorneys, or their non-lawyer representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f); or
2. If the parties prefer to have the settlement terms incorporated in the record of the case, then the full terms of the settlement shall be disclosed in a consent order signed by the parties, their attorneys, or their non-attorney representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f). The consent order shall be filed with the Clerk and the assigned judge, if known.

(d) The stipulation of dismissal or consent order under (c) above shall be deemed the final decision.

Amended by R.1987 d.461, effective November 16, 1987.
See: 19 N.J.R. 1593(a), 19 N.J.R. 2131(c).

(b)1.-2. added to clarify that in those cases where the agency head, either in person or through counsel, has consented to the settlement terms.

Amended by R.1995 d.300, effective June 19, 1995.

See: 27 N.J.R. 1343(a), 27 N.J.R. 2383(a).

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

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

In the introductory paragraph of (a), substituted "transmitting agency is not a party" for "agency head has not consented to the settlement terms"; and rewrote (c).

Case Notes

Emotionally disturbed child and his parent were "prevailing parties". E.P. by P.Q. v. Union County Regional High School Dist. No. 1, D.N.J.1989, 741 F.Supp. 1144.

1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the matter to the transmitting agency for appropriate disposition.

(b) When a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the Office of Administrative Law for appropriate disposition.

(c) After the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case.

Amended by R.1990 d.71, effective February 5, 1990.

See: 21 N.J.R. 3589(a), 22 N.J.R. 334(b).

In (a): deleted language specifying the entering of an initial decision for withdrawals and added, "discontinue ... for appropriate disposition".

In (b): specified that Clerk shall return matter to agency which had transmitted the case to OAL.

In (c): deleted language referring to decision granting withdrawal.

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

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

In (a): deleted "in writing" from withdrawal procedure request.

Law Review and Journal Commentaries

Law Against Discrimination. Judith Nallin, 138 N.J.L.J. No. 15, 23 (1994).

Case Notes

Discharged employee's election to file national origin discrimination charge with the Equal Employment Opportunity Commission pursuant to federal law precluded employee from bringing state court national origin discrimination claim after the EEOC determined that employee failed to demonstrate probable cause for administrative determination of discrimination. *Hernandez v. Region Nine Housing Corp.*, 286 N.J.Super. 676, 670 A.2d 95 (A.D.1996).

Law Against Discrimination did not jurisdictionally prevent plaintiff from filing complaint in superior court after withdrawing her administrative complaint. *Aldrich v. Manpower Temporary Services*, 277 N.J.Super. 500, 650 A.2d 4 (A.D.1994), certification denied 139 N.J. 442, 655 A.2d 445.

SUBCHAPTER 20. MEDIATION BY THE OFFICE OF
ADMINISTRATIVE LAW**1:1-20.1 Scheduling of mediation**

(a) Mediation may be scheduled, at the discretion of the Director, when requested by the transmitting agency, or by all parties to a hearing or when requested by an agency with regard to a matter which has not been transmitted as a contested case. Mediation may be scheduled in any matter where the transmitting agency has a mediation program available to the parties to the case only upon request of the

agency head for good cause and with the consent of the Director.

(b) When a request for mediation is granted, the Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges as suggested mediators. Each party may strike two judges from the list and the Office of Administrative Law will not assign any judge who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

New Rule, R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

Former N.J.A.C. 1:1-20.1, Conduct of mediation, recodified to N.J.A.C. 1:1-20.2.

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 when requested by an agency with regard to a matter which has not been transmitted as a 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).

In the second sentence of (a), substituted "may" for "shall not" and inserted "only upon request of the agency head for good cause and with the consent of the Director".

1:1-20.2 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. Discovery to prepare for mediation shall be permitted at the discretion of the judge.

2. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.

3. All parties must agree in writing to the following:

i. Not to use any information gained solely from the mediation in any subsequent proceeding;

ii. Not to subpoena the mediator for any subsequent proceeding;

iii. Not to disclose to any subsequently assigned judge the content of the mediation discussion;

iv. To mediate in good faith; and

v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

4. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.

5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling

a hearing or for return of the matter to the agency and, where appropriate, the mediator may consider sanctions under N.J.A.C. 1:1-14.14.

6. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge or that the matter be returned to the agency.

7. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.

(b) In no event shall mediation efforts continue beyond 30 days from the date of the first scheduled mediation unless this time limit is extended by agreement of all the parties.

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 (a), deleted a former 2, and recodified former 3 through 7 as 2

through 6. Former N.J.A.C. 1:1-20.1 and amended by R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

In (a), deleted a former 2, and recodified former 3 through 7 as 2 through 6. Former N.J.A.C. 1:1-20.2, Conclusion of mediation, recodified to N.J.A.C. 1:1-20.3.

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

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

Added new (a)1; recodified former (a)1 through (a)6 as (a)2 through (a)7; in (a)5, inserted "or for return of the matter to the agency" and "the mediator"; and in (a)6, inserted "or that the matter be returned to the agency".

1:1-20.3 Conclusion of mediation

(a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a mediation agreement.

(b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision. The initial decision shall be issued and received by the agency head as soon as practicable after the mediation, but in no event later than 45 days thereafter.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate proceeding or for return to the transmitting agency.

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

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

In (c), inserted "or for return to the transmitting agency".

Recodified from N.J.A.C. 1:1-20.2 by R.1999 d.413, effective December 6, 1999.

See: 31 N.J.R. 2290(a), 31 N.J.R. 2717(a), 31 N.J.R. 3999(a).

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

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

In (b), inserted the last sentence.