

TITLE 1

OFFICE OF ADMINISTRATIVE LAW

CHAPTER 1

UNIFORM ADMINISTRATIVE PROCEDURE RULES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.1992 d.213, effective April 21, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Uniform Administrative Procedure Rules, expires on April 21, 1997.

Chapter Historical Note

Chapter 1, originally Uniform Administrative Procedure Rules of Practice, was adopted as R.1980 d.275, effective July 1, 1980, repealing the administrative hearing rules of the Division of Administrative Procedure at N.J.A.C. 15:15-10. See: 11 N.J.R. 479(a), 12 N.J.R. 234(a), 12 N.J.R. 362(a). Subsequently, Chapter 1 was amended by the following rule adoptions:

R.1981 d.55, effective February 17, 1981. See: 13 N.J.R. 3(b), 13 N.J.R. 114(a).

R.1981 d.116, effective May 7, 1981. See: 13 N.J.R. 2(a), 13 N.J.R. 254(b).

R.1981 d.443, effective November 16, 1981. See: 13 N.J.R. 254(c), 13 N.J.R. 842(a).

R.1982 d.87, effective April 5, 1982. See: 14 N.J.R. 2(a), 14 N.J.R. 335(a).

R.1982 d.150, effective May 17, 1982. See: 14 N.J.R. 4(a), 14 N.J.R. 471(a).

R.1982 d.295, effective September 7, 1982. See: 14 N.J.R. 606(b), 14 N.J.R. 975(b).

R.1982 d.467, effective January 3, 1983. See: 14 N.J.R. 486(a), 15 N.J.R. 23(a).

R.1983 d.268, effective July 5, 1983. See: 15 N.J.R. 582(a), 15 N.J.R. 1093(a).

R.1983 d.515, effective November 21, 1983. See: 15 N.J.R. 1399(a), 15 N.J.R. 1939(a).

R.1983 d.550, effective December 5, 1983. See: 15 N.J.R. 1400(b), 15 N.J.R. 2032(a).

R.1984 d.368, effective September 4, 1984. See: 16 N.J.R. 1413(a), 16 N.J.R. 2354(a).

R.1984 d.445, effective October 1, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2518(a).

R.1984 d.476, effective October 15, 1984 (operative November 14, 1984). See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a).

R.1984 d.490, effective November 5, 1984. See: 16 N.J.R. 2320(a), 16 N.J.R. 3004(a).

R.1984 d.587, effective December 7, 1984. See: 16 N.J.R. 2710(a), 16 N.J.R. 3426(a).

Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Subsequently, Chapter 1 was amended by the following rule adoptions:

R.1985 d.368, effective July 15, 1985. See: 17 N.J.R. 1008(a), 17 N.J.R. 1754(a).

R.1985 d.508, effective October 7, 1985. See: 17 N.J.R. 1820(a), 17 N.J.R. 2457(b).

R.1986 d.79, effective April 7, 1986. See: 18 N.J.R. 130(a), 18 N.J.R. 634(a).

R.1986 d.340, effective August 18, 1986. See: 18 N.J.R. 2(a), 18 N.J.R. 1699(a).

R.1986 d.468, effective December 1, 1986. See: 18 N.J.R. 1020(a), 18 N.J.R. 1865(a), 18 N.J.R. 2381(a).

Chapter 1 was repealed by R.1987 d.200 and new rules were adopted, effective May 4, 1987 but operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a). See, also, section annotations for specific rulemaking activity. Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted by R.1992 d.213. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

Cross References

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

CROSS-REFERENCE CHART (OLD TO NEW)

Section recodification by R.1987 d.200, effective May 4, 1987.

OLD CITATION	NEW CITATION
SUBCHAPTER 1.	
1:1-1.1	1:1-1.1
1:1-1.2	1:1-1.2
1:1-1.3	1:1-1.3
1:1-1.4	1:1-2.1
1:1-1.5	1:1-2.1
1:1-1.6	1:1-2.1
1:1-1.7	1:1-2.1
1:1-1.8	1:1-4.2;
	1:1-8.1(a)-(c);
	1:1-8.2(a)6
1:1-1.9	1:1-4.1(b)
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1:1-2.1(b)	1:1-3.2(a)
1:1-2.2(c)	1:1-8.1(c);
	1:1-8.3(b)
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1:1-3.1(a)	1:1-14.1(a)
1:1-3.1(b)	1:1-14.1(b)
1:1-3.2(a)	1:1-14.2(a)
1:1-3.2(b)	1:1-2.1
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	of settlement);
	1:1-14.6(a)
1:1-3.2(c)	1:1-9.3;
	1:1-14.6(f)
1:1-3.2(d)	1:1-14.2(b)
1:1-3.2(e)	1:1-9.7(a)

OLD CITATION	NEW CITATION
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1:1-3.3(b)	1:1-14.11(a)
1:1-3.3(c)	1:1-14.11(b)
1:1-3.3(d)	1:1-14.11(c)
1:1-3.3(e)	1:1-14.11(d)
1:1-3.3(f)	1:1-14.11(e)
1:1-3.4(a)	1:1-15.7(a)
1:1-3.4(b)	1:1-15.7(b)
1:1-3.4(c)	1:1-15.7(c)
1:1-3.5(a)	1:1-14.4(a)
1:1-3.5(b)	1:1-14.4(c)
1:1-3.5(c) repealed	—
1:1-3.6 repealed	—
1:1-3.7(a)	1:1-5.1
1:1-3.7(b)	1:1-5.2
1:1-3.8(a)	1:1-14.5(a)
1:1-3.8(b)	1:1-5.3; 1:1-1.3(a)
1:1-3.8(c)	1:1-14.5(b)-(d)
1:1-3.9	1:1-14.6(a)-(p)
1:1-3.10(a)	1:1-14.3(a)
1:1-3.10(b)	1:1-14.3(b)
1:1-3.11	1:1-6.3
1:1-3.12(a)	1:1-5.4(a)
1:1-3.12(b)	1:1-5.4(b)
1:1-3.12(c)	1:1-5.4(b)
1:1-3.12(d) repealed	—
1:1-3.12(e)	1:1-5.5(a)
1:1-3.12(f)	1:1-5.5(b)
1:1-3.12(g)	1:1-5.5(c)
1:1-3.12(h)	1:1-5.5(e)
1:1-3.13	1:1-5.6
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1:1-4.1	1:1-1.4
1:1-4.2	1:1-14.6(f)
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1:1-5.1(a)	1:1-4.1(a)
1:1-5.1(b)	1:1-8.1(a)
1:1-5.1(c) repealed	—
1:1-5.2(a)	1:1-8.2(a)
1:1-5.2(b)	1:1-8.2(c)
1:1-5.2(c)	1:1-8.3(a)
1:1-5.2(d)	1:1-9.5(a)
1:1-5.2(e)	1:1-8.2(d)
1:1-5.3 repealed	—
1:1-5.4(a)	1:1-4.2; 1:1-8.1(b)
1:1-5.4(b)	1:1-8.1(b)
1:1-5.4(c)	1:1-8.1(b)
1:1-5.4(d)	1:1-4.2
1:1-5.5(a)	1:1-7.4(a)
1:1-5.5(b)	1:1-7.4(b)
1:1-5.5(c)	1:1-7.3(c)
1:1-5.5(d) repealed	—
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1:1-6.1(a)	1:1-6.1(a)
1:1-6.1(b)	1:1-6.1(b)
1:1-6.2 repealed	—
1:1-6.3	1:1-6.2(a)-(b)
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1:1-7.1(a)	1:1-7.1(a)
1:1-7.1(b)	1:1-7.1(b)
1:1-7.1(c)	1:1-7.2(c)
1:1-7.1(d)	1:1-7.1(c)
1:1-7.1(e)	1:1-7.1(d)
1:1-7.2(a)	1:1-7.2(a)
1:1-7.2(b)	1:1-7.3(a)
1:1-7.2(c)	1:1-7.2(b)
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1:1-8.1(a)	1:1-9.1(a)
1:1-8.1(b)	1:1-9.6(a)
1:1-8.2(a)	1:1-9.5(b)

OLD CITATION	NEW CITATION
1:1-8.2(b)	1:1-9.5(b)
1:1-8.2(c)	1:1-9.5(f)
1:1-8.2(d)	1:1-14.4(a)
1:1-8.3(a)	1:1-11.1(a)
1:1-8.3(b)	1:1-11.2(a)
1:1-8.3(c)	1:1-11.3
1:1-8.4	1:1-11.1(b); 1:1-11.3
1:1-8.5(a)	1:1-11.2(b)
1:1-8.5(b)	1:1-11.1(c)
1:1-8.5(c)	1:1-11.5
1:1-8.5(d)	1:1-11.4
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1:1-9.1(a)	1:1-12.1(a)
1:1-9.1(b)	1:1-12.1(a)
1:1-9.1(c)1.	1:1-7.3(c); 1:1-12.1(b)
1:1-9.1(c)2.	1:1-14.1(a)
1:1-9.1(c)3.	1:1-12.1(b)
1:1-9.1(d) repealed	—
1:1-9.1(e)	1:1-12.1(c)
1:1-9.2(a)	1:1-12.2(a)
1:1-9.2(b)	1:1-12.2(b)
1:1-9.2(c)	1:1-12.2(c)
1:1-9.2(d)	1:1-12.2(d)
1:1-9.2(e)	1:1-12.2(e); 1:1-12.3(c)
1:1-9.2(f)	1:1-12.2(f)
1:1-9.2(g)	1:1-1.3(b); 1:1-14.6(f)
1:1-9.3(a)	1:1-12.3(a)
1:1-9.3(b)	1:1-12.4(c)
1:1-9.3(c)	1:1-12.3(b)
1:1-9.4(a)	1:1-12.4(a)
1:1-9.4(b)	1:1-12.4(b)
1:1-9.5(a)	1:1-14.9(a)
1:1-9.5(b)	1:1-14.9(c)
1:1-9.5(c)	1:1-14.9(c)
1:1-9.6(a)	1:1-12.6(a)
1:1-9.6(b)	1:1-12.6(b)
1:1-9.6(c)	1:1-12.6(c)
1:1-9.6(d)	1:1-12.6(d)
1:1-9.6(e)	1:1-12.6(e)
1:1-9.6(f)	1:1-12.6(f)
1:1-9.6(g)	1:1-12.6(g)
1:1-9.6(h)	1:1-12.6(h)
1:1-9.6(i)	1:1-12.6(i)
1:1-9.6(j)	1:1-12.6(j)
1:1-9.6(k)	1:1-12.6(k)
1:1-9.7(a)	1:1-14.10(a)
1:1-9.7(b)	1:1-14.10(b)
1:1-9.7(c)	1:1-14.10(c)
1:1-9.7(d)	1:1-14.10(e)
1:1-9.7(e)	1:1-14.10(f)
1:1-9.7(f)	1:1-14.10(g)
1:1-9.7(g)	1:1-14.10(h)
1:1-9.7(h)	1:1-14.10(i)
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1:1-10.1(a)2.	1:1-13.1(b)
1:1-10.1(b)	1:1-13.1(c)
1:1-10.1(c)	1:1-13.2(a)
1:1-10.1(d)	1:1-13.2(b)
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1:1-11.1(d)	1:1-10.1(b)
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OLD CITATION	NEW CITATION
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1:1-11.2(b)	1:1-10.1(c); 1:1-10.4(d)
1:1-11.3(a)	1:1-10.1(c)
1:1-11.3(b)	1:1-10.2(c)
1:1-11.4(a)	1:1-10.3(a)
1:1-11.4(b)	1:1-10.2(d)
1:1-11.4(c)	1:1-10.3(b)
1:1-11.5(a)	1:1-10.4(a)
1:1-11.5(b)	1:1-10.4(b)
1:1-11.5(c)	1:1-10.4(e)
1:1-11.5(d)	1:1-1.3(b); 1:1-14.6(f)
1:1-11.5(e)	1:1-10.4(b)
1:1-11.5(f)	1:1-10.4(c)
1:1-11.6(a)	1:1-10.5
1:1-11.6(b) repealed	—
1:1-11.7	—
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1:1-12.1(a)	1:1-16.1(a)
1:1-12.1(b)	1:1-16.1(b)
1:1-12.2(a)	1:1-16.2(a)
1:1-12.2(b)	1:1-16.2(b)
1:1-12.2(c)	1:1-16.2(c)
1:1-12.3(a)	1:1-16.3(a)
1:1-12.3(b)	1:1-16.3(b)
1:1-12.3(c)	1:1-16.3(c)
1:1-12.4	1:1-16.4
1:1-12.5	1:1-16.5
1:1-12.6(a)	1:1-16.6(a)
1:1-12.6(b)	1:1-16.6(b)
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1:1-13.2(a)	1:1-12.5(b)
1:1-13.2(b)	1:1-12.5(c)
1:1-13.2(c) repealed	—
1:1-13.3(a)	1:1-12.5(d)
1:1-13.3(b)	1:1-12.5(e)
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1:1-13.4(a)	1:1-12.5(b)
1:1-13.4(b) repealed	—
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1:1-14.1(a)	1:1-17.1(a)
1:1-14.1(b)	1:1-17.1(b)
1:1-14.1(c)	1:1-17.1(c)
1:1-14.1(d)	1:1-17.1(d)
1:1-14.2(a)	1:1-17.2(a)
1:1-14.2(b)	1:1-17.2(b)
1:1-14.2(c)	1:1-17.2(c)
1:1-14.2(d)	1:1-17.2(d)
1:1-14.3(a)	1:1-17.3(a)
1:1-14.4(a)	1:1-17.4(a)
1:1-14.4(b)	1:1-17.4(b)
1:1-14.5(a)	1:1-17.5(a)
1:1-14.6(a)	1:1-17.6(a)
1:1-14.6(b)	1:1-17.6(b)
1:1-14.6(c)	1:1-17.6(c)
1:1-14.6(d)	1:1-17.6(d)
1:1-14.7(a)	1:1-17.7(a)
1:1-14.7(b)	1:1-17.7(b)
1:1-14.7(c)	1:1-17.7(c)
1:1-14.8(a)	1:1-17.8(a)
1:1-14.8(b)	1:1-17.8(b)
1:1-14.8(c)	1:1-17.8(c)
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1:1-15.2(a)	1:1-15.1(c)
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1:1-15.2(c)	1:1-15.1(d)
1:1-15.2(d)	1:1-15.1(b)

OLD CITATION	NEW CITATION
1:1-15.2(e)	1:1-15.8(a)
1:1-15.2(f)	1:1-15.1(a)
1:1-15.2(g)	1:1-15.1(e)
1:1-15.2(h)	1:1-15.8(a)5.
1:1-15.3(a)	1:1-15.2(a)
1:1-15.3(b)	1:1-15.2(b)
1:1-15.4(a)	1:1-2.1
1:1-15.4(b)	1:1-15.3
1:1-15.5(a)	1:1-15.8(b)
1:1-15.5(b)	1:1-15.1(a)
1:1-15.5(c)	1:1-15.8(c)
1:1-15.6	1:1-15.4
1:1-15.7(a)	1:1-15.9(a)
1:1-15.7(b)	1:1-15.9(b)
1:1-15.7(c)	1:1-15.9(c)
1:1-15.7(d)	1:1-15.9(d)
1:1-15.7(e)	1:1-15.9(e)
1:1-15.8(a)	1:1-15.5(a)
1:1-15.8(b)	1:1-15.5(b)
1:1-15.9	1:1-15.6
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1:1-16.2(a)	1:1-14.7(f)
1:1-16.2(b)	1:1-14.7(f)
1:1-16.2(c)	1:1-14.7(f)
1:1-16.3(a)	1:1-18.1(a), (d)
1:1-16.3(b)	1:1-18.1(b)
1:1-16.3(c)	1:1-18.2(c); 1:1-18.3(c)
1:1-16.3(d)	1:1-18.1(c)
1:1-16.3(e)	1:1-18.1(g); 1:1-18.2(b)
1:1-16.4(a)	1:1-18.4(a)
1:1-16.4(b)	1:1-18.4(b)
1:1-16.4(c)	1:1-18.4(d)
1:1-16.4(d)	1:1-18.5(a)
1:1-16.4(e)	1:1-18.5(b)
1:1-16.5(a)	1:1-18.6(a)
1:1-16.5(b)	1:1-18.6(b)
1:1-16.5(c)	1:1-18.7(a)-(b)
1:1-16.5(d)	1:1-18.6(c)
1:1-16.6(a)	1:1-18.8(a)
1:1-16.6(b)	1:1-18.8(b)
1:1-16.6(c)	1:1-18.8(c)-(f)
1:1-16.6(d) repealed	—
SUBCHAPTER 17.	
1:1-17.1(a)	1:1-19.1(a)
1:1-17.1(b)	1:1-19.1(b)
1:1-17.1(c)	1:1-19.1(c)
1:1-17.1(d) repealed	—
1:1-17.1(e) repealed	—
1:1-17.1(f) repealed	—
1:1-17.1(g) repealed	—
1:1-17.2(a)	1:1-19.2(a)-(c)
1:1-17.2(b)	1:1-19.2(d)
1:1-17.2(c)	1:1-19.2(e)
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1:2-2.9(b)	1:1-18.2(b)
1:2-2.9(c)	1:1-18.2(c)

CROSS-REFERENCE CHART (NEW TO OLD)

NEW CITATION	OLD CITATION
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1:1-1.1(a)	1:1-1.1(a)
1:1-1.1(b)	1:1-1.1(a)
1:1-1.1(c)	1:1-1.1(a); 1:1-6.1(a)
1:1-1.1(d)	1:1-1.1(b)
1:1-1.1(e)	1:1-1.1(c)

NEW CITATION	OLD CITATION
1:1-1.2	1:1-1.2
1:1-1.3(a)	1:1-1.3(a)
1:1-1.3(b)	1:1-1.3(a); 1:1-9.2(g); 1:1-11.5(d)
1:1-1.3(c)	1:1-1.3(b)
1:1-1.4	1:1-4.1
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1:1-2.1	1:1-1.4; 1:1-1.5-1.7; 1:1-15.1; 1:1-15.4(a); 1:1-16.1; 1:2-2.2; 1:2-3.2(a)
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1:1-3.1	1:1-2.1
1:1-3.2(a)	1:1-2.2(a)-(b)
1:1-3.2(b)	—
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1:1-12.5(d)	1:1-13.3(a)		1:2-2.8(a)
1:1-12.5(e)	1:1-13.3(b)	1:1-14.7(g)	1:1-16.1
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1:1-12.6(a)	1:1-9.6(a)	1:1-14.8(a)-(e)	1:2-3
1:1-12.6(b)	1:1-9.6(b)	1:1-14.9(a)	1:1-9.5(a)
1:1-12.6(c)	1:1-9.6(c)	1:1-14.9(b)	1:1-9.7(a)
1:1-12.6(d)	1:1-9.6(d)	1:1-14.9(c)	1:1-9.5(a)-(c);
1:1-12.6(e)	1:1-9.6(e)		1:1-10.1(d)
1:1-12.6(f)	1:1-9.6(f)	1:1-14.10(a)	1:1-9.7(a)
1:1-12.6(g)	1:1-9.6(g)	1:1-14.10(b)	1:1-9.7(b)
1:1-12.6(h)	1:1-9.6(h)	1:1-14.10(c)	1:1-9.7(c)
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1:1-14.1(d)	—	1:1-15.1(c)	1:1-15.2(a)
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1:1-14.6(a)	1:1-3.2(b);	1:1-15.7(c)	1:1-3.4(c)
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1:1-14.6(b)	1:1-3.9	1:1-15.8(a)5.	1:1-15.2(h)
1:1-14.6(c)	1:1-3.9	1:1-15.8(b)	1:1-15.5(a)
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1:1-16.2(b)	1:1-12.2(b)
1:1-16.2(c)	1:1-12.2(c)
1:1-16.3(a)	1:1-12.3(a)
1:1-16.3(b)	1:1-12.3(b)
1:1-16.3(c)	1:1-12.3(c)
1:1-16.4	1:1-12.4
1:1-16.5	1:1-12.5
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1:1-17.1(d)	1:1-14.1(d)
1:1-17.2(a)	1:1-14.2(a)
1:1-17.2(b)	1:1-14.2(b)
1:1-17.2(c)	1:1-14.2(c)
1:1-17.2(d)	1:1-14.2(d)
1:1-17.3(a)	1:1-14.3(a)
1:1-17.4(a)	1:1-14.4(a)
1:1-17.4(b)	1:1-14.4(b)
1:1-17.5(a)	1:1-14.5(a)
1:1-17.6(a)	1:1-14.6(a)
1:1-17.6(b)	1:1-14.6(b)
1:1-17.6(c)	1:1-14.6(c)
1:1-17.6(d)	1:1-14.6(d)
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1:1-19.2(b)	1:1-17.2(a)
1:1-19.2(c)	1:1-17.2(a)
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SUBCHAPTER 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:1-11.1(c) (Subpoena forms);
2. N.J.A.C. 1:1-12.6 (Emergency relief);
3. N.J.A.C. 1:1-14.10 (Interlocutory review);
4. N.J.A.C. 1:1-16.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:1-21 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

Cross References

Women-owned and minority-owned businesses, false information supplied, contested case hearing as under this subchapter, see N.J.A.C. 12A:11-1.9.

Case Notes

Disciplinary hearings by the Board are authorized by the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., and are governed by the New Jersey Uniform Administrative Rules. *Deck House, Inc. v. New Jersey State Bd. of Architects*, 531 F.Supp. 633 (D.N.J.1982).

Administrative agency cannot expand reach of statute. *Rutgers University Legislative Affairs Council, Inc. v. Thompson*, 12 N.J.Tax 642 (1992).

An administrative law judge is not automatically bound by an agency party's argument. This would frustrate the legislative intent of N.J.S.A. 52:14F-1 et seq. which tasked the OAL with providing due process hearings independently and impartially. *Div. of Motor Vehicles v. Canova*, 1 N.J.A.R. 7 (1980).

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

Case Notes

Blind Administrative Law Judge was not required to recuse himself due to his inability to visually inspect a videotape. *Division of Motor Vehicles v. Hall*, 94 N.J.A.R.2d (OAL) 14.

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.

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; or
5. Take other appropriate case-related action.

(b) 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 provided:

1. 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, 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;

2. Where the judge determines, after providing the party, attorney or other representative, an opportunity to explain, that the conduct does constitute misconduct, the judge shall issue an order imposing sanctions which shall recite the facts and contain a certification by the judge that he or she personally observed the conduct in question and that the party, attorney or other representative engaged in misconduct.

(c) Where the conduct deemed to obstruct or tending to obstruct a contested case does not require immediate adjudication, or where the matter has not occurred in the presence of the judge, 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.

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).

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).

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 Rule 9 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.

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: Rule 23 (Privilege of Accused); Rule 24 (Definition of Incrimination); Rule 25 (Self-incrimination); Rule 26 (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); Rule 27 (Newsperson's Privilege); Rule 28 (Marital Privilege-Confidential Communications); N.J.S.A. 45:8B-29 (Marriage Counselor Privilege); Rule 29 (Priest-Penitent Privilege); Rule 30 (Religious Belief); Rule 31 (Political Vote); Rule 32 (Trade Secret); Rule 34 (Official Information); Rule 36 (Identity of Informer); Rule 37 (Waiver of Privilege by Contract or Previous Disclosure; Limitations); Rule 38 (Admissibility of Disclosure Wrongfully Compelled); Rule 39 (Reference to Exercise of Privileges); and Rule 40 (Effect of Error in Overruling Claim of Privilege).

Administrative Correction.
See: 23 N.J.R. 847(a)

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

"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).

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.

per. 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).

1:1-15.6 Authentication and content of writings

Any writing offered into evidence which has been disclosed to each other party at least five 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.

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 should, whenever practicable, 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.

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, all parties agree and the judge finds there is good cause for permitting the witness to testify by telephone.

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

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).

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.

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 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.