

7. Exceptions to the initial decision must be filed with the agency no later than six days after the initial decision was mailed to the parties. No replies or cross-exceptions are permitted.

8. Final decisions shall be entered within 15 days after receipt of the initial decision.

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

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

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

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

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

1:1-9.5 Clerk's notices

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

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

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

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

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

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

1:1-9.6 Adjournments

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

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

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

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

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



(f) The fact that a party obtains the consent to an adjournment of his or her adversary will not always result in the granting of the adjournment.

(g) An attorney with a conflicting engagement in a court shall call the Clerk or judge as soon as the conflict is discovered. Attorneys should not assume that such conflicts will always result in an adjournment.

(h) When the judge or the Clerk requests, a party obtaining an adjournment will be responsible for securing from his or her adversary consent to a new date.

(i) All parties to an adjournment will be responsible for giving prompt notice to their witnesses as to the adjournment and the new scheduled date.

(j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-14.14.

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): added introductory text specifying special cases.

Added new subsection (b), recodifying (b)-(f) as (d)-(h) with no change in text.

Recodified (g) as (i), deleting text referring to Clerk's confirmation of new date.

Recodified (h) as (j), revising N.J.A.C. reference.

Administrative Correction to (j).

See: 23 N.J.R. 687(a).

Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).

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

1:1-9.7 Inactive list

(a) Where a party to a pending case is mentally or physically incapable of proceeding or is with other just excuse unable to proceed without substantial inconvenience or inordinate expense, that party or his or her representative may move to place the case on the inactive list. A judge, as a condition to placing a matter on the inactive list, shall consider the public interest in the matter and may impose conditions appropriate to the case.

1. Upon affidavit or other adequate proof, the judge may determine to place the case on the inactive list for as brief a period as possible not to exceed six months.

2. The Clerk shall maintain the inactive list and shall return the case to an active status after the specified period has expired unless, upon motion and further proof, the judge determines that the party is still with just excuse unable to proceed.

3. A judge may order a case to continue on the inactive list for successive brief periods, each not to exceed six months.

4. The Clerk shall notify all parties and the agency of any action taken under this section.

(b) Cases may not be placed on the inactive list to await an appellate court decision involving other parties unless the appellate decision is so imminent and directly relevant to the matter under dispute that some reasonable delay would be justified.

Cross References

Placement on inactive list pending disposition of charges. See, N.J.A.C. 1:19-9.1.

SUBCHAPTER 10. DISCOVERY

1:1-10.1 Purpose and function; policy considerations; public documents not discoverable

(a) The purpose of discovery is to facilitate the disposition of cases by streamlining the hearing and enhancing the likelihood of settlement or withdrawal. These rules are designed to achieve this purpose by giving litigants access to facts which tend to support or undermine their position or that of their adversary.

(b) It is not ground for denial of a request for discovery that the information to be produced may be inadmissible in evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) In considering a discovery motion, the judge shall weigh the specific need for the information, the extent to which the information is within the control of the party and matters of expense, privilege, trade secret and oppressiveness. Except where so proceeding would be unduly prejudicial to the party seeking discovery, discovery shall be ordered on terms least burdensome to the party from whom discovery is sought.

(d) Public documents accessible under legislative authorization shall not be discoverable under this subchapter, except for good cause shown. A party shall exhaust administrative remedies to obtain public documents before seeking discovery under this subchapter.

(e) Discovery shall generally not be available against a State agency that is neither a party to the proceeding nor asserting a position in respect of the outcome but is solely providing the forum for the dispute's resolution.

Case Notes

Parents of mentally retarded individual were entitled to discovery of all information from Division of Developmental Disabilities concerning placement of individual. Mr. and Mrs. J.E. on Behalf of G.E. v. State Dept. of Human Services, Div. of Development Disabilities, 253 N.J. Super. 459, 602 A.2d 279 (A.D.1992), certification granted 130 N.J. 12, 611 A.2d 651, reversed 131 N.J. 552, 622 A.2d 227.

Disclosure of identity of purported "confidential source" who provided certain information which led to the filing of a complaint against

respondent ordered by OAL judge. Div. of Gaming Enforcement v. Boardwalk Regency, 9 N.J.A.R. 274 (1986).

Parties are obliged to exhaust all less-formal opportunities to obtain discoverable material before invoking provisions for discovery practice (citing former N.J.A.C. 1:1-11.4). Div. of Consumer Affairs v. Acme Markets, 3 N.J.A.R. 210 (1981).

1:1-10.2 Discovery by notice or motion; depositions; physical and mental examinations

(a) Any party may notify another party to provide discovery by one or more of the following methods:

1. Written interrogatories;
2. Production of documents or things;
3. Permission to enter upon land or other property for inspection or other purposes; and
4. Requests for admissions.

(b) Any party may request an informal, nontranscribed meeting with witnesses for another party in order to facilitate the purposes of discovery as described in N.J.A.C. 1:1-10.1. The other party and his or her representative must be given notice and the opportunity to be present. Such meetings are voluntary and cannot be compelled. Failure to agree to such meetings will not be considered good cause for permitting depositions pursuant to (c) below.

(c) Depositions upon oral examination or written questions and physical and mental examinations are available only on motion for good cause. In deciding any such motion, the judge shall consider the policy governing discovery as stated in N.J.A.C. 1:1-10.1 and shall weigh the specific need for the deposition or examination; the extent to which the information sought cannot be obtained in other ways; the requested location and time for the deposition or examination; undue hardship; and matters of expense, privilege, trade secret or oppressiveness. An order granting a deposition or an examination shall specify a reasonable time during which the deposition or examination shall be concluded.

(d) A party taking a deposition or having an examination conducted who orders a transcript or a report shall promptly, without charge, furnish a copy of the transcript or report to the witness deposed or examined, if an adverse party, and, if not, to any adverse party. The copy so furnished shall be made available to all other parties for their inspection and copying.

Case Notes

Administrative agency discovery practice limits available methods of discovery on notice to written interrogatories, production of documents or things, property inspection, physical and mental examinations and requests for admissions (citing former N.J.A.C. 1:1-11.2). Depositions upon oral examination are available on motion for good cause shown (citing former N.J.A.C. 1:1-11.3). Div. of Consumer Affairs v. Acme Markets, Inc., 3 N.J.A.R. 210 (1981).

1:1-10.3 Costs of discovery

(a) The party seeking discovery shall pay for all reasonable expenses caused by the discovery request.

(b) Where a proponent of any notice or motion for discovery or a party taking a deposition is a State agency, and the party or person from whom such discovery or deposition is sought is entitled by law to recover in connection with such case the costs thereof from others, such State agency shall not be required to pay the cost of such discovery or deposition.

1:1-10.4 Time for discovery; relief from discovery; motions to compel

(a) The parties in any contested case shall commence immediately to exchange information voluntarily, to seek access as provided by law to public documents and to exhaust other informal means of obtaining discoverable material.

(b) Parties shall immediately serve discovery requests and notices and make discovery motions.

(c) No later than 15 days from receipt of a notice requesting discovery, the receiving party shall provide the requested information, material or access or offer a schedule for reasonable compliance with the notice; or, in the case of a notice requesting admissions, each matter therein shall be admitted unless within the 15 days the receiving party answers, admits or denies the request or objects to it pursuant to N.J.A.C. 1:1-10.4(d).

(d) A party who wishes to object to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days from receipt of the notice. A party who wishes to compel a response to a discovery notice shall place a telephone conference call to the judge and the other parties within 10 days of the notice due date. A party who wishes to object to a discovery response shall place a telephone conference call to the judge and the other parties within 10 days of receiving the response. If a party fails without good reason to place a timely telephone call, the judge may deny that party's objection or decline to compel the discovery.

(e) The parties shall complete all discovery no later than five days before the first scheduled evidentiary hearing or by such date ordered by the judge at the prehearing conference.

Amended by R.1989 d.190, effective April 3, 1989.
See: 20 N.J.R. 2845(b), 21 N.J.R. 889(a).

In (c), clear specifications added on the result of a failure to respond to a request for admissions.

1:1-10.5 Sanctions

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-14.14 for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.