

the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or as necessary to keep the agency head as a client informed of the status of the case, provided that no information may be disclosed ex parte if it would compromise the agency head's ability to adjudicate the case impartially. In no event may the legal representative participate in making or preparing the final decision in the case.

Amended by R.1988 d.78, effective February 16, 1988.  
See: 19 N.J.R. 1761(b), 20 N.J.R. 385(a).

Adopted the codifying of the Supreme Court's ruling in In Re Opinion No. 583 of the Advisory Committee on Professional Ethics, 107 N.J. 230 (1987).

#### Case Notes

In case construing N.J.A.C. 1:1-3.8(c), court held that while an administrative case is being heard at the OAL, the prosecuting DAG may consult ex parte with the head of the administrative agency to the extent necessary to keep the agency head, the client, reasonably informed. In the Matter of Opinion No. 583 of Advisory Committee on Professional Ethics, 107 N.J. 230, 526 A.2d 692 (1987).

### 1:1-14.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more or less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or de-accelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court reporter to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

#### Case Notes

Where a confidential informant's statements served as evidence in a disciplinary action against a correction officer for engaging in an inappropriate relationship with an inmate, but the informant was not called as a witness during the hearing, the matter was remanded to allow the appointing authority to call the confidential informant as a witness; if the appointing authority did not call the confidential informant, the ALJ was authorized to act in its stead to take the testimony. In re Smith, OAL Dkt. No. CSV 4528-07, 2008 N.J. AGEN LEXIS 136, Remand Decision (January 30, 2008).

Record needed to be developed to facilitate review of ALJ's determination that a senior correction officer was improperly dismissed after he tested positive for marijuana because the expert's testimony was not transcribed and the parties offered conflicting interpretations of what the testimony was; the ALJ was authorized to take the expert's testimony to clarify the urine testing process, including appropriate cut-off levels, and the margin of error associated with such testing (remanding 2007 N.J. AGEN LEXIS 140). In re Fuller, OAL Dkt. No. CSV 439-06, 2007 N.J. AGEN LEXIS 1124, Remand Decision (November 8, 2007).

ALJ properly limited the evidence to whether a police officer was successfully re-trained, as required by a settlement agreement between the officer and the appointing authority arising out of a prior disciplinary matter; the allegations giving rise to the prior disciplinary proceeding did not need to be considered in determining whether the officer had fulfilled his obligations under the agreement (adopting 2007 N.J. AGEN LEXIS 242). In re MacDonald, OAL Dkt. No. CSV 474-05, 2007 N.J. AGEN LEXIS 1133, Merit System Board Decision (August 29, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 246) adopted, in which an employee's appeal was dismissed as a sanction for the employee's failure to appear for a scheduled hearing without good cause; it was reasonable to conclude that continuation of the matter would have resulted in additional expense and delay. In re Thompson, OAL Dkt. No. CSV 3859-05, 2007 N.J. AGEN LEXIS 1109, Final Decision (June 20, 2007).

In a dispute in which the appointing authority claimed that an employee lied about his education and military service, the Merit System Board remanded the matter and ordered the Administrative Law Judge to use its powers under N.J.A.C. 1:1-14.6 to take the testimony of witnesses, if necessary, in order to determine whether the documentary evidence offered by the appointing authority could be properly authenticated; the Board also stated that the employee should be compelled to testify and/or present evidence on remand to refute the charges. In re Anderson, OAL Dkt. No. CSV 2101-05 (CSV 4698-04 On Remand), 2006 N.J. AGEN LEXIS 1099, Merit System Board Decision (December 20, 2006).

Merit System Board authorized ALJ on remand to identify and take testimony of witnesses regarding chain of custody of drug specimen in the event the appointing authority did not call those witnesses. In re Brown, OAL Dkt. No. CSV 8874-04, 2006 N.J. AGEN LEXIS 892, Merit System Board Decision (October 20, 2006).

Given the serious allegations against a Human Services Assistant that she pushed a patient into a chair and then struck the patient with a hairbrush, the Merit System Board ordered that it could not make a definitive decision as to whether removal was warranted without further testimony and ordered the appointing authority to call an additional witness; if the appointing authority failed to do so, the Administrative Law Judge was authorized to use her power to take additional testimony (remanding 2005 N.J. AGEN LEXIS 951). In re Woart, OAL Dkt. No. CSV 4709-05, 2006 N.J. AGEN LEXIS 536, Remand Decision (April 26, 2006).

Although an appellant failed to timely comply with the ALJ's discovery schedule, the failure did not unduly prejudice the appointing authority since it received the appellant's answers to its interrogatories; consequently, the remedy of dismissing the appellant's appeal for his untimely submission was unduly harsh and the ALJ should have considered other possible sanctions, such as the counsel fees incurred by the appointing authority as a result of its motion to dismiss. In re Zorn, OAL Dkt. No. CSV 8501-05, 2006 N.J. AGEN LEXIS 633, Remand Decision (April 5, 2006).

Remand was necessary in order to allow a correction officer to provide the ALJ with documentary evidence that his absences from work were due to his daughter's illness; although it appeared that the appointing authority acted harshly in removing the officer, the ALJ's reversal of the appointing authority's penalty without the officer being requested to submit medical documentation was troubling. In re Bailey, OAL Dkt. No. CSV 4696-04, 2005 N.J. AGEN LEXIS 1196, Remand Decision (July 27, 2005).

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

### 1:1-14.7 Conduct of hearings

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

(b) The party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

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

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

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

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

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

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

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

4. Any reference in briefs or other such submissions to initial and final decisions shall include sufficient information to enable the judge to locate the initial decision. This shall include either the Office of Administrative Law docket number, or a reference to New Jersey Administrative Reports or another published and indexed compilation or to the Rutgers Camden Law School website at <http://lawlibrary.rutgers.edu/oa/>. A copy of any cited decision shall be supplied if it is not located in any published compilation or on the foregoing website.

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).

By the ALJ's own account, the investigative report of a chief ranger was relevant to the issue of whether respondents violated regulations regarding keeping and storing explosives; consequently, it was inappropriate for the ALJ to exclude the report without first establishing that the report's probative value was substantially outweighed by the risk that its admission would have necessitated an undue consumption of time or created a substantial danger of under prejudice or confusion (rejecting 2007 N.J. AGEN LEXIS 697). *N.J. Dep't of Labor & Workforce Dev. v. John P. Twining Blasting*, OAL Dkt. No. LID 760-06 (LID 320-03 On Remand), 2008 N.J. AGEN LEXIS 1247, Remand Decision (June 9, 2008 (Issued)).

Initial Decision (2007 N.J. AGEN LEXIS 562) adopted, which concluded that where a sanitation worker was removed on charges of incapacity after permanent restrictions were imposed by physicians hired through the city's third-party administrator, the city failed in its burden of proof because the medical documents on which it relied were conclusory hearsay, lacking in sufficient medical analysis, and unsupported by reliable, competent evidence that would have supported findings of fact; the worker had shown himself able to perform his duties, but for short periods of rehabilitation, and he had the requisite strength and adaptability that could have been reasonably accommodated after return to his former position. *In re Misiur*, OAL Dkt. No. CSV 768-07, 2007 N.J. AGEN LEXIS 1157, Merit System Board Decision (August 29, 2007).

In a disciplinary action against a police officer who was alleged to have sexually assaulted three women, the ALJ should have allowed the testimony of a third victim where her allegations of date rape were similar or identical to the two other victims; the issue of consent was at issue, and the evidence was significant, particularly since the situation was strikingly similar to that of the other two victims. The fact that the grand jury did not issue an indictment regarding the third victim's allegations did not preclude the evidence from being considered as relevant testimony in the disciplinary proceeding (remanding 2005 N.J. AGEN LEXIS 205). *In re Cofone*, OAL Dkt. Nos. CSV 2578-01 and CSV 6148-03, 2005 N.J. AGEN LEXIS 1080, Remand Decision (August 10, 2005).

In a disciplinary action against a police officer who was alleged to have sexually assaulted three women, the ALJ should have allowed the expert to testify as to the level of the victims' blood alcohol content and also should have allowed testimony as to the specialized training the officer received to recognize alcohol intoxication and incapacity; both pieces of evidence were relevant as to the officer's knowledge of the complainants' incapacities to consent to intercourse (remanding 2005 N.J. AGEN LEXIS 205). *In re Cofone*, OAL Dkt. No. CSV 2578-01 and CSV 6148-03, 2005 N.J. AGEN LEXIS 1080, Remand Decision (August 10, 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.

(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

Initial Decision (2006 N.J. AGEN LEXIS 31) adopted, in which the ALJ took judicial notice of the diagnostic codes listed on a cottage technician's Absence Note to conclude that her testimony was not worthy of belief; the technician testified that she left work due to nausea, vomiting, and diarrhea, but the diagnostic codes indicated that the technician was actually treated for acute maxillary sinusitis and depressive disorder, supporting the appointing authority's contention that the technician's illness was a mere pretext on learning she was to be reassigned to a different unit during her shift. *In re Edison*, OAL Dkt. No. CSV 549-05, 2006 N.J. AGEN LEXIS 908, Final Decision (October 18, 2006).

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).

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).

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.

#### 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).

#### 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 un rebutted 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).

Initial Decision (2008 N.J. AGEN LEXIS 791) adopted, which concluded that, although two reports from independent car repair businesses were admitted as hearsay evidence in a Lemon Law dispute, they were accorded little or no weight because their conclusions that the vehicle suffered from a nonconformity were not subject to cross-examination by the manufacturer. *Ragusano v. Ford Motor Co.*, OAL Dkt. No. CMA 8077-08, 2008 N.J. AGEN LEXIS 1050, Final Decision (October 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 1269) adopted, which determined that the record was bereft of credible, competent evidence that a representative of the Police and Firemen's Retirement System or the Division of Pensions and Benefits made any misrepresentation or provided misinformation to public employees on which they reasonably relied to their detriment that holiday pay would be creditable for purposes of calculating their pensions or told union members, union officials, or other public employees that the change in a union contract would retroactively allow holiday pay received prior to a contract amendment to be considered creditable salary. In re *Segear*, OAL Dkt. No. TYP 01500-06, TYP 03718-06, TYP 03719-06, TYP 03877-06, 2008 N.J. AGEN LEXIS 1324, Final Decision (September 8, 2008).

Although parents who had articulated some very serious concerns about the extended school year for their nine-year-old emotionally disturbed son, presented and moved into evidence letters from providers of services to their son, those letters were hearsay because the writers were not available for cross-examination. While it is well established that hearsay is admissible in an administrative proceeding, some legally competent evidence had to support each ultimate finding of fact which did not occur in the immediate case. *M.M. et al v. Ramsey Bd. of Educ.*, OAL Dkt. No. EDS 9036-08, 2008 N.J. AGEN LEXIS 827, Final Decision (August 29, 2008).

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