

(b) The Clerk upon receiving a contested case that has not been transmitted in accordance with this subchapter may either return the case with instructions to the agency for retransmission or cure the transmission defects and accept the matter for filing.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES; ADJOURNMENTS; INACTIVE LIST

1:1-9.1 Scheduling of proceedings

(a) When a contested case is filed, it may be scheduled for mediation, settlement conference, prehearing conference, proceeding on the papers, conference hearing, telephone hearing, plenary hearing or other proceeding.

(b) To schedule a proceeding, the Clerk may contact the parties to arrange a convenient date, time and place or may prepare and serve notice without first contacting the parties. Proceedings shall be scheduled for suitable locations, taking into consideration the convenience of the witnesses and the parties, as well as the nature of the case and proceedings.

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive. The Clerk may schedule mediation whenever all parties concur.

(d) A prehearing conference may be scheduled in any case, other than one requiring a conference hearing, whenever necessary to foster an efficient and expeditious proceeding.

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 for:

1. Division of Motor Vehicles cases dealing with excessive points and surcharges, pursuant to N.J.A.C. 1:13;
2. Department of Environmental Protection cases involving emergency water supply allocation plan exemptions, pursuant to N.J.A.C. 1:7; and
3. Any other class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) A conference hearing may be scheduled for:

1. Civil Service cases dealing with layoffs, disciplinary actions and termination after probationary work period;
2. Division of Economic Assistance cases where an applicant or recipient disputes the proposed action on eligibility or benefits entitlement by a county welfare agency or a local decision or inaction by a municipal welfare department (see N.J.A.C. 1:10 for special hearing rules);

3. Food stamp intentional program violations cases (see N.J.A.C. 1:10 for special hearing rules);

4. Matters arising out of the Special Education Program of the Department of Education (see N.J.A.C. 1:6A for special hearing rules);

5. Any case when all parties agree and the judge so directs; and

6. Any other class of cases which the Director of the Office of Administrative Law and the transmitting agency agree would be suitable to be heard as conference hearings.

(g) A telephone hearing may be scheduled for any case when all parties agree and the judge so directs.

Amended by R.1987 d.463, effective November 16, 1987.

See: 19 N.J.R. 1591(a), 19 N.J.R. 2131(a).

Deleted text (d)1.-3. because those specifications had been found to be superfluous.

Amended by R.1992 d.213, effective May 18, 1992.

See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Revised (a).

1:1-9.2 Cases commenced by order to show cause

When an agency head commences an action by order to show cause, the agency head may, prior to service and filing of the order to show cause, contact the Clerk, who will assign a judge and establish the time, place and date for a hearing on the matter. The agency shall insert in the pleading the information provided by the Clerk and promptly serve and file it in accordance with N.J.A.C. 1:1-7.

1:1-9.3 Priority scheduling

Priority in scheduling shall be given where requirements of law impose expedited time frames for disposition of a case. In all other cases, the transmitting agency or any party may make special scheduling requests to the Clerk.

1:1-9.4 Accelerated proceedings

(a) Any party may apply for accelerated disposition of a case. The application shall be in writing, on notice to all parties, and shall include the reasons for the request and a statement that all parties consent to acceleration.

(b) Applications for acceleration shall be filed as soon as circumstances meriting such action are discovered. Whenever possible, applications for acceleration by a transmitting agency shall be filed upon transmittal of the case and applications for acceleration by any other party shall be filed with the pleadings in the case.

(c) Applications for acceleration shall be made to the Director until such time as a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing or hearing. The Director may decide the request for acceleration or may assign the motion to a judge for determination. If a party has appeared before a judge in person, by telephone, or in writing for a motion, prehearing, or hearing, applications for acceleration shall be made to the judge.

(d) If the transmitting agency is a party and the agency either requests accelerated proceedings or concurs in a request for acceleration, the agency will be deemed to have agreed to abide by the 15-day decision deadline in (e)8 below. If the transmitting agency is not a party, the party requesting acceleration must secure from the transmitting agency agreement to render its final decision within 15 days as provided in (e)8 below.

(e) If the transmitting agency agrees to the 15-day decision deadline, all parties consent and the Director or the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1. Formal discovery shall not be permitted, although parties may voluntarily exchange information, provided it does not delay the accelerated disposition of the case.
2. No mediation, prehearing conference or settlement conference shall be scheduled or conducted unless directed by the presiding judge.
3. Except for extraordinary circumstances establishing good cause, no adjournments shall be granted.
4. Prehearing motions shall not be permitted unless requested by the presiding judge.
5. Post-hearing submissions shall not be accepted except for the purpose of expressing the terms of a settlement or when requested by the presiding judge.
6. Initial decisions shall be issued within 15 days after the hearing is concluded.
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.