

(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.

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.

(f) With the exception of motions for summary decision under N.J.A.C. 1:1-12.5 and motions concerning predominant interest in consolidated cases under N.J.A.C. 1:1-17.6, all motions shall be decided within 10 days after they are submitted for disposition.

(g) A party may request an expedited schedule for disposition of a motion by arranging a telephone conference between the judge and all parties. If the judge agrees to expedite, he or she must establish a schedule for responsive papers, submission and decision.

1:1-12.3 Procedure when oral argument is directed

(a) When oral argument is directed on a motion, the Clerk shall serve upon the parties a notice complying with the requirements of N.J.A.C. 1:1-9.5(f).

(b) Unless otherwise ordered for good cause shown, all motions for which oral argument has been directed shall be heard by telephone conference without any personal appearance of the parties upon such terms as shall be established by the judge, including provision for sound recording.

(c) A motion for which oral argument has been directed shall be considered submitted for disposition at the close of argument.

1:1-12.4 Affidavits; briefs and supporting statements; evidence on motions

(a) Motions and answering papers shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. All motions and answering papers shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under N.J.A.C. 1:1-15, and to which affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be annexed thereto.

(b) In the discretion of the judge, a party or parties may be required to submit briefs or supporting statements pursuant to the schedule established in N.J.A.C. 1:1-12.2 or as ordered by the judge.

(c) The judge may hear the matter wholly or partly on affidavits or on depositions, and may direct any affiant to submit to cross-examination and may permit supplemental or clarifying testimony.

1:1-12.5 Motion for summary decision; when and how made; partial summary decision

(a) At any time after a case is determined to be contested, a party may move for summary decision upon all or any of the substantive issues therein.

(b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The deci-

sion sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. If the adverse party does not so respond, a summary decision, if appropriate, shall be entered.

(c) Motions for summary decision shall be decided within 45 days from the date of submission. Any motion for summary decision not decided by an agency head which fully disposes of the case shall be treated as an initial decision under N.J.A.C. 1:1-18. Any partial summary decision shall be treated as required by (e) and (f) below.

(d) If, on motion under this section, a decision is not rendered upon all the substantive issues in the contested case and a hearing is necessary, the judge at the time of ruling on the motion, by examining the papers on file in the case as well as the motion papers, and by interrogating counsel, if necessary, shall, if practicable, ascertain what material facts exist without substantial controversy and shall thereupon enter an order specifying those facts and directing such further proceedings in the contested case as are appropriate. At the hearing in the contested case, the facts so specified shall be deemed established.

(e) A partial summary decision order shall by its terms not be effective until a final agency decision has been rendered on the issue, either upon interlocutory review pursuant to N.J.A.C. 1:1-14.10 or at the end of the contested case, pursuant to N.J.A.C. 1:1-18.6. However, at the discretion of the judge, for the purpose of avoiding unnecessary litigation or expense by the parties, the order may be submitted to the agency head for immediate review as an initial decision, pursuant to N.J.A.C. 1:1-18.3(c)12. If the agency head concludes that immediate review of the order will not avoid unnecessary litigation or expense, the agency head may return the matter to the judge and indicate that the order will be reviewed at the end of the contested case. Within 10 days after a partial summary decision order is filed with the agency head, the Clerk shall certify a copy of pertinent portions of the record to the agency head.

(f) Review by the agency head of any partial summary decision shall not cause delay in scheduling hearing dates or result in a postponement of any scheduled hearing dates unless the judge assigned to the case orders that a postponement is necessary because of special requirements, possible prejudice, unproductive effort or other good cause.

Amended by R.1990 d.368, effective August, 6, 1990.
See: 22 N.J.R. 3(a), 22 N.J.R. 2262(a).

In (e): added text to provide for an agency head to remand partial summary decisions to judge when deemed appropriate that decision will be reviewed at the end of contested case.

Case Notes

Commissioner of Education was not required to conduct evidentiary hearing before removing local school board and ordering creation of state-operated school district, where there were no disputed issues of fact material to proposed administrative action. *Contini v. Board of Educ. of Newark*, 286 N.J.Super. 106, 668 A.2d 434 (A.D. 1995).1996022889;;;668;162;434;

Motion for summary decision granted on grounds that doctrines of res judicata and collateral estoppel barred re-litigation of issues (citing former N.J.A.C. 1:1-13.1). *Lukas v. Dep't of Human Services*, 5 N.J.A.R. 81 (1982), appeal decided 103 N.J. 206, 510 A.2d 1123 (1986).

Evidential hearing in contested case is not needed if there are no disputed issues of fact. *Frank v. Ivy Club*, 120 N.J. 73, 576 A.2d 241 (1990), certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Former N.J.A.C. 1:1-13.1 through 13.4 cited regarding summary decision; rules held valid. In Re: Uniform Administrative Procedure Rules, 90 N.J. 85, 447 A.2d 151 (1982).

Fact-finding conference conducted by state Division on Civil Rights could serve as basis for resolution of claim that eating clubs practiced gender discrimination. *Frank v. Ivy Club*, 120 N.J. 73, 576 A.2d 241 (1990), certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Validity of partial summary decision rule upheld; reversed summary decisions in sex discrimination case re: men's eating clubs on jurisdiction and liability, final hearing necessary to resolve disputed fact (cited former N.J.A.C. 1:1-13.1-13.4). *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (App.Div.1988).

Limitations period for challenge to denial of tenure did not begin to run when president of college advised employee by letter that he agreed employee should have tenure. *Dugan v. Stockton State College*, 245 N.J.Super. 567, 586 A.2d 322 (A.D.1991).

Administrative official could not resolve disputed facts without trial-type hearing. *Frank v. Ivy Club*, 228 N.J.Super. 40, 548 A.2d 1142 (A.D.1988), certification granted 117 N.J. 627, 569 A.2d 1330, reversed 120 N.J. 73, 576 A.2d 241, certiorari denied 111 S.Ct. 799, 498 U.S. 1073, 112 L.Ed.2d 860.

Plenary hearing is necessary for consideration of petition for issuance of a certificate of public convenience and necessity in this case to consider mitigating circumstances and permit fuller development of all relevant factors. *Matter of Robros Recycling Corp.*, 226 N.J.Super. 343, 544 A.2d 411 (App.Div.1988), certification denied 113 N.J. 638, 552 A.2d 164 (1988).

Summary disposition by administrative law judge is permissible if undisputed facts indicate that particular disposition is required. *Matter of Robros Recycling Corp.*, 226 N.J.Super. 343, 544 A.2d 411 (A.D. 1988), certification denied 113 N.J. 638, 552 A.2d 164.

1:1-12.6 Emergency relief

(a) Where authorized by law and where irreparable harm will result without an expedited decision granting or prohibiting some action or relief connected with a contested case, emergency relief pending a final decision on the whole contested case may be ordered upon the application of a party.

(b) Applications for emergency relief shall be made directly to the agency head and may not be made to the Office of Administrative Law.

(c) An agency head receiving an application for emergency relief may either hear the application or forward the matter to the Office of Administrative Law for hearing on the application for emergency relief. When forwarded to the Office of Administrative Law, the application shall proceed in accordance with (i) through (k) below. All applications for emergency relief shall be heard on an expedited basis.

(d) The moving party must serve notice of the request for emergency relief on all parties. Proof of service will be required if the adequacy of notice is challenged. Opposing parties shall be given ample opportunity under the circumstances to respond to an application for emergency relief.

(e) Where circumstances require some immediate action by the agency head to preserve the subject matter of the application pending the expedited hearing, or where a party applies for emergency relief under circumstances which do not permit an opposing party to be fully heard, the agency head may issue an order granting temporary relief. Temporary relief may continue until the agency head issues a decision on the application for emergency relief.

(f) When temporary relief is granted by an agency head under circumstances which do not permit an opposing party to be fully heard, temporary relief shall:

1. Be based upon specific facts shown by affidavit or oral testimony, that the moving party has made an adequate, good faith effort to provide notice to the opposing party, or that notice would defeat the purpose of the application for relief;

2. Include a finding that immediate and irreparable harm will probably result before adequate notice can be given;

3. Be based on the likelihood that the moving party will prevail when the application is fully argued by all parties;

4. Be as limited in scope and temporary as is possible to allow the opposing party to be given notice and to be fully heard on the application; and

5. Contain a provision for serving and notifying all parties and for scheduling a hearing before the agency head or for transmitting the application to Office of Administrative Law.

(g) Upon determining any application for emergency relief, the agency head shall forthwith issue and immediately serve upon the parties a written order on the application. If the application is related to a contested case that has been transmitted to Office of Administrative Law, the agency head shall also serve the Clerk of Office of Administrative Law with a copy of the order.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order to the transmitting agency head and served on all parties. If the agency head approves the request, he or she shall within 10 days sign and issue the order and cause it to be served on all parties and the Director of the Office of Administrative Law. If the extended time limit necessitates an extension of the deadline for the final decision, the requirements of (e) below apply.

(e) If the agency head requests an extension of the time limit for filing a final decision, he or she shall sign and forward a proposed order to the Director of the Office of Administrative Law and serve copies on all parties. If the Director approves the request, he or she shall within 10 days of receipt of the proposed order sign and issue the order and cause it to be served on all parties.

(f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, set forth the dates of any previous extensions, and establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only in the case of extraordinary circumstances.

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

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

Revised (c), (e) and (f).

Case Notes

Automatic approval of administrative law judge's recommendations was not applicable. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

Provision for automatic adoption of administrative law judge's recommendations will not be literally enforced where agency head is not dragging his feet in issuing final decision. *Rollins Environmental Services (NJ), Inc. v. Weiner*, 269 N.J.Super. 161, 634 A.2d 1356 (A.D.1993).

It was proper exercise of discretion to grant nunc pro tunc extension of time for Hackensack Meadowlands Development Commission (HMDC) to issue its final decision regarding intermunicipal tax-sharing obligations under Hackensack Meadowlands Reclamation and Development Act. *Town of Secaucus v. Hackensack Meadowlands Development Com'n*, 267 N.J.Super. 361, 631 A.2d 959 (A.D.1993), certification denied 139 N.J. 187, 652 A.2d 175.

Three month delay in providing findings and legal conclusions for decision itself untimely; equitable factor against reconsideration of administrative law judge's (ALJ) decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Inherent power to reconsider decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Initial decision of administrative law judge (ALJ) shall be "deemed adopted". *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

Board of Trustees of Public Employee Retirement System failed to make showing justifying setting aside decision. *Mastro v. Board of Trustees, Public Employees' Retirement System*, 266 N.J.Super. 445, 630 A.2d 289 (A.D.1993).

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the agency head has not consented to the settlement terms, 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) If the agency head has approved the terms of the settlement, 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).

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 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).1996038199;;670;162;95;

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 Conduct of mediation

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

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

2. 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.

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 and, where appropriate, 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.

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)5, revised N.J.A.C. citation.

1:1-20.2 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.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate subsequent proceedings.