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.

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 opinion in police report, when successfully rebutted, was not a sufficient basis to require licensee to undergo driver re-examination. Division of Motor Vehicles v. Cioffi, 95 N.J.A.R.2d (MVH) 57.

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 admissable 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 admissable 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. 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.

(b) A party who intends to offer a witness' transcribed testimony at the hearing must give all other parties and the judge at least five days notice of that intention and provide each with a copy of the transcript being offered.

(c) Opposing parties may subpoena the witness to appear personally. Any party may produce additional witnesses and other relevant evidence at the hearing.

(d) Provided the requirements in (a) above are satisfied, the entire controversy may be presented solely upon such transcribed testimony if all parties agree and the judge approves.

(e) Prior transcribed testimony that would be admissible as an exception to the hearsay rule under Evidence Rule 63(3) is not subject to the requirements of this section.

SUBCHAPTER 16. INTERVENTION AND PARTICIPATION

1:1–16.1 Who may apply to intervene; status of intervenor

(a) Any person or entity not initially a party, who has a statutory right to intervene or who will be substantially, specifically and directly affected by the outcome of a contested case, may on motion, seek leave to intervene.

(b) Persons or entities permitted to intervene shall have all the rights and obligations of a party to the proceeding.

Case Notes

Interested parties were entitled to relevant information on consideration of automobile insurance rates of Market Transition Facility. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Policyholders were "interested parties" with respect to access to information to be used by Department of Insurance on setting rates. Matter of Market Transition Facility of New Jersey, 252 N.J.Super. 260, 599 A.2d 906 (A.D.1991), certification denied 127 N.J. 565, 606 A.2d 376.

Administrative law judge was without jurisdiction to compel joinder of third party in school district's placement dispute with parents. B.R. v. Woodbridge Board, 95 N.J.A.R.2d (EDS) 159.

1:1–16.2 Time of motion

(a) A motion for leave to intervene may be filed at any time after a case is initiated.

(b) If made before a case has been filed with the Office of Administrative Law, a motion for leave to intervene shall be filed with the head of the agency having jurisdiction over the case. The agency head may rule upon the motion to intervene or may reserve decision for action by a judge after the case has been filed with the Office of Administrative Law.