

Amended by R.1991 d.296, effective June 17, 1991.

See: 23 N.J.R. 1053(a), 23 N.J.R. 1919(a).

Eliminated provision that a DAG had to "sign off" on agency non-lawyer representation; delegated authority to agencies.

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

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

Revised text.

Amended by R.1997 d.158, effective April 7, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

In (a)6, inserted reference to Public Employment Relations Commission; inserted (a)8; in (b)1iv, amended subsection reference; inserted new (b)2; recodified former (b)2 as (b)3; in (b)3, inserted "where a county or local government employee seeks to represent the appointing authority"; inserted (b)3v; and recodified former (b)3v through (b)3viii as (b)3vi through (b)3ix.

Amended by R.1997 d.474, effective November 3, 1997.

See: 29 N.J.R. 3758(a), 29 N.J.R. 4677(a).

In (b)1, substituted "Family Development" for "Economic Assistance", and added "and Department of Labor Vocational Rehabilitation cases".

Case Notes

Testimony by lay advocate for parents was only arguably relevant under federal discovery rules. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 858 F.Supp. 51.

Attorney-client privilege extended to lay advocate. *Woods on Behalf of T.W. v. New Jersey Dept. of Educ.*, D.N.J.1993, 858 F.Supp. 51.

Attorney licensed in foreign jurisdiction could not represent party as a non-lawyer. *Thompson and Pavlick v. Department of Community Affairs*, 92 N.J.A.R.2d (OAL) 9.

Nursing home not authorized representative for patients. *Bridgeton Nursing Center v. Division of Medical Assistance and Health Services*, 92 N.J.A.R.2d (DMA) 1.

Allowed representation by non-lawyer representative in matters in which such appearances were permitted prior to the establishment of the OAL. *Dep't of Community Affairs v. The Buckingham*, 6 N.J.A.R. 81 (1982).

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

(a) The presiding judge, unless precluded by Federal law, may determine at any time during the proceeding that a specific case is not appropriate for representation by a non-lawyer representative. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative. The judge shall implement a determination to preclude non-lawyer representation by informing the parties of the decision and the reasons therefor. With respect to a county, local or State agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual either to obtain a new non-lawyer, to represent himself or herself or to obtain legal representation.

(b) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance/Application or in any oral application by a non-lawyer.

(c) Non-lawyer representatives shall be subject to the Uniform Administrative Procedure Rules, including the sanctions provided in N.J.A.C. 1:1-14.14. If the judge determines that an incorrect statement in an oral application or Notice of Appearance/Application was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. 1:1-14.14, which may include:

1. In the case of a State, county or local agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action;
2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,
3. A recommendation by the presiding judge to the agency head that a particular non-lawyer representative be permanently excluded from administrative hearings before that agency.

(d) A non-lawyer may not be precluded from providing representational services solely because the non-lawyer is also appearing as a witness in the matter.

(e) In general, a non-lawyer representative shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross-examinations of witnesses.

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation which may be rendered by a non-lawyer. Conditions or limits may include:
 - i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;
 - ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;
 - iii. Requiring the party to speak for him or herself; or
 - iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party, except that non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations who have been authorized to agree to the terms of a particular settlement by the represented entity may sign consent orders or stipulations.

(g) Non-lawyer representatives are expected to be guided in their behavior by appropriate standards of conduct, such as contained in the following Rules of Professional Conduct

for attorneys: RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 3.2 (Expediting Litigation); RPC 3.3 (Candor Towards the Tribunal); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 3.5 (Impartiality and Decorum of the Tribunal); and RPC 4.1 (Truthfulness in Statements to Others). Non-lawyer representatives who are state officers or employees must also comply with the requirements of the New Jersey Conflicts of Interest Law, in particular N.J.S.A. 52:13D-16. For failure to comply with these standards, the judge may revoke a non-lawyer representative's right to appear in a case or may order sanctions as provided in (c) above.

Amended by R.1989 d.158, effective March 20, 1989.
See: 20 N.J.R. 2845(a), 21 N.J.R. 749(a).

Exceptions allowing non-lawyer representatives to sign consent orders or stipulations, added at (f).

Correction in (c): changed 1:11-4.4 to 1:1-14.4.

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 (c): revised N.J.A.C. citation.

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

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

Added (g).

Amended by R.1997 d.158, effective April 7, 1997.

See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Case Notes

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1:1-5.6 Appearance without representation: State agencies or county or municipal welfare agencies; corporations

(a) In those cases where a State agency or a county or municipal welfare agency does not send a representative who has been approved under N.J.A.C. 1:1-5.4 to a hearing, but merely rests its case on papers and/or on witnesses presented to the judge:

1. The agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. 1:1-5.4 and lists the papers and/or witnesses upon which the agency intends to rely.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. 1:1-5.4, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to examine or cross-examine witnesses.

(b) In cases where a corporation is a party and will not be represented at the hearing by either a lawyer or a non-lawyer representative approved under N.J.A.C. 1:1-5.4, the judge may permit the corporation to proceed at the hearing on papers and/or on witnesses.

1. The corporation's lawyer or approved non-lawyer representative must obtain the judge's approval for the appearance without representation prior to the hearing. The judge shall consider whether the party's position can be adequately presented without representation and whether there will be any adverse impact on the hearing process.

2. A witness who appears on behalf of the corporation may testify and, in the interest of developing a full hearing record, may be permitted to ask questions through the judge, make statements in response to other testimony or to offer documents in his or her own name. However, the judge need not permit this witness to examine or cross-examine other witnesses.

SUBCHAPTER 6. PLEADINGS

1:1-6.1 Pleading requirements

(a) Specific pleading requirements are governed by the agency with subject matter jurisdiction over the case. Except as otherwise provided by this subchapter, parties in contested cases should refer to the rules of the appropriate agency for guidance.

(b) Pleadings shall be filed as required by the rules of the agency with subject matter jurisdiction over the case.

(c) Pleadings shall be served in the manner permitted by N.J.A.C. 1:1-7.1(a) on all parties and on any other person required by the rules of the agency with subject matter jurisdiction over the case.

Case Notes

Notice of appeal or cross-appeal is deemed complaint and tolls running of statute of limitations when aggrieved party in state administrative proceeding elects not to file complaint in state court alleging federal civil rights claims but raises such claims in notice of appeal or cross-appeal from the decision of the agency. *Maisonet v. New Jersey Dept. of Human Services, Div. of Family Development*, 140 N.J. 214, 657 A.2d 1209 (1995).

The "letter report" also serves as the "first pleading" in the administrative hearing process. The significance of the letter report at this stage of the administrative process is to put the applicant on notice of the affirmative qualification criteria which he or she is obligated to prove by clear and convincing evidence. *Davis v. Div. of Gaming Enforcement*, 8 N.J.A.R. 301 (1985).

1:1-6.2 Amendment of pleadings

(a) Unless precluded by law or constitutional principle, pleadings may be freely amended when, in the judge's discretion, an amendment would be in the interest of efficiency, expediency and the avoidance of over-technical pleading requirements and would not create undue prejudice.

(b) A judge in granting pleading amendments may permit a brief continuance to allow an opposing party additional preparation time.

Case Notes

First pleading may be amended anytime, even after presentation of proofs (citing former N.J.A.C. 1:1-6.3). *Roberts v. Keansburg Bd. of Educ.*, 5 N.J.A.R. 208 (1983).

1:1-6.3 Public officers; death or separation from office

When any public officer who is a party to a contested case, whether or not mentioned by name in the pleadings, dies, resigns or for any reason ceases to hold office, his or her successor in office shall be deemed to have been substituted in his or her place. However, on motion, the judge may otherwise order or may specifically order the retention as a party of the predecessor in office.

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS; FORMAT**1:1-7.1 Service; when required; manner**

(a) Service shall be made in person; or by certified mail, return receipt requested; or by ordinary mail; or in any manner which is designed to provide actual notice to the party or person being served.

(b) Any paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order.

(c) Service by mail shall be complete upon mailing.

(d) The standards of personal service contained in R. 4:4-4 of the New Jersey Court Rules shall apply to contested cases when personal service is required and this section is inapplicable.

1:1-7.2 Proof of publication and service

(a) Whenever these rules or the applicable rules of any agency provide for publication, mailing or posting of public notices in contested cases, proofs thereof shall be filed within 20 days after the publication, mailing or posting.

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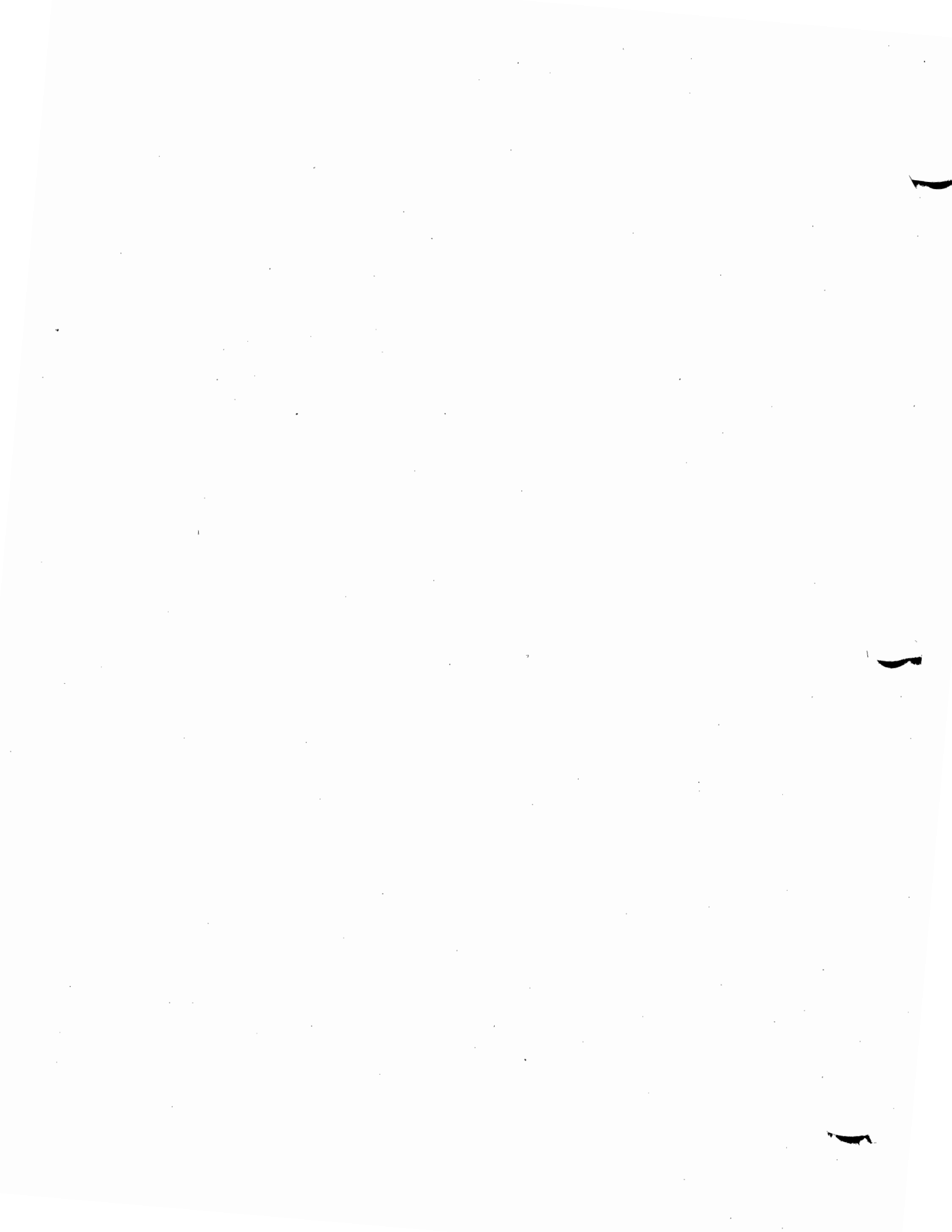
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(b) Except for service by publication or as otherwise required by this chapter or by State or Federal statute, proof of service shall not be necessary unless a question of notice arises.

(c) Where necessary to prove service, proof may be made by an acknowledgment of service signed by the attorney, any other representative or party, or by an affidavit of the person making service, or by a certificate of service appended to the paper to be filed and signed by the attorney or other representative for the party making service. Where appropriate, other competent proof that actual and timely notice existed of the contents of the paper may be considered as a substitute for service.

1:1-7.3 Filing; copies

(a) A paper may be filed with either the Clerk or the judge assigned to the case. Evidence of filing shall be a notation showing the date, time and place of filing. When a paper is filed with a judge, the notation shall also identify the judge. A copy of such papers shall be forwarded by the filing party to the Clerk immediately.

(b) The Clerk or the judge, upon receiving papers for filing that do not conform to the requirements of these rules, may either return the papers with instructions for refileing or cure the defects and accept the papers for filing.

(c) All papers filed with the Office of Administrative Law shall be in duplicate. If the filer submits an additional copy of the paper to be filed with a self-addressed, stamped envelope, the Clerk will return the paper to the filer marked with the date of filing.

1:1-7.4 Format of papers

(a) Every paper filed shall contain:

1. The Office of Administrative Law docket number of the proceeding or, if the case has not been transmitted, the agency docket number;
2. The name, address and telephone number of the person who prepared the paper; and
3. A caption setting forth the title of the proceeding and a brief designation describing the paper filed.

(b) All papers shall be on 8½" × 11" stock of customary weight and quality insofar as is practicable.

1:1-7.5 Filing by facsimile transmission

(a) A paper may be filed by facsimile transmission if:

1. It is an application for or response to a request for emergency relief pursuant to N.J.A.C. 1:1-12.6; or
2. When permitted by the judge for good cause shown upon timely application.

(b) Facsimile transmissions must comply with all requirements of this subchapter except N.J.A.C. 1:1-7.3(c) and 1:1-7.4(b).

(c) The party filing a document by facsimile transmission must include a certification indicating the method of service upon each party and stating that the original document is available for filing if requested by court or a party.

(d) Facsimile transmittals are filed as of the date of receipt by the Clerk or the judge, provided that the complete transmittal is received by 5:00 P.M. Facsimile transmittals received after 5:00 P.M. shall be deemed to be filed as of the next business day.

(e) A party requesting a facsimile transmittal from the Clerk or the judge shall be assessed a charge at the rate provided in the Right to Know Law, N.J.S.A. 47:1A-1 et seq.

New Rule, R.1992 d.213, effective May 18, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

SUBCHAPTER 8. FILING AND TRANSMISSION OF CONTESTED CASES IN THE OFFICE OF ADMINISTRATIVE LAW

1:1-8.1 Agency filing with the Office of Administrative Law; settlement efforts

(a) After the parties have complied with all pleading requirements, the agency shall within 30 days either file the case with the Clerk of the Office of Administrative Law in the manner provided by N.J.A.C. 1:1-8.2 or retain it under the provisions of N.J.S.A. 52:14F-8 and notify all parties of the decision to retain.

(b) During the 30-day period in (a) above, an agency may attempt settlement in accordance with N.J.A.C. 1:1-4.2. At the conclusion of the 30-day period, unless all parties agree to continue the settlement efforts, the matter shall be either filed with the Office of Administrative Law or further retained under the provisions of N.J.S.A. 52:14F-8. After the 30th day of an agency's settlement efforts, any party may request that the agency transmit the matter to the Office of Administrative Law, provided that the agency does not intend to retain the case under N.J.S.A. 52:14F-8.

(c) An agency may file a contested case with the Office of Administrative Law immediately if the agency determines that settlement efforts would be inappropriate or unproductive.

Case Notes

Agency may retain contested case and must notify all parties of decision to retain (citing former N.J.A.C. 1:1-5.1 and 5.4). Deck

House, Inc. v. New Jersey State Bd. of Architects, 531 F.Supp. 633 (D.N.J.1982).

An agency head may postpone the transfer of a contested case while the parties negotiate; however, no such delay is allowed where it would be inappropriate or unproductive (citing former N.J.A.C. 1:1-5.1 and 5.4). *Abbott v. Burke*, 100 N.J. 269, 495 A.2d 376 (1985).

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1. The name of the agency transmitting the case;
2. The name, address and telephone number of the agency's transmitting officer;
3. The name or title of the proceeding, including the designation petitioner/respondent or appellant/appellee when appropriate;
4. The agency docket or reference number;
5. A description of the nature of the case, including a statement of the legal authority and jurisdiction upon which the agency action is based or under which the hearing is to be held, a reference to particular statutes and rules involved as well as a brief summary of the matters of fact and law asserted. If this information is included in a pleading that is attached to the transmittal form pursuant to (b) below, the agency may refer to the pleading in order to satisfy this requirement;
6. An indication as to whether the agency has attempted settlement;
7. An estimate of the total time required for the hearing;
8. Whether a court stenographer is requested. If a stenographer is not requested, the Office of Administrative Law may provide at its expense either an audiotape recording or a court stenographer for the hearing. When a stenographer is requested by the transmitting agency, the appearance fee shall be paid by the transmitting agency. When the transmitting agency notifies the Clerk that a court stenographer is required because a party so requests, the appearance fee shall be paid by that party;
9. Anticipated special features or requirements, including the need for emergent relief, discovery, motions, prehearing conference or conference hearing and whether the case is a remand;
10. The names, addresses and telephone numbers of all parties and their attorneys or other representatives, with each person clearly designated as either party or representative. For any party that is a corporation, the transmitting agency shall provide the name, address and telephone number of the corporation's attorney or non-lawyer representative qualified under N.J.A.C. 1:1-5.4(b)2v.

11. A request for a barrier-free hearing location if it is known that a handicapped person will be present; and

12. The names of any other agencies claiming jurisdiction over either the entire or any portion of the factual dispute presented in the transmitted contested case.

13. The transmitting agency may provide the name and address of one additional person other than a party or representative to receive a copy of all Clerk's notices in the case. If no person is designated, the OAL shall send an informational copy of notices to the agency's transmitting officer.

(b) The agency shall attach all pleadings to the transmittal form.

(c) The agency may affix to the completed transmittal form only documents which have been exchanged between the parties prior to transmission of the case to the Office of Administrative Law. If the agency affixes to the transmittal form documents that have not been exchanged between the parties, the agency shall either serve these documents upon the parties or offer them to the parties and shall inform the Clerk of such action in the transmittal form.

(d) If there was a previous hearing in a matter which upon appeal is subject to de novo review, the agency shall not transmit the record of the previous hearing to the Office of Administrative Law.

(e) If an agency has transmitted a case to the Office of Administrative Law, any party or agency aware that another agency is claiming jurisdiction over any part of the transmitted case shall immediately notify the Office of Administrative Law, the other parties and affected agencies of the second jurisdictional claim.

(f) The completed transmittal form and two copies of any attachments shall be filed with the Clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102.

Amended by R.1987 d.519, effective December 21, 1987.

See: 19 N.J.R. 1761(a), 19 N.J.R. 2388(a).

New (d) added; old (d)-(e) renumbered (e)-(f).

Amended by R.1989 d.395, effective July 17, 1989.

See: 21 N.J.R. 1181(a), 21 N.J.R. 2019(a).

In (f): added "in duplicate" regarding transmittal documents.

Amended by R.1990 d.484, effective September 17, 1990.

See: 22 N.J.R. 2066(a), 22 N.J.R. 3003(a).

At (a), added requirement for specific information about parties and their representatives on the form used to transmit cases and added 13 regarding making copy available to one additional designated party.

1:1-8.3 Receipt by Office of Administrative Law of transmitted contested case; filing; return of improperly transmitted cases

(a) Upon receipt of a properly transmitted contested case the Clerk shall mark the case as having been received and filed as of a particular date and time. Upon filing, the Clerk shall assign an Office of Administrative Law docket number to the contested case.