Amended by R.2001 d.180, effective June 4, 2001.
See: 33 N.J.R. 1040(a), 33 N.J.R. 1926(a).
In (k)4, inserted "or 14.14" following "1:1-14.4"; added (k)7.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Deleted former (g); recodified former (h) through (m) as (g) through (*l*); in (i), substituted "(*l*)" for "(m)"; in (j)4, inserted "and 14.15"; in (k), substituted "(j)" for "(k)" and "(g)" for "(h)"; and in (*l*), substituted "(j)1" for "(k)1".
Amended by R.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).
Added (m).

Case Notes

In employment discrimination case, Administrative Law Judge's denial of all fees for one of the employee's attorneys was not "law of the case," and the ALJ's subsequent modification of that ruling to allow payment for certain services was adopted by the Director; except for specified matters relating to the hearing itself, delineated in N.J.A.C. 1:1-14.10(j), any ruling of the ALJ is subject to review by the agency head at the conclusion of the case. Heusser v. N.J. Highway Auth., OAL Dkt. No. CRT 01863-98, 2005 N.J. AGEN LEXIS 1071, Final Decision (August 30, 2005).

Granting of partial summary judgement is not effective until a final agency review has been rendered on an issue, either upon interlocutory review pursuant to a request by respondent or at end of the contested case (citing former N.J.A.C. 1:1-9.7 and 1:1-16.5). Kurman v. Fairmount Realty Corp., 8 N.J.A.R. 110 (1985).

Order of the Administrative Law Judge may be reviewed by the Commissioner of the Department of Education and by the Commissioner of the Department of Human Services whether upon the interlocutory review or at the end of special education case (citing former N.J.A.C. 1:1-9.7). A.N. v. Clark Bd. of Educ., 6 N.J.A.R. 360 (1983).

1:1-14.11 Ordering a transcript; cost; certification to court; copying

(a) Except as provided by (c) below, a transcript of any proceeding may be obtained by requesting the official court reporter or official transcription firm to prepare a transcript. The requesting party shall notify all other parties and the Clerk of the request. Unless the requesting party is the State or a political subdivision thereof, the request shall be accompanied by a reasonable security deposit not to exceed either the estimated cost of the transcript as determined by the preparer or $300.00 for each day or fraction thereof of the proceeding, the deposit to be made payable to the preparer. The reporter shall promptly prepare the transcript and shall file a copy with the Clerk at the time the original is delivered to the requesting party. The preparer shall bill the requesting party for any amount due for the preparation of the transcript and the copy or shall reimburse the requesting party for any overpayment.

(b) An unofficial copy of a sound recorded proceeding may be obtained by making a request to the Clerk accompanied by a blank standard cassette of appropriate length.

(c) When the preparation of a transcript is being requested for an appeal to court, whether the proceeding was sound or stenographically recorded, the request shall be made as follows:

1. For cases heard by an Administrative Law Judge, the request shall be made to the Clerk of the Office of Administrative Law;

2. For cases heard by an agency head, the request shall be made to the Clerk of that agency.

(d) All transcript preparation requests pursuant to (c) above for appeal to a court shall include one copy of the transcript for the Clerk and any additional copies required by R. 2:6-12. The form of the transcript request shall conform with the requirements of R. 2:5-3(a) and be accompanied by the deposit required by R. 2:5-3(d).

1. The Clerk shall promptly arrange for the preparation of the transcript. Upon completion of the transcript, the preparer shall bill the requesting party for any sum due or shall reimburse the requesting party for any overpayment and shall forward the original and any copies ordered pursuant to R. 2:6-12 to the requesting party. When the last volume of the entire transcript has been delivered to the appellant, the preparer shall forward to the Clerk the copy of the transcript prepared for the Clerk.

2. The Clerk shall transmit the transcript copy to the court and comply with the requirements of R. 2:5-3.

(e) For cases in which an agency possesses a transcript of the hearing being appealed, the request for copying under R. 2:5-3(a) shall be made to the Clerk of that agency. Upon receiving such a request, the Clerk shall make the existing transcript available to the appellant for reproduction for filing and service.

(f) Any transcript that is required by law to be filed with a Clerk shall be considered a public document which is available upon request for copying, as required by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

(g) The following shall apply to all transcripts:

1. Transcripts must be prepared in accordance with State standards established by the Administrative Director of the Courts.

2. Unless a proceeding has been sealed, any person may request a transcript or a recording of the proceeding. However, if the person requesting a transcript or tape recording was not a party to the proceeding, the requester, when making the request, must also notify all parties of the request. If a party objects to the request, a written objection must be filed immediately with the Clerk and served on the requester and all other parties to the proceeding. This objection shall be reviewed by the judge who presided over the proceeding.

3. If a proceeding was sealed, only parties to the proceeding may request a transcript or a tape recording and the contents of the transcript or recording shall not be disclosed to anyone except in accordance with the order sealing the proceeding.

(h) Any party or person entitled by Federal statute or regulation to copy and inspect the verbatim transcript may arrange with the Clerk to review any transcript filed under (a) above and shall also be permitted to hear and receive a copy of any sound recorded proceeding pursuant to (b) above. All applications to obtain a transcript of any proceeding at public expense for use on appeal shall be made to the Appellate Court pursuant to New Jersey Court Rule R. 2:5-3 or in case of Federal appeals pursuant to applicable Federal Court Rules.

(i) Where the Division of Ratepayer Advocate is representing public interest in a proceeding and another party to the proceeding is entitled by law to recover the costs thereof from others, such other party shall obtain, pay for and furnish to the Ratepayer Advocate upon request the official transcript.

Amended by R.1990 d.68, effective February 5, 1990.
See: 21 N.J.R. 1181(b), 21 N.J.R. 3587(a), 22 N.J.R. 334(a).
In (a)-(c): Deleted language specifying that "any party, or person, with a legitimate need, may obtain" or "may request a transcript.".
In (a): Added sentence that the requesting party shall notify all other parties of the request. Established new rate for security deposit. Specified responsibilities of the preparer regarding transcripts and billings.
In (c): Revised section to include new rate for security deposit and added sentence, "The reporter shall bill . . . for any overpayment".
Added new sections (d)-(h), recodifying old (d)-(e) as new (i)-(j).
In (j): Deleted sentence regarding payment for official transcripts by state agencies.
Amended by R.2002 d.198, effective July 1, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).
In (j), substituted references to Ratepayer Advocate for references to Public Advocate throughout.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (g), substituted "Open Public Records Act" for "Right to Know Law".
Amended by R.2011 d.179, effective July 5, 2011.
See: 43 N.J.R. 701(a), 43 N.J.R. 1523(a).
Rewrote (a); deleted former (c); recodified former (d) through (j) as (c) through (i); in the introductory paragraph of (d), substituted "(c)" for "(d)"; and in (h), deleted "or (c)" following "(a)".

Case Notes

Inmate charged with prison drug trafficking not entitled to verbatim recording of disciplinary proceeding. Negron v. Department of Corrections, 220 N.J.Super. 425, 532 A.2d 735 (App.Div.1987).

Unofficial copy of the sound recording of Office of Administrative Law proceedings may not be substituted for the official hearing transcript, and will not be considered if so submitted. The Commissioner may not make additional findings of fact based on testimony for which no official transcript was provided. Strengthen Our Sisters v. Bd. of Educ. of West Milford, OAL Dkt. No. EDU 11097-08, 2009 N.J. AGEN LEXIS 733, Final Decision (July 8, 2009).

State Board of Education does not have the authority to waive or modify standards established by the Administrative Director of the Courts for the preparation of hearing transcripts or to reduce the deposit required by the Office of Administrative Law for the preparation of transcripts, or in the case at hand to require a local school board to share the cost of transcripts ordered by appellants challenging the school board's denial of their request to provide transportation for their children. T.F.S. ex rel. J.R.S. v. Bd. of Educ., South Brunswick Twnshp., OAL Dkt. Nos. EDU 6674-02 and EDU 10118-05; C Nos. 400-05 and 264-06; SB No. 36-06, 2005 N.J. AGEN LEXIS 1490 (April 9, 2007).

Regulations governing administrative proceedings are clear in providing that a copy of a sound recording of a hearing obtained from the Office of Administrative Law (OAL) is "unofficial"; here, the tape purportedly contained testimony from another case, it was not a copy obtained from OAL, and appellant failed to demonstrate that the testimony on the tape was relevant to the conduct alleged in the instant charges. In re Tenure Hearing of McCullough, EDU No. 6702-03S; C No. 70-06; SB No. 12-06, 2006 N.J. AGEN LEXIS 929 (October 4, 2006).

Rule allows respondent an opportunity to obtain a transcript of proceeding (citing former N.J.A.C. 1:1-3.3). Div. of Motor Vehicles v. Exum, 5 N.J.A.R. 298 (1983).

1:1-14.12 Disqualification of judges

(a) A judge shall, on his or her own motion, withdraw from participation in any proceeding in which the judge's ability to provide a fair and impartial hearing might reasonably be questioned, including but not limited to instances where the judge:

1. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

2. Is by blood or marriage the second cousin of or is more closely related to any party to the proceeding or an officer, director or trustee of a party;

3. Is by blood or marriage the first cousin of or is more closely related to any attorney in the case. This proscription shall extend to partners, employers, employees or office associates of any such attorney;

4. Is by blood or marriage the second cousin of or is more closely related to a likely witness to the proceeding;

5. While in private practice served as attorney of record or counsel in the case or was associated with a lawyer who served during such association as attorney of record or counsel in the proceeding, or the judge or such lawyer has been a witness concerning the case;

6. Has served in government employment and in such capacity participated as counsel, advisor or material witness concerning the proceeding;

7. Is interested, individually or as a fiduciary, or whose spouse or minor child residing in the same household is interested in the outcome of the proceeding; or

8. When there is any other reason which might preclude a fair and unbiased hearing and decision, or which might reasonably lead the parties or their representatives to believe so.

(b) A judge shall, as soon as practicable after assignment to a particular case, withdraw from participation in a proceeding whenever the judge finds that any of the criteria in (a)1 through 8 above apply. A judge may not avoid disqualification by disclosing on the record the basis for disqualification and securing the consent of the parties.

(c) Any party may, by motion, apply to a judge for his or her disqualification. Such motion must be accompanied by a statement of the reasons for such application and shall be filed as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. In no event shall the judge enter any order, resolve any procedural matters or render any other determination until the motion for disqualification has been decided.

(d) Any request for interlocutory review of an administrative law judge's order under this section shall be made pursuant to N.J.A.C. 1:1-14.10(k) and (*l*).

Case Notes

Blind Administrative Law Judge was not required to recuse himself due to his inability to visually inspect a videotape. Division of Motor Vehicles v. Hall, 94 N.J.A.R.2d (OAL) 14.

Administrative law judge was not required to recuse himself. Ridings v. Maxim Sewerage Corp., 92 N.J.A.R.2d (OAL) 10.

Decision in criminal case involving substantive aspects of judicial disqualification provided no basis for collateral attack on issue of recusal of administrative law judge. N.J.S.A. 18A:6-27. In the Matter of the Tenure Hearing of John Fargo, 92 N.J.A.R.2d (EDU) 172.

1:1-14.13 Proceedings in the event of death, disability, departure from State employment, disqualification or other incapacity of judge

(a) If, by reason of death, disability, departure from State employment, disqualification or other incapacity, a judge is unable to continue presiding over a pending hearing or issue an initial decision after the conclusion of the hearing, a conference will be scheduled to determine if the parties can settle the matter or, if not, can reach agreement upon as many matters as possible.

(b) In the event settlement is not reached, another judge shall be assigned to complete the hearing or issue the initial decision as if he or she had presided over the hearing from its commencement, provided:

1. The judge is able to familiarize himself or herself with the proceedings and all testimony taken by reviewing the transcript, exhibits marked in evidence and any other materials which are contained in the record; and

2. The judge determines that the hearing can be completed with or without recalling witnesses without prejudice to the parties.

(c) In the event the hearing cannot be continued for any of the reasons enumerated in (b) above, a new hearing shall be ordered by the judge.

(d) An order or ruling issued pursuant to (b) and (c) above may only be appealed interlocutorily; a party may not seek review of such orders or rulings after the judge renders the initial decision in the contested case.

Amended by R.2008 d.151, effective June 16, 2008.
See: 40 N.J.R. 915(a), 40 N.J.R. 3617(a).
Added (d).

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or

5. Take other appropriate case-related action.

New Rule, 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).
Amended by R.1996 d.133, effective March 18, 1996.
See: 27 N.J.R. 609(a), 28 N.J.R. 1503(a).
Added (b) through (d).
Recodified in part to N.J.A.C. 1:1-14.15 by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Recodified (b) through (d) as N.J.A.C. 1:1-14.15.

Case Notes

Administrative law judge has power to impose reasonable monetary sanctions on attorneys. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Before administrative law judge (ALJ) could impose sanctions on attorneys, court was required to conduct evidentiary hearing. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Initial Decision (2009 N.J. AGEN LEXIS 765) adopted, which found that an employee who refused to answer interrogatories and produce certain documents on the grounds of self-incrimination was prohibited from testifying about the matters on which he refused to disclose information and documentation. If the employee was going to defend his actions based on the Internal Revenue Code, the City had the right to review tax returns, to receive responses regarding the ex-wife's employment and income after the divorce, to learn if the employee claimed his former wife on other documents, and to review other relevant documents that would have been used in defending the case. In re Peterson, OAL Dkt. No. CSV 01472-09, 2009 N.J. CSC LEXIS 1494, Final Decision (December 2, 2009).

Dismissal was the proper sanction where parent's counsel failed to provide the ALJ the complete and final witness and his full and complete exhibit packet in advance of the hearing, as ordered by the ALJ; failure on the part of counsel to comply with the court order was egregious, was uncalled for, and there was no excuse for his failure to comply. A.D. ex rel. A.J. v. Camden City Bd. of Educ., OAL Dkt. No. EDS 8733-09, 2009 N.J. AGEN LEXIS 772, Final Decision (October 28, 2009).

All evidence regarding a school district's proposed placement for a three-year-old autistic child was excluded as a sanction for the school district's failure to comply with an order requiring it to provide the parents' expert access to the proposed placement to conduct an observation; failure to comply with the order effectively denied the parents the opportunity to present a case regarding whether the proposed placement would have provided their child with a free appropriate public education. S.B. ex rel. P.B. v. Park Ridge Bd. of Educ., OAL Dkt. No. EDS 13813-08, 2009 N.J. AGEN LEXIS 318, Final Decision (April 21, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 1031) adopted, which dismissed, for lack of prosecution, a school district employee's claim for reimbursement of full salary without loss of sick time for an injury allegedly sustained in the course of her employment; although the case was placed on inactive status awaiting a determination by the Division of Workers' Compensation as to whether the employee sustained a qualifying injury, the employee's compensation claim had been dismissed for lack of prosecution and the employee failed to offer any explanation or justification as why the education claim should not also have been dismissed, especially in light of the fact that more than eight years had elapsed since the filing of the education appeal. Green v. School Dist. of Jersey City, OAL Dkt. No. EDU 7401-00, 2009 N.J. AGEN LEXIS 639, Final Decision (January 29, 2009).

Even if the Merit System Board had jurisdiction to review the City's request that appellant pay the costs of the City's experts based on the appellant's attorney's late arrival to the hearing before the ALJ, the facts would not support such a penalty, given the reasonable explanation of the late arrival; moreover, the Board would generally not penalize an appellant for the actions of his or her representative unless those actions were shown to be intentionally and flagrantly in violation of OAL rules and authorized by that appellant. In re Harris, OAL Dkt. No. CSV 11388-03, 2007 N.J. AGEN LEXIS 1075, Merit System Board Decision (September 26, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 414) adopted, finding that when discovery requests encompassed all aspects of the petition, the proper remedy under N.J.A.C. 1:1-14.14 for failure to provide discovery was suppression of the petitioner's claim. L.A. and C.A. ex rel. P.M.A. v. Bd. of Educ. of Port Republic, OAL Dkt. No. EDU 12031-06, 2007 N.J. AGEN LEXIS 521, Commissioner's Decision (July 18, 2007).

Parent's duplicative discovery requests did not warrant sanctions (adopting 2006 N.J. AGEN LEXIS 263 as supplemented) (decided under former N.J.A.C. 1:1-14.14(a) and (b), now N.J.A.C. 1:1-14.14 and 1:1-14.15). R.O. ex rel. R.O. v. Bd. of Educ. of W. Windsor-Plainsboro School Dist., OAL Dkt. No. EDU 8827-05, 2006 N.J. AGEN LEXIS 575, Commissioner's Decision (June 28, 2006).

Respondent's answer and cross-petition dismissed for persistent discovery failures. Absolut Spirits Co., Inc. v. Monsieur Touton Selection, Ltd., OAL Dkt. No. ABC 4217-04, 2006 N.J. AGEN LEXIS 508, Final Decision (May 10, 2006), aff'd in part, and rev'd in part on other grounds, A-5453-05 (App.Div. Oct. 22, 2007) (unpublished opinion) (affirming dismissal of respondent's answer and cross-petition, but reversing the granting of affirmative relief to petitioner as an evidentiary hearing was necessary).

Initial Decision (2005 N.J. AGEN LEXIS 397) adopted, which ordered insurance producer's defenses stricken where, for almost seven months, the producer failed to respond to requests for discovery, failed to comply with the ALJ's order to comply with the discovery requests, and demonstrated a flagrant disregard for the rules and the OAL's orders. Bryan v. Bellissima, OAL Dkt. No. BKI 10040-2004S, 2005 N.J. AGEN LEXIS 1154, Final Decision (August 30, 2005).

1:1-14.15 Conduct obstructing or tending to obstruct the conduct of a contested case

(a) If any party, attorney, or other representative of a party, engages in any misconduct which, in the opinion of the judge, obstructs or tends to obstruct the conduct of a contested case, the party, attorney, or other representative may be fined in an amount which shall not exceed $1,000 for each instance.

(b) Where the conduct deemed to obstruct or tending to obstruct the conduct of a contested case occurs under circumstances which the judge personally observes and which he or she determines unmistakably demonstrates willfulness and requires immediate adjudication to permit the proceedings to continue in an orderly and proper manner:

1. The judge shall inform the party, attorney or other representative of the nature of the actions deemed obstructive and shall afford the party, attorney or other representative an immediate opportunity to explain the conduct; and

2. Where the judge determines, after providing the party, attorney or other representative, an opportunity to explain, that the conduct does constitute misconduct and that the conduct unmistakably demonstrates willfulness, the judge shall issue an order imposing sanctions.

i. The order imposing sanctions shall recite the facts and contain a certification by the judge that he or she personally observed the conduct in question and explain the conclusion that the party, attorney or other representative engaged in misconduct.

(c) Where the conduct deemed to obstruct or tending to obstruct a contested case did not occur in the presence of the judge or where the conduct does not require immediate adjudication to permit the proceedings to continue in an orderly and proper manner, the matter shall proceed by order to show cause specifying the acts or omissions alleged to be misconduct. The proceedings shall be captioned "In the Matter of _____, Charged with Misconduct."

(d) In any proceeding held pursuant to (c) above, the matter may be presented by a staff attorney of the Office of Administrative Law, or by the Attorney General. The designation shall be made by the Director of the Office of Administrative Law. The matter shall not be heard by the judge who instituted the proceeding if the appearance of objectivity requires a hearing by another judge.

Recodified in part from N.J.A.C. 1:1-14.14 and amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
Recodified former introductory paragraph of (b) as (a); in (a), substituted a period for "provided:"; recodified former (b)1 as introductory paragraph of (b); in introductory paragraph of (b), substituted a colon for ", the"; inserted designation (b)1; in (b)1, inserted "The" at the beginning and "and" at the end; in (b)2, inserted "and that the conduct unmistakably demonstrates willfulness" and substituted a period for "which" at the end; inserted designation (b)2i; and rewrote (b)2i and (c).

Case Notes

Administrative law judge has power to impose reasonable monetary sanctions on attorneys. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

Before administrative law judge (ALJ) could impose sanctions on attorneys, court was required to conduct evidentiary hearing. In re Timofai Sanitation Co., Inc., Discovery Dispute, 252 N.J.Super. 495, 600 A.2d 158 (A.D.1991).

SUBCHAPTER 15. EVIDENCE RULES

1:1-15.1 General rules

(a) Only evidence which is admitted by the judge and included in the record shall be considered.

In a disciplinary action brought against a senior correction officer after his positive drug test for marijuana, discrepancies regarding other specimens and the container used to collect the officer's sample did not undermine the reasonable probability that the officer's specimen had not been altered in any important respect between collection and analysis; the ALJ's findings otherwise were unreasonable and contrary to the credible evidence in the record. In re Gonsalvez, OAL Dkt. No. CSV 8601-02, 2006 N.J. AGEN LEXIS 1128, Final Decision (February 22, 2006), aff'd per curiam, No. A-4080-05T5, 2007 N.J. Super. Unpub. LEXIS 1369 (App.Div. October 31, 2007).

Merit System Board refused to disturb an ALJ's reversal of the removal of a Human Services Assistant on allegations of patient abuse where the findings were not arbitrary, capricious, or unreasonable; there was sufficient evidence in the record to support the ALJ's credibility determinations that the assistant would not have hit the patient and that the witness may not have actually seen what he believed he saw (adopting 2006 N.J. AGEN LEXIS 328). In re Greene, OAL Dkt. No. CSV 8697-05, 2006 N.J. AGEN LEXIS 864, Merit System Board Decision (September 20, 2006).

In a disciplinary action against a correction officer recruit on claims that he made inappropriate sexual comments, exposed himself, and masturbated in front of a fellow recruit, the ALJ's determination that the complaining witness was not credible was unreasonable and contrary to the evidence in the record where the witness's account of the critical details of the incident remained consistent, and the minor inconsistencies cited by the ALJ regarding the precise words uttered by the recruit, his exact location during the masturbation, and the time of the witness's telephone call to her supervisor were of little consequence; additionally, the record was devoid of any reason why the complaining witness would lie about what occurred during the shift in question. In re Royster, OAL Dkt. No. CSV 6360-04, 2005 N.J. AGEN LEXIS 1087, Final Decision (December 7, 2005), aff'd per curiam, No. A-2435-05T5, 2007 N.J. Super. Unpub. LEXIS 1260 (App.Div. April 19, 2007).

Strict standard in N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.6(c) for overturning the ALJ's credibility determination was not met as the ALJ's credibility determinations and conclusions were not in error or otherwise arbitrary, capricious or unreasonable; therefore, the charges against the senior corrections officer for failing to stop a fellow officer from striking a juvenile inmate with a wooden object and failing to obtain proper medical attention for the inmate were properly dismissed and the 6-month suspension reversed. The ALJ determined that the appointing authority's direct evidence failed to establish the officer's presence in the dormitory area and/or his viewing of the assault by even a preponderance of the credible evidence, while the officer's testimony regarding the events of the night was sufficiently credible; moreover, there was no evidentiary support that the circumstances heard or witnessed by the officer were so unusual as to require him to come into the dormitory (adopting 2005 N.J. AGEN LEXIS 230). In re Graham, OAL Dkt. No. CSV 0727-02, 2005 N.J. AGEN LEXIS 1172, Merit System Board Decision (September 21, 2005).

After an initial decision by administrative law judge, the agency head may enter an order or a final decision adopting, rejecting or modifying the initial decision (citing former N.J.A.C. 1:1-16.5). Kurman v. Fairmount Realty Corp., 8 N.J.A.R. 110 (1985).

Granting of partial summary judgement is not effective until a final agency review has been rendered on an issue, either upon interlocutory review pursuant to a request by respondent or at end of the contested case (citing former N.J.A.C. 1:1-9.7 and 1:1-16.5). Kurman v. Fairmount Realty Corp., 8 N.J.A.R. 110 (1985).

1:1-18.7 Remand; procedure

(a) An agency head may enter an order remanding a contested case to the Office of Administrative Law for further action on issues or arguments not previously raised or incompletely considered. The order of remand shall specifically state the reason and necessity for the remand and the issues or arguments to be considered. The remand order shall be attached to a N.J.A.C. 1:1-8.2 transmittal form and returned to the Clerk of the Office of Administrative Law along with the case record.

(b) The judge shall hear the remanded matter and render an initial decision.

Case Notes

Administrative law judge without authority to refuse to comply with an order of remand of an agency head (citing former N.J.A.C. 1:1-16.5(c)). In Re Kallen, 92 N.J. 14, 455 A.2d 460 (1983).

Remand was appropriate and necessary, where the public interest would clearly not be served if the Racing Commission were compelled to determine trainer's suitability for license on incomplete record. Record indicated the evidence before ALJ was limited where: (1) no testimony was taken; (2) record did not indicate if burden of demonstrating suitability for license was placed on trainer as it should have been; and (3) it was not clear if trainer was given opportunity to prove his suitability for licensure. Height v. N.J. Racing Comm'n, OAL Dkt. No. RAC 06380-07, 2008 N.J. AGEN LEXIS 1113, Final Decision (March 20, 2008).

Order of remand signed by assistant director; valid. O.F. v. Hudson County Welfare Agency, 92 N.J.A.R.2d (DEA) 57.

Order for remand by Director of agency rejected by administrative law judge since Department had ample opportunity to develop proofs at prior hearing; Director rejected ALJ's decision and reopened case (citing former N.J.A.C. 1:1-16.5). Cash Services, Inc., v. Dep't of Banking, 5 N.J.A.R. 103 (1981).

1:1-18.8 Extensions of time limits

(a) Time limits for filing an initial decision, filing exceptions and replies and issuing a final decision may be extended for good cause.

(b) A request for extension of any time period must be submitted no later than the day on which that time period is to expire. This requirement may be waived only in case of emergency or other unforeseeable circumstances.

(c) Requests to extend the time limit for initial decisions shall be submitted in writing to the Director of the Office of Administrative Law. If the Director concurs in the request, he or she shall sign a proposed order no later than the date the time limit for the initial decision is due to expire and shall forward the proposed order to the transmitting agency head and serve copies on all parties. If the agency head approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the Director, who shall issue the order and cause it to be served on all parties.

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing 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. 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 ten days of receipt of the proposed order sign the proposed order and return it to the transmitting agency head, who shall 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, 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 for good cause shown.

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).
Amended by R.2003 d.306, effective August 4, 2003.
See: 35 N.J.R. 1614(a), 35 N.J.R. 3551(a).
In (e), rewrote the last sentence.
Amended by R.2007 d.393, effective December 17, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).
In (d), deleted "with a proposed form of extension order" following "writing" and "and the Director of the Office of Administrative Law" following the second occurrence of "parties"; and in (f), deleted "set forth the dates of any previous extensions," preceding "and establish", and substituted "for good cause shown" for "in the case of extraordinary circumstances".

Case Notes

Decision by ALJ recommending that college board of trustees follow its written procedures for denying reappointment to director of educational opportunity fund was "deemed adopted" by the board, where the board took no action to adopt, reject, or modify the ALJ's decision within 45 days, and did not seek an extension of time to do so within that period, there was no emergency justifying delay. Newman v. Ramapo College of N.J., 349 N.J.Super. 196, 793 A.2d 120.

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).

Challenge to extension of time under N.J.A.C. 1:1-18.8 for the Commissioner to issue a ruling on an appeal was actually a motion for leave to appeal an interlocutory order, rather than a "motion for emergent relief"; interlocutory review of an administrative ruling may be granted in the interest of justice or for good cause shown, and petitioner failed to demonstrate good cause. Toddlertown Child Care Center v. Bd. of Educ. of Irvington, OAL Dkt. Nos. EDU 3041-07 and EDU 5430-07 (CONSOLIDATED), SB No. 35-07, 2007 N.J. AGEN LEXIS 974 (December 19, 2007).

Exceptions are required to be filed within 13 days after the Initial Decision, including partial summary decisions, and although an end-date for filing exceptions was not specified in the order for extension, it was not reasonable to assume that the exception period could run until the date established for the Final Decision on the matter; in addition, the bases for many of licensee's exceptions were improper. Bakke v. Prime Ins. Syndicate, OAL Dkt. No. BKI 1168-05, 2006 N.J. AGEN LEXIS 985, Final Decision (May 24, 2006).

Although an appellant's exceptions were untimely, his exceptions and the appointing authority's responses were both received prior to the matter being considered by the Board; consequently, good cause existed to accept the appellant's exceptions. In re Zorn, OAL Dkt. No. CSV 8501-05, 2006 N.J. AGEN LEXIS 633, Remand Decision (April 5, 2006).

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the transmitting agency is not a party, 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) Where the parties to a case wish to settle the matter and the transmitting agency is a party to the case, if the agency head has approved the terms of the settlement, either personally or through an authorized representative, 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

Commentary: Maintaining the prestige of the administrative judiciary is essential to a system of government in which the administrative judiciary must to the maximum extent possible, function independently of the executive and legislative branches. Respect for the office facilitates the orderly conduct of legitimate administrative judicial functions. Administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for an administrative law judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting an administrative law judge's personal business.

An administrative law judge must avoid lending the prestige of the office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family.

Although an administrative law judge should be sensitive to possible abuse of the prestige of the office, an administrative law judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation.

An administrative law judge must not testify voluntarily as a character witness because to do so may lend the prestige of the office in support of the party for whom the administrative law judge testifies. Moreover, when an administrative law judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. An administrative law judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, an administrative law judge should discourage a party from requiring the judge to testify as a character witness.

C. An administrative law judge shall not hold membership in any organization that practices invidious discrimination as defined by Federal law and the New Jersey Law Against Discrimination.

Commentary: It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination. Membership of an administrative law judge in an organization that practices invidious discrimination may give rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as, that the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of categories prohibited by Federal law or the New Jersey Law Against Discrimination persons who would otherwise be admitted to membership. See New York State Club Ass'n Inc. v. City of New York, 487 U.S. 1, 108 S.Ct. 2225, 101 L.Ed.2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.Ct. 1940, 95 L.Ed.2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984).

Although Canon 2C relates only to membership in organizations that invidiously discriminate, in addition, it would be a violation of Canon 2 and Canon 2A for an administrative law judge to arrange a meeting at a club that the judge knows practices invidious discrimination, or for the judge to regularly use such a club. Moreover, public manifestation by an administrative law judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the administrative judiciary, in violation of Canon 2A.

When a person who is an administrative law judge at the time this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2 and Canon 2A, the administrative law judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but the judge is required to suspend participation in any activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible, the administrative law judge is required to resign immediately from the organization.

CANON 3

AN ADMINISTRATIVE LAW JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of an administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities:

(1) An administrative law judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) An administrative law judge shall be faithful to the law and maintain professional competence in it. A judge

shall be unswayed by partisan interests, public clamor, or fear of criticism.

(3) An administrative law judge shall maintain order and decorum in proceedings before the judge.

(4) An administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, attorneys, representatives, and others with whom the judge deals in an official capacity, and shall require similar conduct of attorneys, representatives, staff members, and others subject to the judge's direction and control.

Commentary: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the judge. Judges can be efficient and businesslike while being patient and deliberate.

(5) An administrative law judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff and others subject to the judge's direction and control to do so.

Commentary: A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, the media, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudice.

(6) An administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representative, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications as to substantive matters concerning a pending or impending proceeding. On notice, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, by amicus curiae or as otherwise authorized by law, if the judge affords the parties reasonable opportunity to respond. A judge may with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge. A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

Commentary: The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding except as authorized by law, but does not preclude a judge from consulting with other judges or subordinate personnel whose function is to aid the judges in carrying out adjudicative responsibilities. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

(7) An administrative law judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary: In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Prompt disposition of the judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants, and their representatives cooperate with the judge to that end.

(8) An administrative law judge shall abstain from public comment about a pending or impending proceeding in any court or tribunal and shall require similar abstention on the part of personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the hearing procedures of agencies.

Commentary: "Agency personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by rules of professional conduct. This subsection is not intended to preclude participation in an association of judges merely because such association makes public comments about a pending or impending proceeding in the administrative process. The subsection is directed primarily at public comments by a judge concerning a proceeding before another judge.

(9) An administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

B. Administrative responsibilities:

(1) An administrative law judge shall diligently discharge assigned administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other administrative law judges.

(2) An administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) An administrative law judge shall initiate appropriate disciplinary measures against a judge or a lawyer for unprofessional conduct of which the judge may become aware.

Commentary: Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary

body. Internal agency procedure which routes the complaint should be utilized; however, the judge remains responsible for initiation of the action.

C. Disqualification:

(1) An administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

Commentary: By decisional law, the rule of necessity may supersede the rule of disqualification. For example, a judge might be the only judge available in a matter requiring immediate judicial action. The judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) in private practice the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a witness concerning it;

Commentary: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) the judge knows that he or she, individually or as a fiduciary, or his or her spouse or child residing in the judge's household, or any other member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household, has a more than de minimis financial interest in the subject matter in controversy or is a party to the proceeding, or any other more than de minimis interest that could be substantially affected by the outcome of the proceeding; generally, receiving service from a particular public utility is a de minimis interest;

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as, or is in the employ of or associated in the practice of law with, a lawyer or other representative in the proceeding;

Commentary: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated of itself disqualifies the judge.

(iii) is known by the judge to have a more than de minimis interest that could be affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a witness in the proceeding.

(2) A judge shall inform himself or herself about the judge's personal and fiduciary financial interests, and make a reasonable effort to inform himself or herself about the personal financial interests of his or her spouse and minor children residing in the judge's household.

(3) For the purposes of this Code the following words or phrases shall have the meaning indicated:

(a) The degree of relationship is calculated according to the common law;

Commentary: According to the common law, the third degree of relationship test would, for example, disqualify the judge if the judge's or his or her spouse's parent, grandparent, uncle or aunt, brother or sister, cousin, niece or her husband, or nephew or his wife were a party or lawyer in the proceeding.

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities;

(v) ownership of one share of stock is more than a de minimis interest.

(d) "proceeding" includes prehearing or other stages of litigation.

CANON 4

AN ADMINISTRATIVE LAW JUDGE SHALL REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Extra-judicial activities in general:

An administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

Commentary: Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

B. Avocational activities:

An administrative law judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

Commentary: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including the revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

C. Governmental, civic, and charitable activities:

(1) An administrative law judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interest.

Commentary: The judge has a professional obligation to avoid improper influence.

(2) An administrative law judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

Commentary: Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the judge from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the administrative judiciary.

(3) An administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(a) A judge shall not serve as an officer, director, trustee, or non-legal advisor if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court or tribunal.

Commentary: The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to reexamine regularly the activities of each organization with which he or she is affiliated to determine if it is proper to continue his or her relationship with that organization.

(b) An administrative law judge as an officer, director, trustee or non-legal advisor, or as a member, or otherwise:

(i) may assist such an organization in planning fund-raising, but shall not personally participate in the solicitation of funds or other fund-raising activities; however, this shall not prohibit de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Commentary: An administrative law judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may conduct de minimis fund-raising activities within the confines of the OAL and its employees for non-profit charitable organizations with which judges or their immediate families are associated, (2) a judge may solicit other judges for membership in the organizations described above and other persons if neither those persons nor persons with whom they are affiliated are likely ever to appear before the Office of Administrative Law, and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for membership solicitation does not violate Canon 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial activities:

(1) An administrative law judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in transactions or continuing business relationships with lawyers or other persons likely to come before the Office of Administrative Law.

Commentary: A judge may avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges in the Office of Administrative Law. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or involve those family members in frequent transactions or continuing business relationships with persons likely to come before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

(2) An administrative law judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate.

(3) An administrative law judge shall not serve as an officer, director, manager, advisor, or employee of any business entity.

(4) An administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) Neither an administrative law judge, nor a member of the judge's family or a person treated by the judge as a member of the judge's family residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except for:

Commentary: Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-

related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

Commentary: A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria to other applicants; or

(h) any other gift, bequest, favor, or loan only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

Commentary: Canon 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

(6) An administrative law judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon and Canon 3. The Director of the Office of Administrative Law is required to disclose such information pursuant to the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12.

E. Fiduciary activities:

(1) An administrative law judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) An administrative law judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the Office of Administrative Law.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

Commentary: The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Canon 4D(4).

F. Practice of law:

A full-time administrative law judge shall not practice law, with or without compensation.

Commentary: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

This provision will not be interpreted to prohibit a judge from giving legal advice to and assisting in the drafting or reviewing of documents for a member of the judge's family, so long as the judge receives no compensation. A member of the judge's family denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

G. Compensation and reimbursement:

An administrative law judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code to the extent permitted by law.

CANON 5

AN ADMINISTRATIVE LAW JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

A. An administrative law judge shall not:

(1) act as a leader or hold an office in a political organization;

(2) publicly endorse or publicly oppose any candidate for public office;

(3) make speeches on behalf of a political organization;

(4) attend political functions or functions that are likely to be considered as being political in nature;

(5) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or

(6) otherwise engage in any political activity except as authorized under this Code.

Commentary: An administrative law judge retains the right to participate in the political process as a voter. Canon 5A(2) does not prohibit an administrative law judge from privately expressing his or her views on candidates for public office.

B. A candidate for reappointment to an administrative law judge position or an administrative law judge seeking another governmental office shall not engage in any political activity to secure the appointment except that such persons may:

(1) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Canon 5B(1); and

(3) provide to those specified in this Canon information as to his or her qualifications for the office.

C. An administrative law judge shall resign from office when the judge becomes a candidate either in a party primary or in a general election for an elective public office.

New Rule, R.1992 d.430, effective November 2, 1992.
See: 24 N.J.R. 2755(a), 24 N.J.R. 4028(a).
Recodified from N.J.A.C. 1:1-1 Appendix A by R.2002 d.198, effective July 1, 2002.
See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).