

TITLE 1

ADMINISTRATIVE LAW

CHAPTER 1

UNIFORM ADMINISTRATIVE PROCEDURE RULES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g).

Source and Effective Date

R.2007 d.393, effective November 20, 2007.
See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

Chapter Expiration Date

Chapter 1, Uniform Administrative Procedure Rules, expires on November 20, 2012.

Chapter Historical Note

Chapter 1, Uniform Administrative Procedure Rules of Practice, was adopted as R.1980 d.275, effective July 1, 1980, repealing the administrative hearing rules of the Division of Administrative Procedure at N.J.A.C. 15:15-10. See: 11 N.J.R. 479(a), 12 N.J.R. 234(a), 12 N.J.R. 362(a). Chapter 1 was amended by R.1981 d.55, effective February 17, 1981. See: 13 N.J.R. 3(b), 13 N.J.R. 114(a); R.1981 d.116, effective May 7, 1981. See: 13 N.J.R. 2(a), 13 N.J.R. 254(b); R.1981 d.443, effective November 16, 1981. See: 13 N.J.R. 254(c), 13 N.J.R. 842(a); R.1982 d.87, effective April 5, 1982. See: 14 N.J.R. 2(a), 14 N.J.R. 335(a); R.1982 d.150, effective May 17, 1982. See: 14 N.J.R. 4(a), 14 N.J.R. 471(a); R.1982 d.295, effective September 7, 1982. See: 14 N.J.R. 606(b), 14 N.J.R. 975(b); R.1982 d.467, effective January 3, 1983. See: 14 N.J.R. 486(a), 15 N.J.R. 23(a); R.1983 d.268, effective July 5, 1983. See: 15 N.J.R. 582(a), 15 N.J.R. 1093(a); R.1983 d.515, effective November 21, 1983. See: 15 N.J.R. 1399(a), 15 N.J.R. 1939(a); R.1983 d.550, effective December 5, 1983. See: 15 N.J.R. 1400(b), 15 N.J.R. 2032(a); R.1984 d.368, effective September 4, 1984. See: 16 N.J.R. 1413(a), 16 N.J.R. 2354(a); R.1984 d.445, effective October 1, 1984. See: 16 N.J.R. 1636(a), 16 N.J.R. 2518(a); R.1984 d.476, effective October 15, 1984 (operative November 14, 1984). See: 16 N.J.R. 1408(a), 16 N.J.R. 2777(a); R.1984 d.490, effective November 5, 1984. See: 16 N.J.R. 2320(a), 16 N.J.R. 3004(a); R.1984 d.587, effective December 7, 1984. See: 16 N.J.R. 2710(a), 16 N.J.R. 3426(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules of Practice, was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Chapter 1 was amended by R.1985 d.368, effective July 15, 1985. See: 17 N.J.R. 1008(a), 17 N.J.R. 1754(a); R.1985 d.508, effective October 7, 1985. See: 17 N.J.R. 1820(a), 17 N.J.R. 2457(b); R.1986 d.79, effective April 7, 1986. See: 18 N.J.R. 130(a), 18 N.J.R. 634(a); R.1986 d.340, effective August 18, 1986. See: 18 N.J.R. 2(a), 18 N.J.R. 1699(a); R.1986 d.468, effective December 1, 1986. See: 18 N.J.R. 1020(a), 18 N.J.R. 1865(a), 18 N.J.R. 2381(a).

Chapter 1, Uniform Administrative Procedure Rules of Practice, was repealed and a new Chapter 1, Uniform Administrative Procedure Rules, was adopted by R.1987 d.200, effective May 4, 1987 (operative July 1, 1987). See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.1992 d.213, effective April 21, 1992. See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Pursuant to Executive Order No. 66(1978), Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.1997 d.158, effective March 10, 1997. See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.2002 d.198, effective May 30, 2002. See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

Chapter 1, Uniform Administrative Procedure Rules, was readopted as R.2007 d.393, effective November 20, 2007. See: Source and Effective Date. See, also, section annotations.

Cross References

Apparel industry registration, confiscation of apparel and equipment, requests for formal hearings, see N.J.A.C. 12:210-1.9.

Motorized wheelchair dispute resolution, notification and scheduling of contested case hearings, see N.J.A.C. 13:45A-26E6.

Small, minority and female businesses, State contracts, contested case hearings as under this section, see N.J.A.C. 12A:10-2.2.

Law Review and Journal Commentaries

Administrative adjudications in New Jersey: Why not let the ALJ decide? Richard M. Hluchan, 180 N.J.Law. 28 (Mag.) (Oct./Nov. 1996).

Appeals and enforcement of agency decisions: Confessions of a general counsel. Robert E. Anderson, 180 N.J.Law. 25 (Mag.) (Oct./Nov. 1996).

Approaching hearsay at administrative hearings: Hearsay evidence and the Residuum Rule. Joseph R. Morano, 180 N.J.Law. 22 (Mag.) (Oct./Nov. 1996).

Introduction to administrative law, or what is this thing called administrative law? Barbara A. Hamed, 180 N.J.Law. 9 (Mag.) (Oct./Nov. 1996).

Right to a hearing: Statutory rights, constitutional rights and "fundamental fairness". Robert H. Stoloff, 180 N.J.Law. 14 (Mag.) (Oct./Nov. 1996).

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SUBCHAPTER 11. SUBPOENAS

1:1-11.1 Subpoenas for attendance of witnesses; production of documentary evidence; issuance; contents

(a) Subpoenas may be issued by the Clerk, any judge, or by pro se parties, attorneys-at-law or non-lawyer representatives, in the name of the Clerk, to compel the attendance of a person to testify or to produce books, papers, documents, electronically stored information or other objects at a hearing, provided, however, that a subpoena to compel the attendance of the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director may be issued only by a judge. A subpoena for the Governor, an agency head, Assistant Commissioner, Deputy Commissioner, or Division Director shall be issued only if the requesting party makes a showing that the subpoenaed individual has firsthand knowledge of, or direct involvement in, the events giving rise to the contested case, or that the testimony is essential to prevent injustice.

(b) The subpoena shall contain the title and docket number of the case, the name of the person to whom it has been issued, the time and place at which the person subpoenaed must appear, the name and telephone number of the party who has requested the subpoena and a statement that all inquiries concerning the subpoena should be directed to the requesting party. The subpoena shall command the person to whom it is directed to attend and give testimony or to produce books, papers, documents or other designated objects at the time and place specified therein and on any continued dates.

(c) Subpoenas to compel the attendance of a person to testify at a deposition may be issued by a judge pursuant to N.J.A.C. 1:1-10.2(c).

(d) A subpoena which requires production of books, papers, documents or other objects designated therein shall not be used as a discovery device in place of discovery procedures otherwise available under this chapter, nor as a means of avoiding discovery deadlines established by this chapter or by the judge in a particular case.

(e) Subpoena forms shall be available free of charge from the Office of Administrative Law. Subpoena forms may be obtained from the Clerk of the Office of Administrative Law or on the State of New Jersey Office of Administrative Law website www.state.nj.us/oal/.

(f) Upon request by a party, subpoena issued by the Clerk or by a judge may be forwarded to that party by facsimile transmission. Facsimile transmitted subpoenas shall be served in the same manner and shall have the same force and effect as any other subpoena pursuant to this subchapter. A party requesting a facsimile transmittal shall be charged for such transmittal pursuant to N.J.A.C. 1:1-7.5(e).

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

Added (d).

Amended by R.1994 d.293, effective June 6, 1994.

See: 26 N.J.R. 1276(a), 26 N.J.R. 2255(a).

Amended by R.2002 d.198, effective July 1, 2002.

See: 34 N.J.R. 983(a), 34 N.J.R. 2309(a).

In (e), added the second 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 (a), inserted “, electronically stored information”.

1:1-11.2 Service; fees

(a) A subpoena shall be served by the requesting party by delivering a copy either in person or by certified mail return receipt requested to the person named in the subpoena, together with the appropriate fee, at a reasonable time in advance of the hearing.

(b) Witnesses required to attend shall be entitled to payment by the requesting party at a rate of \$2.00 per day of attendance if the witness is a resident of the county in which the hearing is held and an additional allowance of \$2.00 for every 30 miles of travel in going to the place of hearing from his or her residence and in returning if the witness is not a resident of the county in which the hearing is held.

1:1-11.3 Motions to quash

The judge on motion may quash or modify any subpoena for good cause shown. If compliance with a subpoena for the production of documentary evidence would be unreasonable or oppressive, the judge may condition denial of the motion upon the advancement by the requesting party of the reasonable cost of producing the objects subpoenaed. The judge may direct that the objects designated in the subpoena be produced before the judge at a time prior to the hearing or prior to the time when they are to be offered in evidence and may upon their production permit them or portions of them to be inspected by the parties and their attorneys.

1:1-11.4 Failure to obey subpoena

A party who refuses to obey a subpoena may be subject to sanctions under N.J.A.C. 1:1-14.4 or may suffer an inference that the documentary or physical evidence or testimony that the party fails to produce is unfavorable.

1:1-11.5 Enforcement

A party who has requested issuance of a subpoena may seek enforcement of the subpoena by bringing an action in the Superior Court pursuant to the New Jersey Court Rules.

SUBCHAPTER 12. MOTIONS

1:1-12.1 When and how made; generally; limitation in conference hearings

(a) Where a party seeks an order of a judge, the party shall apply by motion.

1. A party shall make each motion in writing, unless it is made orally during a hearing or unless the judge otherwise permits it to be made orally.

2. No technical forms of motion are required. In a motion, a party shall state the grounds upon which the motion is made and the relief or order being sought.

(b) A party shall file each motion with the judge. If a case has not yet been assigned to a judge, motions may be filed with the Clerk.

(c) In a motion for substantially the same relief as that previously denied, a party shall specifically identify the previous proceeding and its disposition.

Amended by R.1991 d.44, effective February 4, 1991.

See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

In (b): deleted text explaining Clerk's procedures regarding motions. Added text: "If a case ... with the Clerk."

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

In (a)2, substituted "and" for the comma following "made", deleted "and the date when the matter shall be submitted to the judge for disposition" following "sought" and deleted the last sentence; and deleted (d).

1:1-12.2 Motions in writing; time limits

(a) Proof of service shall be filed with all moving and responsive papers.

(b) With the exception of emergency relief applications made pursuant to N.J.A.C. 1:1-12.6, summary decision motions made pursuant to N.J.A.C. 1:1-12.5, and when a motion is expedited pursuant to (f) below, the opposing parties shall file and serve responsive papers no later than 10 days after receiving the moving papers.

(c) The moving party may file and serve further papers responding to any matter raised by the opposing party and shall do so no later than five days after receiving the responsive papers.

(d) All motions in writing shall be decided on the papers unless oral argument is directed by the judge.

(e) With the exception of motions for summary decision under N.J.A.C. 1:1-12.5, motions concerning predominant interest in consolidated cases under N.J.A.C. 1:1-17.6, and motions for emergency relief pursuant to N.J.A.C. 1:1-12.6, all motions shall be decided within 30 days of service of the last permitted response.

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

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

Section was "Motions in writing; generally, no oral argument; time limits". Deleted former (a), recodified former (b) through (g) as (a) through (f); in (a), deleted the former first sentence and substituted "all

moving and responsive" for "the moving"; rewrote (b); in (d), substituted "decided" for "submitted for disposition"; and in (e), substituted a comma for "and" following the first N.J.A.C. reference and "30 days of service of the last permitted response" for "10 days after they are submitted for disposition", and inserted "and motions for emergency relief pursuant to N.J.A.C. 1:1-12.6,".

1:1-12.3 Procedure when oral argument is directed

All motions for which oral argument has been directed shall be heard by telephone conference unless otherwise directed by the judge. All arguments on motions shall be sound recorded.

Amended by R.2007 d.393, effective December 17, 2007.

See: 39 N.J.R. 2393(a), 39 N.J.R. 5201(a).

Rewrote the section.

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

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

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

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

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

(a) A party may move for summary decision upon all or any of the substantive issues in a contested case. Such motion must be filed no later than 30 days prior to the first scheduled hearing date or by such date as ordered by the judge.

(b) The motion for summary decision shall be served with briefs and with or without supporting affidavits. The decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Such response must be filed within 20 days of service of the motion. A reply, if any, must be filed