

(c) If all parties consent, the judge may accept as an interpreter a friend or relative of a party or witness, any employee of a State or local agency, or other person who can provide acceptable interpreter assistance.

(d) In cases requiring the appointment of a qualified interpreter for a hearing impaired person pursuant to N.J.S.A. 34:1-69.7 et seq., the administrative law judge shall appoint an interpreter from the official registry of interpreters. The fee for the interpreter shall be paid by the transmitting agency.

Amended by R.1989 d.159, effective March 20, 1989.
See: 20 N.J.R. 2845(c), 21 N.J.R. 749(b).

(d) added requiring appointment of interpreter for hearing impaired, transmitting agency to pay fee.

1:1-14.4 Failure to appear; sanctions for failure to appear

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may, pursuant to N.J.A.C. 1:1-3.3(b) and (c), direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

- i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;
- ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or
- iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for the conclusion that there has been an intentional delay.

(c) If the appearing party requires an initial decision on the merits because of the failure to appear, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

Amended by R.1987 d.462, effective November 16, 1987.

See: 19 N.J.R. 1592(a), 19 N.J.R. 2131(b).

Added text in (a) "The judge may . . . the requested relief."

Amended by R.1987 d.506, effective December 21, 1987.

See: 19 N.J.R. 1591(b), 19 N.J.R. 2388(b).

Substituted may for shall in (a).

Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).

Amended failure to appear rules; recodified provisions of original subsection (c) as new rule, N.J.A.C. 1:1-14.14.

Recodified original subsection to subsections (a) and (b), deleting original subsection (b). In (a), changed "10" to "one" day for time limit of receipt of an explanation for nonappearance. Added additional text to (a) and new (b)2. Added new subsection (c).

Case Notes

Decision to permit an ex parte presentation of evidence in matter of State employee's removal was not arbitrary. *White v. Department of Transportation*, 95 N.J.A.R.2d (ETH) 1.

Salesperson's failure to file answer to order to show cause or to make appearance before New Jersey Real Estate Commission warranted license suspension. *New Jersey Real Estate Commission v. Grennor*, 92 N.J.A.R.2d (REC) 29.

1:1-14.5 Ex parte communications

(a) Except as specifically permitted by law or this chapter, a judge may not initiate or consider ex parte any evidence or communications concerning issues of fact or law in a pending or impending proceeding. Where ex parte communications are unavoidable, the judge shall advise all parties of the communications as soon as possible thereafter.

(b) The ex parte communications preclusion shall not encompass scheduling discussions or other practical administrative matters.

(c) Ex parte discussions relating to possible settlement may be conducted in the course of settlement conferences or mediations when all parties agree in advance.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or as necessary to keep the agency head as a client informed of the status of the case, provided that no information may be disclosed ex parte if it would compromise the agency head's ability to adjudicate the case impartially. In no event may the legal representative participate in making or preparing the final decision in the case.

Amended by R.1988 d.78, effective February 16, 1988.

See: 19 N.J.R. 1761(b), 20 N.J.R. 385(a).

Adopted the codifying of the Supreme Court's ruling in *In Re Opinion No. 583 of the Advisory Committee on Professional Ethics*, 107 N.J. 230 (1987).

Case Notes

In case construing N.J.A.C. 1:1-3.8(c), court held that while an administrative case is being heard at the OAL, the prosecuting DAG

may consult ex parte with the head of the administrative agency to the extent necessary to keep the agency head, the client, reasonably informed. In the Matter of Opinion No. 583 of Advisory Committee on Professional Ethics, 107 N.J. 230, 526 A.2d 692 (1987).

1:1-14.6 Judge's powers in presiding over prehearing activities, conducting hearings, developing records and rendering initial decisions

(a) The judge may schedule any form of hearing or proceeding and establish appropriate location areas and instruct the Clerk to issue all appropriate notices.

(b) When required in individual cases, the judge may supersede any notice issued by the Clerk by informing the parties and the Clerk of this action.

(c) Depending on the needs of the case, the judge may schedule additional hearing dates, declare scheduled hearing dates unnecessary, or schedule any number of in-person conferences or telephone conferences.

(d) When required in individual cases, the judge at any time of the proceeding may convert any form of proceeding into another, whether more or less formal or whether in-person or by telephone.

(e) The judge may bifurcate hearings whenever there are multiple parties, issues or claims, and the nature of the case is such that a hearing of all issues in one proceeding may be complex and confusing, or whenever a substantial saving of time would result from conducting separate hearings or whenever bifurcation might eliminate the need for further hearings.

(f) The judge may establish special accelerated or decelerated schedules to meet the special needs of the parties or the particular case.

(g) The judge may administer any oaths or affirmations required or may direct a certified court reporter to perform this function.

(h) The judge may render any ruling or order necessary to decide any matter presented to him or her which is within the jurisdiction of the transmitting agency or the agency conducting the hearing.

(i) The judge shall control the presentation of the evidence and the development of the record and shall determine admissibility of all evidence produced. The judge may permit narrative testimony whenever appropriate.

(j) The judge may utilize his or her sanction powers to ensure the proper conduct of the parties and their representatives appearing in the matter.

(k) The judge may limit the presentation of oral or documentary evidence, the submission of rebuttal evidence and the conduct of cross-examination.

(l) The judge may determine that the party with the burden of proof shall not begin the presentation of evidence and may require another party to proceed first.

(m) The judge may make such rulings as are necessary to prevent argumentative, repetitive or irrelevant questioning and to expedite the cross-examination to an extent consistent with disclosure of all relevant testimony and information.

(n) The judge may compel production of relevant materials, files, records and documents and may issue subpoenas to compel the appearance of any witness when he or she believes that the witness or produced materials may assist in a full and true disclosure of the facts.

(o) The judge may require any party at any time to clarify confusion or gaps in the proofs. The judge may question any witness to further develop the record.

(p) The judge may take such other actions as are necessary for the proper, expeditious and fair conduct of the hearing or other proceeding, development of the record and rendering of a decision.

Case Notes

Respondent moved to bar counsel for petitioner because of alleged conflict of interest due to N.J.S.A. 52:13D-16(b) that prohibits members of the Legislature and their partner and employees from representing any person other than the State in connection with any cause or matter pending before a State agency. Cited N.J.A.C. 1:1-5.1 and 14.6(p), which authorize an administrative law judge to rule on the propriety of appearance of counsel. Held counsel was barred (citing former N.J.A.C. 1:1-3.7 and 3.9). *Stone Harbor v. Div. of Coastal Resources*, 4 N.J.A.R. 101 (1980).

1:1-14.7 Conduct of conference hearings, plenary hearings and telephone hearings

(a) The judge shall commence conference and plenary hearings by stating the case title and the docket number, asking the representatives or parties present to state their names for the record and describing briefly the matter in dispute. The judge shall also, unless all parties are represented by counsel or otherwise familiar with the procedures, state the procedural rules for the hearing. The judge may also permit any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing to be entered into the record at this time.

(b) In conference and plenary hearings, the party with the burden of proof may make an opening statement. All other parties may make statements in a sequence determined by the judge.

(c) After opening statements in conference and plenary hearings, the party with the burden of proof shall begin the presentation of evidence unless the judge has determined otherwise. The other parties may present their evidence in a sequence determined by the judge.

(d) Cross-examination of witnesses in conference and plenary hearings shall be conducted in a sequence and in a manner determined by the judge to expedite the hearing while ensuring a fair hearing.

(e) When all parties and witnesses have been heard in conference and plenary hearings, opportunity shall be offered to present oral final argument, in a sequence determined by the judge.

(f) Unless permitted or requested by the judge, there shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other dispositions permitted after the final argument in plenary hearings. Whenever possible, proposed findings or other submissions should be offered at the hearing in lieu of or in conjunction with the final argument.

1. When proposed findings or other submissions are permitted or requested by the judge, the parties shall conform to a schedule that may not exceed 30 days after the last day of testimony or the final argument.

2. When the judge permits proposed findings or other submissions to be prepared with the aid of a transcript, the transcript must be ordered immediately. The 30-day submission time frame shall commence upon receipt of the transcript.

3. Any proposed findings of fact submitted by a party shall not be considered unless they are based on facts proved in the hearing.

4. Any reference in briefs or other such submissions to initial decisions shall include sufficient information to enable the judge to locate the initial decision. This shall include either the Office of Administrative Law docket number or a reference to New Jersey Administrative Reports or another published and indexed compilation.

(g) In conference hearings, no proposed findings of fact, including conclusions of law, briefs, forms of order or other dispositions may be offered or required after the final argument, except for the purpose of expressing the terms of a settlement.

(h) The hearing shall be concluded in conference and plenary cases after the final argument or, if a schedule has been established for subsequent submissions, when the time established for the filing of such items has expired.

(i) A telephone hearing may be designated by the Clerk or judge as a conference or plenary hearing. A telephone hearing, whether conference or plenary, is begun by the judge placing a conference call on a designated date and time to the parties in the case.

Amended by R.1991 d.44, effective February 4, 1991.
See: 22 N.J.R. 3278(b), 23 N.J.R. 293(a).

In (h): deleted text “, or when the last such item has been received by the judge, whichever is earlier,” describing filing of submissions.

1:1-14.8 Conduct of proceedings on the papers

(a) Upon transmittal of a case that may be conducted as a proceeding on the papers, the Clerk shall schedule a hearing and send a notice of hearing to the parties. The notice shall permit the party requesting the hearing to select a telephone hearing or a proceeding on the papers in lieu of the scheduled in-person hearing.

(b) Along with the notice of hearing, the Clerk shall transmit a certification, to be completed if the party requesting the hearing chooses to have a proceeding on the papers.

(c) A completed certification must be returned to the Clerk no later than 10 days before the scheduled hearing date. Statements, records and other documents which supplement the certification may also be submitted. Upon request and for good cause shown, the Clerk may grant additional time for submission of supplemental documents.

(d) At the conclusion of the time allotted in (c) above, the Clerk will assign the record for review and determination by a judge. The record consists of the certification and supplemental documents, as well as documents transmitted with the file by the transmitting agency. In a proceeding on the papers, the hearing is concluded when the clerk assigns the record to a judge.

(e) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certification is received, the matter shall be handled pursuant to N.J.A.C. 1:1-14.14.

Amended by R.1988 d.517, effective November 7, 1988.
See: 20 N.J.R. 1979(c), 20 N.J.R. 2749(a).

Deleted text from (e) and substituted new. The new text changes the timing of exchange to receipt of the notice of filing of the case, rather than the notice of hearing.

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.

1:1-14.9 Orders; preparation of orders

(a) Any resolution which does not completely conclude the case shall be by order. Orders may be rendered in writing or orally on the record by the judge.

(b) Unless such review is precluded by law, all judges' orders are reviewable by an agency head in accordance with N.J.A.C. 1:1-14.10 or when rendering a final decision under N.J.A.C. 1:1-18.6.

(c) Orders may be prepared by a party at the direction of a judge. When prepared by a party, the order shall be filed with the judge and served on all parties who may within five days after service object to the form of the order by writing to the judge with a copy to all parties. Upon objection to the form of the order, the judge, without oral argument or any further proceedings, may settle the form of the order either by preparing a new order or by modifying the pro-

posed order. After signing the order, the judge shall cause the order to be served upon the parties.

1:1-14.10 Interlocutory review

(a) Except for the special review procedures provided in N.J.A.C. 1:1-12.6 (emergency relief), and 1:1-12.5(e) (partial summary decision), an order or ruling may be reviewed interlocutorily by an agency head at the request of a party.

(b) Any request for interlocutory review shall be made to the agency head and copies served on all parties no later than five working days from the receipt of the written order or oral ruling, whichever is rendered first. An opposing party may, within three days of receipt of the request, submit an objection to the agency head. A copy must be served on the party who requested review. Any request for interlocutory review or objection to a request shall be in writing by memorandum, letter or motion and shall include a copy of any written order or ruling or a summary of any oral order or ruling sought to be reviewed. Copies of all documents submitted shall be filed with the judge and Clerk.

(c) Within 10 days of the request for interlocutory review, the agency head shall notify the parties and the Clerk whether the order or ruling will be reviewed. If the agency head does not so act within 10 days, the request for review shall be considered denied. Informal communication by telephone or in person to the parties or their representatives and to the Clerk within the 10 day period will satisfy this notice requirement, provided that a written communication or order promptly follows.

(d) A party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head in writing arguments in favor of the order or ruling being reviewed. A copy shall be served on the party who requested review.

(e) Where the agency head determines to conduct an interlocutory review, the agency head shall issue a decision, order or other disposition of the review at the earliest opportunity but no later than 20 days from receiving the request for review. Where the interests of justice require, the agency head shall conduct an interlocutory review on an expedited basis. Where the agency head does not issue an order within 20 days, the judge's ruling shall be considered conditionally affirmed. The time period for disposition may be extended for good cause for an additional 20 days if both the agency head and the Director of the Office of Administrative Law concur.

(f) Where the proceeding generating the request for interlocutory review has been sound recorded and the agency head requests the verbatim record, the Clerk shall furnish the original sound recording or a certified copy within one day of the request. The party requesting the interlocutory review shall provide the agency head with all other papers, materials, transcripts or parts of the record which pertain to the request for interlocutory review.

(g) Within five working days of the agency head's notice that an interlocutory review will be conducted, the judge, in his or her discretion, may provide the agency head and the parties with a written memorandum stating the basis for the order or ruling.

(h) The time limits established in this section, with the exception of (e) above, may be extended by the agency head where the need for a delay is caused by honest mistake, accident, or any cause compatible with due diligence.

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Either the presiding judge or the agency head may order a stay of the proceedings, either on their own or upon application. Applications for stays should be made in the first instance to the presiding judge. If denied, the application may be resubmitted to the agency head. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j) Except as limited by (m) below and N.J.A.C. 1:1-18.4(a), any order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;
2. Was made but the agency head declined to review the order or ruling; or
3. Was made and not considered by the agency head within the established time frame.

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;
2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;
3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;
4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs, expenses, or fines;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3; and
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).