

TITLE 1

OFFICE OF 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.1992 d.213, effective April 21, 1992.
See: 24 N.J.R. 321(a), 24 N.J.R. 1873(b).

Executive Order No. 66(1978) Expiration Date

Chapter 1, Uniform Administrative Procedure Rules, expires on April 21, 1997.

Chapter Historical Note

Chapter 1, originally 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). Subsequently, Chapter 1 was amended by the following rule adoptions:

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 was readopted as R.1985 d.292, effective May 15, 1985. See: 17 N.J.R. 2(a), 17 N.J.R. 1403(a). Subsequently, Chapter 1 was amended by the following rule adoptions:

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 was repealed by R.1987 d.200 and new rules were adopted, effective May 4, 1987 but operative July 1, 1987. See: 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a). See, also, section annotations for specific rulemaking activity. Pursuant to Executive Order No. 66(1978), Chapter 1 was readopted by R.1992 d.213. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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. Harned, 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 1. APPLICABILITY, SCOPE, CITATION OF RULES, CONSTRUCTION AND RELAXATION; COMPUTATION OF TIME

1:1-1.1 Applicability; scope; special hearing rules

(a) Subject to any superseding Federal or State law, this chapter shall govern the procedural aspects pertaining to transmission, the conduct of the hearing and the rendering of the initial and final decisions in all contested cases in the Executive Branch of the State Government. N.J.S.A. 52:14F-5. This chapter governs the procedure whether the contested case is before the Office of Administrative Law, an agency head or any other administrative agency. Subchapter 21 governs the conduct of certain uncontested cases handled by the Office of Administrative Law under N.J.S.A. 52:14F-5(o).

(b) In the event of conflict between this chapter and any other agency rule, except agency rules which incorporate statutory requirements, this chapter shall prevail. Procedural rules formerly adopted by the agencies, including those adopted prior to the creation of the Office of Administrative Law, shall continue to apply to the extent they are not inconsistent with this chapter, with statutory requirements or with constitutional standards.

(c) No agency other than the Office of Administrative Law may hereafter propose any rules to regulate the conduct of contested cases and the rendering of administrative adjudications. N.J.S.A. 52:14F5(e). Specific pleading and other pre-transmittal requirements may be regulated by the agencies provided they are consistent with this chapter.

(d) In addition to those rules that specifically govern a transmitting agency's responsibilities and the jurisdiction of the Office of Administrative Law, the following Uniform Administrative Procedure rules are not intended to apply to contested cases heard in agencies exempt under N.J.S.A. 52:14F-8:

1. N.J.A.C. 1:1-11.1(c) (Subpoena forms);
2. N.J.A.C. 1:1-12.6 (Emergency relief);
3. N.J.A.C. 1:1-14.10 (Interlocutory review);
4. N.J.A.C. 1:1-16.2(b) and (c) (Time of motion to intervene);
5. N.J.A.C. 1:1-18.8 (Extensions of time limits for decisions and exceptions); and
6. N.J.A.C. 1:1-21 (Uncontested cases).

(e) This chapter is subject to special hearing rules applicable to particular agencies. Such rules may be adopted by the Office of Administrative Law after consultation with a transmitting agency or at the request of a transmitting agency when the transmitted cases involve unique hearing requirements that are not addressed by this chapter. Where

required by Federal law, special hearing rules may be promulgated by a transmitting agency with the concurrence of the Office of Administrative Law.

Cross References

Women-owned and minority-owned businesses, false information supplied, contested case hearing as under this subchapter, see N.J.A.C. 12A:11-1.9.

Case Notes

Disciplinary hearings by the Board are authorized by the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., and are governed by the New Jersey Uniform Administrative Rules. Deck House, Inc. v. New Jersey State Bd. of Architects, 531 F.Supp. 633 (D.N.J.1982).

Administrative agency cannot expand reach of statute. Rutgers University Legislative Affairs Council, Inc. v. Thompson, 12 N.J.Tax 642 (1992).

An administrative law judge is not automatically bound by an agency party's argument. This would frustrate the legislative intent of N.J.S.A. 52:14F-1 et seq. which tasked the OAL with providing due process hearings independently and impartially. Div. of Motor Vehicles v. Canova, 1 N.J.A.R. 7 (1980).

1:1-1.2 Citation of rules

This chapter shall be referred to as the "New Jersey Uniform Administrative Procedure Rules" and may be cited as, for example, N.J.A.C. 1:1-1.2.

4. An order granting admission shall set forth the limitations upon admission established in R. 1:21-2(b).

5. A judge may, at any time during the proceeding and for good cause shown, revoke permission for the attorney to appear.

1:1-5.3 Conduct of lawyers

In any case where the issue of an attorney's ethical or professional conduct is raised, the judge before whom the issue has been presented shall consider the merits of the issue raised and make a ruling as to whether the attorney may appear or continue representation in the matter. The judge may disqualify an attorney from participating in a particular case when disqualification is required by the Rules of Professional Conduct or the New Jersey Conflict of Interest Law. If disciplinary action against the attorney is indicated, the matter shall be referred to the appropriate disciplinary body.

Case Notes

Contested case hearing before administrative law judge was hearing before "state agency" for purposes conflicts of interest law. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law that conducted administrative hearing on behalf of Department of Community Affairs had authority derivative of Department's authority. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law could properly reach different decision from that reached by Joint Committee on Legislative Ethics. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 243 N.J.Super. 187, 578 A.2d 1257 (A.D.1990).

Office of Administrative Law has authority to regulate qualifications of persons appearing before its courts; administrative law judge authorized to rule on attorney disqualification in a contested case; Code of Judicial Conduct and Rules of Professional Conduct incorporated by reference (decision on former rule). In the *Matter of Tenure Hearing of Onorevale*, 103 N.J. 548, 511 A.2d 1171 (1986).

The OAL may initially determine issues relating to possible attorney disqualification on ethics grounds appearing before administrative law judges in contested cases (citing former N.J.A.C. 1:1-3.8). In the *Matter of Tenure Hearing of Onorevale*, 103 N.J. 548, 511 A.2d 1171 (1986).

Legislator-attorney was disqualified from representing party in administrative proceeding. *Wood v. Department of Community Affairs, Bureau of Regulatory Affairs*, 92 N.J.A.R.2d (OAL) 1.

Respondent moved to bar counsel for petitioner because of alleged conflict of interest due to rule that prohibits members of the Legislature and their partners 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 1:1-14.6(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. Dir. of Coastal Resources*, 4 N.J.A.R. 101 (1980).

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) In conformity with New Jersey Court Rule R. 1:21-1(e), the following non-lawyers may apply for permission to represent a party at a contested case hearing:

1. Persons whose appearance is required by Federal law;
2. State agency employees;
3. County or municipal welfare agency employees;
4. Legal service paralegals or assistants;
5. Close corporation principals;
6. Union representatives in Civil Service cases; and
7. Individuals representing parents or children in special education proceedings.

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. Oral applications at the hearing may be made in Division of Economic Assistance, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases.

i. At the hearing, the non-lawyer applicant shall state that he or she is not a suspended or disbarred attorney and that he or she is not receiving a fee for the appearance.

ii. At the hearing, the judge shall determine that the non-lawyer applicant seeking to represent a recipient or applicant for services fulfills the appearance requirements of Federal law.

iii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall state that he or she is an agency staff person with knowledge of the matter in controversy, has been assigned to represent the agency in the case and that the county or municipal counsel is not providing representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name, title, business address and telephone number of his or her supervisor.

iv. At the hearing, a non-lawyer applicant seeking to represent the Division of Economic Assistance, the Division of Medical Assistance and Health Services or the Division of Youth and Family Services shall state how he or she satisfies the requirements for representation set forth in (b)2i, below.

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county

or local government employee; where a non-lawyer seeks to represent a party in a special education hearing; where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Economic Assistance, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

i. For non-lawyer employees seeking to represent a State agency, the Notice shall include a statement that the non-lawyer is an employee of the State agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; his or her supervisor's position, business address and telephone number; and an explanation of his or her special expertise or experience in the matter in controversy. The Notice shall also contain a statement, indicating that the employee has been assigned to represent the agency in the case that the Attorney General will not provide legal representation.

ii. For non-lawyers from legal services programs, the Notice shall include a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services Program of which he or she is a part; and the name, business address, telephone number and signed authorization of a Legal Services attorney who supervises the applicant.

iii. The non-lawyer union representative shall include in his or her Notice a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the represented employee's collective bargaining unit; and the name, title, business address and telephone number of his or her supervisor.

iv. In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she has knowledge or training with respect to handicapped pupils and their educational needs so as to facilitate the presentation of the claims or defenses of the parent or child. The applicant shall describe his or her relevant education, work experience or other qualifications related to the child's condition.

v. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall demonstrate in his or her Notice how he or she qualifies as a principal of a close corporation.

vi. Any non-lawyer applicant filing a Notice of Appearance/Application shall submit a certification with the Notice stating that he or she is not a disbarred or suspended attorney and is not receiving a fee for the appearance.

vii. The Notice of Appearance/Application must be signed by the non-lawyer applicant. Notices shall be filed with the Clerk and served on all parties no later than 10 days prior to the scheduled hearing date.

viii. The Clerk may require the applicant to supply additional information or explanation of the items specified above as applicable, or may require the applicant to supply evidence of the statements contained in the Notice. If the Clerk does not otherwise notify the applicant within five days of receipt of the Notice, the non-lawyer's request to appear at the hearing shall be deemed approved. When the Clerk believes that a Notice presents a significant legal issue relating to representation rights, the Clerk will notify the parties that the presiding judge will determine the matter at or before the hearing.

Amended by R.1991 d.296, effective June 17, 1991.
See: 23 N.J.R. 1053(a), 23 N.J.R. 1919(a).

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

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

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

Revised text.

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) In settlements, a non-lawyer may not sign a consent order or stipulation for a party, except that non-lawyer representatives of State agencies, county or municipal welfare agencies or close corporations who have been autho-

rized to agree to the terms of a particular settlement by the represented entity may sign consent orders or stipulations.

(g) Non-lawyer representatives are expected to be guided in their behavior by appropriate standards of conduct, such as contained in the following Rules of Professional Conduct for attorneys: RPC 1.2 (Scope of Representation); RPC 1.3 (Diligence); RPC 1.4 (Communication); RPC 3.2 (Expediting Litigation); RPC 3.3 (Candor Toward the Tribunal); RPC 3.4 (Fairness to Opposing Party and Counsel); RPC 3.5 (Impartiality and Decorum of the Tribunal); and RPC 4.1 (Truthfulness in Statements to Others). For failure to comply with these standards, the judge may revoke a non-lawyer representative's right to appear in a case or may order sanctions as provided in (c) above.

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

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

Correction in (c): changed 1:11-4.4 to 1:1-14.4.
Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

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

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

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

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

Added (g).

Case Notes

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

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

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

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

1. The agency shall include in the transmittal form a statement which verifies the agency's intention to proceed without a representative qualified under N.J.A.C. 1:1-5.4 and lists the papers and/or witnesses upon which the agency intends to rely.
2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or the witnesses' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. 1:1-5.4, to ask questions through the judge, make statements in response to other witnesses' testimony, or to offer documents in his or her own name. However, the judge need not permit a witness who does not qualify as an agency representative under these rules to examine or cross-examine witnesses.

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

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

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

SUBCHAPTER 6. PLEADINGS

1:1-6.1 Pleading requirements

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

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

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

Case Notes

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

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

1:1-6.2 Amendment of pleadings

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

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

Case Notes

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

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

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

SUBCHAPTER 7. SERVICE AND FILING OF PAPERS; FORMAT

1:1-7.1 Service; when required; manner

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

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

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

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

1:1-7.2 Proof of publication and service

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

(d) Requests to extend the time limit for exceptions and replies shall be submitted in writing with a proposed form of extension order 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 and the Director of the Office of Administrative Law. 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 10 days of receipt of the proposed order sign and 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, set forth the dates of any previous extensions, 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 in the case of extraordinary circumstances.

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).

Case Notes

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).

SUBCHAPTER 19. SETTLEMENTS AND WITHDRAWALS

1:1-19.1 Settlements

(a) Where the parties to a case wish to settle the matter, and the agency head has not consented to the settlement terms, 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) If the agency head has approved the terms of the settlement, 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 by the parties, their attorneys, or their non-attorney representatives when authorized pursuant to N.J.A.C. 1:1-5.5(f). The consent order shall be filed with the Clerk and the assigned judge, if known.

(d) The stipulation of dismissal or consent order under (c) above shall be deemed the final decision.

Amended by R.1987 d.461, effective November 16, 1987.

See: 19 N.J.R. 1593(a), 19 N.J.R. 2131(c).

(b)1.-2. added to clarify that in those cases where the agency head, either in person or through counsel, has consented to the settlement terms.

Amended by R.1995 d.300, effective June 19, 1995.

See: 27 N.J.R. 1343(a), 27 N.J.R. 2383(a).

Case Notes

Emotionally disturbed child and his parent were "prevailing parties". *E.P. by P.O. v. Union County Regional High School Dist. No. 1*, D.N.J.1989, 741 F.Supp. 1144.

1:1-19.2 Withdrawals

(a) A party may withdraw a request for a hearing or a defense raised by notifying the judge and all parties. Upon receipt of such notification, the judge shall discontinue all proceedings and return the case file to the Clerk. If the judge deems it advisable to state the circumstances of the withdrawal on the record, the judge may enter an initial decision memorializing the withdrawal and returning the

matter to the transmitting agency for appropriate disposition.

(b) When a party withdraws, the Clerk shall return the matter to the agency which transmitted the case to the Office of Administrative Law for appropriate disposition.

(c) After the Clerk has returned the matter, a party shall address to the transmitting agency head any motion to reopen a withdrawn case.

Amended by R.1990 d.71, effective February 5, 1990.

See: 21 N.J.R. 3589(a), 22 N.J.R. 334(b).

In (a): deleted language specifying the entering of an initial decision for withdrawals and added, "discontinue . . . for appropriate disposition".

In (b): specified that Clerk shall return matter to agency which had transmitted the case to OAL.

In (c): deleted language referring to decision granting withdrawal.

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

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

In (a): deleted "in writing" from withdrawal procedure request.

Law Review and Journal Commentaries

Law Against Discrimination. Judith Nallin, 138 N.J.L.J. No. 15, 23 (1994).

Case Notes

Discharged employee's election to file national origin discrimination charge with the Equal Employment Opportunity Commission pursuant to federal law precluded employee from bringing state court national origin discrimination claim after the EEOC determined that employee failed to demonstrate probable cause for administrative determination of discrimination. *Hernandez v. Region Nine Housing Corp.*, 286 N.J.Super. 676, 670 A.2d 95 (A.D.1996).

Law Against Discrimination did not jurisdictionally prevent plaintiff from filing complaint in superior court after withdrawing her administrative complaint. *Aldrich v. Manpower Temporary Services*, 277 N.J.Super. 500, 650 A.2d 4 (A.D.1994), certification denied 139 N.J. 442, 655 A.2d 445.

SUBCHAPTER 20. MEDIATION BY THE OFFICE OF ADMINISTRATIVE LAW

1:1-20.1 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1. All parties to the mediation shall make available for the mediation a person who has authority to bind the party to a mediated settlement.

2. The Office of Administrative Law shall supply the parties with a list containing not less than six administrative law judges as suggested mediators. Each party may strike two judges from the list and the Office of Administrative Law will not assign any judge who has been stricken from the list to conduct the mediation. The Office of Administrative Law shall notify the parties of the assigned mediator.

3. All parties must agree in writing to the following:

i. Not to use any information gained solely from the mediation in any subsequent proceeding;

ii. Not to subpoena the mediator for any subsequent proceeding;

iii. Not to disclose to any subsequently assigned judge the content of the mediation discussion;

iv. To mediate in good faith; and

v. That any agreement of the parties derived from the mediation shall be binding on the parties and will have the effect of a contract in subsequent proceedings.

4. The mediator shall, within 10 days of assignment, schedule a mediation at a convenient time and location.

5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-14.14.

6. The mediator may at any time return the matter to the Clerk and request that a hearing be scheduled before another judge.

7. No particular form of mediation is required. The structure of the mediation shall be tailored to the needs of the particular dispute. Where helpful, parties may be permitted to present any documents, exhibits, testimony or other evidence which would aid in the attainment of a mediated settlement.

(b) In no event shall mediation efforts continue beyond 30 days from the date of the first scheduled mediation unless this time limit is extended by agreement of all the parties.

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 (a)5, revised N.J.A.C. citation.

1:1-20.2 Conclusion of mediation

(a) If the transmitting agency is a party to the mediation, successful mediation shall be concluded by a mediation agreement.

(b) If the transmitting agency is not a party, successful mediation shall be concluded by initial decision.

(c) If mediation does not result in agreement, the matter shall be returned to the Clerk for scheduling appropriate subsequent proceedings.