

1. Admission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee.

The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the attorney to appear in subsequent matters during the payment year, provided the attorney otherwise qualifies for admission.

New Jersey State Library

Journal of Management Studies, 19(1), 67-80.

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 and Public Employment Relations Commission cases;
7. Individuals representing parents or children in special education proceedings; and
8. County or local government employees in Civil Service cases.

(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)3i below.

2. Oral application at the hearing may be made in public employment relations proceedings. At the hear-

ing, 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.

3. 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 county or local government employee seeks to represent the appointing authority; 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 and 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. For non-lawyer employees seeking to represent a county or local government appointing authority in a Civil Service case, the notice shall include a statement that the non-lawyer is an employee of the county or local government appointing authority; his or her position with the appointing authority; 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 appointing authority in the case and that the legal representative for the county or locality does not provide representation in the matter.

vi. 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.

vii. 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.

viii. 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.

ix. 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.

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

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

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

Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

1. In the interest of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation which may be rendered by a non-lawyer. Conditions or limits may include:

- i. Requiring any examination and cross-examination by the non-lawyer to be conducted through the judge;
- ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;
- iii. Requiring the party to speak for him or herself; or
- iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

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

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

Amended by R.1989 d.158, effective March 20, 1989.

See: 20 N.J.R. 2845(a), 21 N.J.R. 749(a).

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

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

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

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

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

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

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

Added (g).

Amended by R.1997 d.158, effective April 7, 1997.
See: 29 N.J.R. 282(a), 29 N.J.R. 1295(a).

Case Notes

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.