

CHAPTER 13A
DIVISION OF CONSUMER AFFAIRS
LEMON LAW HEARINGS

Authority

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

Source and Effective Date

R.2009 d.217, effective June 10, 2009.
See: 41 N.J.R. 1127(a), 41 N.J.R. 2647(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, expires on June 10, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, was adopted as R.1989 d.189, effective April 3, 1989. See: 21 N.J.R. 91(a), 21 N.J.R. 889(b).

Pursuant to Executive Order No. 66(1978), Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, was readopted as R.1994 d.107, effective February 3, 1994. See: 25 N.J.R. 5387(a), 26 N.J.R. 1223(a).

Subchapter 11, Subpoenas, was repealed by R.1994 d.293, effective June 6, 1994. See: 26 N.J.R. 1276(a), 26 N.J.R. 2255(a).

Pursuant to Executive Order No. 66(1978), Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, was readopted as R.1999 d.64, effective February 1, 1999. See: 30 N.J.R. 4308(a), 31 N.J.R. 637(a).

Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, was readopted as R.2004 d.147, effective March 18, 2004. See: 36 N.J.R. 6(a), 36 N.J.R. 1919(a).

Chapter 13A, Division of Consumer Affairs Lemon Law Hearings, was readopted as R.2009 d.217, effective June 10, 2009. See: Source and Effective Date.

Cross References

Motorized wheelchair dispute resolution, notification and scheduling of contested case hearings, see N.J.A.C. 13:45A-26E.6.

Law Reviews and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. Matt Ackermann, 150 N.J.L.J. 609 (1997).

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SUBCHAPTER 1. APPLICABILITY**1:13A-1.1 Applicability**

The special rules in this chapter shall apply to matter transmitted to the Office of Administrative Law (OAL) by the Division of Consumer Affairs (Division) wherein a consumer of a motor vehicle or of a motorized wheelchair seeks a refund or replacement of the vehicle from a manufacturer under the provisions of the New Jersey Lemon Law, N.J.S.A. 56:12-29 et seq. and of N.J.S.A. 56:12-75. These special rules must be read in conjunction with the Division of Consumer Affairs' rules on dispute resolution at N.J.A.C. 13:45A-26.1 through 26.17. Any aspect of the OAL hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these special rules are inconsistent with the U.A.P.R., these rules shall apply.

Amended by R.1993 d.422, effective September 7, 1993.

See: 25 N.J.R. 2625(a), 25 N.J.R. 4063(a).

Amended by R.1996 d.434, effective September 16, 1996.

See: 28 N.J.R. 3206(b), 28 N.J.R. 4219(a).

Extended application to motorized wheelchairs and added reference to N.J.S.A. 56:12-75.

1:13A-1.2 Presumptions

An initial decision mailed pursuant to these rules shall be presumed to be received three days after mailing.

New Rule, R.1993 d.289, effective June 7, 1993.
See: 24 N.J.R. 1843(a), 25 N.J.R. 2247(a).

SUBCHAPTERS 2 THROUGH 7. (RESERVED)

SUBCHAPTER 8. FILING AND TRANSMISSION OF
CONTESTED CASES IN THE OFFICE OF
ADMINISTRATIVE LAW

**1:13A-8.1 Agency filing with the Office of
Administrative Law**

Immediately after accepting a consumer's application for dispute resolution under N.J.A.C. 13:45A-26.10(c), the matter shall be transmitted to the Office of Administrative Law. The division shall not attempt to settle the case before transmitting the matter to the OAL.

SUBCHAPTER 9. SCHEDULING; CLERK'S NOTICES;
ADJOURNMENTS; INACTIVE LIST

1:13A-9.1 Scheduling of summary proceedings

Upon acceptance of a consumer's application for dispute resolution, the Division and the Office of Administrative Law shall immediately arrange a summary hearing date which, to the greatest extent possible, shall be convenient to all parties. Unless the consumer agrees to a later date, the summary hearing shall be no later than 20 days from the date of acceptance of the consumer's application.

Amended by R.1999 d.64, effective March 1, 1999.
See: 30 N.J.R. 4308(a), 31 N.J.R. 637(a).
Rewrote the section.

1:13A-9.2 Clerk's notices

The Clerk shall send a written notice of filing and summary hearing to each party.

SUBCHAPTER 10. DISCOVERY

1:13A-10.1 Discovery

(a) The consumer's application for dispute resolution, the required attachments and the manufacturer's response shall be provided as specified by N.J.A.C. 13:45A-26.10(b) and (f).

(b) No other discovery shall be permitted.

Case Notes

N.J.A.C. 1:13A-10.1 bars discovery apart from the application for Lemon Law relief and the requisite attachments; consequently, to the extent an ALJ's ruling was based on the failure to provide discovery, it appeared the evidentiary ruling with regard to a videotape offered to

demonstrate a defect was incorrect. *Caruso v. Ducati North America Inc.*, OAL Dkt. No. CMA 12681-08, 2009 N.J. AGEN LEXIS 885, Final Decision (February 19, 2009).

SUBCHAPTER 11. (RESERVED)

SUBCHAPTER 12. MOTIONS

1:13A-12.1 Limitations on prehearing motions

Except for a motion for adjournment to which the consumer has consented, a party may not file any motion before the scheduled date of hearing.

Case Notes

The purpose of providing for Lemon Law cases to be brought administratively is to provide an "expeditious forum," and adjournments in Lemon Law cases are disfavored. *Dasilva v. Ford Motor Co.*, OAL Dkt. No. CMA 7782-04, 2005 N.J. AGEN LEXIS 1067, Final Decision (December 22, 2005).

SUBCHAPTER 13. PREHEARING CONFERENCES AND
PROCEDURES

1:13A-13.1 Prehearing conferences

Prehearing conferences will not be scheduled in any proceeding conducted under this chapter.

SUBCHAPTER 14. CONDUCT OF CASES

1:13A-14.1 Failure to appear

If a party fails to appear at any proceeding scheduled by the Clerk or judge, the provisions of N.J.A.C. 1:1-14.4 shall apply.

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).

Recodified original subsections (a)-(b) to single subsection of rule text. Deleted text superseded by amendments made to N.J.A.C. 1:1-14.4 for procedures on "failure to appear" cases.

1:13A-14.2 Conduct of hearing

(a) Except as modified by N.J.A.C. 1:13A-14.3, the hearing shall be conducted pursuant to the provisions of N.J.A.C. 1:1-14.7(a) through (e).

(b) There shall be no proposed findings of fact, conclusions of law, briefs, forms of order or other posthearing submissions permitted after the final argument except if permitted by the judge for good cause. In no event shall the submission of posthearing documents extend the 20 days permitted for issuing an initial decision.

Amended by R.1993 d.422, effective September 7, 1993.
See: 25 N.J.R. 2625(a), 25 N.J.R. 4063(a).

1:13A-14.3 Burden of producing evidence

The consumer shall first present his or her evidence. The manufacturer may then present any contradictory evidence or argument and affirmative defenses as set forth in the statute.

Law Reviews and Journal Commentaries

Expert testimony not required in Lemon Law suits, court says. *Matt Ackermann*, 150 N.J.L.J. 609 (1997).

1:13A-14.4 Proof of fees and costs

(a) At the hearing in a matter concerning a motor vehicle, the consumer shall present proof of any costs incurred in preparing for the hearing. If the consumer is represented, the consumer's attorney shall also present a certified statement of fees to date and a statement of the hourly rate or other fee for appearing at the hearing.

(b) A prevailing consumer in a matter concerning a motor vehicle shall be awarded the following fees and costs: reasonable attorney's fees, filing fee, fees for reports prepared by expert witnesses or for the appearance and testimony of expert witnesses.

Amended by R.1993 d.422, effective September 7, 1993.

See: 25 N.J.R. 2625(a), 25 N.J.R. 4063(a).

Amended by R.1996 d.434, effective September 16, 1996.

See: 28 N.J.R. 3206(b), 28 N.J.R. 4219(a).

In (a) and (b) restricted section to matters concerning motor vehicles.

SUBCHAPTERS 15 THROUGH 17. (RESERVED)

**SUBCHAPTER 18. INITIAL DECISION;
EXCEPTIONS; FINAL DECISION; REMAND;
EXTENSIONS OF TIME LIMITS**
1:13A-18.1 Initial decisions

(a) An initial decision shall be issued in writing no later than 20 days from the conclusion of the hearing.

(b) The initial decision shall include a caption; date record closed; appearances by the parties and representatives, if any; statement of the case; brief summary of findings of fact and conclusion of law and reasons therefor; appropriate remedies, and specific dates for completion of all awarded remedies. In a case concerning a motor vehicle, if the decision concludes that the consumer is the prevailing party, the initial decision shall also include an award of reasonable attorney's fees and other costs.

(c) The initial decision shall be mailed promptly to the agency head and to the parties.

(d) Within four days after the initial decision is mailed to the agency head, the Clerk shall certify the entire record with original exhibits to the agency head.

Amended by R.1993 d.289, effective June 7, 1993.

See: 24 N.J.R. 1843(a), 25 N.J.R. 2247(a).

Added new (c); redesignated revised (c) to (d).

Amended by R.1993 d.422, effective September 7, 1993.

See: 25 N.J.R. 2625(a), 25 N.J.R. 4063(a).

Amended by R.1996 d.434, effective September 16, 1996.

See: 28 N.J.R. 3206(b), 28 N.J.R. 4219(a).

In (b) limited fee awards in initial decisions to matters concerning motor vehicles.

1:13A-18.2 Exceptions; replies

(a) If a party wishes to take exception to the initial decision, such exception must be submitted in writing to the Director of the Division of Consumer Affairs, the judge and to all parties. Exceptions must be received by the Division of Consumer Affairs no later than eight days after the initial decision was mailed to the parties. Exceptions shall not exceed three pages in length. In all other respects, exceptions shall conform to the requirements of N.J.A.C. 1:1-18.4(b) and (c).

(b) No replies or cross-exceptions shall be permitted.

Repeal and New Rule, R.1993 d.289, effective June 7, 1993.

See: 24 N.J.R. 1843(a), 25 N.J.R. 2247(a).

Section was "Exemptions; replies".

1:13A-18.3 Final decision

The Director of the Division of Consumer Affairs shall issue a final decision which shall adopt, reject or modify the initial decision no later than 15 days from receipt of the initial decision. Unless a final decision is issued within the 15 day period, the initial decision shall be deemed adopted as the final decision and the requirements and penalties of N.J.A.C. 13:45A-26.12(c) and (d) and N.J.A.C. 13:45A-26.13 shall apply.

Amended by R.1993 d.422, effective September 7, 1993.

See: 25 N.J.R. 2625(a), 25 N.J.R. 4063(a).

1:13A-18.4 Extensions of time limits

Time limits for filing an initial decision and for issuing a final decision shall not be extended.

**SUBCHAPTER 19. SETTLEMENTS AND
WITHDRAWALS**
1:13A-19.1 Settlements

If a case involving a motor vehicle is settled, the settlement shall indicate whether attorney's fees and other costs will be paid by the manufacturer to the consumer or whether such fees and costs have been waived by the consumer.